

Colorado Register



37 CR 19

Volume 37 , No.19

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Introduction

The *Colorado Register* is published pursuant to C.R.S. 24-4-103(11) and is the sole official publication for state agency notices of rule-making, proposed rules, attorney general's opinions relating to such rules, and adopted rules. The register may also include other public notices including annual departmental regulatory agendas submitted by principal departments to the secretary of state.

"Rule" means the whole or any part of every agency statement of general applicability and future effect implementing, interpreting, or declaring law or policy or setting forth the procedure or practice requirements of any agency. "Rule" includes "regulation". C.R.S. 24-4-102(15). Adopted rules are effective twenty days after the publication date of this issue unless otherwise specified.

The *Colorado Register* is published by the office of the Colorado Secretary of State twice monthly on the tenth and the twenty-fifth. Notices of rule-making and adopted rules that are filed from the first through the fifteenth are published on the twenty-fifth of the same month, and those that are filed from the sixteenth through the last day of the month are published on the tenth of the following month. All filings are submitted through the secretary of state's electronic filing system.

For questions regarding the content and application of a particular rule, please contact the state agency responsible for promulgating the rule. For questions about this publication, please contact the Administrative Rules Program at rules@sos.state.co.us.

Notice of Rulemaking Hearing

Tracking number

2014-01014

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

11/05/2014

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

2014-01018

Department

200 - Department of Revenue

Agency

201 - Taxpayer Service Division - Tax Group

CCR number

1 CCR 201-9

Rule title

TON MILE TAX AND PASSENGER MILE TAX

Rulemaking Hearing

Date

11/05/2014

Time

09:00 AM

Location

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

Subjects and issues involved

Ton Mile Tax and Passenger Mile Tax

Statutory authority

39-21-112(1), and 42-1-204, C.R.S.

Contact information

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~~CHANGES TO RULES AND REGULATIONS RELATING TO THE COLORADO TON- MILE AND PASSENGER MILE REGULATIONS~~

~~REPEAL in their entirety Regulations 42-3-123(11)(a) through 42-3-127, at 1 C.C.R. 201-9 and add the following Regulations 42-3-123(1) through 42-3-1.~~

~~The statutory basis for these regulations is 42-1-204 and 39-21-112, C.R.S. 1973.~~

~~(a) —to update and conform regulations to statutory changes;~~

~~(b) —to provide further clarification and guidance to the public in the administration of gross ton and passenger-mile taxes.~~

REGULATION 42-3-123(1)

~~Repealed, 01-01-78.~~

~~REGULATION 42-3-123(2) Reserved~~

~~REGULATION 42-3-123(3) Reserved~~

~~REGULATION 42-3-123(4) Reserved~~

~~REGULATION 42-3-123(5) Reserved~~

~~REGULATION 42-3-123(6) Reserved~~

~~REGULATION 42-3-123(7) Reserved~~

~~REGULATION 42-3-123(8) Reserved~~

~~REGULATION 42-3-123(9) Reserved~~

~~REGULATION 42-3-123(10) Reserved~~

~~REGULATION 42-3-123(11)(a)~~

~~Every owner of vehicles licensed on farm plates has the burden of clearly establishing his right to such plates and must establish that the equipment owned or used by him is operated within both the intent and the letter of the law. To qualify for farm plates, the operation of such vehicles on the highways of this state must be no more than a simple and normal, traditional and necessary use of the highways by the kind and character of motor vehicles commonly used by farmers as a class. In addition, other factors to be considered by the Department in determining the validity of any farm registration will include the relative destructive effect on the highways as compared with motor vehicles commonly used by other commercial carriers, whether the use of the highways is seasonal or continuous, and the relative amount of the burden of road taxation borne by farmers as a class as compared with that borne by other commercial carriers.~~

~~Vehicles whose only commercial use is the transporting of sod or turf over the highways of this state are entitled to farm registration if they meet the criteria for farm vehicles set forth above.~~

~~Any vehicle used in connection with a feed lot operation is not entitled to farm registration.~~

~~REGULATION 42-3-123(11)(b) Reserved~~

~~REGULATION 42-3-123(11)(c)~~

~~Any person making application for registration under subsection (11) shall certify to the licensing authority on forms prescribed and furnished by the Department of Revenue that the use of the vehicle for which the registration application is made will be in conformity with the requirements of paragraph (a) of the statute as well as the provision of the regulation promulgated thereunder. The Department of Revenue will revoke the farm plates of any vehicle or vehicles found not to be in compliance with such requirements and provisions.~~

~~REGULATION 42-3-123(11) (d) Reserved~~

~~REGULATION 42-3-123(11) (e) Reserved~~

~~REGULATION 42-3-123(13) Reserved~~

~~REGULATION 42-3-123(13.1) Reserved~~

~~REGULATION 42-3-123(14) (a) Reserved~~

~~REGULATION 42-3-123(14) (b)~~

~~Empty weight is the weight of any motor vehicle or trailer or any combination thereof, including the operating parts, safety equipment, and accessories (permanently affixed to the truck) as determined by weighing on a certified scale. This would include, but not be limited to any necessary beds, platforms, tanks, or racks which have been added. This would also include at least one-half tank of fuel but not the weight of the driver. A manufacturer's list weight is generally not acceptable as the empty weight of any unit or combination.~~

~~REGULATION 42-3-123(14) (c)~~

- ~~(I) — For purposes of ton mile tax, cargo is anything in excess of empty weight. Cargo includes, but is not limited to: payload, crates, ladders, meat hooks, pallets, bracing, bedding, tools, padding, dollies, and any other items that are not permanently affixed to the unit or combination.~~
- ~~(II) — In order to simplify the gross ton mile tax computation, especially for smaller operations, the taxpayer should obtain an average weight factor from the Department based on information submitted by the taxpayer./~~

~~The average weight factor is a combination of empty vehicle weight and average cargo weight. This combined factor is multiplied by the number of miles traveled within Colorado to arrive at the ton mile tax liability. Empty vehicle weight should also be averaged if an owner or operator has more than one vehicle or combination. Vehicles or combinations must be grouped as to class, operation, or other distinguishing features within a fleet to compute an average empty vehicle weight and average cargo weight. This average weight factor shall be valid for a two year period. The Department is to be notified immediately of any change in equipment or operation. A change in equipment or operation shall occur whenever a fleet increases or decreases by more than 5%, or the average cargo increases or decreases by more than 5%.~~

~~REGULATION 42-3-123(15)~~

~~To qualify for exemption under (d) above, the vehicle must be equipped to hoist and tow wrecked or disabled vehicles for purposes of wrecking or repairing and must not be equipped to transport cargo.~~

~~REGULATION 42-3-123(16)-~~

~~This section pertains to motor vehicles operated pursuant to a temporary certificate issued by the Public Utilities Commission. Under the authority of 40-10-104 C.R.S. 1973, the Public Utilities Commission may declare an emergency for a definite time which may be limited to specific areas and unprocessed agricultural products. Based on such a declaration the Department of Revenue may issue a temporary certificate of convenience and necessity to qualified applicants.~~

- ~~(a) — This certificate follows the P.U.C. order by designating the unprocessed agricultural product, the names of the counties in which the emergency has been declared to exist and the limits of time for which they may be issued. Emergency declarations by the P.U.C. authorize the issuance of a temporary certificate to allow trucks, truck tractors and trailers, or semitrailers to haul specific unprocessed agricultural commodities.~~
- ~~(b) — Payment for temporary certificates may be made to the Department of Revenue or the Highway Patrol.~~

~~REGULATION 42-3-123(18)-~~

~~Commercial passenger carriers including mass transit vehicles that are exempt when operating within a city, city and county, or incorporated town are subject to a passenger mile tax when operating outside these designated areas. Commercial passenger carriers operated by public school districts, churches, boy or girl scout troops, or similar organizations are exempt from passenger mile tax if no direct charge is made for transportation to the user of the service.~~

~~REGULATION 42-3-123(19) Reserved~~

~~REGULATION 42-3-123(20) Reserved~~

~~REGULATION 42-3-123(21) Reserved~~

~~REGULATION 42-3-123(22) Reserved~~

~~REGULATION 42-3-123(23) Reserved~~

~~REGULATION 42-3-124 Reserved~~

~~REGULATION 42-3-125 Reserved~~

~~REGULATION 42-3-131 Reserved~~

COLORADO DEPARTMENT OF REVENUE

STATEMENT OF BASIS AND PURPOSE

Ton Mile Tax and Passenger Mile Tax

42-3

1 CCR 201-9

Statement of Basis and Purpose

Basis

The statutory basis for this amendment is §39-21-112(1), and §42-1-204, C.R.S.

Purpose

The purpose for the repeal of these rules is that the statutes upon which these rules were based have been repealed.

Notice of Rulemaking Hearing

Tracking number

2014-00989

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

11/18/2014

Time

01:00 PM

Location

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

Subjects and issues involved

Modifications to advertising rules for new and used motor vehicles.

Statutory authority

Colorado Revised Statutes, Sections --- 12-6-101, 12-6-102, 12-6-102(1.5), 12-6-103, 12-6-104, 12-6-118, and, 12-6-118 (3)(k)

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Proposed New Regulation 12-6-102 (1.5)
Statement of Authority, Basis and Purpose

The Statutory Authority for the adoption of this new Regulation 12-6-102 (1.5) is Section 12-6-101, C.R.S., Section 12-6-102, C.R.S., Section 12-6-102 (1.5), Section 12-6-103, C.R.S., Section 12-6-104, C.R.S., Section 12-6-118, C.R.S., and, Section 12-6-118 (3)(k), C.R.S.

The Basis and Purpose for adoption of this new regulation in the Motor Vehicle Dealer Board Regulations is to define the term, “computer display.”

PROPOSED NEW REGULATION:

REGULATION 12-6-102 (1.5)

THE TERM, “COMPUTER DISPLAY,” MEANS ANY ELECTRONIC DEVICE CAPABLE OF PRESENTING A COMMERCIAL MESSAGE.

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

The Statutory Authority for the adoption of this revised Regulation 12-6-118(3)(k) is Section 12-6-101, C.R.S., Section 12-6-102, C.R.S., Section 12-6-102 (1.5), Section 12-6-103, C.R.S., Section 12-6-104, C.R.S., Section 12-6-118, C.R.S., and, Section 12-6-118(3)(k), C.R.S.

The Basis and Purpose for adoption of this revised regulation in the Motor Vehicle Dealer Board Regulations is consumer protection, better compliance, and improved enforcement through: 1) simplifying and clarifying prohibited uses of the term, “used”; 2) adding “prior rental vehicle” to the list of other known vehicle history statuses that an advertiser must disclose in an advertisement; 3) prohibiting the combination of rebates, incentives, and other offers, and prohibiting the impression that rebates, incentives, and other offers are attainable, if they are not; 4) adding a requirement that if an advertisement relates to a lease agreement, the advertisement must clearly and conspicuously disclose that the terms of the advertisement relate to a lease, not a purchase; 5) prohibiting misleading statements that may falsely assure a prospective credit purchaser of credit financing; and, 6) defining the term, “bait advertising,” and prohibiting bait advertising.

PROPOSED REVISED REGULATION:

REGULATION 12-6-118(3)(k)

Advertising shall be construed to be misleading or inaccurate in the following particulars:

Rule 1. Advertising a motor vehicle which is not in operable condition unless specifically disclosed.

Rule 2. Advertising which would imply the dealer is going out of business when such is not the case.

Rule 3. Advertising a specific motor vehicle for sale or lease with price or terms quoted, without fully identifying the vehicle as to year, make, model and dealer stock number. Such vehicle shall be willfully shown and sold at the advertised price and/or terms while such vehicle remains unsold or unleased, for a period of five days following the last date the ad was published, unless the ad states that the advertised price and terms are good only for a specific time and such time has elapsed. If a specific number of motor vehicles is advertised, such vehicles must have been invoiced to the dealer.

Rule 4. Using a picture or photograph of a vehicle in advertising when the picture or photograph

is not the same make, year and equipment actually being offered for the price or terms advertised.

Rule 5. Advertising in such a manner which utilizes an asterisk or other reference symbols to contradict or materially change the meaning of any advertising statements.

Rule 6. ~~Advertising used motor vehicles to create the impression that they are new or using the word "new" when advertising used vehicles, such as "new, used cars". Any vehicle of the current model or the previous model year which is a used vehicle shall be so identified in any advertisement for said vehicle.~~ A USED VEHICLE SHALL NOT BE ADVERTISED IN ANY MANNER THAT CREATES THE IMPRESSION THAT IT IS NEW.

Rule 7. Advertising motor vehicles which are known by the dealer to be salvage or rebuilt from salvage, taxi cabs, PRIOR RENTAL VEHICLES, flooded vehicles or police vehicles, which are not so identified in the advertisement.

Rule 8. Advertising in any manner to imply that a purchaser will be receiving benefits of any existing loan on a vehicle when no such benefit exists.

Rule 9. Advertising or making statements that are not true or that cannot or will not be honored. Advertising which creates the false impression that the purchaser will determine the terms, price or conditions of a sale, such as "write your own deal," "name your own price," "no reasonable offer refused," and "we will not be undersold." Advertising any item as "free" which is associated with or conditioned upon the negotiated sale of a motor vehicle.

Rule 10. Advertising sales prices for used motor vehicles which claim or imply a specific savings or discount without clearly and accurately documenting the basis for the savings or discount.

Rule 11. Advertising any reference to "dealer cost" or "invoice" price. Advertising the word "wholesale" in connection with the retail offering of motor vehicles.

Rule 12. Advertising a specific trade-in amount or range of amounts without, in fact, offering such a trade-in amount and, failing to disclose or advertise the M.S.R.P., sale price, or capitalized cost of the vehicle from which the trade-in will be deducted.

Rule 13. Advertising the price of a vehicle without including all costs to the purchaser at the time of delivery, except sales tax, finance charges, cost of emissions test, and transportation costs, incurred after sale, to deliver the vehicle to the purchaser at the purchaser's request.

Rule 14. Advertising any specific discount or rebate on new motor vehicles without the manufacturer's suggested retail price conspicuously stated in the ad. WHEN ADVERTISING REBATES, INCENTIVES, OR OTHER OFFERS, A DEALER SHALL NOT COMBINE SUCH OFFERS OR GIVE THE IMPRESSION THAT SUCH OFFERS ARE ATTAINABLE, WHEN IN FACT THEY ARE NOT.

Rule 15. Advertising any qualifying statement or disclosure which is not clear, conspicuous, and readable, and which is not adjacent to the offer or terms it qualifies, and in less than eight-point type.

Rule 16. Advertising any contest that offers to prospective participants the opportunity to receive or compete for gifts or prizes without such advertisement containing the words “no purchase or payment of any kind is necessary to enter or win this contest” in bold-faced type and at least ten-point type.

RULE 17. IF ANY ADVERTISEMENT RELATES TO A LEASE, THE ADVERTISEMENT SHALL CLEARLY AND CONSPICUOUSLY DISCLOSE THAT THE ADVERTISEMENT IS FOR THE LEASE OF A VEHICLE.

RULE 18. STATEMENTS, SUCH AS “EVERYBODY FINANCED,” “NO CREDIT REJECTED,” “WE FINANCE ANYONE,” AND OTHER STATEMENTS REPRESENTING OR IMPLYING THAT NO PROSPECTIVE CREDIT PURCHASER WILL BE REJECTED BECAUSE OF HIS INABILITY TO QUALIFY FOR CREDIT, ARE PROHIBITED, UNLESS SUCH STATEMENTS ARE TRUE.

RULE 19. BAIT ADVERTISING, AS DEFINED IN § 18-5-303, C.R.S., IS NOT ALLOWED.

Notice of Rulemaking Hearing

Tracking number

2014-00990

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

11/18/2014

Time

01:00 PM

Location

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

Subjects and issues involved

Modifications to advertising rules for new and used powersports vehicles.

Statutory authority

12-6-102, 12-6-102 (1.5), 12-6-103, 12-6-104, 12-6-501, 12-6-502, 12-6-503, 12-6-504, 12-6-520, and, 12-6-520(3)(i).

Contact information

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Proposed Revised Regulation 12-6-520(3)(i)
Statement of Authority, Basis and Purpose

The Statutory Authority for the adoption of this revised Regulation 12-6-520(3)(i) is Section 12-6-102, C.R.S., Section 12-6-102 (1.5), C.R.S., Section 12-6-103, C.R.S., Section 12-6-104, C.R.S., Section 12-6-501, 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 12-6-520, C.R.S., and Section 12-6-520(3)(i), C.R.S.

The Basis and Purpose for adoption of this revised regulation in the Motor Vehicle Dealer Board Regulations is consumer protection, better compliance, and improved enforcement through: 1) simplifying and clarifying prohibited uses of the term, “used”; 2) prohibiting the combination of rebates, incentives, and other offers, and prohibiting the impression that rebates, incentives, and other offers are attainable, if they are not; 3) adding a requirement that if an advertisement relates to a lease agreement the advertisement must clearly and conspicuously disclose that the terms of the advertisement relate to a lease, not a purchase; 4) prohibiting misleading statements that may falsely assure a prospective credit purchaser of credit financing; 5) defining the term, “advertising,” and the term, “computer display,” and, 6) defining the term, “bait advertising,” and prohibiting bait advertising.

REGULATION 12-6-520(3)(i)

Advertising shall be construed to be misleading or inaccurate in the following particulars:

Rule 1. Advertising a powersports vehicle which is not in operable condition unless specifically disclosed.

Rule 2. Advertising which would imply the dealer is going out of business when such is not the case.

Rule 3. Advertising a specific powersports vehicle for sale or lease with price or terms quoted, without fully identifying the vehicle as to year, make, model, if known, and dealer stock number. Such vehicle shall be willfully shown and sold at the advertised price and/or terms while such vehicle remains unsold or unleased, for a period of five days following the last date the ad was published, unless the ad states that the advertised price and terms are good only for a specific time and such time has elapsed. If a specific number of powersports vehicles are advertised, such vehicles must have been invoiced to the dealer.

Rule 4. Using a picture or photograph of a powersports vehicle in advertising when the picture or photograph is not the same make, year and equipment actually being offered for the price or terms advertised.

Rule 5. Advertising in such a manner which utilizes an asterisk or other reference symbols to

contradict or materially change the meaning of any advertising statements.

Rule 6. ~~Advertising used powersports vehicles to create the impression that they are new or using the word “new” when advertising used powersports vehicles, such as “new, used powersports vehicles” . Any powersports vehicle of the current model or the previous model year which is a used powersports vehicle shall be so identified in any advertisement for said powersports vehicle.~~ A USED POWERSPORTS VEHICLE SHALL NOT BE ADVERTISED IN ANY MANNER THAT CREATES THE IMPRESSION THAT IT IS NEW.

Rule 7. Advertising in any manner to imply that a purchaser will be receiving benefits of any existing loan on a powersports vehicle when no such benefit exists.

Rule 8. Advertising or making statements that are not true or that cannot or will not be honored. Advertising which creates the false impression that the purchaser will determine the terms, price or conditions of a sale, such as “write your own deal,” “name your own price,” “no reasonable offer refused,” and “we will not be undersold.” Advertising any item as “free” which is associated with or conditioned upon the negotiated sale of a powersports vehicle.

Rule 9. Advertising sales prices for used powersports vehicles which claim or imply a specific savings or discount without clearly and accurately documenting the basis for the savings or discount

Rule 10. Advertising any reference to “dealer cost” or “invoice” price. Advertising the word “wholesale” in connection with the retail offering of powersports vehicles.

Rule 11. Advertising a specific trade-in amount or range of amounts without, in fact, offering such a trade-in amount and, failing to disclose or advertise the M.S.R.P., sale price, or capitalized cost of the powersports vehicle from which the trade-in will be deducted.

Rule 12. Advertising the price of a powersports vehicle without including all costs to the purchaser at the time of delivery, except sales tax, finance charges, cost of any required emissions test, and transportation costs, incurred after sale, to deliver the powersports vehicle to the purchaser at the purchaser’s request.

Rule 13. Advertising any specific discount or rebate on new powersports vehicles without the manufacturer’s suggested retail price conspicuously stated in the ad. **WHEN ADVERTISING REBATES, INCENTIVES, OR OTHER OFFERS, A DEALER SHALL NOT COMBINE SUCH OFFERS OR GIVE THE IMPRESSION THAT SUCH OFFERS ARE ATTAINABLE, WHEN IN FACT THEY ARE NOT.**

Rule 14. Advertising any qualifying statement or disclosure which is not clear, conspicuous, and readable, and which is not adjacent to the offer or terms it qualifies, and in less than eight-point type.

Rule 15. Advertising any contest that offers to prospective participants the opportunity to receive

or compete for gifts or prizes without such advertisement containing the words “no purchase or payment of any kind is necessary to enter or win this contest” in bold-faced type and at least ten-point type.

RULE 16. IF ANY ADVERTISEMENT RELATES TO A LEASE, THE ADVERTISEMENT SHALL CLEARLY AND CONSPICUOUSLY DISCLOSE THAT THE ADVERTISEMENT IS FOR THE LEASE OF A POWERSPORTS VEHICLE.

RULE 17. STATEMENTS, SUCH AS “EVERYBODY FINANCED,” “NO CREDIT REJECTED,” “WE FINANCE ANYONE,” AND OTHER STATEMENTS REPRESENTING OR IMPLYING THAT NO PROSPECTIVE CREDIT PURCHASER WILL BE REJECTED BECAUSE OF HIS INABILITY TO QUALIFY FOR CREDIT, ARE PROHIBITED, UNLESS SUCH STATEMENTS ARE TRUE.

RULE 18. THE TERM, “ADVERTISEMENT,” SHALL HAVE THE SAME MEANING AS SET FORTH IN § 12-6-102 (1.5), C.R.S., AND THE TERM, “COMPUTER DISPLAY,” MEANS ANY ELECTRONIC DEVICE CAPABLE OF PRESENTING A COMMERCIAL MESSAGE.

RULE 19. BAIT ADVERTISING, AS DEFINED IN § 18-5-303, C.R.S., IS NOT ALLOWED.

Notice of Rulemaking Hearing

Tracking number

2014-01035

Department

400 - Department of Natural Resources

Agency

405 - Colorado Parks and Wildlife (405 Series, Parks)

CCR number

2 CCR 405-4

Rule title

CHAPTER P-4 - SNOWMOBILE REGULATIONS

Rulemaking Hearing

Date

11/13/2014

Time

08:30 AM

Location

Burlington Community and Education Center, 340 S 14th St, Burlington, CO 80807

Subjects and issues involved

CHAPTER P-4 - SNOWMOBILE REGULATIONS - See Attached

Statutory authority

See Attached

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September 30, 2014

**RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
November 13-14, 2014**

In accordance with the State Administrative Procedure Act, section 24-4-103, C.R.S., the Parks and Wildlife Commission gives notice that regulations will be considered for adoption at their next meeting on **November 13-14, 2014. The Parks and Wildlife Commission meeting will be held at the Burlington Community and Education Center, 340 S 14th St, Burlington, CO 80807. The following regulatory subjects and issues shall be considered** pursuant to the Commission's authority in sections 33-1-104, 33-1-106, 33-1-107, 33-1-108, 33-1-121, 33-2-104, 33-2-105, 33-2-106, 33-3-104, 33-4-101, 33-4-102 and 33-5.5-102, 33-6-107, 33-6-109, 33-6-112, 33-6-113, 33-6-114, 33-6-114.5, 33-6-117, 33-6-119, 33-6-121, 33-6-124, 33-6-125, 33-6-127, 33-6-128, 33-6-130, 33-6-205, 33-6-206, 33-6-207, 33-6-208, 33-6-209, C.R.S., and in sections 33-10-101 to 33-33-113, C.R.S. (the "Parks Act"), and especially sections 33-10-106, 33-10-107, 33-10.5-107, 33-11-109, 33-12-101, 33-12-103, 33-12-103.5, 33-12-106, 33-12.5-103, 33-13-103, 33-13-104, 33-13-106, 33-13-109, 33-13-110, 33-13-111, 33-14-107, 33-14.5-107, 33-32-103 and 33-33-105. C.R.S.

FINAL REGULATORY ADOPTION - November 13-14, 2014 beginning at 8:30 a.m.*

EFFECTIVE DATE OF REGULATIONS approved during the November 2014 Parks and Wildlife Commission meeting: January 1, 2015, unless otherwise noted.

PARKS REGULATIONS

FINAL REGULATIONS:

Chapter P-4 - "Snowmobile Regulations" 2 CCR 405-4

Open for review of final regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter P-5 - "Off-Highway Vehicle Regulations" 2 CCR 405-5

Open for review of final regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter P-6 - "Procedural Rules" 2 CCR 405-6

Open for review of final regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current

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DRAFT REGULATIONS:

Chapter P-8 - “Aquatic Nuisance Species” 2 CCR 405-8

Open for review of regulations in accordance with Executive Order D 2012-002 (“Regulatory Efficiency Reviews”) to determine if they should be continued in their current form, modified or repealed, including consideration of regulations that update standard protocols and assure consistency with other parks and wildlife regulations.

WILDLIFE REGULATIONS

FINAL REGULATIONS:

Chapter W-1 - “Fishing” 2 CCR 406-1, and those related provisions of Chapter W-0 - (“General Provisions” 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-1

Open for annual review of the entire chapter including, but not limited to, consideration of regulations regarding seasons and season dates, bag and possession limits, licensing requirements, manner of take provisions and special conditions or restrictions applicable to waters of the state, including, but not limited to, the following:

- Removing specific hours of closure from existing regulations for walleye spawning operations at Cherry Creek and Chatfield Reservoirs and allowing the closure to be lifted prior to April 15th if spawning operations have concluded.
- Adding regulations to establish bag and possession limits for arctic char at Dillon Reservoir.
- Removing season dates from harvest restrictions on Grand Lake for lake trout.
- Adding a minimum size harvest regulation for bass at Poudre Ponds #1 near Greeley.
- Removing the bag and possession limit for smallmouth bass at Ridgway Reservoir.
- Removing the unlimited bag and possession limit for yellow perch at Rifle Gap Reservoir and establishing new bag and possession limits for perch.
- Prohibiting public access within 150 feet of any kokanee spawning trap on Wolford Reservoir.
- Clarifying prohibition of transfer or transport of live fish.

These Chapter W-1 - Fishing regulations will become effective April 1, 2015.

Chapter W-2 - “Big Game” 2 CCR 406-2

Open for consideration of regulations adjusting non-resident big game license fees according to the Consumer Price Index, and adjusting non-resident big game license fees within statutory limitations pursuant to 33-4-102 (1.6)(IV)(b), C.R.S.

Chapter W-3 - “Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3

Open for annual review of regulations regarding turkey hunting, including but not limited to, license areas and license numbers, season dates, and manner of take provisions for 2015 turkey hunting seasons, including, but not limited to, the following:

- Adding an either-sex fall turkey season in both GMU 25 and 34.
- Splitting the spring turkey season in GMUs 103, 107, and 109 into two separate spring seasons.

Chapter W-8 - “Field Trials and Training of Hunting Dogs” 2 CCR 406-8

Open for review of final regulations in accordance with Executive Order D 2012-002 (“Regulatory Efficiency Reviews”) to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter W-15 - “License Agents” 2 CCR 406-15

Open for consideration of regulations regarding license agents, including but not limited to, adjusting commission rates applicable to the sale of licenses by license agents according to the Consumer Price Index.

CITIZEN PETITIONS:

Final action may be taken on rule-making petitions at any step of the Commission’s generally applicable two-step rule-making process.

Chapter W-0 - “General Provisions” 2 CCR 406-0, and those related provisions of Chapter W-2 - (“Big Game” 2 CCR 406-2), Chapter W-3 - (“Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3), and Chapter W-5 - (“Small Game - Migratory Birds” 2 CCR 406-5) necessary to accommodate changes to or ensure consistency with Chapter W-0

At its November meeting, the Parks and Wildlife Commission will consider a Citizen Petition for Rulemaking related to General Provisions, as follows:

- *A Citizen Petition for rulemaking* requesting the Commission pass a regulation prohibiting the use of lead ammunition for hunting all game wildlife within the state of Colorado.

The Commission may accept all or a portion of the petition for final action, further consideration or otherwise reject the petition at the November Commission meeting. A copy of the petition may be obtained by contacting Danielle Isenhardt (303) 866-3203 ext. 4625, Regulations Manager, Colorado Parks and Wildlife.

Chapter W-2 - “Big Game” 2 CCR 406-2, and those related provisions of Chapter W-0 - (“General Provisions” 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

At its November meeting, the Parks and Wildlife Commission will consider a Citizen Petition for Rulemaking related to Big Game, as follows:

- *A Citizen Petition for rulemaking* requesting the Commission allow the use of electronics attached to arrows during archery season.

- *A Citizen Petition for rulemaking* requesting the Commission pass a regulation prohibiting hunting within a one-mile radius of Brainard Lake Recreation Area.

The Commission may accept all or a portion of the petition for final action, further consideration or otherwise reject the petition at the November Commission meeting. A copy of the petition may be obtained by contacting Danielle Isenhardt (303) 866-3203 ext. 4625, Regulations Manager, Colorado Parks and Wildlife.

DRAFT REGULATIONS:

Chapter W-2 - “Big Game” 2 CCR 406-2

Open for consideration of regulations regarding the implementation of alternatives for the 2015-2019 Big Game Season Structure, including, but not limited to, the following:

- Changes to youth and black bear season participation.
- Changes to license purchase cutoff dates.
- Changes to annual season dates.

Chapter W-12 - “Lake Licenses” 2 CCR 406-12

Open for review of draft regulations in accordance with Executive Order D 2012-002 (“Regulatory Efficiency Reviews”) to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

ISSUES IDENTIFICATION:

Chapter W-0 - “General Provisions” 2 CCR 406-0, and those related provisions of Chapter W-3 - (“Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3) necessary to accommodate changes to or ensure consistency with Chapter W-0

Open for annual review of the entire chapter, including but not limited to, Game Management Unit boundaries, regulations relating to fish management, health, importation, prohibited species, and other annual changes.

Chapter W-2 - “Big Game” 2 CCR 406-2 and those related provisions of Chapter W-0 - (“General Provisions” 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

Open for review of the entire chapter, including, but not limited to:

- Annual changes to season dates, limited license areas and license numbers, and manner of take provisions for Bighorn sheep and Rocky Mountain goat.
- Annual changes to season dates, limited license areas and manner of take provisions for deer, elk, pronghorn antelope, moose, mountain lion, and bear.
- Annual changes to limited license application and drawing process.

Except for the time indicated for when the meeting is scheduled to begin, the order indicated for each agenda item is approximate and subject to change when necessary to accommodate the Commission’s schedule.

Viewing of Proposed Rules: copies of the proposed rules (together with a proposed statement of basis and purpose and specific statutory authority), will be available for inspection and distribution at the Office of the Regulations Manager, Division of Parks and Wildlife, 1313 Sherman St., Denver, Colorado, at least five (5) days prior to the date of hearing. Such copies, however, are only proposals to be submitted to the Commission by the Division of Parks and Wildlife.

Modification of Proposed Rules prior to adoption: subject to the provisions of Section 24-4-103, C.R.S., modification of these proposals may be made by the Division of Parks and Wildlife or the Commission before the Commission promulgates final rules and regulations on the above topics.

Comment deadlines: Comments will be accepted at any time prior to, or as part of the meeting. However, to ensure sufficient time for consideration prior to the meeting, comments should be provided to the Division of Parks and Wildlife by noon on the following date:

October 30, 2014, for mailing by the Division of Parks and Wildlife to the Parks and Wildlife Commission on **October 31, 2014.**

Comments received by the Division after noon on **October 30, 2014,** will be provided to the Commission on the day of the meeting.

Opportunity to submit alternate proposals and provide comment: the Commission will afford all interested persons an opportunity to submit alternate proposals, written data, views or arguments and to present them orally at the meeting unless it deems such oral presentation unnecessary. Written alternate proposals, data, views or arguments and other written statements should be submitted to the Division of Parks and Wildlife at 1313 Sherman St., Denver, CO 80203; or e-mailed to dnr_cpwcommission@state.co.us.

Use of Consent Agenda:

In order to increase the Parks and Wildlife Commission's efficiency and allow more time for consideration of parks and wildlife policy and contested issues, some or all of this regulatory agenda may be listed for action by the Commission as part of a "Consent Agenda" for this meeting.

The process for placing matters on the Consent Agenda is as follows:

The Director identifies matters where the recommended action follows established policy or precedent, there has been agreement reached or the matter is expected to be uncontested and non-controversial. Staff will provide written memos to the Parks and Wildlife Commission members explaining the matters on the Consent Agenda. Copies of the memos will be available to the public.

Regulatory Matters on the Consent Agenda are noticed for hearing at the same time and in the same manner as other consent agenda items. If a member of the Commission requests further consideration of an item on the consent agenda, that item will be withdrawn from the Consent Agenda and discussed at the end of the meeting or at the next meeting. The Consent Agenda may be voted on without the necessity of reading individual items. Any Commission member may request clarification from the Director of any matter on the Consent Agenda.

OTHER AGENDA ITEMS: The Parks and Wildlife Commission may consider and make policy, program implementation, and other non-regulatory decisions, which may be of public interest at this meeting. A copy of the complete meeting agenda may be viewed on the Division of Parks and Wildlife's internet home page at <http://cpw.state.co.us>, on or after **November 3, 2014.**

Notice of Rulemaking Hearing

Tracking number

2014-01039

Department

400 - Department of Natural Resources

Agency

405 - Colorado Parks and Wildlife (405 Series, Parks)

CCR number

2 CCR 405-5

Rule title

CHAPTER P-5 - OFF-HIGHWAY VEHICLE REGULATIONS

Rulemaking Hearing

Date

11/13/2014

Time

08:30 AM

Location

at Burlington Community and Education Center, 340 S 14th St, Burlington, CO 80807

Subjects and issues involved

CHAPTER P-5 - OFF-HIGHWAY VEHICLE REGULATIONS - see attached

Statutory authority

see attached

Contact information

Name

Danielle Isenhardt

Title

Regulations Manager

Telephone

303-866-3203

Email

danielle.isenhardt@state.co.us

September 30, 2014

**RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
November 13-14, 2014**

In accordance with the State Administrative Procedure Act, section 24-4-103, C.R.S., the Parks and Wildlife Commission gives notice that regulations will be considered for adoption at their next meeting on **November 13-14, 2014. The Parks and Wildlife Commission meeting will be held at the Burlington Community and Education Center, 340 S 14th St, Burlington, CO 80807. The following regulatory subjects and issues shall be considered** pursuant to the Commission's authority in sections 33-1-104, 33-1-106, 33-1-107, 33-1-108, 33-1-121, 33-2-104, 33-2-105, 33-2-106, 33-3-104, 33-4-101, 33-4-102 and 33-5.5-102, 33-6-107, 33-6-109, 33-6-112, 33-6-113, 33-6-114, 33-6-114.5, 33-6-117, 33-6-119, 33-6-121, 33-6-124, 33-6-125, 33-6-127, 33-6-128, 33-6-130, 33-6-205, 33-6-206, 33-6-207, 33-6-208, 33-6-209, C.R.S., and in sections 33-10-101 to 33-33-113, C.R.S. (the "Parks Act"), and especially sections 33-10-106, 33-10-107, 33-10.5-107, 33-11-109, 33-12-101, 33-12-103, 33-12-103.5, 33-12-106, 33-12.5-103, 33-13-103, 33-13-104, 33-13-106, 33-13-109, 33-13-110, 33-13-111, 33-14-107, 33-14.5-107, 33-32-103 and 33-33-105. C.R.S.

FINAL REGULATORY ADOPTION - November 13-14, 2014 beginning at 8:30 a.m.*

EFFECTIVE DATE OF REGULATIONS approved during the November 2014 Parks and Wildlife Commission meeting: January 1, 2015, unless otherwise noted.

PARKS REGULATIONS

FINAL REGULATIONS:

Chapter P-4 - "Snowmobile Regulations" 2 CCR 405-4

Open for review of final regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter P-5 - "Off-Highway Vehicle Regulations" 2 CCR 405-5

Open for review of final regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter P-6 - "Procedural Rules" 2 CCR 405-6

Open for review of final regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current

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DRAFT REGULATIONS:

Chapter P-8 - “Aquatic Nuisance Species” 2 CCR 405-8

Open for review of regulations in accordance with Executive Order D 2012-002 (“Regulatory Efficiency Reviews”) to determine if they should be continued in their current form, modified or repealed, including consideration of regulations that update standard protocols and assure consistency with other parks and wildlife regulations.

WILDLIFE REGULATIONS

FINAL REGULATIONS:

Chapter W-1 - “Fishing” 2 CCR 406-1, and those related provisions of Chapter W-0 - (“General Provisions” 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-1

Open for annual review of the entire chapter including, but not limited to, consideration of regulations regarding seasons and season dates, bag and possession limits, licensing requirements, manner of take provisions and special conditions or restrictions applicable to waters of the state, including, but not limited to, the following:

- Removing specific hours of closure from existing regulations for walleye spawning operations at Cherry Creek and Chatfield Reservoirs and allowing the closure to be lifted prior to April 15th if spawning operations have concluded.
- Adding regulations to establish bag and possession limits for arctic char at Dillon Reservoir.
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- Prohibiting public access within 150 feet of any kokanee spawning trap on Wolford Reservoir.
- Clarifying prohibition of transfer or transport of live fish.

These Chapter W-1 - Fishing regulations will become effective April 1, 2015.

Chapter W-2 - “Big Game” 2 CCR 406-2

Open for consideration of regulations adjusting non-resident big game license fees according to the Consumer Price Index, and adjusting non-resident big game license fees within statutory limitations pursuant to 33-4-102 (1.6)(IV)(b), C.R.S.

Chapter W-3 - “Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3

Open for annual review of regulations regarding turkey hunting, including but not limited to, license areas and license numbers, season dates, and manner of take provisions for 2015 turkey hunting seasons, including, but not limited to, the following:

- Adding an either-sex fall turkey season in both GMU 25 and 34.
- Splitting the spring turkey season in GMUs 103, 107, and 109 into two separate spring seasons.

Chapter W-8 - “Field Trials and Training of Hunting Dogs” 2 CCR 406-8

Open for review of final regulations in accordance with Executive Order D 2012-002 (“Regulatory Efficiency Reviews”) to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter W-15 - “License Agents” 2 CCR 406-15

Open for consideration of regulations regarding license agents, including but not limited to, adjusting commission rates applicable to the sale of licenses by license agents according to the Consumer Price Index.

CITIZEN PETITIONS:

Final action may be taken on rule-making petitions at any step of the Commission’s generally applicable two-step rule-making process.

Chapter W-0 - “General Provisions” 2 CCR 406-0, and those related provisions of Chapter W-2 - (“Big Game” 2 CCR 406-2), Chapter W-3 - (“Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3), and Chapter W-5 - (“Small Game - Migratory Birds” 2 CCR 406-5) necessary to accommodate changes to or ensure consistency with Chapter W-0

At its November meeting, the Parks and Wildlife Commission will consider a Citizen Petition for Rulemaking related to General Provisions, as follows:

- *A Citizen Petition for rulemaking* requesting the Commission pass a regulation prohibiting the use of lead ammunition for hunting all game wildlife within the state of Colorado.

The Commission may accept all or a portion of the petition for final action, further consideration or otherwise reject the petition at the November Commission meeting. A copy of the petition may be obtained by contacting Danielle Isenhardt (303) 866-3203 ext. 4625, Regulations Manager, Colorado Parks and Wildlife.

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- *A Citizen Petition for rulemaking* requesting the Commission allow the use of electronics attached to arrows during archery season.

- *A Citizen Petition for rulemaking* requesting the Commission pass a regulation prohibiting hunting within a one-mile radius of Brainard Lake Recreation Area.

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DRAFT REGULATIONS:

Chapter W-2 - “Big Game” 2 CCR 406-2

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- Changes to youth and black bear season participation.
- Changes to license purchase cutoff dates.
- Changes to annual season dates.

Chapter W-12 - “Lake Licenses” 2 CCR 406-12

Open for review of draft regulations in accordance with Executive Order D 2012-002 (“Regulatory Efficiency Reviews”) to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

ISSUES IDENTIFICATION:

Chapter W-0 - “General Provisions” 2 CCR 406-0, and those related provisions of Chapter W-3 - (“Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3) necessary to accommodate changes to or ensure consistency with Chapter W-0

Open for annual review of the entire chapter, including but not limited to, Game Management Unit boundaries, regulations relating to fish management, health, importation, prohibited species, and other annual changes.

Chapter W-2 - “Big Game” 2 CCR 406-2 and those related provisions of Chapter W-0 - (“General Provisions” 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

Open for review of the entire chapter, including, but not limited to:

- Annual changes to season dates, limited license areas and license numbers, and manner of take provisions for Bighorn sheep and Rocky Mountain goat.
- Annual changes to season dates, limited license areas and manner of take provisions for deer, elk, pronghorn antelope, moose, mountain lion, and bear.
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Viewing of Proposed Rules: copies of the proposed rules (together with a proposed statement of basis and purpose and specific statutory authority), will be available for inspection and distribution at the Office of the Regulations Manager, Division of Parks and Wildlife, 1313 Sherman St., Denver, Colorado, at least five (5) days prior to the date of hearing. Such copies, however, are only proposals to be submitted to the Commission by the Division of Parks and Wildlife.

Modification of Proposed Rules prior to adoption: subject to the provisions of Section 24-4-103, C.R.S., modification of these proposals may be made by the Division of Parks and Wildlife or the Commission before the Commission promulgates final rules and regulations on the above topics.

Comment deadlines: Comments will be accepted at any time prior to, or as part of the meeting. However, to ensure sufficient time for consideration prior to the meeting, comments should be provided to the Division of Parks and Wildlife by noon on the following date:

October 30, 2014, for mailing by the Division of Parks and Wildlife to the Parks and Wildlife Commission on **October 31, 2014**.

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Opportunity to submit alternate proposals and provide comment: the Commission will afford all interested persons an opportunity to submit alternate proposals, written data, views or arguments and to present them orally at the meeting unless it deems such oral presentation unnecessary. Written alternate proposals, data, views or arguments and other written statements should be submitted to the Division of Parks and Wildlife at 1313 Sherman St., Denver, CO 80203; or e-mailed to dnr_cpwwcommission@state.co.us.

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OTHER AGENDA ITEMS: The Parks and Wildlife Commission may consider and make policy, program implementation, and other non-regulatory decisions, which may be of public interest at this meeting. A copy of the complete meeting agenda may be viewed on the Division of Parks and Wildlife's internet home page at <http://cpw.state.co.us>, on or after **November 3, 2014**.

Notice of Rulemaking Hearing

Tracking number

2014-01040

Department

400 - Department of Natural Resources

Agency

405 - Colorado Parks and Wildlife (405 Series, Parks)

CCR number

2 CCR 405-6

Rule title

CHAPTER P-6 - PROCEDURAL RULES

Rulemaking Hearing

Date

11/13/2014

Time

08:30 AM

Location

Burlington Community and Education Center, 340 S 14th St, Burlington, CO 80807

Subjects and issues involved

CHAPTER P-6 - PROCEDURAL RULES - See Attachment

Statutory authority

see attached

Contact information

Name

Danielle Isenhardt

Title

Regulations Manager

Telephone

303-866-3203

Email

danielle.isenhardt@state.co.us

September 30, 2014

**RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
November 13-14, 2014**

In accordance with the State Administrative Procedure Act, section 24-4-103, C.R.S., the Parks and Wildlife Commission gives notice that regulations will be considered for adoption at their next meeting on **November 13-14, 2014. The Parks and Wildlife Commission meeting will be held at the Burlington Community and Education Center, 340 S 14th St, Burlington, CO 80807. The following regulatory subjects and issues shall be considered** pursuant to the Commission's authority in sections 33-1-104, 33-1-106, 33-1-107, 33-1-108, 33-1-121, 33-2-104, 33-2-105, 33-2-106, 33-3-104, 33-4-101, 33-4-102 and 33-5.5-102, 33-6-107, 33-6-109, 33-6-112, 33-6-113, 33-6-114, 33-6-114.5, 33-6-117, 33-6-119, 33-6-121, 33-6-124, 33-6-125, 33-6-127, 33-6-128, 33-6-130, 33-6-205, 33-6-206, 33-6-207, 33-6-208, 33-6-209, C.R.S., and in sections 33-10-101 to 33-33-113, C.R.S. (the "Parks Act"), and especially sections 33-10-106, 33-10-107, 33-10.5-107, 33-11-109, 33-12-101, 33-12-103, 33-12-103.5, 33-12-106, 33-12.5-103, 33-13-103, 33-13-104, 33-13-106, 33-13-109, 33-13-110, 33-13-111, 33-14-107, 33-14.5-107, 33-32-103 and 33-33-105. C.R.S.

FINAL REGULATORY ADOPTION - November 13-14, 2014 beginning at 8:30 a.m.*

EFFECTIVE DATE OF REGULATIONS approved during the November 2014 Parks and Wildlife Commission meeting: January 1, 2015, unless otherwise noted.

PARKS REGULATIONS

FINAL REGULATIONS:

Chapter P-4 - "Snowmobile Regulations" 2 CCR 405-4

Open for review of final regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter P-5 - "Off-Highway Vehicle Regulations" 2 CCR 405-5

Open for review of final regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter P-6 - "Procedural Rules" 2 CCR 405-6

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DRAFT REGULATIONS:

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WILDLIFE REGULATIONS

FINAL REGULATIONS:

Chapter W-1 - “Fishing” 2 CCR 406-1, and those related provisions of Chapter W-0 - (“General Provisions” 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-1

Open for annual review of the entire chapter including, but not limited to, consideration of regulations regarding seasons and season dates, bag and possession limits, licensing requirements, manner of take provisions and special conditions or restrictions applicable to waters of the state, including, but not limited to, the following:

- Removing specific hours of closure from existing regulations for walleye spawning operations at Cherry Creek and Chatfield Reservoirs and allowing the closure to be lifted prior to April 15th if spawning operations have concluded.
- Adding regulations to establish bag and possession limits for arctic char at Dillon Reservoir.
- Removing season dates from harvest restrictions on Grand Lake for lake trout.
- Adding a minimum size harvest regulation for bass at Poudre Ponds #1 near Greeley.
- Removing the bag and possession limit for smallmouth bass at Ridgway Reservoir.
- Removing the unlimited bag and possession limit for yellow perch at Rifle Gap Reservoir and establishing new bag and possession limits for perch.
- Prohibiting public access within 150 feet of any kokanee spawning trap on Wolford Reservoir.
- Clarifying prohibition of transfer or transport of live fish.

These Chapter W-1 - Fishing regulations will become effective April 1, 2015.

Chapter W-2 - “Big Game” 2 CCR 406-2

Open for consideration of regulations adjusting non-resident big game license fees according to the Consumer Price Index, and adjusting non-resident big game license fees within statutory limitations pursuant to 33-4-102 (1.6)(IV)(b), C.R.S.

Chapter W-3 - “Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3

Open for annual review of regulations regarding turkey hunting, including but not limited to, license areas and license numbers, season dates, and manner of take provisions for 2015 turkey hunting seasons, including, but not limited to, the following:

- Adding an either-sex fall turkey season in both GMU 25 and 34.
- Splitting the spring turkey season in GMUs 103, 107, and 109 into two separate spring seasons.

Chapter W-8 - “Field Trials and Training of Hunting Dogs” 2 CCR 406-8

Open for review of final regulations in accordance with Executive Order D 2012-002 (“Regulatory Efficiency Reviews”) to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter W-15 - “License Agents” 2 CCR 406-15

Open for consideration of regulations regarding license agents, including but not limited to, adjusting commission rates applicable to the sale of licenses by license agents according to the Consumer Price Index.

CITIZEN PETITIONS:

Final action may be taken on rule-making petitions at any step of the Commission’s generally applicable two-step rule-making process.

Chapter W-0 - “General Provisions” 2 CCR 406-0, and those related provisions of Chapter W-2 - (“Big Game” 2 CCR 406-2), Chapter W-3 - (“Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3), and Chapter W-5 - (“Small Game - Migratory Birds” 2 CCR 406-5) necessary to accommodate changes to or ensure consistency with Chapter W-0

At its November meeting, the Parks and Wildlife Commission will consider a Citizen Petition for Rulemaking related to General Provisions, as follows:

- *A Citizen Petition for rulemaking* requesting the Commission pass a regulation prohibiting the use of lead ammunition for hunting all game wildlife within the state of Colorado.

The Commission may accept all or a portion of the petition for final action, further consideration or otherwise reject the petition at the November Commission meeting. A copy of the petition may be obtained by contacting Danielle Isenhardt (303) 866-3203 ext. 4625, Regulations Manager, Colorado Parks and Wildlife.

Chapter W-2 - “Big Game” 2 CCR 406-2, and those related provisions of Chapter W-0 - (“General Provisions” 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

At its November meeting, the Parks and Wildlife Commission will consider a Citizen Petition for Rulemaking related to Big Game, as follows:

- *A Citizen Petition for rulemaking* requesting the Commission allow the use of electronics attached to arrows during archery season.

- *A Citizen Petition for rulemaking* requesting the Commission pass a regulation prohibiting hunting within a one-mile radius of Brainard Lake Recreation Area.

The Commission may accept all or a portion of the petition for final action, further consideration or otherwise reject the petition at the November Commission meeting. A copy of the petition may be obtained by contacting Danielle Isenhardt (303) 866-3203 ext. 4625, Regulations Manager, Colorado Parks and Wildlife.

DRAFT REGULATIONS:

Chapter W-2 - “Big Game” 2 CCR 406-2

Open for consideration of regulations regarding the implementation of alternatives for the 2015-2019 Big Game Season Structure, including, but not limited to, the following:

- Changes to youth and black bear season participation.
- Changes to license purchase cutoff dates.
- Changes to annual season dates.

Chapter W-12 - “Lake Licenses” 2 CCR 406-12

Open for review of draft regulations in accordance with Executive Order D 2012-002 (“Regulatory Efficiency Reviews”) to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

ISSUES IDENTIFICATION:

Chapter W-0 - “General Provisions” 2 CCR 406-0, and those related provisions of Chapter W-3 - (“Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3) necessary to accommodate changes to or ensure consistency with Chapter W-0

Open for annual review of the entire chapter, including but not limited to, Game Management Unit boundaries, regulations relating to fish management, health, importation, prohibited species, and other annual changes.

Chapter W-2 - “Big Game” 2 CCR 406-2 and those related provisions of Chapter W-0 - (“General Provisions” 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

Open for review of the entire chapter, including, but not limited to:

- Annual changes to season dates, limited license areas and license numbers, and manner of take provisions for Bighorn sheep and Rocky Mountain goat.
- Annual changes to season dates, limited license areas and manner of take provisions for deer, elk, pronghorn antelope, moose, mountain lion, and bear.
- Annual changes to limited license application and drawing process.

Except for the time indicated for when the meeting is scheduled to begin, the order indicated for each agenda item is approximate and subject to change when necessary to accommodate the Commission’s schedule.

Viewing of Proposed Rules: copies of the proposed rules (together with a proposed statement of basis and purpose and specific statutory authority), will be available for inspection and distribution at the Office of the Regulations Manager, Division of Parks and Wildlife, 1313 Sherman St., Denver, Colorado, at least five (5) days prior to the date of hearing. Such copies, however, are only proposals to be submitted to the Commission by the Division of Parks and Wildlife.

Modification of Proposed Rules prior to adoption: subject to the provisions of Section 24-4-103, C.R.S., modification of these proposals may be made by the Division of Parks and Wildlife or the Commission before the Commission promulgates final rules and regulations on the above topics.

Comment deadlines: Comments will be accepted at any time prior to, or as part of the meeting. However, to ensure sufficient time for consideration prior to the meeting, comments should be provided to the Division of Parks and Wildlife by noon on the following date:

October 30, 2014, for mailing by the Division of Parks and Wildlife to the Parks and Wildlife Commission on **October 31, 2014**.

Comments received by the Division after noon on **October 30, 2014**, will be provided to the Commission on the day of the meeting.

Opportunity to submit alternate proposals and provide comment: the Commission will afford all interested persons an opportunity to submit alternate proposals, written data, views or arguments and to present them orally at the meeting unless it deems such oral presentation unnecessary. Written alternate proposals, data, views or arguments and other written statements should be submitted to the Division of Parks and Wildlife at 1313 Sherman St., Denver, CO 80203; or e-mailed to dnr_cpwcommission@state.co.us.

Use of Consent Agenda:

In order to increase the Parks and Wildlife Commission's efficiency and allow more time for consideration of parks and wildlife policy and contested issues, some or all of this regulatory agenda may be listed for action by the Commission as part of a "Consent Agenda" for this meeting.

The process for placing matters on the Consent Agenda is as follows:

The Director identifies matters where the recommended action follows established policy or precedent, there has been agreement reached or the matter is expected to be uncontested and non-controversial. Staff will provide written memos to the Parks and Wildlife Commission members explaining the matters on the Consent Agenda. Copies of the memos will be available to the public.

Regulatory Matters on the Consent Agenda are noticed for hearing at the same time and in the same manner as other consent agenda items. If a member of the Commission requests further consideration of an item on the consent agenda, that item will be withdrawn from the Consent Agenda and discussed at the end of the meeting or at the next meeting. The Consent Agenda may be voted on without the necessity of reading individual items. Any Commission member may request clarification from the Director of any matter on the Consent Agenda.

OTHER AGENDA ITEMS: The Parks and Wildlife Commission may consider and make policy, program implementation, and other non-regulatory decisions, which may be of public interest at this meeting. A copy of the complete meeting agenda may be viewed on the Division of Parks and Wildlife's internet home page at <http://cpw.state.co.us>, on or after **November 3, 2014**.

Notice of Rulemaking Hearing

Tracking number

2014-01041

Department

400 - Department of Natural Resources

Agency

405 - Colorado Parks and Wildlife (405 Series, Parks)

CCR number

2 CCR 405-8

Rule title

CHAPTER P-8 - AQUATIC NUISANCE SPECIES (ANS)

Rulemaking Hearing

Date

11/13/2014

Time

08:30 AM

Location

Burlington Community and Education Center, 340 S 14th St, Burlington, CO 80807

Subjects and issues involved

CHAPTER P-8 - AQUATIC NUISANCE SPECIES (ANS) - see attachment

Statutory authority

see attached

Contact information

Name

Danielle Isenhardt

Title

Regulations Manager

Telephone

303-866-3203

Email

danielle.isenhardt@state.co.us

September 30, 2014

**RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
November 13-14, 2014**

In accordance with the State Administrative Procedure Act, section 24-4-103, C.R.S., the Parks and Wildlife Commission gives notice that regulations will be considered for adoption at their next meeting on **November 13-14, 2014. The Parks and Wildlife Commission meeting will be held at the Burlington Community and Education Center, 340 S 14th St, Burlington, CO 80807. The following regulatory subjects and issues shall be considered** pursuant to the Commission's authority in sections 33-1-104, 33-1-106, 33-1-107, 33-1-108, 33-1-121, 33-2-104, 33-2-105, 33-2-106, 33-3-104, 33-4-101, 33-4-102 and 33-5.5-102, 33-6-107, 33-6-109, 33-6-112, 33-6-113, 33-6-114, 33-6-114.5, 33-6-117, 33-6-119, 33-6-121, 33-6-124, 33-6-125, 33-6-127, 33-6-128, 33-6-130, 33-6-205, 33-6-206, 33-6-207, 33-6-208, 33-6-209, C.R.S., and in sections 33-10-101 to 33-33-113, C.R.S. (the "Parks Act"), and especially sections 33-10-106, 33-10-107, 33-10.5-107, 33-11-109, 33-12-101, 33-12-103, 33-12-103.5, 33-12-106, 33-12.5-103, 33-13-103, 33-13-104, 33-13-106, 33-13-109, 33-13-110, 33-13-111, 33-14-107, 33-14.5-107, 33-32-103 and 33-33-105. C.R.S.

FINAL REGULATORY ADOPTION - November 13-14, 2014 beginning at 8:30 a.m.*

EFFECTIVE DATE OF REGULATIONS approved during the November 2014 Parks and Wildlife Commission meeting: January 1, 2015, unless otherwise noted.

PARKS REGULATIONS

FINAL REGULATIONS:

Chapter P-4 - "Snowmobile Regulations" 2 CCR 405-4

Open for review of final regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter P-5 - "Off-Highway Vehicle Regulations" 2 CCR 405-5

Open for review of final regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter P-6 - "Procedural Rules" 2 CCR 405-6

Open for review of final regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current

**Please reference the Commission agenda, to be posted on or after November 3, 2014, to ensure when each regulatory item will be addressed by the Commission. The agenda will be posted at <http://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx>.*

form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

**Please reference the Commission agenda, to be posted on or after November 3, 2014, to ensure when each regulatory item will be addressed by the Commission. The agenda will be posted at <http://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx>.*

DRAFT REGULATIONS:

Chapter P-8 - “Aquatic Nuisance Species” 2 CCR 405-8

Open for review of regulations in accordance with Executive Order D 2012-002 (“Regulatory Efficiency Reviews”) to determine if they should be continued in their current form, modified or repealed, including consideration of regulations that update standard protocols and assure consistency with other parks and wildlife regulations.

WILDLIFE REGULATIONS

FINAL REGULATIONS:

Chapter W-1 - “Fishing” 2 CCR 406-1, and those related provisions of Chapter W-0 - (“General Provisions” 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-1

Open for annual review of the entire chapter including, but not limited to, consideration of regulations regarding seasons and season dates, bag and possession limits, licensing requirements, manner of take provisions and special conditions or restrictions applicable to waters of the state, including, but not limited to, the following:

- Removing specific hours of closure from existing regulations for walleye spawning operations at Cherry Creek and Chatfield Reservoirs and allowing the closure to be lifted prior to April 15th if spawning operations have concluded.
- Adding regulations to establish bag and possession limits for arctic char at Dillon Reservoir.
- Removing season dates from harvest restrictions on Grand Lake for lake trout.
- Adding a minimum size harvest regulation for bass at Poudre Ponds #1 near Greeley.
- Removing the bag and possession limit for smallmouth bass at Ridgway Reservoir.
- Removing the unlimited bag and possession limit for yellow perch at Rifle Gap Reservoir and establishing new bag and possession limits for perch.
- Prohibiting public access within 150 feet of any kokanee spawning trap on Wolford Reservoir.
- Clarifying prohibition of transfer or transport of live fish.

These Chapter W-1 - Fishing regulations will become effective April 1, 2015.

Chapter W-2 - “Big Game” 2 CCR 406-2

Open for consideration of regulations adjusting non-resident big game license fees according to the Consumer Price Index, and adjusting non-resident big game license fees within statutory limitations pursuant to 33-4-102 (1.6)(IV)(b), C.R.S.

Chapter W-3 - “Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3

Open for annual review of regulations regarding turkey hunting, including but not limited to, license areas and license numbers, season dates, and manner of take provisions for 2015 turkey hunting seasons, including, but not limited to, the following:

- Adding an either-sex fall turkey season in both GMU 25 and 34.
- Splitting the spring turkey season in GMUs 103, 107, and 109 into two separate spring seasons.

Chapter W-8 - “Field Trials and Training of Hunting Dogs” 2 CCR 406-8

Open for review of final regulations in accordance with Executive Order D 2012-002 (“Regulatory Efficiency Reviews”) to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter W-15 - “License Agents” 2 CCR 406-15

Open for consideration of regulations regarding license agents, including but not limited to, adjusting commission rates applicable to the sale of licenses by license agents according to the Consumer Price Index.

CITIZEN PETITIONS:

Final action may be taken on rule-making petitions at any step of the Commission’s generally applicable two-step rule-making process.

Chapter W-0 - “General Provisions” 2 CCR 406-0, and those related provisions of Chapter W-2 - (“Big Game” 2 CCR 406-2), Chapter W-3 - (“Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3), and Chapter W-5 - (“Small Game - Migratory Birds” 2 CCR 406-5) necessary to accommodate changes to or ensure consistency with Chapter W-0

At its November meeting, the Parks and Wildlife Commission will consider a Citizen Petition for Rulemaking related to General Provisions, as follows:

- *A Citizen Petition for rulemaking* requesting the Commission pass a regulation prohibiting the use of lead ammunition for hunting all game wildlife within the state of Colorado.

The Commission may accept all or a portion of the petition for final action, further consideration or otherwise reject the petition at the November Commission meeting. A copy of the petition may be obtained by contacting Danielle Isenhardt (303) 866-3203 ext. 4625, Regulations Manager, Colorado Parks and Wildlife.

Chapter W-2 - “Big Game” 2 CCR 406-2, and those related provisions of Chapter W-0 - (“General Provisions” 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

At its November meeting, the Parks and Wildlife Commission will consider a Citizen Petition for Rulemaking related to Big Game, as follows:

- *A Citizen Petition for rulemaking* requesting the Commission allow the use of electronics attached to arrows during archery season.

- *A Citizen Petition for rulemaking* requesting the Commission pass a regulation prohibiting hunting within a one-mile radius of Brainard Lake Recreation Area.

The Commission may accept all or a portion of the petition for final action, further consideration or otherwise reject the petition at the November Commission meeting. A copy of the petition may be obtained by contacting Danielle Isenhardt (303) 866-3203 ext. 4625, Regulations Manager, Colorado Parks and Wildlife.

DRAFT REGULATIONS:

Chapter W-2 - “Big Game” 2 CCR 406-2

Open for consideration of regulations regarding the implementation of alternatives for the 2015-2019 Big Game Season Structure, including, but not limited to, the following:

- Changes to youth and black bear season participation.
- Changes to license purchase cutoff dates.
- Changes to annual season dates.

Chapter W-12 - “Lake Licenses” 2 CCR 406-12

Open for review of draft regulations in accordance with Executive Order D 2012-002 (“Regulatory Efficiency Reviews”) to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

ISSUES IDENTIFICATION:

Chapter W-0 - “General Provisions” 2 CCR 406-0, and those related provisions of Chapter W-3 - (“Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3) necessary to accommodate changes to or ensure consistency with Chapter W-0

Open for annual review of the entire chapter, including but not limited to, Game Management Unit boundaries, regulations relating to fish management, health, importation, prohibited species, and other annual changes.

Chapter W-2 - “Big Game” 2 CCR 406-2 and those related provisions of Chapter W-0 - (“General Provisions” 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

Open for review of the entire chapter, including, but not limited to:

- Annual changes to season dates, limited license areas and license numbers, and manner of take provisions for Bighorn sheep and Rocky Mountain goat.
- Annual changes to season dates, limited license areas and manner of take provisions for deer, elk, pronghorn antelope, moose, mountain lion, and bear.
- Annual changes to limited license application and drawing process.

Except for the time indicated for when the meeting is scheduled to begin, the order indicated for each agenda item is approximate and subject to change when necessary to accommodate the Commission’s schedule.

Viewing of Proposed Rules: copies of the proposed rules (together with a proposed statement of basis and purpose and specific statutory authority), will be available for inspection and distribution at the Office of the Regulations Manager, Division of Parks and Wildlife, 1313 Sherman St., Denver, Colorado, at least five (5) days prior to the date of hearing. Such copies, however, are only proposals to be submitted to the Commission by the Division of Parks and Wildlife.

Modification of Proposed Rules prior to adoption: subject to the provisions of Section 24-4-103, C.R.S., modification of these proposals may be made by the Division of Parks and Wildlife or the Commission before the Commission promulgates final rules and regulations on the above topics.

Comment deadlines: Comments will be accepted at any time prior to, or as part of the meeting. However, to ensure sufficient time for consideration prior to the meeting, comments should be provided to the Division of Parks and Wildlife by noon on the following date:

October 30, 2014, for mailing by the Division of Parks and Wildlife to the Parks and Wildlife Commission on **October 31, 2014**.

Comments received by the Division after noon on **October 30, 2014**, will be provided to the Commission on the day of the meeting.

Opportunity to submit alternate proposals and provide comment: the Commission will afford all interested persons an opportunity to submit alternate proposals, written data, views or arguments and to present them orally at the meeting unless it deems such oral presentation unnecessary. Written alternate proposals, data, views or arguments and other written statements should be submitted to the Division of Parks and Wildlife at 1313 Sherman St., Denver, CO 80203; or e-mailed to dnr_cpwcommission@state.co.us.

Use of Consent Agenda:

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The Director identifies matters where the recommended action follows established policy or precedent, there has been agreement reached or the matter is expected to be uncontested and non-controversial. Staff will provide written memos to the Parks and Wildlife Commission members explaining the matters on the Consent Agenda. Copies of the memos will be available to the public.

Regulatory Matters on the Consent Agenda are noticed for hearing at the same time and in the same manner as other consent agenda items. If a member of the Commission requests further consideration of an item on the consent agenda, that item will be withdrawn from the Consent Agenda and discussed at the end of the meeting or at the next meeting. The Consent Agenda may be voted on without the necessity of reading individual items. Any Commission member may request clarification from the Director of any matter on the Consent Agenda.

OTHER AGENDA ITEMS: The Parks and Wildlife Commission may consider and make policy, program implementation, and other non-regulatory decisions, which may be of public interest at this meeting. A copy of the complete meeting agenda may be viewed on the Division of Parks and Wildlife's internet home page at <http://cpw.state.co.us>, on or after **November 3, 2014**.

Notice of Rulemaking Hearing

Tracking number

2014-01043

Department

400 - Department of Natural Resources

Agency

406 - Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-0

Rule title

CHAPTER W-0 - GENERAL PROVISIONS

Rulemaking Hearing

Date

11/13/2014

Time

08:30 AM

Location

Burlington Community and Education Center, 340 S 14th St, Burlington, CO 80807

Subjects and issues involved

CHAPTER W-0 - GENERAL PROVISIONS - See attachment

Statutory authority

see attached

Contact information

Name

Danielle Isenhardt

Title

Regulations Manager

Telephone

303-866-3203

Email

danielle.isenhardt@state.co.us

September 30, 2014

**RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
November 13-14, 2014**

In accordance with the State Administrative Procedure Act, section 24-4-103, C.R.S., the Parks and Wildlife Commission gives notice that regulations will be considered for adoption at their next meeting on **November 13-14, 2014. The Parks and Wildlife Commission meeting will be held at the Burlington Community and Education Center, 340 S 14th St, Burlington, CO 80807. The following regulatory subjects and issues shall be considered** pursuant to the Commission's authority in sections 33-1-104, 33-1-106, 33-1-107, 33-1-108, 33-1-121, 33-2-104, 33-2-105, 33-2-106, 33-3-104, 33-4-101, 33-4-102 and 33-5.5-102, 33-6-107, 33-6-109, 33-6-112, 33-6-113, 33-6-114, 33-6-114.5, 33-6-117, 33-6-119, 33-6-121, 33-6-124, 33-6-125, 33-6-127, 33-6-128, 33-6-130, 33-6-205, 33-6-206, 33-6-207, 33-6-208, 33-6-209, C.R.S., and in sections 33-10-101 to 33-33-113, C.R.S. (the "Parks Act"), and especially sections 33-10-106, 33-10-107, 33-10.5-107, 33-11-109, 33-12-101, 33-12-103, 33-12-103.5, 33-12-106, 33-12.5-103, 33-13-103, 33-13-104, 33-13-106, 33-13-109, 33-13-110, 33-13-111, 33-14-107, 33-14.5-107, 33-32-103 and 33-33-105. C.R.S.

FINAL REGULATORY ADOPTION - November 13-14, 2014 beginning at 8:30 a.m.*

EFFECTIVE DATE OF REGULATIONS approved during the November 2014 Parks and Wildlife Commission meeting: January 1, 2015, unless otherwise noted.

PARKS REGULATIONS

FINAL REGULATIONS:

Chapter P-4 - "Snowmobile Regulations" 2 CCR 405-4

Open for review of final regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter P-5 - "Off-Highway Vehicle Regulations" 2 CCR 405-5

Open for review of final regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter P-6 - "Procedural Rules" 2 CCR 405-6

Open for review of final regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current

**Please reference the Commission agenda, to be posted on or after November 3, 2014, to ensure when each regulatory item will be addressed by the Commission. The agenda will be posted at <http://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx>.*

form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

**Please reference the Commission agenda, to be posted on or after November 3, 2014, to ensure when each regulatory item will be addressed by the Commission. The agenda will be posted at <http://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx>.*

DRAFT REGULATIONS:

Chapter P-8 - “Aquatic Nuisance Species” 2 CCR 405-8

Open for review of regulations in accordance with Executive Order D 2012-002 (“Regulatory Efficiency Reviews”) to determine if they should be continued in their current form, modified or repealed, including consideration of regulations that update standard protocols and assure consistency with other parks and wildlife regulations.

WILDLIFE REGULATIONS

FINAL REGULATIONS:

Chapter W-1 - “Fishing” 2 CCR 406-1, and those related provisions of Chapter W-0 - (“General Provisions” 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-1

Open for annual review of the entire chapter including, but not limited to, consideration of regulations regarding seasons and season dates, bag and possession limits, licensing requirements, manner of take provisions and special conditions or restrictions applicable to waters of the state, including, but not limited to, the following:

- Removing specific hours of closure from existing regulations for walleye spawning operations at Cherry Creek and Chatfield Reservoirs and allowing the closure to be lifted prior to April 15th if spawning operations have concluded.
- Adding regulations to establish bag and possession limits for arctic char at Dillon Reservoir.
- Removing season dates from harvest restrictions on Grand Lake for lake trout.
- Adding a minimum size harvest regulation for bass at Poudre Ponds #1 near Greeley.
- Removing the bag and possession limit for smallmouth bass at Ridgway Reservoir.
- Removing the unlimited bag and possession limit for yellow perch at Rifle Gap Reservoir and establishing new bag and possession limits for perch.
- Prohibiting public access within 150 feet of any kokanee spawning trap on Wolford Reservoir.
- Clarifying prohibition of transfer or transport of live fish.

These Chapter W-1 - Fishing regulations will become effective April 1, 2015.

Chapter W-2 - “Big Game” 2 CCR 406-2

Open for consideration of regulations adjusting non-resident big game license fees according to the Consumer Price Index, and adjusting non-resident big game license fees within statutory limitations pursuant to 33-4-102 (1.6)(IV)(b), C.R.S.

Chapter W-3 - “Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3

Open for annual review of regulations regarding turkey hunting, including but not limited to, license areas and license numbers, season dates, and manner of take provisions for 2015 turkey hunting seasons, including, but not limited to, the following:

- Adding an either-sex fall turkey season in both GMU 25 and 34.
- Splitting the spring turkey season in GMUs 103, 107, and 109 into two separate spring seasons.

Chapter W-8 - “Field Trials and Training of Hunting Dogs” 2 CCR 406-8

Open for review of final regulations in accordance with Executive Order D 2012-002 (“Regulatory Efficiency Reviews”) to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter W-15 - “License Agents” 2 CCR 406-15

Open for consideration of regulations regarding license agents, including but not limited to, adjusting commission rates applicable to the sale of licenses by license agents according to the Consumer Price Index.

CITIZEN PETITIONS:

Final action may be taken on rule-making petitions at any step of the Commission’s generally applicable two-step rule-making process.

Chapter W-0 - “General Provisions” 2 CCR 406-0, and those related provisions of Chapter W-2 - (“Big Game” 2 CCR 406-2), Chapter W-3 - (“Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3), and Chapter W-5 - (“Small Game - Migratory Birds” 2 CCR 406-5) necessary to accommodate changes to or ensure consistency with Chapter W-0

At its November meeting, the Parks and Wildlife Commission will consider a Citizen Petition for Rulemaking related to General Provisions, as follows:

- *A Citizen Petition for rulemaking* requesting the Commission pass a regulation prohibiting the use of lead ammunition for hunting all game wildlife within the state of Colorado.

The Commission may accept all or a portion of the petition for final action, further consideration or otherwise reject the petition at the November Commission meeting. A copy of the petition may be obtained by contacting Danielle Isenhardt (303) 866-3203 ext. 4625, Regulations Manager, Colorado Parks and Wildlife.

Chapter W-2 - “Big Game” 2 CCR 406-2, and those related provisions of Chapter W-0 - (“General Provisions” 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

At its November meeting, the Parks and Wildlife Commission will consider a Citizen Petition for Rulemaking related to Big Game, as follows:

- *A Citizen Petition for rulemaking* requesting the Commission allow the use of electronics attached to arrows during archery season.

- *A Citizen Petition for rulemaking* requesting the Commission pass a regulation prohibiting hunting within a one-mile radius of Brainard Lake Recreation Area.

The Commission may accept all or a portion of the petition for final action, further consideration or otherwise reject the petition at the November Commission meeting. A copy of the petition may be obtained by contacting Danielle Isenhardt (303) 866-3203 ext. 4625, Regulations Manager, Colorado Parks and Wildlife.

DRAFT REGULATIONS:

Chapter W-2 - “Big Game” 2 CCR 406-2

Open for consideration of regulations regarding the implementation of alternatives for the 2015-2019 Big Game Season Structure, including, but not limited to, the following:

- Changes to youth and black bear season participation.
- Changes to license purchase cutoff dates.
- Changes to annual season dates.

Chapter W-12 - “Lake Licenses” 2 CCR 406-12

Open for review of draft regulations in accordance with Executive Order D 2012-002 (“Regulatory Efficiency Reviews”) to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

ISSUES IDENTIFICATION:

Chapter W-0 - “General Provisions” 2 CCR 406-0, and those related provisions of Chapter W-3 - (“Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3) necessary to accommodate changes to or ensure consistency with Chapter W-0

Open for annual review of the entire chapter, including but not limited to, Game Management Unit boundaries, regulations relating to fish management, health, importation, prohibited species, and other annual changes.

Chapter W-2 - “Big Game” 2 CCR 406-2 and those related provisions of Chapter W-0 - (“General Provisions” 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

Open for review of the entire chapter, including, but not limited to:

- Annual changes to season dates, limited license areas and license numbers, and manner of take provisions for Bighorn sheep and Rocky Mountain goat.
- Annual changes to season dates, limited license areas and manner of take provisions for deer, elk, pronghorn antelope, moose, mountain lion, and bear.
- Annual changes to limited license application and drawing process.

Except for the time indicated for when the meeting is scheduled to begin, the order indicated for each agenda item is approximate and subject to change when necessary to accommodate the Commission’s schedule.

Viewing of Proposed Rules: copies of the proposed rules (together with a proposed statement of basis and purpose and specific statutory authority), will be available for inspection and distribution at the Office of the Regulations Manager, Division of Parks and Wildlife, 1313 Sherman St., Denver, Colorado, at least five (5) days prior to the date of hearing. Such copies, however, are only proposals to be submitted to the Commission by the Division of Parks and Wildlife.

Modification of Proposed Rules prior to adoption: subject to the provisions of Section 24-4-103, C.R.S., modification of these proposals may be made by the Division of Parks and Wildlife or the Commission before the Commission promulgates final rules and regulations on the above topics.

Comment deadlines: Comments will be accepted at any time prior to, or as part of the meeting. However, to ensure sufficient time for consideration prior to the meeting, comments should be provided to the Division of Parks and Wildlife by noon on the following date:

October 30, 2014, for mailing by the Division of Parks and Wildlife to the Parks and Wildlife Commission on **October 31, 2014**.

Comments received by the Division after noon on **October 30, 2014**, will be provided to the Commission on the day of the meeting.

Opportunity to submit alternate proposals and provide comment: the Commission will afford all interested persons an opportunity to submit alternate proposals, written data, views or arguments and to present them orally at the meeting unless it deems such oral presentation unnecessary. Written alternate proposals, data, views or arguments and other written statements should be submitted to the Division of Parks and Wildlife at 1313 Sherman St., Denver, CO 80203; or e-mailed to dnr_cpwcommission@state.co.us.

Use of Consent Agenda:

In order to increase the Parks and Wildlife Commission's efficiency and allow more time for consideration of parks and wildlife policy and contested issues, some or all of this regulatory agenda may be listed for action by the Commission as part of a "Consent Agenda" for this meeting.

The process for placing matters on the Consent Agenda is as follows:

The Director identifies matters where the recommended action follows established policy or precedent, there has been agreement reached or the matter is expected to be uncontested and non-controversial. Staff will provide written memos to the Parks and Wildlife Commission members explaining the matters on the Consent Agenda. Copies of the memos will be available to the public.

Regulatory Matters on the Consent Agenda are noticed for hearing at the same time and in the same manner as other consent agenda items. If a member of the Commission requests further consideration of an item on the consent agenda, that item will be withdrawn from the Consent Agenda and discussed at the end of the meeting or at the next meeting. The Consent Agenda may be voted on without the necessity of reading individual items. Any Commission member may request clarification from the Director of any matter on the Consent Agenda.

OTHER AGENDA ITEMS: The Parks and Wildlife Commission may consider and make policy, program implementation, and other non-regulatory decisions, which may be of public interest at this meeting. A copy of the complete meeting agenda may be viewed on the Division of Parks and Wildlife's internet home page at <http://cpw.state.co.us>, on or after **November 3, 2014**.

Notice of Rulemaking Hearing

Tracking number

2014-01042

Department

400 - Department of Natural Resources

Agency

406 - Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-1

Rule title

CHAPTER W-1 - FISHING

Rulemaking Hearing

Date

11/13/2014

Time

08:30 AM

Location

Burlington Community and Education Center, 340 S 14th St, Burlington, CO 80807

Subjects and issues involved

CHAPTER W-1 - FISHING - see attachment

Statutory authority

see attached

Contact information

Name

Danielle Isenhardt

Title

Regulations Manager

Telephone

303-866-3203

Email

danielle.isenhardt@state.co.us

September 30, 2014

**RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
November 13-14, 2014**

In accordance with the State Administrative Procedure Act, section 24-4-103, C.R.S., the Parks and Wildlife Commission gives notice that regulations will be considered for adoption at their next meeting on **November 13-14, 2014. The Parks and Wildlife Commission meeting will be held at the Burlington Community and Education Center, 340 S 14th St, Burlington, CO 80807. The following regulatory subjects and issues shall be considered** pursuant to the Commission's authority in sections 33-1-104, 33-1-106, 33-1-107, 33-1-108, 33-1-121, 33-2-104, 33-2-105, 33-2-106, 33-3-104, 33-4-101, 33-4-102 and 33-5.5-102, 33-6-107, 33-6-109, 33-6-112, 33-6-113, 33-6-114, 33-6-114.5, 33-6-117, 33-6-119, 33-6-121, 33-6-124, 33-6-125, 33-6-127, 33-6-128, 33-6-130, 33-6-205, 33-6-206, 33-6-207, 33-6-208, 33-6-209, C.R.S., and in sections 33-10-101 to 33-33-113, C.R.S. (the "Parks Act"), and especially sections 33-10-106, 33-10-107, 33-10.5-107, 33-11-109, 33-12-101, 33-12-103, 33-12-103.5, 33-12-106, 33-12.5-103, 33-13-103, 33-13-104, 33-13-106, 33-13-109, 33-13-110, 33-13-111, 33-14-107, 33-14.5-107, 33-32-103 and 33-33-105. C.R.S.

FINAL REGULATORY ADOPTION - November 13-14, 2014 beginning at 8:30 a.m.*

EFFECTIVE DATE OF REGULATIONS approved during the November 2014 Parks and Wildlife Commission meeting: January 1, 2015, unless otherwise noted.

PARKS REGULATIONS

FINAL REGULATIONS:

Chapter P-4 - "Snowmobile Regulations" 2 CCR 405-4

Open for review of final regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter P-5 - "Off-Highway Vehicle Regulations" 2 CCR 405-5

Open for review of final regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter P-6 - "Procedural Rules" 2 CCR 405-6

Open for review of final regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current

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form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

**Please reference the Commission agenda, to be posted on or after November 3, 2014, to ensure when each regulatory item will be addressed by the Commission. The agenda will be posted at <http://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx>.*

DRAFT REGULATIONS:

Chapter P-8 - “Aquatic Nuisance Species” 2 CCR 405-8

Open for review of regulations in accordance with Executive Order D 2012-002 (“Regulatory Efficiency Reviews”) to determine if they should be continued in their current form, modified or repealed, including consideration of regulations that update standard protocols and assure consistency with other parks and wildlife regulations.

WILDLIFE REGULATIONS

FINAL REGULATIONS:

Chapter W-1 - “Fishing” 2 CCR 406-1, and those related provisions of Chapter W-0 - (“General Provisions” 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-1

Open for annual review of the entire chapter including, but not limited to, consideration of regulations regarding seasons and season dates, bag and possession limits, licensing requirements, manner of take provisions and special conditions or restrictions applicable to waters of the state, including, but not limited to, the following:

- Removing specific hours of closure from existing regulations for walleye spawning operations at Cherry Creek and Chatfield Reservoirs and allowing the closure to be lifted prior to April 15th if spawning operations have concluded.
- Adding regulations to establish bag and possession limits for arctic char at Dillon Reservoir.
- Removing season dates from harvest restrictions on Grand Lake for lake trout.
- Adding a minimum size harvest regulation for bass at Poudre Ponds #1 near Greeley.
- Removing the bag and possession limit for smallmouth bass at Ridgway Reservoir.
- Removing the unlimited bag and possession limit for yellow perch at Rifle Gap Reservoir and establishing new bag and possession limits for perch.
- Prohibiting public access within 150 feet of any kokanee spawning trap on Wolford Reservoir.
- Clarifying prohibition of transfer or transport of live fish.

These Chapter W-1 - Fishing regulations will become effective April 1, 2015.

Chapter W-2 - “Big Game” 2 CCR 406-2

Open for consideration of regulations adjusting non-resident big game license fees according to the Consumer Price Index, and adjusting non-resident big game license fees within statutory limitations pursuant to 33-4-102 (1.6)(IV)(b), C.R.S.

Chapter W-3 - “Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3

Open for annual review of regulations regarding turkey hunting, including but not limited to, license areas and license numbers, season dates, and manner of take provisions for 2015 turkey hunting seasons, including, but not limited to, the following:

- Adding an either-sex fall turkey season in both GMU 25 and 34.
- Splitting the spring turkey season in GMUs 103, 107, and 109 into two separate spring seasons.

Chapter W-8 - “Field Trials and Training of Hunting Dogs” 2 CCR 406-8

Open for review of final regulations in accordance with Executive Order D 2012-002 (“Regulatory Efficiency Reviews”) to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter W-15 - “License Agents” 2 CCR 406-15

Open for consideration of regulations regarding license agents, including but not limited to, adjusting commission rates applicable to the sale of licenses by license agents according to the Consumer Price Index.

CITIZEN PETITIONS:

Final action may be taken on rule-making petitions at any step of the Commission’s generally applicable two-step rule-making process.

Chapter W-0 - “General Provisions” 2 CCR 406-0, and those related provisions of Chapter W-2 - (“Big Game” 2 CCR 406-2), Chapter W-3 - (“Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3), and Chapter W-5 - (“Small Game - Migratory Birds” 2 CCR 406-5) necessary to accommodate changes to or ensure consistency with Chapter W-0

At its November meeting, the Parks and Wildlife Commission will consider a Citizen Petition for Rulemaking related to General Provisions, as follows:

- *A Citizen Petition for rulemaking* requesting the Commission pass a regulation prohibiting the use of lead ammunition for hunting all game wildlife within the state of Colorado.

The Commission may accept all or a portion of the petition for final action, further consideration or otherwise reject the petition at the November Commission meeting. A copy of the petition may be obtained by contacting Danielle Isenhardt (303) 866-3203 ext. 4625, Regulations Manager, Colorado Parks and Wildlife.

Chapter W-2 - “Big Game” 2 CCR 406-2, and those related provisions of Chapter W-0 - (“General Provisions” 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

At its November meeting, the Parks and Wildlife Commission will consider a Citizen Petition for Rulemaking related to Big Game, as follows:

- *A Citizen Petition for rulemaking* requesting the Commission allow the use of electronics attached to arrows during archery season.

- *A Citizen Petition for rulemaking* requesting the Commission pass a regulation prohibiting hunting within a one-mile radius of Brainard Lake Recreation Area.

The Commission may accept all or a portion of the petition for final action, further consideration or otherwise reject the petition at the November Commission meeting. A copy of the petition may be obtained by contacting Danielle Isenhardt (303) 866-3203 ext. 4625, Regulations Manager, Colorado Parks and Wildlife.

DRAFT REGULATIONS:

Chapter W-2 - “Big Game” 2 CCR 406-2

Open for consideration of regulations regarding the implementation of alternatives for the 2015-2019 Big Game Season Structure, including, but not limited to, the following:

- Changes to youth and black bear season participation.
- Changes to license purchase cutoff dates.
- Changes to annual season dates.

Chapter W-12 - “Lake Licenses” 2 CCR 406-12

Open for review of draft regulations in accordance with Executive Order D 2012-002 (“Regulatory Efficiency Reviews”) to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

ISSUES IDENTIFICATION:

Chapter W-0 - “General Provisions” 2 CCR 406-0, and those related provisions of Chapter W-3 - (“Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3) necessary to accommodate changes to or ensure consistency with Chapter W-0

Open for annual review of the entire chapter, including but not limited to, Game Management Unit boundaries, regulations relating to fish management, health, importation, prohibited species, and other annual changes.

Chapter W-2 - “Big Game” 2 CCR 406-2 and those related provisions of Chapter W-0 - (“General Provisions” 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

Open for review of the entire chapter, including, but not limited to:

- Annual changes to season dates, limited license areas and license numbers, and manner of take provisions for Bighorn sheep and Rocky Mountain goat.
- Annual changes to season dates, limited license areas and manner of take provisions for deer, elk, pronghorn antelope, moose, mountain lion, and bear.
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Viewing of Proposed Rules: copies of the proposed rules (together with a proposed statement of basis and purpose and specific statutory authority), will be available for inspection and distribution at the Office of the Regulations Manager, Division of Parks and Wildlife, 1313 Sherman St., Denver, Colorado, at least five (5) days prior to the date of hearing. Such copies, however, are only proposals to be submitted to the Commission by the Division of Parks and Wildlife.

Modification of Proposed Rules prior to adoption: subject to the provisions of Section 24-4-103, C.R.S., modification of these proposals may be made by the Division of Parks and Wildlife or the Commission before the Commission promulgates final rules and regulations on the above topics.

Comment deadlines: Comments will be accepted at any time prior to, or as part of the meeting. However, to ensure sufficient time for consideration prior to the meeting, comments should be provided to the Division of Parks and Wildlife by noon on the following date:

October 30, 2014, for mailing by the Division of Parks and Wildlife to the Parks and Wildlife Commission on **October 31, 2014**.

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Opportunity to submit alternate proposals and provide comment: the Commission will afford all interested persons an opportunity to submit alternate proposals, written data, views or arguments and to present them orally at the meeting unless it deems such oral presentation unnecessary. Written alternate proposals, data, views or arguments and other written statements should be submitted to the Division of Parks and Wildlife at 1313 Sherman St., Denver, CO 80203; or e-mailed to dnr_cpwwcommission@state.co.us.

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Notice of Rulemaking Hearing

Tracking number

2014-01044

Department

400 - Department of Natural Resources

Agency

406 - Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-2

Rule title

CHAPTER W-2 - BIG GAME

Rulemaking Hearing

Date

11/13/2014

Time

08:30 AM

Location

Burlington Community and Education Center, 340 S 14th St, Burlington, CO 80807

Subjects and issues involved

CHAPTER W-2 - BIG GAME - see attachment

Statutory authority

see attached

Contact information

Name

Danielle Isenhardt

Title

Regulations Manager

Telephone

303-866-3203

Email

danielle.isenhardt@state.co.us

September 30, 2014

**RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
November 13-14, 2014**

In accordance with the State Administrative Procedure Act, section 24-4-103, C.R.S., the Parks and Wildlife Commission gives notice that regulations will be considered for adoption at their next meeting on **November 13-14, 2014. The Parks and Wildlife Commission meeting will be held at the Burlington Community and Education Center, 340 S 14th St, Burlington, CO 80807. The following regulatory subjects and issues shall be considered** pursuant to the Commission's authority in sections 33-1-104, 33-1-106, 33-1-107, 33-1-108, 33-1-121, 33-2-104, 33-2-105, 33-2-106, 33-3-104, 33-4-101, 33-4-102 and 33-5.5-102, 33-6-107, 33-6-109, 33-6-112, 33-6-113, 33-6-114, 33-6-114.5, 33-6-117, 33-6-119, 33-6-121, 33-6-124, 33-6-125, 33-6-127, 33-6-128, 33-6-130, 33-6-205, 33-6-206, 33-6-207, 33-6-208, 33-6-209, C.R.S., and in sections 33-10-101 to 33-33-113, C.R.S. (the "Parks Act"), and especially sections 33-10-106, 33-10-107, 33-10.5-107, 33-11-109, 33-12-101, 33-12-103, 33-12-103.5, 33-12-106, 33-12.5-103, 33-13-103, 33-13-104, 33-13-106, 33-13-109, 33-13-110, 33-13-111, 33-14-107, 33-14.5-107, 33-32-103 and 33-33-105. C.R.S.

FINAL REGULATORY ADOPTION - November 13-14, 2014 beginning at 8:30 a.m.*

EFFECTIVE DATE OF REGULATIONS approved during the November 2014 Parks and Wildlife Commission meeting: January 1, 2015, unless otherwise noted.

PARKS REGULATIONS

FINAL REGULATIONS:

Chapter P-4 - "Snowmobile Regulations" 2 CCR 405-4

Open for review of final regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter P-5 - "Off-Highway Vehicle Regulations" 2 CCR 405-5

Open for review of final regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter P-6 - "Procedural Rules" 2 CCR 405-6

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DRAFT REGULATIONS:

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WILDLIFE REGULATIONS

FINAL REGULATIONS:

Chapter W-1 - “Fishing” 2 CCR 406-1, and those related provisions of Chapter W-0 - (“General Provisions” 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-1

Open for annual review of the entire chapter including, but not limited to, consideration of regulations regarding seasons and season dates, bag and possession limits, licensing requirements, manner of take provisions and special conditions or restrictions applicable to waters of the state, including, but not limited to, the following:

- Removing specific hours of closure from existing regulations for walleye spawning operations at Cherry Creek and Chatfield Reservoirs and allowing the closure to be lifted prior to April 15th if spawning operations have concluded.
- Adding regulations to establish bag and possession limits for arctic char at Dillon Reservoir.
- Removing season dates from harvest restrictions on Grand Lake for lake trout.
- Adding a minimum size harvest regulation for bass at Poudre Ponds #1 near Greeley.
- Removing the bag and possession limit for smallmouth bass at Ridgway Reservoir.
- Removing the unlimited bag and possession limit for yellow perch at Rifle Gap Reservoir and establishing new bag and possession limits for perch.
- Prohibiting public access within 150 feet of any kokanee spawning trap on Wolford Reservoir.
- Clarifying prohibition of transfer or transport of live fish.

These Chapter W-1 - Fishing regulations will become effective April 1, 2015.

Chapter W-2 - “Big Game” 2 CCR 406-2

Open for consideration of regulations adjusting non-resident big game license fees according to the Consumer Price Index, and adjusting non-resident big game license fees within statutory limitations pursuant to 33-4-102 (1.6)(IV)(b), C.R.S.

Chapter W-3 - “Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3

Open for annual review of regulations regarding turkey hunting, including but not limited to, license areas and license numbers, season dates, and manner of take provisions for 2015 turkey hunting seasons, including, but not limited to, the following:

- Adding an either-sex fall turkey season in both GMU 25 and 34.
- Splitting the spring turkey season in GMUs 103, 107, and 109 into two separate spring seasons.

Chapter W-8 - “Field Trials and Training of Hunting Dogs” 2 CCR 406-8

Open for review of final regulations in accordance with Executive Order D 2012-002 (“Regulatory Efficiency Reviews”) to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter W-15 - “License Agents” 2 CCR 406-15

Open for consideration of regulations regarding license agents, including but not limited to, adjusting commission rates applicable to the sale of licenses by license agents according to the Consumer Price Index.

CITIZEN PETITIONS:

Final action may be taken on rule-making petitions at any step of the Commission’s generally applicable two-step rule-making process.

Chapter W-0 - “General Provisions” 2 CCR 406-0, and those related provisions of Chapter W-2 - (“Big Game” 2 CCR 406-2), Chapter W-3 - (“Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3), and Chapter W-5 - (“Small Game - Migratory Birds” 2 CCR 406-5) necessary to accommodate changes to or ensure consistency with Chapter W-0

At its November meeting, the Parks and Wildlife Commission will consider a Citizen Petition for Rulemaking related to General Provisions, as follows:

- *A Citizen Petition for rulemaking* requesting the Commission pass a regulation prohibiting the use of lead ammunition for hunting all game wildlife within the state of Colorado.

The Commission may accept all or a portion of the petition for final action, further consideration or otherwise reject the petition at the November Commission meeting. A copy of the petition may be obtained by contacting Danielle Isenhardt (303) 866-3203 ext. 4625, Regulations Manager, Colorado Parks and Wildlife.

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- Changes to youth and black bear season participation.
- Changes to license purchase cutoff dates.
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Chapter W-12 - “Lake Licenses” 2 CCR 406-12

Open for review of draft regulations in accordance with Executive Order D 2012-002 (“Regulatory Efficiency Reviews”) to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

ISSUES IDENTIFICATION:

Chapter W-0 - “General Provisions” 2 CCR 406-0, and those related provisions of Chapter W-3 - (“Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3) necessary to accommodate changes to or ensure consistency with Chapter W-0

Open for annual review of the entire chapter, including but not limited to, Game Management Unit boundaries, regulations relating to fish management, health, importation, prohibited species, and other annual changes.

Chapter W-2 - “Big Game” 2 CCR 406-2 and those related provisions of Chapter W-0 - (“General Provisions” 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

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The Director identifies matters where the recommended action follows established policy or precedent, there has been agreement reached or the matter is expected to be uncontested and non-controversial. Staff will provide written memos to the Parks and Wildlife Commission members explaining the matters on the Consent Agenda. Copies of the memos will be available to the public.

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OTHER AGENDA ITEMS: The Parks and Wildlife Commission may consider and make policy, program implementation, and other non-regulatory decisions, which may be of public interest at this meeting. A copy of the complete meeting agenda may be viewed on the Division of Parks and Wildlife's internet home page at <http://cpw.state.co.us>, on or after **November 3, 2014**.

Notice of Rulemaking Hearing

Tracking number

2014-01045

Department

400 - Department of Natural Resources

Agency

406 - Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-3

Rule title

CHAPTER W-3 - FURBEARERS AND SMALL GAME EXCEPT MIGRATORY BIRDS

Rulemaking Hearing

Date

11/13/2014

Time

08:30 AM

Location

Burlington Community and Education Center, 340 S 14th St, Burlington, CO 80807

Subjects and issues involved

CHAPTER W-3 - FURBEARERS AND SMALL GAME EXCEPT MIGRATORY BIRDS - see attachment

Statutory authority

see attached

Contact information

Name

Danielle Isenhardt

Title

Regulations Manager

Telephone

303-866-3203

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September 30, 2014

**RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
November 13-14, 2014**

In accordance with the State Administrative Procedure Act, section 24-4-103, C.R.S., the Parks and Wildlife Commission gives notice that regulations will be considered for adoption at their next meeting on **November 13-14, 2014. The Parks and Wildlife Commission meeting will be held at the Burlington Community and Education Center, 340 S 14th St, Burlington, CO 80807. The following regulatory subjects and issues shall be considered** pursuant to the Commission's authority in sections 33-1-104, 33-1-106, 33-1-107, 33-1-108, 33-1-121, 33-2-104, 33-2-105, 33-2-106, 33-3-104, 33-4-101, 33-4-102 and 33-5.5-102, 33-6-107, 33-6-109, 33-6-112, 33-6-113, 33-6-114, 33-6-114.5, 33-6-117, 33-6-119, 33-6-121, 33-6-124, 33-6-125, 33-6-127, 33-6-128, 33-6-130, 33-6-205, 33-6-206, 33-6-207, 33-6-208, 33-6-209, C.R.S., and in sections 33-10-101 to 33-33-113, C.R.S. (the "Parks Act"), and especially sections 33-10-106, 33-10-107, 33-10.5-107, 33-11-109, 33-12-101, 33-12-103, 33-12-103.5, 33-12-106, 33-12.5-103, 33-13-103, 33-13-104, 33-13-106, 33-13-109, 33-13-110, 33-13-111, 33-14-107, 33-14.5-107, 33-32-103 and 33-33-105. C.R.S.

FINAL REGULATORY ADOPTION - November 13-14, 2014 beginning at 8:30 a.m.*

EFFECTIVE DATE OF REGULATIONS approved during the November 2014 Parks and Wildlife Commission meeting: January 1, 2015, unless otherwise noted.

PARKS REGULATIONS

FINAL REGULATIONS:

Chapter P-4 - "Snowmobile Regulations" 2 CCR 405-4

Open for review of final regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter P-5 - "Off-Highway Vehicle Regulations" 2 CCR 405-5

Open for review of final regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter P-6 - "Procedural Rules" 2 CCR 405-6

Open for review of final regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current

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form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

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DRAFT REGULATIONS:

Chapter P-8 - “Aquatic Nuisance Species” 2 CCR 405-8

Open for review of regulations in accordance with Executive Order D 2012-002 (“Regulatory Efficiency Reviews”) to determine if they should be continued in their current form, modified or repealed, including consideration of regulations that update standard protocols and assure consistency with other parks and wildlife regulations.

WILDLIFE REGULATIONS

FINAL REGULATIONS:

Chapter W-1 - “Fishing” 2 CCR 406-1, and those related provisions of Chapter W-0 - (“General Provisions” 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-1

Open for annual review of the entire chapter including, but not limited to, consideration of regulations regarding seasons and season dates, bag and possession limits, licensing requirements, manner of take provisions and special conditions or restrictions applicable to waters of the state, including, but not limited to, the following:

- Removing specific hours of closure from existing regulations for walleye spawning operations at Cherry Creek and Chatfield Reservoirs and allowing the closure to be lifted prior to April 15th if spawning operations have concluded.
- Adding regulations to establish bag and possession limits for arctic char at Dillon Reservoir.
- Removing season dates from harvest restrictions on Grand Lake for lake trout.
- Adding a minimum size harvest regulation for bass at Poudre Ponds #1 near Greeley.
- Removing the bag and possession limit for smallmouth bass at Ridgway Reservoir.
- Removing the unlimited bag and possession limit for yellow perch at Rifle Gap Reservoir and establishing new bag and possession limits for perch.
- Prohibiting public access within 150 feet of any kokanee spawning trap on Wolford Reservoir.
- Clarifying prohibition of transfer or transport of live fish.

These Chapter W-1 - Fishing regulations will become effective April 1, 2015.

Chapter W-2 - “Big Game” 2 CCR 406-2

Open for consideration of regulations adjusting non-resident big game license fees according to the Consumer Price Index, and adjusting non-resident big game license fees within statutory limitations pursuant to 33-4-102 (1.6)(IV)(b), C.R.S.

Chapter W-3 - “Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3

Open for annual review of regulations regarding turkey hunting, including but not limited to, license areas and license numbers, season dates, and manner of take provisions for 2015 turkey hunting seasons, including, but not limited to, the following:

- Adding an either-sex fall turkey season in both GMU 25 and 34.
- Splitting the spring turkey season in GMUs 103, 107, and 109 into two separate spring seasons.

Chapter W-8 - “Field Trials and Training of Hunting Dogs” 2 CCR 406-8

Open for review of final regulations in accordance with Executive Order D 2012-002 (“Regulatory Efficiency Reviews”) to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter W-15 - “License Agents” 2 CCR 406-15

Open for consideration of regulations regarding license agents, including but not limited to, adjusting commission rates applicable to the sale of licenses by license agents according to the Consumer Price Index.

CITIZEN PETITIONS:

Final action may be taken on rule-making petitions at any step of the Commission’s generally applicable two-step rule-making process.

Chapter W-0 - “General Provisions” 2 CCR 406-0, and those related provisions of Chapter W-2 - (“Big Game” 2 CCR 406-2), Chapter W-3 - (“Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3), and Chapter W-5 - (“Small Game - Migratory Birds” 2 CCR 406-5) necessary to accommodate changes to or ensure consistency with Chapter W-0

At its November meeting, the Parks and Wildlife Commission will consider a Citizen Petition for Rulemaking related to General Provisions, as follows:

- *A Citizen Petition for rulemaking* requesting the Commission pass a regulation prohibiting the use of lead ammunition for hunting all game wildlife within the state of Colorado.

The Commission may accept all or a portion of the petition for final action, further consideration or otherwise reject the petition at the November Commission meeting. A copy of the petition may be obtained by contacting Danielle Isenhardt (303) 866-3203 ext. 4625, Regulations Manager, Colorado Parks and Wildlife.

Chapter W-2 - “Big Game” 2 CCR 406-2, and those related provisions of Chapter W-0 - (“General Provisions” 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

At its November meeting, the Parks and Wildlife Commission will consider a Citizen Petition for Rulemaking related to Big Game, as follows:

- *A Citizen Petition for rulemaking* requesting the Commission allow the use of electronics attached to arrows during archery season.

- *A Citizen Petition for rulemaking* requesting the Commission pass a regulation prohibiting hunting within a one-mile radius of Brainard Lake Recreation Area.

The Commission may accept all or a portion of the petition for final action, further consideration or otherwise reject the petition at the November Commission meeting. A copy of the petition may be obtained by contacting Danielle Isenhardt (303) 866-3203 ext. 4625, Regulations Manager, Colorado Parks and Wildlife.

DRAFT REGULATIONS:

Chapter W-2 - “Big Game” 2 CCR 406-2

Open for consideration of regulations regarding the implementation of alternatives for the 2015-2019 Big Game Season Structure, including, but not limited to, the following:

- Changes to youth and black bear season participation.
- Changes to license purchase cutoff dates.
- Changes to annual season dates.

Chapter W-12 - “Lake Licenses” 2 CCR 406-12

Open for review of draft regulations in accordance with Executive Order D 2012-002 (“Regulatory Efficiency Reviews”) to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

ISSUES IDENTIFICATION:

Chapter W-0 - “General Provisions” 2 CCR 406-0, and those related provisions of Chapter W-3 - (“Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3) necessary to accommodate changes to or ensure consistency with Chapter W-0

Open for annual review of the entire chapter, including but not limited to, Game Management Unit boundaries, regulations relating to fish management, health, importation, prohibited species, and other annual changes.

Chapter W-2 - “Big Game” 2 CCR 406-2 and those related provisions of Chapter W-0 - (“General Provisions” 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

Open for review of the entire chapter, including, but not limited to:

- Annual changes to season dates, limited license areas and license numbers, and manner of take provisions for Bighorn sheep and Rocky Mountain goat.
- Annual changes to season dates, limited license areas and manner of take provisions for deer, elk, pronghorn antelope, moose, mountain lion, and bear.
- Annual changes to limited license application and drawing process.

Except for the time indicated for when the meeting is scheduled to begin, the order indicated for each agenda item is approximate and subject to change when necessary to accommodate the Commission’s schedule.

Viewing of Proposed Rules: copies of the proposed rules (together with a proposed statement of basis and purpose and specific statutory authority), will be available for inspection and distribution at the Office of the Regulations Manager, Division of Parks and Wildlife, 1313 Sherman St., Denver, Colorado, at least five (5) days prior to the date of hearing. Such copies, however, are only proposals to be submitted to the Commission by the Division of Parks and Wildlife.

Modification of Proposed Rules prior to adoption: subject to the provisions of Section 24-4-103, C.R.S., modification of these proposals may be made by the Division of Parks and Wildlife or the Commission before the Commission promulgates final rules and regulations on the above topics.

Comment deadlines: Comments will be accepted at any time prior to, or as part of the meeting. However, to ensure sufficient time for consideration prior to the meeting, comments should be provided to the Division of Parks and Wildlife by noon on the following date:

October 30, 2014, for mailing by the Division of Parks and Wildlife to the Parks and Wildlife Commission on **October 31, 2014.**

Comments received by the Division after noon on **October 30, 2014,** will be provided to the Commission on the day of the meeting.

Opportunity to submit alternate proposals and provide comment: the Commission will afford all interested persons an opportunity to submit alternate proposals, written data, views or arguments and to present them orally at the meeting unless it deems such oral presentation unnecessary. Written alternate proposals, data, views or arguments and other written statements should be submitted to the Division of Parks and Wildlife at 1313 Sherman St., Denver, CO 80203; or e-mailed to dnr_cpwcommission@state.co.us.

Use of Consent Agenda:

In order to increase the Parks and Wildlife Commission's efficiency and allow more time for consideration of parks and wildlife policy and contested issues, some or all of this regulatory agenda may be listed for action by the Commission as part of a "Consent Agenda" for this meeting.

The process for placing matters on the Consent Agenda is as follows:

The Director identifies matters where the recommended action follows established policy or precedent, there has been agreement reached or the matter is expected to be uncontested and non-controversial. Staff will provide written memos to the Parks and Wildlife Commission members explaining the matters on the Consent Agenda. Copies of the memos will be available to the public.

Regulatory Matters on the Consent Agenda are noticed for hearing at the same time and in the same manner as other consent agenda items. If a member of the Commission requests further consideration of an item on the consent agenda, that item will be withdrawn from the Consent Agenda and discussed at the end of the meeting or at the next meeting. The Consent Agenda may be voted on without the necessity of reading individual items. Any Commission member may request clarification from the Director of any matter on the Consent Agenda.

OTHER AGENDA ITEMS: The Parks and Wildlife Commission may consider and make policy, program implementation, and other non-regulatory decisions, which may be of public interest at this meeting. A copy of the complete meeting agenda may be viewed on the Division of Parks and Wildlife's internet home page at <http://cpw.state.co.us>, on or after **November 3, 2014.**

Notice of Rulemaking Hearing

Tracking number

2014-01048

Department

400 - Department of Natural Resources

Agency

406 - Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-5

Rule title

CHAPTER W-5 - MIGRATORY BIRDS

Rulemaking Hearing

Date

11/13/2014

Time

08:30 AM

Location

Burlington Community and Education Center, 340 S 14th St, Burlington, CO 80807

Subjects and issues involved

CHAPTER W-5 - MIGRATORY BIRDS - see attached

Statutory authority

see attached

Contact information

Name

Danielle Isenhardt

Title

Regulations Manager

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303-866-3203

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danielle.isenhardt@state.co.us

September 30, 2014

**RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
November 13-14, 2014**

In accordance with the State Administrative Procedure Act, section 24-4-103, C.R.S., the Parks and Wildlife Commission gives notice that regulations will be considered for adoption at their next meeting on **November 13-14, 2014. The Parks and Wildlife Commission meeting will be held at the Burlington Community and Education Center, 340 S 14th St, Burlington, CO 80807. The following regulatory subjects and issues shall be considered** pursuant to the Commission's authority in sections 33-1-104, 33-1-106, 33-1-107, 33-1-108, 33-1-121, 33-2-104, 33-2-105, 33-2-106, 33-3-104, 33-4-101, 33-4-102 and 33-5.5-102, 33-6-107, 33-6-109, 33-6-112, 33-6-113, 33-6-114, 33-6-114.5, 33-6-117, 33-6-119, 33-6-121, 33-6-124, 33-6-125, 33-6-127, 33-6-128, 33-6-130, 33-6-205, 33-6-206, 33-6-207, 33-6-208, 33-6-209, C.R.S., and in sections 33-10-101 to 33-33-113, C.R.S. (the "Parks Act"), and especially sections 33-10-106, 33-10-107, 33-10.5-107, 33-11-109, 33-12-101, 33-12-103, 33-12-103.5, 33-12-106, 33-12.5-103, 33-13-103, 33-13-104, 33-13-106, 33-13-109, 33-13-110, 33-13-111, 33-14-107, 33-14.5-107, 33-32-103 and 33-33-105. C.R.S.

FINAL REGULATORY ADOPTION - November 13-14, 2014 beginning at 8:30 a.m.*

EFFECTIVE DATE OF REGULATIONS approved during the November 2014 Parks and Wildlife Commission meeting: January 1, 2015, unless otherwise noted.

PARKS REGULATIONS

FINAL REGULATIONS:

Chapter P-4 - "Snowmobile Regulations" 2 CCR 405-4

Open for review of final regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter P-5 - "Off-Highway Vehicle Regulations" 2 CCR 405-5

Open for review of final regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter P-6 - "Procedural Rules" 2 CCR 405-6

Open for review of final regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current

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form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

**Please reference the Commission agenda, to be posted on or after November 3, 2014, to ensure when each regulatory item will be addressed by the Commission. The agenda will be posted at <http://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx>.*

DRAFT REGULATIONS:

Chapter P-8 - “Aquatic Nuisance Species” 2 CCR 405-8

Open for review of regulations in accordance with Executive Order D 2012-002 (“Regulatory Efficiency Reviews”) to determine if they should be continued in their current form, modified or repealed, including consideration of regulations that update standard protocols and assure consistency with other parks and wildlife regulations.

WILDLIFE REGULATIONS

FINAL REGULATIONS:

Chapter W-1 - “Fishing” 2 CCR 406-1, and those related provisions of Chapter W-0 - (“General Provisions” 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-1

Open for annual review of the entire chapter including, but not limited to, consideration of regulations regarding seasons and season dates, bag and possession limits, licensing requirements, manner of take provisions and special conditions or restrictions applicable to waters of the state, including, but not limited to, the following:

- Removing specific hours of closure from existing regulations for walleye spawning operations at Cherry Creek and Chatfield Reservoirs and allowing the closure to be lifted prior to April 15th if spawning operations have concluded.
- Adding regulations to establish bag and possession limits for arctic char at Dillon Reservoir.
- Removing season dates from harvest restrictions on Grand Lake for lake trout.
- Adding a minimum size harvest regulation for bass at Poudre Ponds #1 near Greeley.
- Removing the bag and possession limit for smallmouth bass at Ridgway Reservoir.
- Removing the unlimited bag and possession limit for yellow perch at Rifle Gap Reservoir and establishing new bag and possession limits for perch.
- Prohibiting public access within 150 feet of any kokanee spawning trap on Wolford Reservoir.
- Clarifying prohibition of transfer or transport of live fish.

These Chapter W-1 - Fishing regulations will become effective April 1, 2015.

Chapter W-2 - “Big Game” 2 CCR 406-2

Open for consideration of regulations adjusting non-resident big game license fees according to the Consumer Price Index, and adjusting non-resident big game license fees within statutory limitations pursuant to 33-4-102 (1.6)(IV)(b), C.R.S.

Chapter W-3 - “Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3

Open for annual review of regulations regarding turkey hunting, including but not limited to, license areas and license numbers, season dates, and manner of take provisions for 2015 turkey hunting seasons, including, but not limited to, the following:

- Adding an either-sex fall turkey season in both GMU 25 and 34.
- Splitting the spring turkey season in GMUs 103, 107, and 109 into two separate spring seasons.

Chapter W-8 - “Field Trials and Training of Hunting Dogs” 2 CCR 406-8

Open for review of final regulations in accordance with Executive Order D 2012-002 (“Regulatory Efficiency Reviews”) to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter W-15 - “License Agents” 2 CCR 406-15

Open for consideration of regulations regarding license agents, including but not limited to, adjusting commission rates applicable to the sale of licenses by license agents according to the Consumer Price Index.

CITIZEN PETITIONS:

Final action may be taken on rule-making petitions at any step of the Commission’s generally applicable two-step rule-making process.

Chapter W-0 - “General Provisions” 2 CCR 406-0, and those related provisions of Chapter W-2 - (“Big Game” 2 CCR 406-2), Chapter W-3 - (“Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3), and Chapter W-5 - (“Small Game - Migratory Birds” 2 CCR 406-5) necessary to accommodate changes to or ensure consistency with Chapter W-0

At its November meeting, the Parks and Wildlife Commission will consider a Citizen Petition for Rulemaking related to General Provisions, as follows:

- *A Citizen Petition for rulemaking* requesting the Commission pass a regulation prohibiting the use of lead ammunition for hunting all game wildlife within the state of Colorado.

The Commission may accept all or a portion of the petition for final action, further consideration or otherwise reject the petition at the November Commission meeting. A copy of the petition may be obtained by contacting Danielle Isenhardt (303) 866-3203 ext. 4625, Regulations Manager, Colorado Parks and Wildlife.

Chapter W-2 - “Big Game” 2 CCR 406-2, and those related provisions of Chapter W-0 - (“General Provisions” 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

At its November meeting, the Parks and Wildlife Commission will consider a Citizen Petition for Rulemaking related to Big Game, as follows:

- *A Citizen Petition for rulemaking* requesting the Commission allow the use of electronics attached to arrows during archery season.

- *A Citizen Petition for rulemaking* requesting the Commission pass a regulation prohibiting hunting within a one-mile radius of Brainard Lake Recreation Area.

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DRAFT REGULATIONS:

Chapter W-2 - “Big Game” 2 CCR 406-2

Open for consideration of regulations regarding the implementation of alternatives for the 2015-2019 Big Game Season Structure, including, but not limited to, the following:

- Changes to youth and black bear season participation.
- Changes to license purchase cutoff dates.
- Changes to annual season dates.

Chapter W-12 - “Lake Licenses” 2 CCR 406-12

Open for review of draft regulations in accordance with Executive Order D 2012-002 (“Regulatory Efficiency Reviews”) to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

ISSUES IDENTIFICATION:

Chapter W-0 - “General Provisions” 2 CCR 406-0, and those related provisions of Chapter W-3 - (“Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3) necessary to accommodate changes to or ensure consistency with Chapter W-0

Open for annual review of the entire chapter, including but not limited to, Game Management Unit boundaries, regulations relating to fish management, health, importation, prohibited species, and other annual changes.

Chapter W-2 - “Big Game” 2 CCR 406-2 and those related provisions of Chapter W-0 - (“General Provisions” 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

Open for review of the entire chapter, including, but not limited to:

- Annual changes to season dates, limited license areas and license numbers, and manner of take provisions for Bighorn sheep and Rocky Mountain goat.
- Annual changes to season dates, limited license areas and manner of take provisions for deer, elk, pronghorn antelope, moose, mountain lion, and bear.
- Annual changes to limited license application and drawing process.

Except for the time indicated for when the meeting is scheduled to begin, the order indicated for each agenda item is approximate and subject to change when necessary to accommodate the Commission’s schedule.

Viewing of Proposed Rules: copies of the proposed rules (together with a proposed statement of basis and purpose and specific statutory authority), will be available for inspection and distribution at the Office of the Regulations Manager, Division of Parks and Wildlife, 1313 Sherman St., Denver, Colorado, at least five (5) days prior to the date of hearing. Such copies, however, are only proposals to be submitted to the Commission by the Division of Parks and Wildlife.

Modification of Proposed Rules prior to adoption: subject to the provisions of Section 24-4-103, C.R.S., modification of these proposals may be made by the Division of Parks and Wildlife or the Commission before the Commission promulgates final rules and regulations on the above topics.

Comment deadlines: Comments will be accepted at any time prior to, or as part of the meeting. However, to ensure sufficient time for consideration prior to the meeting, comments should be provided to the Division of Parks and Wildlife by noon on the following date:

October 30, 2014, for mailing by the Division of Parks and Wildlife to the Parks and Wildlife Commission on **October 31, 2014.**

Comments received by the Division after noon on **October 30, 2014,** will be provided to the Commission on the day of the meeting.

Opportunity to submit alternate proposals and provide comment: the Commission will afford all interested persons an opportunity to submit alternate proposals, written data, views or arguments and to present them orally at the meeting unless it deems such oral presentation unnecessary. Written alternate proposals, data, views or arguments and other written statements should be submitted to the Division of Parks and Wildlife at 1313 Sherman St., Denver, CO 80203; or e-mailed to dnr_cpwcommission@state.co.us.

Use of Consent Agenda:

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OTHER AGENDA ITEMS: The Parks and Wildlife Commission may consider and make policy, program implementation, and other non-regulatory decisions, which may be of public interest at this meeting. A copy of the complete meeting agenda may be viewed on the Division of Parks and Wildlife's internet home page at <http://cpw.state.co.us>, on or after **November 3, 2014.**

Notice of Rulemaking Hearing

Tracking number

2014-01046

Department

400 - Department of Natural Resources

Agency

406 - Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-8

Rule title

CHAPTER 8 - FIELD TRIALS AND TRAINING OF DOGS

Rulemaking Hearing

Date

11/13/2014

Time

08:30 AM

Location

Burlington Community and Education Center, 340 S 14th St, Burlington, CO 80807

Subjects and issues involved

CHAPTER 8 - FIELD TRIALS AND TRAINING OF DOGS - see attachment

Statutory authority

see attached

Contact information

Name

Danielle Isenhardt

Title

Regulations Manager

Telephone

303-866-3203

Email

danielle.isenhardt@state.co.us

September 30, 2014

**RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
November 13-14, 2014**

In accordance with the State Administrative Procedure Act, section 24-4-103, C.R.S., the Parks and Wildlife Commission gives notice that regulations will be considered for adoption at their next meeting on **November 13-14, 2014. The Parks and Wildlife Commission meeting will be held at the Burlington Community and Education Center, 340 S 14th St, Burlington, CO 80807. The following regulatory subjects and issues shall be considered** pursuant to the Commission's authority in sections 33-1-104, 33-1-106, 33-1-107, 33-1-108, 33-1-121, 33-2-104, 33-2-105, 33-2-106, 33-3-104, 33-4-101, 33-4-102 and 33-5.5-102, 33-6-107, 33-6-109, 33-6-112, 33-6-113, 33-6-114, 33-6-114.5, 33-6-117, 33-6-119, 33-6-121, 33-6-124, 33-6-125, 33-6-127, 33-6-128, 33-6-130, 33-6-205, 33-6-206, 33-6-207, 33-6-208, 33-6-209, C.R.S., and in sections 33-10-101 to 33-33-113, C.R.S. (the "Parks Act"), and especially sections 33-10-106, 33-10-107, 33-10.5-107, 33-11-109, 33-12-101, 33-12-103, 33-12-103.5, 33-12-106, 33-12.5-103, 33-13-103, 33-13-104, 33-13-106, 33-13-109, 33-13-110, 33-13-111, 33-14-107, 33-14.5-107, 33-32-103 and 33-33-105. C.R.S.

FINAL REGULATORY ADOPTION - November 13-14, 2014 beginning at 8:30 a.m.*

EFFECTIVE DATE OF REGULATIONS approved during the November 2014 Parks and Wildlife Commission meeting: January 1, 2015, unless otherwise noted.

PARKS REGULATIONS

FINAL REGULATIONS:

Chapter P-4 - "Snowmobile Regulations" 2 CCR 405-4

Open for review of final regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter P-5 - "Off-Highway Vehicle Regulations" 2 CCR 405-5

Open for review of final regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter P-6 - "Procedural Rules" 2 CCR 405-6

Open for review of final regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current

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form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

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DRAFT REGULATIONS:

Chapter P-8 - “Aquatic Nuisance Species” 2 CCR 405-8

Open for review of regulations in accordance with Executive Order D 2012-002 (“Regulatory Efficiency Reviews”) to determine if they should be continued in their current form, modified or repealed, including consideration of regulations that update standard protocols and assure consistency with other parks and wildlife regulations.

WILDLIFE REGULATIONS

FINAL REGULATIONS:

Chapter W-1 - “Fishing” 2 CCR 406-1, and those related provisions of Chapter W-0 - (“General Provisions” 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-1

Open for annual review of the entire chapter including, but not limited to, consideration of regulations regarding seasons and season dates, bag and possession limits, licensing requirements, manner of take provisions and special conditions or restrictions applicable to waters of the state, including, but not limited to, the following:

- Removing specific hours of closure from existing regulations for walleye spawning operations at Cherry Creek and Chatfield Reservoirs and allowing the closure to be lifted prior to April 15th if spawning operations have concluded.
- Adding regulations to establish bag and possession limits for arctic char at Dillon Reservoir.
- Removing season dates from harvest restrictions on Grand Lake for lake trout.
- Adding a minimum size harvest regulation for bass at Poudre Ponds #1 near Greeley.
- Removing the bag and possession limit for smallmouth bass at Ridgway Reservoir.
- Removing the unlimited bag and possession limit for yellow perch at Rifle Gap Reservoir and establishing new bag and possession limits for perch.
- Prohibiting public access within 150 feet of any kokanee spawning trap on Wolford Reservoir.
- Clarifying prohibition of transfer or transport of live fish.

These Chapter W-1 - Fishing regulations will become effective April 1, 2015.

Chapter W-2 - “Big Game” 2 CCR 406-2

Open for consideration of regulations adjusting non-resident big game license fees according to the Consumer Price Index, and adjusting non-resident big game license fees within statutory limitations pursuant to 33-4-102 (1.6)(IV)(b), C.R.S.

Chapter W-3 - “Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3

Open for annual review of regulations regarding turkey hunting, including but not limited to, license areas and license numbers, season dates, and manner of take provisions for 2015 turkey hunting seasons, including, but not limited to, the following:

- Adding an either-sex fall turkey season in both GMU 25 and 34.
- Splitting the spring turkey season in GMUs 103, 107, and 109 into two separate spring seasons.

Chapter W-8 - “Field Trials and Training of Hunting Dogs” 2 CCR 406-8

Open for review of final regulations in accordance with Executive Order D 2012-002 (“Regulatory Efficiency Reviews”) to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter W-15 - “License Agents” 2 CCR 406-15

Open for consideration of regulations regarding license agents, including but not limited to, adjusting commission rates applicable to the sale of licenses by license agents according to the Consumer Price Index.

CITIZEN PETITIONS:

Final action may be taken on rule-making petitions at any step of the Commission’s generally applicable two-step rule-making process.

Chapter W-0 - “General Provisions” 2 CCR 406-0, and those related provisions of Chapter W-2 - (“Big Game” 2 CCR 406-2), Chapter W-3 - (“Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3), and Chapter W-5 - (“Small Game - Migratory Birds” 2 CCR 406-5) necessary to accommodate changes to or ensure consistency with Chapter W-0

At its November meeting, the Parks and Wildlife Commission will consider a Citizen Petition for Rulemaking related to General Provisions, as follows:

- *A Citizen Petition for rulemaking* requesting the Commission pass a regulation prohibiting the use of lead ammunition for hunting all game wildlife within the state of Colorado.

The Commission may accept all or a portion of the petition for final action, further consideration or otherwise reject the petition at the November Commission meeting. A copy of the petition may be obtained by contacting Danielle Isenhardt (303) 866-3203 ext. 4625, Regulations Manager, Colorado Parks and Wildlife.

Chapter W-2 - “Big Game” 2 CCR 406-2, and those related provisions of Chapter W-0 - (“General Provisions” 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

At its November meeting, the Parks and Wildlife Commission will consider a Citizen Petition for Rulemaking related to Big Game, as follows:

- *A Citizen Petition for rulemaking* requesting the Commission allow the use of electronics attached to arrows during archery season.

- *A Citizen Petition for rulemaking* requesting the Commission pass a regulation prohibiting hunting within a one-mile radius of Brainard Lake Recreation Area.

The Commission may accept all or a portion of the petition for final action, further consideration or otherwise reject the petition at the November Commission meeting. A copy of the petition may be obtained by contacting Danielle Isenhardt (303) 866-3203 ext. 4625, Regulations Manager, Colorado Parks and Wildlife.

DRAFT REGULATIONS:

Chapter W-2 - “Big Game” 2 CCR 406-2

Open for consideration of regulations regarding the implementation of alternatives for the 2015-2019 Big Game Season Structure, including, but not limited to, the following:

- Changes to youth and black bear season participation.
- Changes to license purchase cutoff dates.
- Changes to annual season dates.

Chapter W-12 - “Lake Licenses” 2 CCR 406-12

Open for review of draft regulations in accordance with Executive Order D 2012-002 (“Regulatory Efficiency Reviews”) to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

ISSUES IDENTIFICATION:

Chapter W-0 - “General Provisions” 2 CCR 406-0, and those related provisions of Chapter W-3 - (“Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3) necessary to accommodate changes to or ensure consistency with Chapter W-0

Open for annual review of the entire chapter, including but not limited to, Game Management Unit boundaries, regulations relating to fish management, health, importation, prohibited species, and other annual changes.

Chapter W-2 - “Big Game” 2 CCR 406-2 and those related provisions of Chapter W-0 - (“General Provisions” 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

Open for review of the entire chapter, including, but not limited to:

- Annual changes to season dates, limited license areas and license numbers, and manner of take provisions for Bighorn sheep and Rocky Mountain goat.
- Annual changes to season dates, limited license areas and manner of take provisions for deer, elk, pronghorn antelope, moose, mountain lion, and bear.
- Annual changes to limited license application and drawing process.

Except for the time indicated for when the meeting is scheduled to begin, the order indicated for each agenda item is approximate and subject to change when necessary to accommodate the Commission’s schedule.

Viewing of Proposed Rules: copies of the proposed rules (together with a proposed statement of basis and purpose and specific statutory authority), will be available for inspection and distribution at the Office of the Regulations Manager, Division of Parks and Wildlife, 1313 Sherman St., Denver, Colorado, at least five (5) days prior to the date of hearing. Such copies, however, are only proposals to be submitted to the Commission by the Division of Parks and Wildlife.

Modification of Proposed Rules prior to adoption: subject to the provisions of Section 24-4-103, C.R.S., modification of these proposals may be made by the Division of Parks and Wildlife or the Commission before the Commission promulgates final rules and regulations on the above topics.

Comment deadlines: Comments will be accepted at any time prior to, or as part of the meeting. However, to ensure sufficient time for consideration prior to the meeting, comments should be provided to the Division of Parks and Wildlife by noon on the following date:

October 30, 2014, for mailing by the Division of Parks and Wildlife to the Parks and Wildlife Commission on **October 31, 2014**.

Comments received by the Division after noon on **October 30, 2014**, will be provided to the Commission on the day of the meeting.

Opportunity to submit alternate proposals and provide comment: the Commission will afford all interested persons an opportunity to submit alternate proposals, written data, views or arguments and to present them orally at the meeting unless it deems such oral presentation unnecessary. Written alternate proposals, data, views or arguments and other written statements should be submitted to the Division of Parks and Wildlife at 1313 Sherman St., Denver, CO 80203; or e-mailed to dnr_cpwcommission@state.co.us.

Use of Consent Agenda:

In order to increase the Parks and Wildlife Commission's efficiency and allow more time for consideration of parks and wildlife policy and contested issues, some or all of this regulatory agenda may be listed for action by the Commission as part of a "Consent Agenda" for this meeting.

The process for placing matters on the Consent Agenda is as follows:

The Director identifies matters where the recommended action follows established policy or precedent, there has been agreement reached or the matter is expected to be uncontested and non-controversial. Staff will provide written memos to the Parks and Wildlife Commission members explaining the matters on the Consent Agenda. Copies of the memos will be available to the public.

Regulatory Matters on the Consent Agenda are noticed for hearing at the same time and in the same manner as other consent agenda items. If a member of the Commission requests further consideration of an item on the consent agenda, that item will be withdrawn from the Consent Agenda and discussed at the end of the meeting or at the next meeting. The Consent Agenda may be voted on without the necessity of reading individual items. Any Commission member may request clarification from the Director of any matter on the Consent Agenda.

OTHER AGENDA ITEMS: The Parks and Wildlife Commission may consider and make policy, program implementation, and other non-regulatory decisions, which may be of public interest at this meeting. A copy of the complete meeting agenda may be viewed on the Division of Parks and Wildlife's internet home page at <http://cpw.state.co.us>, on or after **November 3, 2014**.

Notice of Rulemaking Hearing

Tracking number

2014-01049

Department

400 - Department of Natural Resources

Agency

406 - Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-12

Rule title

CHAPTER 12 - LAKE LICENSES

Rulemaking Hearing**Date**

11/13/2014

Time

08:30 AM

Location

Burlington Community and Education Center, 340 S 14th St, Burlington, CO 80807

Subjects and issues involved

CHAPTER 12 - LAKE LICENSES - see attachment

Statutory authority

see attached

Contact information**Name**

Danielle Isenhardt

Title

Regulations Manager

Telephone

303-866-3203

Email

danielle.isenhardt@state.co.us

September 30, 2014

**RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
November 13-14, 2014**

In accordance with the State Administrative Procedure Act, section 24-4-103, C.R.S., the Parks and Wildlife Commission gives notice that regulations will be considered for adoption at their next meeting on **November 13-14, 2014. The Parks and Wildlife Commission meeting will be held at the Burlington Community and Education Center, 340 S 14th St, Burlington, CO 80807. The following regulatory subjects and issues shall be considered** pursuant to the Commission's authority in sections 33-1-104, 33-1-106, 33-1-107, 33-1-108, 33-1-121, 33-2-104, 33-2-105, 33-2-106, 33-3-104, 33-4-101, 33-4-102 and 33-5.5-102, 33-6-107, 33-6-109, 33-6-112, 33-6-113, 33-6-114, 33-6-114.5, 33-6-117, 33-6-119, 33-6-121, 33-6-124, 33-6-125, 33-6-127, 33-6-128, 33-6-130, 33-6-205, 33-6-206, 33-6-207, 33-6-208, 33-6-209, C.R.S., and in sections 33-10-101 to 33-33-113, C.R.S. (the "Parks Act"), and especially sections 33-10-106, 33-10-107, 33-10.5-107, 33-11-109, 33-12-101, 33-12-103, 33-12-103.5, 33-12-106, 33-12.5-103, 33-13-103, 33-13-104, 33-13-106, 33-13-109, 33-13-110, 33-13-111, 33-14-107, 33-14.5-107, 33-32-103 and 33-33-105. C.R.S.

FINAL REGULATORY ADOPTION - November 13-14, 2014 beginning at 8:30 a.m.*

EFFECTIVE DATE OF REGULATIONS approved during the November 2014 Parks and Wildlife Commission meeting: January 1, 2015, unless otherwise noted.

PARKS REGULATIONS

FINAL REGULATIONS:

Chapter P-4 - "Snowmobile Regulations" 2 CCR 405-4

Open for review of final regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter P-5 - "Off-Highway Vehicle Regulations" 2 CCR 405-5

Open for review of final regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter P-6 - "Procedural Rules" 2 CCR 405-6

Open for review of final regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current

**Please reference the Commission agenda, to be posted on or after November 3, 2014, to ensure when each regulatory item will be addressed by the Commission. The agenda will be posted at <http://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx>.*

form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

**Please reference the Commission agenda, to be posted on or after November 3, 2014, to ensure when each regulatory item will be addressed by the Commission. The agenda will be posted at <http://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx>.*

DRAFT REGULATIONS:

Chapter P-8 - “Aquatic Nuisance Species” 2 CCR 405-8

Open for review of regulations in accordance with Executive Order D 2012-002 (“Regulatory Efficiency Reviews”) to determine if they should be continued in their current form, modified or repealed, including consideration of regulations that update standard protocols and assure consistency with other parks and wildlife regulations.

WILDLIFE REGULATIONS

FINAL REGULATIONS:

Chapter W-1 - “Fishing” 2 CCR 406-1, and those related provisions of Chapter W-0 - (“General Provisions” 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-1

Open for annual review of the entire chapter including, but not limited to, consideration of regulations regarding seasons and season dates, bag and possession limits, licensing requirements, manner of take provisions and special conditions or restrictions applicable to waters of the state, including, but not limited to, the following:

- Removing specific hours of closure from existing regulations for walleye spawning operations at Cherry Creek and Chatfield Reservoirs and allowing the closure to be lifted prior to April 15th if spawning operations have concluded.
- Adding regulations to establish bag and possession limits for arctic char at Dillon Reservoir.
- Removing season dates from harvest restrictions on Grand Lake for lake trout.
- Adding a minimum size harvest regulation for bass at Poudre Ponds #1 near Greeley.
- Removing the bag and possession limit for smallmouth bass at Ridgway Reservoir.
- Removing the unlimited bag and possession limit for yellow perch at Rifle Gap Reservoir and establishing new bag and possession limits for perch.
- Prohibiting public access within 150 feet of any kokanee spawning trap on Wolford Reservoir.
- Clarifying prohibition of transfer or transport of live fish.

These Chapter W-1 - Fishing regulations will become effective April 1, 2015.

Chapter W-2 - “Big Game” 2 CCR 406-2

Open for consideration of regulations adjusting non-resident big game license fees according to the Consumer Price Index, and adjusting non-resident big game license fees within statutory limitations pursuant to 33-4-102 (1.6)(IV)(b), C.R.S.

Chapter W-3 - “Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3

Open for annual review of regulations regarding turkey hunting, including but not limited to, license areas and license numbers, season dates, and manner of take provisions for 2015 turkey hunting seasons, including, but not limited to, the following:

- Adding an either-sex fall turkey season in both GMU 25 and 34.
- Splitting the spring turkey season in GMUs 103, 107, and 109 into two separate spring seasons.

Chapter W-8 - “Field Trials and Training of Hunting Dogs” 2 CCR 406-8

Open for review of final regulations in accordance with Executive Order D 2012-002 (“Regulatory Efficiency Reviews”) to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter W-15 - “License Agents” 2 CCR 406-15

Open for consideration of regulations regarding license agents, including but not limited to, adjusting commission rates applicable to the sale of licenses by license agents according to the Consumer Price Index.

CITIZEN PETITIONS:

Final action may be taken on rule-making petitions at any step of the Commission’s generally applicable two-step rule-making process.

Chapter W-0 - “General Provisions” 2 CCR 406-0, and those related provisions of Chapter W-2 - (“Big Game” 2 CCR 406-2), Chapter W-3 - (“Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3), and Chapter W-5 - (“Small Game - Migratory Birds” 2 CCR 406-5) necessary to accommodate changes to or ensure consistency with Chapter W-0

At its November meeting, the Parks and Wildlife Commission will consider a Citizen Petition for Rulemaking related to General Provisions, as follows:

- *A Citizen Petition for rulemaking* requesting the Commission pass a regulation prohibiting the use of lead ammunition for hunting all game wildlife within the state of Colorado.

The Commission may accept all or a portion of the petition for final action, further consideration or otherwise reject the petition at the November Commission meeting. A copy of the petition may be obtained by contacting Danielle Isenhardt (303) 866-3203 ext. 4625, Regulations Manager, Colorado Parks and Wildlife.

Chapter W-2 - “Big Game” 2 CCR 406-2, and those related provisions of Chapter W-0 - (“General Provisions” 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

At its November meeting, the Parks and Wildlife Commission will consider a Citizen Petition for Rulemaking related to Big Game, as follows:

- *A Citizen Petition for rulemaking* requesting the Commission allow the use of electronics attached to arrows during archery season.

- *A Citizen Petition for rulemaking* requesting the Commission pass a regulation prohibiting hunting within a one-mile radius of Brainard Lake Recreation Area.

The Commission may accept all or a portion of the petition for final action, further consideration or otherwise reject the petition at the November Commission meeting. A copy of the petition may be obtained by contacting Danielle Isenhardt (303) 866-3203 ext. 4625, Regulations Manager, Colorado Parks and Wildlife.

DRAFT REGULATIONS:

Chapter W-2 - “Big Game” 2 CCR 406-2

Open for consideration of regulations regarding the implementation of alternatives for the 2015-2019 Big Game Season Structure, including, but not limited to, the following:

- Changes to youth and black bear season participation.
- Changes to license purchase cutoff dates.
- Changes to annual season dates.

Chapter W-12 - “Lake Licenses” 2 CCR 406-12

Open for review of draft regulations in accordance with Executive Order D 2012-002 (“Regulatory Efficiency Reviews”) to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

ISSUES IDENTIFICATION:

Chapter W-0 - “General Provisions” 2 CCR 406-0, and those related provisions of Chapter W-3 - (“Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3) necessary to accommodate changes to or ensure consistency with Chapter W-0

Open for annual review of the entire chapter, including but not limited to, Game Management Unit boundaries, regulations relating to fish management, health, importation, prohibited species, and other annual changes.

Chapter W-2 - “Big Game” 2 CCR 406-2 and those related provisions of Chapter W-0 - (“General Provisions” 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

Open for review of the entire chapter, including, but not limited to:

- Annual changes to season dates, limited license areas and license numbers, and manner of take provisions for Bighorn sheep and Rocky Mountain goat.
- Annual changes to season dates, limited license areas and manner of take provisions for deer, elk, pronghorn antelope, moose, mountain lion, and bear.
- Annual changes to limited license application and drawing process.

Except for the time indicated for when the meeting is scheduled to begin, the order indicated for each agenda item is approximate and subject to change when necessary to accommodate the Commission’s schedule.

Viewing of Proposed Rules: copies of the proposed rules (together with a proposed statement of basis and purpose and specific statutory authority), will be available for inspection and distribution at the Office of the Regulations Manager, Division of Parks and Wildlife, 1313 Sherman St., Denver, Colorado, at least five (5) days prior to the date of hearing. Such copies, however, are only proposals to be submitted to the Commission by the Division of Parks and Wildlife.

Modification of Proposed Rules prior to adoption: subject to the provisions of Section 24-4-103, C.R.S., modification of these proposals may be made by the Division of Parks and Wildlife or the Commission before the Commission promulgates final rules and regulations on the above topics.

Comment deadlines: Comments will be accepted at any time prior to, or as part of the meeting. However, to ensure sufficient time for consideration prior to the meeting, comments should be provided to the Division of Parks and Wildlife by noon on the following date:

October 30, 2014, for mailing by the Division of Parks and Wildlife to the Parks and Wildlife Commission on **October 31, 2014.**

Comments received by the Division after noon on **October 30, 2014,** will be provided to the Commission on the day of the meeting.

Opportunity to submit alternate proposals and provide comment: the Commission will afford all interested persons an opportunity to submit alternate proposals, written data, views or arguments and to present them orally at the meeting unless it deems such oral presentation unnecessary. Written alternate proposals, data, views or arguments and other written statements should be submitted to the Division of Parks and Wildlife at 1313 Sherman St., Denver, CO 80203; or e-mailed to dnr_cpwcommission@state.co.us.

Use of Consent Agenda:

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Regulatory Matters on the Consent Agenda are noticed for hearing at the same time and in the same manner as other consent agenda items. If a member of the Commission requests further consideration of an item on the consent agenda, that item will be withdrawn from the Consent Agenda and discussed at the end of the meeting or at the next meeting. The Consent Agenda may be voted on without the necessity of reading individual items. Any Commission member may request clarification from the Director of any matter on the Consent Agenda.

OTHER AGENDA ITEMS: The Parks and Wildlife Commission may consider and make policy, program implementation, and other non-regulatory decisions, which may be of public interest at this meeting. A copy of the complete meeting agenda may be viewed on the Division of Parks and Wildlife's internet home page at <http://cpw.state.co.us>, on or after **November 3, 2014.**

Notice of Rulemaking Hearing

Tracking number

2014-01047

Department

400 - Department of Natural Resources

Agency

406 - Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-15

Rule title

CHAPTER W-15 - LICENSE AGENTS

Rulemaking Hearing

Date

11/13/2014

Time

08:30 AM

Location

Burlington Community and Education Center, 340 S 14th St, Burlington, CO 80807

Subjects and issues involved

CHAPTER W-15 - LICENSE AGENTS - see attachment

Statutory authority

see attached

Contact information

Name

Danielle Isenhardt

Title

Regulations Manager

Telephone

303-866-3203

Email

danielle.isenhardt@state.co.us

September 30, 2014

**RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
November 13-14, 2014**

In accordance with the State Administrative Procedure Act, section 24-4-103, C.R.S., the Parks and Wildlife Commission gives notice that regulations will be considered for adoption at their next meeting on **November 13-14, 2014. The Parks and Wildlife Commission meeting will be held at the Burlington Community and Education Center, 340 S 14th St, Burlington, CO 80807. The following regulatory subjects and issues shall be considered** pursuant to the Commission's authority in sections 33-1-104, 33-1-106, 33-1-107, 33-1-108, 33-1-121, 33-2-104, 33-2-105, 33-2-106, 33-3-104, 33-4-101, 33-4-102 and 33-5.5-102, 33-6-107, 33-6-109, 33-6-112, 33-6-113, 33-6-114, 33-6-114.5, 33-6-117, 33-6-119, 33-6-121, 33-6-124, 33-6-125, 33-6-127, 33-6-128, 33-6-130, 33-6-205, 33-6-206, 33-6-207, 33-6-208, 33-6-209, C.R.S., and in sections 33-10-101 to 33-33-113, C.R.S. (the "Parks Act"), and especially sections 33-10-106, 33-10-107, 33-10.5-107, 33-11-109, 33-12-101, 33-12-103, 33-12-103.5, 33-12-106, 33-12.5-103, 33-13-103, 33-13-104, 33-13-106, 33-13-109, 33-13-110, 33-13-111, 33-14-107, 33-14.5-107, 33-32-103 and 33-33-105. C.R.S.

FINAL REGULATORY ADOPTION - November 13-14, 2014 beginning at 8:30 a.m.*

EFFECTIVE DATE OF REGULATIONS approved during the November 2014 Parks and Wildlife Commission meeting: January 1, 2015, unless otherwise noted.

PARKS REGULATIONS

FINAL REGULATIONS:

Chapter P-4 - "Snowmobile Regulations" 2 CCR 405-4

Open for review of final regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter P-5 - "Off-Highway Vehicle Regulations" 2 CCR 405-5

Open for review of final regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter P-6 - "Procedural Rules" 2 CCR 405-6

Open for review of final regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current

**Please reference the Commission agenda, to be posted on or after November 3, 2014, to ensure when each regulatory item will be addressed by the Commission. The agenda will be posted at <http://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx>.*

form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

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DRAFT REGULATIONS:

Chapter P-8 - “Aquatic Nuisance Species” 2 CCR 405-8

Open for review of regulations in accordance with Executive Order D 2012-002 (“Regulatory Efficiency Reviews”) to determine if they should be continued in their current form, modified or repealed, including consideration of regulations that update standard protocols and assure consistency with other parks and wildlife regulations.

WILDLIFE REGULATIONS

FINAL REGULATIONS:

Chapter W-1 - “Fishing” 2 CCR 406-1, and those related provisions of Chapter W-0 - (“General Provisions” 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-1

Open for annual review of the entire chapter including, but not limited to, consideration of regulations regarding seasons and season dates, bag and possession limits, licensing requirements, manner of take provisions and special conditions or restrictions applicable to waters of the state, including, but not limited to, the following:

- Removing specific hours of closure from existing regulations for walleye spawning operations at Cherry Creek and Chatfield Reservoirs and allowing the closure to be lifted prior to April 15th if spawning operations have concluded.
- Adding regulations to establish bag and possession limits for arctic char at Dillon Reservoir.
- Removing season dates from harvest restrictions on Grand Lake for lake trout.
- Adding a minimum size harvest regulation for bass at Poudre Ponds #1 near Greeley.
- Removing the bag and possession limit for smallmouth bass at Ridgway Reservoir.
- Removing the unlimited bag and possession limit for yellow perch at Rifle Gap Reservoir and establishing new bag and possession limits for perch.
- Prohibiting public access within 150 feet of any kokanee spawning trap on Wolford Reservoir.
- Clarifying prohibition of transfer or transport of live fish.

These Chapter W-1 - Fishing regulations will become effective April 1, 2015.

Chapter W-2 - “Big Game” 2 CCR 406-2

Open for consideration of regulations adjusting non-resident big game license fees according to the Consumer Price Index, and adjusting non-resident big game license fees within statutory limitations pursuant to 33-4-102 (1.6)(IV)(b), C.R.S.

Chapter W-3 - “Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3

Open for annual review of regulations regarding turkey hunting, including but not limited to, license areas and license numbers, season dates, and manner of take provisions for 2015 turkey hunting seasons, including, but not limited to, the following:

- Adding an either-sex fall turkey season in both GMU 25 and 34.
- Splitting the spring turkey season in GMUs 103, 107, and 109 into two separate spring seasons.

Chapter W-8 - “Field Trials and Training of Hunting Dogs” 2 CCR 406-8

Open for review of final regulations in accordance with Executive Order D 2012-002 (“Regulatory Efficiency Reviews”) to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

Chapter W-15 - “License Agents” 2 CCR 406-15

Open for consideration of regulations regarding license agents, including but not limited to, adjusting commission rates applicable to the sale of licenses by license agents according to the Consumer Price Index.

CITIZEN PETITIONS:

Final action may be taken on rule-making petitions at any step of the Commission’s generally applicable two-step rule-making process.

Chapter W-0 - “General Provisions” 2 CCR 406-0, and those related provisions of Chapter W-2 - (“Big Game” 2 CCR 406-2), Chapter W-3 - (“Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3), and Chapter W-5 - (“Small Game - Migratory Birds” 2 CCR 406-5) necessary to accommodate changes to or ensure consistency with Chapter W-0

At its November meeting, the Parks and Wildlife Commission will consider a Citizen Petition for Rulemaking related to General Provisions, as follows:

- *A Citizen Petition for rulemaking* requesting the Commission pass a regulation prohibiting the use of lead ammunition for hunting all game wildlife within the state of Colorado.

The Commission may accept all or a portion of the petition for final action, further consideration or otherwise reject the petition at the November Commission meeting. A copy of the petition may be obtained by contacting Danielle Isenhardt (303) 866-3203 ext. 4625, Regulations Manager, Colorado Parks and Wildlife.

Chapter W-2 - “Big Game” 2 CCR 406-2, and those related provisions of Chapter W-0 - (“General Provisions” 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

At its November meeting, the Parks and Wildlife Commission will consider a Citizen Petition for Rulemaking related to Big Game, as follows:

- *A Citizen Petition for rulemaking* requesting the Commission allow the use of electronics attached to arrows during archery season.

- *A Citizen Petition for rulemaking* requesting the Commission pass a regulation prohibiting hunting within a one-mile radius of Brainard Lake Recreation Area.

The Commission may accept all or a portion of the petition for final action, further consideration or otherwise reject the petition at the November Commission meeting. A copy of the petition may be obtained by contacting Danielle Isenhardt (303) 866-3203 ext. 4625, Regulations Manager, Colorado Parks and Wildlife.

DRAFT REGULATIONS:

Chapter W-2 - “Big Game” 2 CCR 406-2

Open for consideration of regulations regarding the implementation of alternatives for the 2015-2019 Big Game Season Structure, including, but not limited to, the following:

- Changes to youth and black bear season participation.
- Changes to license purchase cutoff dates.
- Changes to annual season dates.

Chapter W-12 - “Lake Licenses” 2 CCR 406-12

Open for review of draft regulations in accordance with Executive Order D 2012-002 (“Regulatory Efficiency Reviews”) to determine if they should be continued in their current form, modified or repealed and to ensure consistency with other parks and wildlife regulations.

ISSUES IDENTIFICATION:

Chapter W-0 - “General Provisions” 2 CCR 406-0, and those related provisions of Chapter W-3 - (“Furbearers and Small Game, except Migratory Birds” 2 CCR 406-3) necessary to accommodate changes to or ensure consistency with Chapter W-0

Open for annual review of the entire chapter, including but not limited to, Game Management Unit boundaries, regulations relating to fish management, health, importation, prohibited species, and other annual changes.

Chapter W-2 - “Big Game” 2 CCR 406-2 and those related provisions of Chapter W-0 - (“General Provisions” 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

Open for review of the entire chapter, including, but not limited to:

- Annual changes to season dates, limited license areas and license numbers, and manner of take provisions for Bighorn sheep and Rocky Mountain goat.
- Annual changes to season dates, limited license areas and manner of take provisions for deer, elk, pronghorn antelope, moose, mountain lion, and bear.
- Annual changes to limited license application and drawing process.

Except for the time indicated for when the meeting is scheduled to begin, the order indicated for each agenda item is approximate and subject to change when necessary to accommodate the Commission’s schedule.

Viewing of Proposed Rules: copies of the proposed rules (together with a proposed statement of basis and purpose and specific statutory authority), will be available for inspection and distribution at the Office of the Regulations Manager, Division of Parks and Wildlife, 1313 Sherman St., Denver, Colorado, at least five (5) days prior to the date of hearing. Such copies, however, are only proposals to be submitted to the Commission by the Division of Parks and Wildlife.

Modification of Proposed Rules prior to adoption: subject to the provisions of Section 24-4-103, C.R.S., modification of these proposals may be made by the Division of Parks and Wildlife or the Commission before the Commission promulgates final rules and regulations on the above topics.

Comment deadlines: Comments will be accepted at any time prior to, or as part of the meeting. However, to ensure sufficient time for consideration prior to the meeting, comments should be provided to the Division of Parks and Wildlife by noon on the following date:

October 30, 2014, for mailing by the Division of Parks and Wildlife to the Parks and Wildlife Commission on **October 31, 2014**.

Comments received by the Division after noon on **October 30, 2014**, will be provided to the Commission on the day of the meeting.

Opportunity to submit alternate proposals and provide comment: the Commission will afford all interested persons an opportunity to submit alternate proposals, written data, views or arguments and to present them orally at the meeting unless it deems such oral presentation unnecessary. Written alternate proposals, data, views or arguments and other written statements should be submitted to the Division of Parks and Wildlife at 1313 Sherman St., Denver, CO 80203; or e-mailed to dnr_cpwwcommission@state.co.us.

Use of Consent Agenda:

In order to increase the Parks and Wildlife Commission's efficiency and allow more time for consideration of parks and wildlife policy and contested issues, some or all of this regulatory agenda may be listed for action by the Commission as part of a "Consent Agenda" for this meeting.

The process for placing matters on the Consent Agenda is as follows:

The Director identifies matters where the recommended action follows established policy or precedent, there has been agreement reached or the matter is expected to be uncontested and non-controversial. Staff will provide written memos to the Parks and Wildlife Commission members explaining the matters on the Consent Agenda. Copies of the memos will be available to the public.

Regulatory Matters on the Consent Agenda are noticed for hearing at the same time and in the same manner as other consent agenda items. If a member of the Commission requests further consideration of an item on the consent agenda, that item will be withdrawn from the Consent Agenda and discussed at the end of the meeting or at the next meeting. The Consent Agenda may be voted on without the necessity of reading individual items. Any Commission member may request clarification from the Director of any matter on the Consent Agenda.

OTHER AGENDA ITEMS: The Parks and Wildlife Commission may consider and make policy, program implementation, and other non-regulatory decisions, which may be of public interest at this meeting. A copy of the complete meeting agenda may be viewed on the Division of Parks and Wildlife's internet home page at <http://cpw.state.co.us>, on or after **November 3, 2014**.

Notice of Rulemaking Hearing

Tracking number

2014-01001

Department

600 - Department of Transportation

Agency

601 - Transportation Commission and Office of Transportation Safety

CCR number

2 CCR 601-3

Rule title

Rules Governing Outdoor Advertising in Colorado

Rulemaking Hearing

Date

11/13/2014

Time

01:30 PM

Location

CO Department of Transportation Headquarters Auditorium, 4201 E. Arkansas Ave., Denver, CO 80222

Subjects and issues involved

Rules Governing Outdoor Advertising along the State Highway System

Statutory authority

43-1-415m 43-1-414(4) C.R.S.

Contact information

Name

Mary Frances Nevans

Title

Rules Administrator

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Colorado Department of Transportation

Executive Director

Rules Governing Outdoor Advertising in Colorado

2 CCR 601-3

Statement of Basis and Purpose and Statutory Authority

The Department of Transportation (“CDOT”) is authorized to promulgate rules pursuant to § 43-1-415, C.R.S., and § 43-1-414(4), C.R.S., 23 U.S.C. 131 and 23 C.F.R. 750.701 *et seq.*

The purpose of these Rules is to carry out the provisions of § 43-1-401, *et seq.*, C.R.S., and the Highway Beautification Act of 1965, 23 U.S.C. 131, 23 C.F.R. 750.705(h) by establishing a statewide uniform program controlling the use of Advertising Devices in areas adjacent to the State Highway System. The intent of these Rules is to protect and promote the health, safety, and welfare of the traveling public and the people of Colorado, and to manage the reasonable, orderly and effective display of outdoor advertising, while preserving and enhancing the natural and scenic beauty of Colorado.

These Rules are written to comply with and implement the Colorado Revised Statutes and the requirements of [23 U.S.C 131](#), and federal regulations related to outdoor advertising control, [23 C.F.R. Part 750](#). If any provision of these Rules or their application is held illegal, invalid, or unenforceable, no other provisions or applications of the Rules shall be affected that can be given effect and to this end the provisions of these Rules are severable. If these Rules conflict with relevant federal or state law, the federal or state law shall govern.

Application

These Rules apply to all Advertising Devices adjacent to the State Highway System, and all routes on the National Highway System (“NHS”) that are Visible from the Main Traveled Way and within 660 feet of the nearest edge of the right-of-way and those additional signs beyond 660 feet outside of Urban Areas which are Visible from the Main Traveled Way and erected with the purpose of their message being read from such Main Traveled Way. This area is collectively referred to throughout these Rules as the Control Area. [23 U.S.C. 131]. The Main Traveled Way means the Traveled way of a State Highway on which through traffic is carried. [23 U.S.C. 101; § 43-1-404(4), C.R.S.] These Rules do not apply to advertising billboards on land in Colorado held by the federal government in trust for Indian tribes. [23 U.S.C. 131]

1.00 Definitions

1.1 All definitions set forth in 23 C.F.R. 750.102, 23 C.F.R. 750.703, and § 43-1-403, C.R.S. shall apply to these Rules. If there is a conflict between the definitions in state and federal law and regulations and these Rules, the state and federal law definitions shall govern.

1.2 “Advertising Device” means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, structure, or any other contrivance designed, intended, or used to advertise or to give information in the nature of advertising and having the capacity of being Visible from the Main Traveled Way of any State Highway, except any advertising device on a vehicle using the highway. The term “vehicle using the highway” does not include any vehicle parked near said highway for advertising purposes. [§43-1-403(1), C.R.S.]

1.3 “Applicant” means a person, entity or agency who applies for an Outdoor Advertising Permit from CDOT to maintain or erect an Advertising Device.

1.4 “Bonus Area” shall have the definition set forth in § 43-1-406(2)(b), C.R.S., and means any portion of the area within six hundred sixty feet of the nearest edge of the right-of-way of any portion of the federal interstate system of highways which is constructed upon any part of right-of-way, the entire width of which is acquired for right-of-way after July 1, 1956, or may be acquired in the future. A portion shall be deemed so constructed if, within such portion, no line normal or perpendicular to the center line of the highway and extending to both edges of the right-of-way will intersect any right-of-way acquired for right-of-way on or before July 1, 1956. Bonus areas do not include Kerr areas or Cotton areas.

1.5 “CEVMS” or “Changeable Electronic Variable Message Sign” means a self-luminous advertising sign which emits or projects any kind of light, color, or message change which ranges from static images to image sequences to full motion video. This shall include “Variable Message Sign” which means an advertising sign, display or device with moving parts whose message may be changed by electronic or by remote control or other process through the use of moving or intermittent light or lights. [43-1-404(1)(f)(I), C.R.S.]

1.6 “Commercial Advertising” means advertising of commercial interests which promotes or identifies goods and/or services as a result of the exposure of the business name rather than advocating a social or political cause.

1.7 “Conforming Sign” means a sign legally erected and maintained in accordance with state, federal, and local laws.

1.8 “Comprehensive Development” shall include all land used or to be used or occupied for the activities of the development, including buildings, parking, storage and service areas, streets, driveways, and reasonably necessary landscaped areas. A Comprehensive Development includes only land that is used for a purpose reasonably related to the activities of the development other than an attempt to qualify the land for on-premise advertising. [§ 43-1-403 (1.5)(a), C.R.S.]

1.9 “Control Area” means the area within six hundred sixty (660) feet of the nearest edge of the

State Highway right-of-way where an Advertising Device is Visible from the Main Traveled Way, and areas outside of Urban Areas that are more than six hundred sixty (660) feet of the nearest edge of such right-of-way where an Advertising Device is Visible from the Main Traveled Way of the system, and erected with the purpose of its message being read from the Main Traveled Way.

1.10 “Controlled Route” means any route on the National Highway System, which includes the interstate system, State Highways, and any route on the former federal-aid primary system in existence on June 1, 1991.

1.11 “Department” means the Colorado Department of Transportation (“CDOT”) created pursuant to § 43-1-103, C.R.S.

1.12 “Directional Sign” shall have the same meaning as § 43-1-403(4), C.R.S. (i.e., shall include but not be limited to: Advertising devices containing directional information to facilitate emergency vehicle access to remote locations or about public places owned or operated by federal, state, or local governments or their agencies; publicly or privately owned natural phenomena, historic, cultural, scientific, educational, and religious sites; and areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public).

1.13 “Illegal Sign” means a sign erected or maintained in violation of the state or federal law, these Rules or local law or ordinance.

1.14 “Main Traveled Way” means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separate roadways for traffic in opposite directions is a main traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas. [23 C.F.R. 750.703(h)]

1.15 “Maintain” means to allow to exist, or to preserve, keep in repair, continue or replace an Advertising Device. [§ 43-1-403(9), C.R.S. 23 C.F.R. 750.102 and 23 C.F.R. 750.153]

1.16 “Nonconforming Advertising Device” means a sign which was lawfully erected but which fails to conform to the sizing, lighting, spacing or location requirements of law enacted at a later date or because of changed conditions, except those advertising devices allowed by § 43-1-404(1), C.R.S. [23 C.F.R. 750.707; § 43-1-413, C.R.S., § 43-1-403(12); § 43-1-404(1)(e)(I), C.R.S.]

1.17 “Notice of Noncompliance” means the notice provided to the Applicant, Permittee or property owner providing the information regarding a violation as set forth in § 43-1-412, C.R.S., and these Rules.

1.18 “Off-Premise Sign” means an Advertising Device which advertises an activity, service or product not conducted on the Property upon which the Sign is located.

1.19 “Official Sign” shall have the same meaning as § 43-1-403(13), C.R.S. (Any advertising device erected for a public purpose authorized by law, but the term shall not include devices advertising any private business).

1.20 “On-Premise Sign” means an Advertising Device: (1) advertising the sale or lease of a Property on which it is located; (2) or advertising activities on the Property on which it is located; or (3) located within a Comprehensive Development that advertises any activity conducted within the Comprehensive Development.

1.21 “Parkland” means any publicly owned land which is designated or used as a public park, recreation area, wildlife or waterfowl refuge or historic site.

1.22 “Permit” means an official certificate or document which the Department issues or renews annually to allow an Advertising Device to display advertising.

1.23 “Permit Number Identifier” means a series of numbers assigned by the Department that is unique to the Advertising Device and identifies it for purposes of oversight. The Permit Number Identifier for Advertising Devices is different from the number identifier used for Official Signs (that do not require a Permit).

1.24 “Permittee” means a person, entity or agency that applies for and receives an Advertising Permit from the Department to maintain an Advertising Device.

1.25 “Premises” means the central, actual physical location where an activity is routinely conducted. Premises include the primary structures, parking facilities and private roadway if they are necessary to the principal activity.

1.26 “Property” means an area of land owned by one entity or person that is not severed by land owned by another, nor severed by a public roadway.

1.27 “Rest Area” means an area or site established and maintained within or adjacent to the highway right-of-way by or under public supervision or control for the convenience of the traveling public. [23 C.F.R. 750.153(l)]

1.28 “Sign” means any Advertising Device as defined in § 43-1-403(1), C.R.S. For purposes of these Rules, Sign shall have the same meaning as Advertising Device unless otherwise specified.

1.29 “State Highway System” for purposes of these Rules shall consist of the non-federal-aid system, including sections thereof within Urban Areas, the federal-aid primary and secondary system, the interstate system and freeways, including State Highways designated as scenic byways by the Colorado Transportation Commission. [23 USC 131(t); § 43-2-101(1) and § 43-1-419, C.R.S.]

1.30 “State Highway” shall have the same meaning as defined in § 43-2-101, C.R.S. and shall include freeways for purposes of these Rules.

1.31 “Urban Area” pursuant to 23 U.S.C. 101 (33) means an urbanized area designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area, within boundaries to be fixed by responsible State and local officials.

1.32 “Visible” means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity. [23 C.F.R. 750.153 (j)]

1.33 “Zoned for Commercial or Industrial Uses” means those districts established by the zoning authorities under authority of state law as being most appropriate for commerce, industry, or trade, regardless of how labeled. They are commonly categorized as commercial, industrial, business, manufacturing, highway service or highway business (when these latter are intended for highway-oriented business), retail, trade, warehouse, and similar classifications. 23 C.F.R. 750.703.

2.00 Permitting

2.1 Signs Requiring a CDOT Permit

A. A permit from the Department shall be required for all signs within the Control Area as provided for in § 43-1-407 and 408, C.R.S. A permit is required for all Off-Premise Signs, including:

1. Nonconforming Advertising Devices [§ 43-1-403(12), C.R.S.];
2. Advertising Devices located in areas Zoned for Commercial or Industrial Uses by law. [§ 43-1-404(1)(d) and (e), and § 43-1-407(1)(II)(c), C.R.S.]
3. Advertising on Bus Benches and Shelters. [§ 43-1-407(2)(a)(I) through (III), C.R.S.]
4. Directional Signs not excepted under § 43-1-407(1)(b)(I) through (II), C.R.S.

2.2 Signs Not Requiring a Permit from CDOT

A. A Sign Permit is not required for:

1. On-Premise Signs;
2. Directional Signs that are:
 - a. No larger than 8 square feet and that advertises farms, ranches,

nonprofit educational, veterans', religious, charitable, or civic organizations. §43-1-407(1)(b)(II), C.R.S.;

b. No larger than 32 square feet, the sole purpose of which is to provide direction to individual farms or ranches by way of individual signs that are no larger than 8 square feet. [§43-1-407(1)(b)(II), C.R.S.];

c. A sign indicating a public utility and not advertising a product, including informational signs, notices, or markers, erected and maintained by a public or private public utility company. [23 C.F.R. 750.153(o)]

3. Official Signs. [§ 43-1-404(1)(a) and § 43-1-407, C.R.S.]

2.3 Conditions that Prohibit CDOT from Issuing or Renewing a Permit.

[§ 43-1-411, and § 43-1-417(3)(a), C.R.S. and 23 C.F.R. 750.108]

A. The Department is prohibited from issuing or renewing a Permit for any Advertising Device pursuant to § 43-1-411, C.R.S. and 23 C.F.R. 750.108 if the sign:

1. Does not conform to size, lighting, and spacing standards as prescribed by these Rules where the Rules were adopted prior to the erection of the Advertising Device;
2. Would encroach upon the right-of-way of a public highway absent prior written approval from the Department;
3. Is within 500 feet of the center point of an intersection of a Controlled Route at grade with another highway or with a railroad so as to materially obstruct or reduce the existing view of traffic on the other highway or railway trains approaching the intersection;
4. Is along a Controlled Route where it would reduce the existing view of traffic in either direction or of traffic control or official highway signs to less than 500 feet;
5. Includes more than two advertising panels on an Advertising Device facing the same direction;
6. Required a permit prior to July 1, 1981, and no permit was obtained;
7. Simulates any official, directional, or warning sign erected or maintained by the federal or state government or local governing body which involves light simulating or resembling traffic signals or traffic control signs;
8. Is nailed, tacked, posted, or attached in any manner on trees, plants, fence posts, public utility poles, rocks or other natural objects; or

9. Becomes decayed, insecure, or in danger of falling or otherwise is unsafe or unsightly due to lack of maintenance or repair, or from any other cause.

2.4 Required Permit Identification on the Sign [§ 43-1-409(4), C.R.S.]

A. The sign must display the following information in a conspicuous location Visible from the Main Traveled Way:

1. The name of the Permittee or owner of the Permitted sign;
2. The Permit Number Identifier assigned by the Department, which must be affixed within 30 days after the date of issuance;

B. If the name of the Permittee or owner and the Permit Identifier Number, any other required information is not conspicuous and Visible as required, the Permit for the device may be revoked pursuant to Rule 2.11.

C. The Department shall issue a Permit for up to one year from the date of issuance.

D. If the Advertising Device authorized by a Permit is not erected within 1 year from the Permit issuance date, then the Permit is void as of one year from the date it was issued [§ 43-1-409(1)(a), C.R.S.].

E. Permits shall be issued without proration for periods of less than 1 year. Permit renewals shall be received before June 1 of each year and shall be issued for a 1 year period beginning July 1 and ending June 30.

F. The permit holder may request a replacement Permit Identifier Number at no additional cost.

2.6 Permit Payment and Maintenance Requirements [§ 43-1-408 and § 43-1-409, C.R.S.]

A. All requirements set forth in § 43-1-408 and § 43-1-409, C.R.S., with respect to the Permit Application shall be met before a Permit is issued, including the fee payment for the Permit.

B. Permit Applications for Advertising Devices located in an area Zoned for Commercial or Industrial Uses must include proof of the dates of the initial and current zoning of the proposed Advertising Device's location and any information that proves that the authorized governmental entity took official action to zone the area.

C. The Applicant shall not construct the Advertising Device structure prior to obtaining a Permit.

D. The Permittee shall repair, replace, and Maintain in good condition any damaged

Advertising Device structure as allowed in these Rules.

2.7 Permit Renewals [§ 43-1-409, C.R.S.]

- A. Every Permit must be renewed annually and accompanied by a renewal fee pursuant to § 43-1-409, C.R.S., with the exception of Permits related to advertising devices subject to agreements of certification between CDOT and the local zoning authority.
- B. The Permit holder shall, during the term of the Permit, have the right to change the advertising copy, ornamentation, or trim on the structure or sign subject to the Permit without payment of any additional fee.
- C. Renewal fees shall be assessed in accordance with § 43-1-409, C.R.S.
- D. If the renewal fee is not received on or before May 31, a late fee shall be assessed. The Department shall not waive late fees.
- E. If the Department does not receive a timely application for renewal, the Department shall give written notice by certified mail to the Permittee requiring him or her within 60 days of receipt of the notice to apply for a renewal permit and pay an additional late fee pursuant to § 43-1-409, C.R.S., or remove the Advertising Device by a certain date. The notice shall include the right of the Permittee to request a hearing. [§ 43-1-412(2)(b), C.R.S.]

2.8 Permit Renewals for Advertising Device subject to Agreement of Certification between Department and Local Zoning [§ 43-1-409, C.R.S.]

- A. A Permit renewal is not required for an Advertising Device erected in an area Zoned for Commercial or Industrial Uses where the local zoning authority has entered into an agreement of certification with the Department, and the local zoning authority has legal requirements in place concerning the control of Advertising Devices that are at least as restrictive as these Rules as to size, lighting, spacing, use and maintenance.
- B. The local zoning authority's agreement of certification must contain the terms set forth in § 43-1-409(2), C.R.S. If the Department determines after public hearing that the local zoning authority has failed to comply with its agreement of certification, the Department may rescind the agreement of certification by taking the steps set forth in § 43-1-409(2), C.R.S.
- C. The Department's action resulting from this process shall constitute a final agency action.
- D. In the event of rescission of the agreement of certification, the Permittee must renew the Permit.

2.9 Transfers of Permits [§ 43-1-409(7), C.R.S.]

- A. A Permittee may transfer the Permit to another party.
- B. The Permittee or the other party must file with the Department a transfer form signed by the Permittee and purchaser or transferee within 60 days of the transfer of legal interest in the Advertising Device.
- C. The transfer form must include the name and address of the purchaser or transferee, the Permit Identifier Number, contact information for the Permittee and purchaser or transferee, and a copy of any lease or sale agreement documenting the transfer.
- D. Any change in size, location, or materials of the Advertising Device shall require a new Permit application.

2.10 Permits for Bus Benches and Bus Shelters [§ 43-1-407(2)(A)(I) and (II), C.R.S.]

- A. The Department shall issue a Permit to erect or Maintain an Advertising Device on a bus bench or bus shelter located within the right-of-way of any State Highway or on land adjacent to or Visible from the right-of-way of any State Highway if the local governing body having authority over the State Highway pursuant to § 43-2-135, C.R.S. has approved such Advertising Device.
- B. The Department shall accept the local Permit as a state-approved Permit if the approval procedure of the local governing body included a determination that the Advertising Device does not restrict pedestrian traffic and is not a safety hazard to the motoring public. [§ 43-1-407(2)(a)(I), C.R.S.]
- C. The Department shall not impose any additional or more strict requirements for Advertising Device Permits on bus benches or bus shelters than those imposed by a local governing body unless required by federal law, or based on safety requirements for bus benches or shelters.
- D. If the bus bench or bus shelter is located on a Controlled Route outside of a city, city and county, or incorporated town, the Department shall have direct authority over the issuance of a permit. [§ 43-1-417, C.R.S. and 43-2-135, C.R.S.]

2.11 Permit Denial, Revocation or Denial of Renewal [23 C.F.R. 750.104; § 43-1-410, C.R.S.]

- A. The Department may deny, revoke, or deny the renewal of a Permit for any violation of state or federal law or these Rules, including but not limited to:
 - 1. False or misleading information in the Permit application or Renewal;

2. Advertisement of illegal activities;
3. Failure to maintain the sign in good repair;
4. Failure to comply with all Permit provisions;
5. Increasing the permitted size of an Advertising Device; or
6. Any violation of federal law referenced herein, § 43-1-401, *et seq.*, C.R.S. or these Rules.

B. Pursuant to § 43-1-412(4), C.R.S., the applicant or permit holder shall have sixty days within which to provide CDOT with proof of compliance.

3.00 Notice of Noncompliance Pursuant to § 43-1-412, C.R.S.

3.1 Issuance of Written Notice

A. If the Department determines that an application for renewal should be denied, or that an existing Permit should be revoked, the Department shall give written notice by certified mail to the Applicant or Permittee.

B. If the Department revokes a Permit, the Department shall send a Notice of Noncompliance pursuant to Rule 3.00 to the Permittee.

C. In either case, the notice shall specify in what respect the sign does not comply with relevant federal or state law and/or these Rules.

D. Pursuant to § 43-1-412(4), C.R.S., the applicant or permit holder shall have sixty days within which to provide CDOT with proof of compliance.

3.2 Grounds for Noncompliance

A. Sign Lacking a CDOT Permit [§ 43-1-412(2)(a), C.R.S.]

1. If a Permit has not been obtained for the Advertising Device, the Department shall give written Notice of Noncompliance by certified mail to the owner of the Property on which the sign is located. Such notice will:

- a. Inform the Property owner that the Advertising Device is illegal;
- b. Require the owner to remove the sign within 60 days of receipt of the notice or obtain a permit; and
- c. Advise the Property owner of the right to request a hearing.

B. Permit Renewal. [§ 43-1-412(2)(b), C.R.S.]

1. Permitted signs are subject to renewal requirements.
2. If the Department does not receive a Permit renewal application as required, the Department shall give the Permittee written notice by certified mail that:
 - a. Requires the Permittee to apply for a renewal Permit and pay the required late fee within 60 day of receipt of the notice or remove the sign; and
 - b. Advise the Permittee of the right to request a hearing.

C. Permit Application or Renewal Denied. § 43-1-412(2)(c), C.R.S.

1. If the Department determines that a renewal application should be denied or that an existing Permit should be revoked, the Department shall give the Applicant or Permittee written notice by certified mail that:
 - a. Specifies in what respect he or she has failed to comply with state or federal law and these Rules;
 - b. Requires the removal of the Advertising Device or correction of the violation, if correction is permissible, within 60 days of receipt of the notice; and
 - c. Advises the Applicant or Permittee of the right to request a hearing. See Rule 5.00.

4.00 Due Process and Enforcement

- A. After the 60 day notice period has expired, the Department may determine with or without a hearing whether the Advertising Device is in compliance.
- B. If the Department determines the Advertising Device is not in compliance with state and federal law and these Rules, it shall issue an order that shall be served upon the party by certified mail setting forth:
 1. The provisions of the law or Rules violated;
 2. The facts alleged to constitute the violation;
 3. The time by which the Advertising Device must be removed; and
 4. That the Advertising Device will be removed at the party's expense. [§ 43-1-

412(4), C.R.S.]

C. If the party does not remove the Advertising Device as ordered, the Department is authorized to remove it immediately and bill the appropriate party for costs incurred. [§ 43-1-412(5), C.R.S.]

D. If the Property owner does not consent to the Department's entry upon the land to remove the Advertising Device, and no party has sought judicial review pursuant to the State Administrative Procedure Act, the Department may apply to a court of competent jurisdiction for an order allowing the Department to enter upon the land for the purpose of immediately removing the Advertising Device.

E. The court shall issue such order upon proof the Advertising Device has not been removed and judicial review has not been sought. [§ 43-1-412(5), C.R.S.]

F. Upon removal of the Advertising Device pursuant to § 43-1-412, C.R.S., neither the owner of the Property upon which it was erected nor the Department shall be liable in damages to anyone who claims to be the owner of the Advertising Device but who has failed to obtain a Permit.

G. The Department shall not be responsible for damages otherwise created by the removal of the Advertising Device or for its destruction subsequent to removal. [§ 43-1-412(6), C.R.S.]

5.00 Request for Hearing

A. A request for a hearing must be received by the Department no later than 60 days after receipt of the notice. [§ 43-1-412(3), C.R.S.]

B. The request for hearing must be made in writing, by certified mail, addressed to and received by:

Outdoor Advertising Program
Colorado Dept. of Transportation
4201 East Arkansas Ave.
Denver, Colorado, 80222

C. Upon receipt of a request for a hearing, the Department shall arrange for and give written notice of the hearing.

D. At least 30 days prior to the hearing, the Department shall provide notice of the hearing either by personal service or certified mail to the last address furnished by the person requesting the hearing. The notice shall meet the requirements of § 24-4-105(2)

(a), C.R.S.

E. Any person(s) given such notice shall file a written answer within 30 days after the service or mailing of such notice.

F. If such person fails to answer, the Department, upon motion, may enter a default. For good cause shown, the entry of default may be set aside within 10 days after the date of such entry. [§ 24-4-105(2)(b), C.R.S.]

G. A person who may be affected or aggrieved by the Department action shall be admitted as a party to the proceeding upon the person's filing with the Department a written request to be included, setting forth a brief statement of the facts which entitle the person to be admitted and the matters which should be decided. The Department may admit any person or agency as a party to the proceeding for limited purposes. [§ 24-4-105(2)(c), C.R.S.]

H. The hearing shall be presided over by an Administrative Law Judge pursuant to § 24-4-105(3), C.R.S.

6.00 Signs Allowed in Control Areas [§ 43-1-404, C.R.S., 23 USC 131, 23 C.F.R. 750.105; 23 C.F.R. 750.108]

6.01 Advertising Devices Allowed

A. The following signs may be allowed within the Control Area adjacent to the Controlled Route:

1. On-Premise Signs;

2. Off-Premise Signs, which include:

a. Signs in Areas Zoned for Commercial or Industrial Uses” ;

b. Nonconforming Signs;

- c. Directional and Official Signs;
- d. Advertising Devices on Scenic Byways (See Rule 9.00);
- e. Landmark Signs;
- f. Free Coffee Signs;
- g. Tourist-Oriented Directional Signs (TODS) and Specific Information Signs (LOGO) (Rules Governing TODS and LOGO Signs are addressed in a separate set of rules, 2 CCR 601-7);
- h. Changeable Electronic Variable Message Signs (“CEVMS”)

6.02 On-Premise Signs [23 U.S.C. 131(c) and (j); 23 C.F.R. 750.704(a); 23 C.F.R. 750.105 23 C.F.R. 750.108, and 23 C.F.R. 750.709(d)

A. Authority. This section of the Rules pertains to On-Premise Signs located outside of 50 feet from the advertised or principal activity and Visible from the Main Travelled Way of the State Highway System.

1. Size

- a. On-Premise Signs which are located outside of 50 feet from the advertised or principal activity shall not exceed 20 feet in length, width or height, or 150 square feet in area, including border and trim, but excluding supports. [23 C.F.R. 750.108(g)].
- b. No sign may attempt or appear to attempt to direct the movement of traffic or interfere with, imitate or resemble any official traffic sign, signal or device.
- c. No sign may prevent the driver of a vehicle from having a clear and unobstructed view of Official signs and approaching or merging traffic.
- d. No sign may be erected or maintained upon trees or painted or drawn

upon rocks or other natural features.

e. No On-Premise Sign may be erected in an area across a public or private roadway from the Property where the business is conducted unless the purpose of the public or private roadway is for the exclusive use of a Comprehensive Development.

2. Lighting

a. On-Premise Signs shall comply with the lighting requirements of § 43-1-404(1)(f)(I), C.R.S.; however, for purposes of spacing, On-Premise Signs shall not be counted within the 1,000 feet limitation for Off-Premise Signs.

b. No sign may contain, include, or be illuminated by any flashing, intermittent or moving light or lights.

c. No lighting may be used in any way in connection with any sign unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the Main-Traveled Way of the State Highway System or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.

d. No On-Premise Sign may move or have any animated or moving parts.

B. An On-Premise Sign must be located upon the same Property as the activity advertised. An On-Premise Sign may:

1. Advertise the principal or primary activities, goods or services available upon the premises;
2. Identify the property upon which the sign is located;
3. Advertise the property upon which the sign is located for sale or lease;
4. When located within a Comprehensive Development, advertise activities conducted within the Comprehensive Development;
5. Direct the traveling public to the closest entrance to the premises located upon the property;
6. Include non-commercial advertising devices (ex. religious, social or political commentaries) erected by the owner or lessee of property.

C. Where the sign site is located at or near the end of a narrow strip contiguous to the advertised activity, the sign site shall not be considered part of the Premises on which the activity being advertised is conducted when the purpose is clearly to circumvent 23 U.S.C. 131(j). *See* 23 C.F.R. 750.709(3).

D. An On-Premise Sign does not include:

1. A sign that advertises activities, goods, or services not available upon the property.
2. A sign that consists principally of brand name or trade name advertising of a product or service which is only incidental to the principal activity conducted upon the premises.
3. A sign which brings in rental income to the premise/property and /or sign owner. [23 C.F.R. 750.709]

E. On-Premise Signs that Identify the Property upon which They Are Located.

1. An On-Premise Sign identifying the property upon which it is located shall contain only the:
 - a. Name of the property,
 - b. Type of property,
 - c. Logo, and/or
 - d. Name of the owner of the property.
2. Such signs may also direct the traveling public to the closest entrance to the premises.
3. On-Premise Signs directing the travelling public to the closest entrance to the premises are limited to two signs Visible to traffic proceeding in any one direction if the highway frontage of the property is less than one mile in length.
4. If the highway frontage of the property is more than one mile in length, one sign Visible to traffic proceeding in any one direction per mile is allowed.
5. The purpose of such signs shall not be to advertise specific goods or services available upon the premises.

F. On-Premise Signs that Advertise the Primary Activities, Goods or Services Conducted on the Premises which are located outside of 50 feet from the activity shall not exceed 20 feet in length, width or height, or 150 square feet in area, including border and trim, but excluding supports. [23 C.F.R. 750.108(g)]

G. On-Premise Signs that Advertise the Sale or Lease of the Property upon which the

Sign is Located.

1. An On-Premise Sign that advertises the sale or lease of the property may not contain any product or service other than the logo and/or name, type of real property, address, and contact information of the party offering the property for sale or lease.
2. Real property offered for sale or lease must only be the uses of record for zones or platted areas.
3. On-Premise Signs advertising the sale or lease of the property are limited to one sign visible to traffic proceeding in any one direction less than one mile apart.
4. On-Premise Signs advertising the sale or lease of the property may be no larger than 96 square feet including border and trim, but excluding supports.
5. Not more than one such sign advertising the sale or lease of the same property may be allowed in such manner as to be visible to traffic proceeding in any one direction on any one Interstate Highway. [23 C.F.R. 750. 105(a)].

H. On-Premise Signs – Non-Commercial.

1. Non-commercial signs are limited to two signs visible to traffic proceeding in any one direction if the highway frontage of the property upon which the premises is located is less than one mile in length.
 2. If the highway frontage of the property upon which the premises is located is more than one mile in length, one non-commercial sign visible to traffic proceeding in any one direction per mile is allowable.
1. A property owner who had an On-Premise Sign that was in existence upon the property on the effective date of these Rules and who could have reasonably believed such advertising device was on premise under prior rules shall be allowed one year from the effective date of the Rules to bring such advertising device into compliance with these Rules.

J. On-Premise Signs Located Within Fifty Feet of the Advertised Activity

1. These Rules do not apply to On-Premise Signs located within 50 feet of the principal activity.
2. When the advertised activity is a business, is commercial, or concerns industrial land use, the 50 foot distance shall be measured from the regularly used buildings, parking lots, storage or processing areas, or other structures which are essential and customary to the conduct of the business. The distance shall not be measured from driveways, fences, or similar facilities.

3. When the advertised activity is a non-commercial or non-industrial land use such as a residence, farm, or orchard, the 50 foot distance shall be measured from the major structures on the Property.

4. A sign that is located within 50 feet of the premises and advertises the primary activities, goods and services available upon the premises is an On-Premise Sign unless the land upon which the sign is located is used for, or devoted to, a separate purpose unrelated to the principal activity advertised. For example, land adjacent to or adjoining a service station, but devoted to raising of crops, residence, or farmstead uses or other commercial or industrial uses having no direct relationship to the service station activity is a separate purpose unrelated to the principal activity advertised.

K. Obsolescence of On-Premise Signs

1. Upon the termination or cessation for one consecutive year of the activities, services or products advertised by an On-Premise Sign, the Sign advertising the activity shall no longer qualify as an On-Premise Sign and shall be deemed illegal and subject to removal by the Department at the expense of the sign owner.

L. On-Premise Signs – Right-of-Way Encroachment

1. On-Premise Signs shall be allowed to extend over existing right-of-way and future rights-of-way of any State Highway if:

a. The Sign is attached to and extends from a building and only advertises activities or services offered in that building;

b. The building and attached Sign is adjacent to the State Highway within a city, city and county, or incorporated town having authority over the State Highway pursuant to § 43-2-135, C.R.S.;

c. The sign does not restrict pedestrian traffic and is not a safety hazard to the motoring public; and

d. Before erecting the sign, the owner has obtained written permission from the city, city and county or incorporated town. [§ 43-1-421, C.R.S.]

2. No On-Premise Sign may encroach over an Interstate right-of-way nor any portion of a roadway.

M. Comprehensive Development On-Premise Signs

1. On-Premise Signs for Comprehensive Developments shall adhere to the requirements of On-Premise Signs in Rule 6.02.
2. A Comprehensive Development includes all land used or to be used or occupied for the activities of the development, including buildings, parking, storage and service areas, streets, driveways, and reasonably necessary landscaped areas.
3. A Comprehensive Development includes only land that is used for a purpose reasonably related to the activities of the development other than an attempt to qualify the land for on-premise advertising.
4. A Comprehensive Development is a group of two or more lots or parcels of land used primarily for multiple separate commercial or industrial activities and must meet all of the following requirements pursuant to § 43-1-403 (1.5)(a) and (b), C.R.S.:
 - a. Is located entirely on one side of a highway;
 - b. Consists of lots or parcels that are contiguous except for public or private roadways or driveways that provide access to the development;
 - c. Has been approved by the relevant local government as a development with a common identity and plan for public and private improvements;
 - d. Has common areas such as parking, amenities, and landscaping; and
 - e. Has an approved plan of common ownership in which the owners have recorded irrevocable rights to use common areas and that provides for the management and maintenance of common areas.

6.03 Off-Premise Signs

6.03.1 General Requirements

A. Off-Premise signs include:

1. Signs in Areas Zoned for Commercial or Industrial Uses;
2. Nonconforming Signs;
3. Directional and Official Signs;
4. Advertising Devices on Scenic Byways;
5. Landmark Signs, and
6. Free Coffee Signs

B. An Off-Premise Sign shall comply with the requirements set forth in these Rules and 23 C.F.R. 750.108. All signs shall not:

1. Attempt to direct the movement of traffic or interfere with or resemble an official traffic sign, signal or device; [23 C.F.R. 750.108(a)]
2. Interfere with a driver's clear and unobstructed view of Official Signs and approaching, intersecting or merging traffic; [23 C.F.R. 750.108(b)]
3. Contain or be illuminated by any flashing, intermittent or moving light(s); [23 C.F.R. 750.108(c)]
4. Contain any animated parts or moving parts; [23 C.F.R. 750.108(e)]
5. Be illuminated by lights that interfere with a driver's vision or cause glare so as to impair the driver's vision, or that interfere with a driver's operating the vehicle; [23 C.F.R. 750.108(d)]
6. Be erected or displayed upon any natural feature, fence, [23 C.F.R. 750.108(f)] or utility pole. [§ 43-1-411(4), C.R.S.]

C. No Off-Premise Sign shall be erected adjacent to a Scenic Byway, except for Directional and Official Signs. [§ 43-1-419, C.R.S.]

D. An off premise sign shall be considered abandoned if it meets the requirements of Rule 6.03.3 B.

E. Measuring Distances between Off-Premise Signs [23 C.F.R. 750.103]

1. Distances from the edge of the right-of-way shall be measured horizontally along a line perpendicular to the centerline of the highway.
2. All distances shall be measured along the centerline of the highway between two vertical planes which are normal or perpendicular to and intersect the centerline of the highway, and which pass through the termini of the measured distance.

6.03.2 Nonconforming Advertising Devices

A. CDOT has authority over all Nonconforming Signs located along a Controlled Route and that are Visible from the Main Traveled Way with the purpose of their messages being read, except such signs in Urban Areas that are more than 660 feet from the nearest edge of the Controlled Route right-of-way. [23 C.F.R. 750.704; § 43-1-406, C.R.S.]

B. Legal Requirements to Maintain and Continue Nonconforming Signs. [23 C.F.R. 750.707]

1. There must be existing Property rights in the Nonconforming Sign and the sign owner must be able to prove the legal right to install a sign on the Property.
2. The Nonconforming Sign must have been lawfully in place on the effective date of the state law or rule, and must have continued to be lawfully maintained following passage of the state law or rule.
3. The Nonconforming Sign may be sold, leased, or otherwise transferred without affecting its status, but its location may not be changed.
4. A Nonconforming Sign removed as a result of a right-of-way taking or for any other reason may be relocated to a conforming area but cannot be reestablished at a new location as a nonconforming use. [23 C.F.R. 750.707(d)(3)]

6.03.3 Sign Repairs [23 C.F.R. 750.707; § 43-1-413, C.R.S.]

A. Reasonable and Customary Repair of a Nonconforming Sign. This section provides guidance on what constitutes Reasonable and Customary Repair not to exceed 50 percent replacement cost per year. Nothing within this section allows for changing any aspect of or the character of a Nonconforming Sign. Such a change shall be considered a violation of § 43-1-413(1)(c), C.R.S.

1. The Nonconforming Sign must remain substantially the same as it was on the date it was designated as a Nonconforming Sign.
2. A Permittee is responsible for reasonable and customary repair and maintenance of the Nonconforming Sign.
3. A Permittee must notify CDOT prior to performing any customary repair or maintenance of the Nonconforming Sign if such customary repair or maintenance involves replacing the entire face or head of the sign, or if it involves replacement of all supporting poles of the sign.
4. Reasonable and customary repair and maintenance of the Nonconforming Sign, including a change of advertising message or design, is not a change that would terminate nonconforming rights, but such change shall be non-compensable. [§ 43-1-413(3), C.R.S.]
5. Reasonable and customary repair and maintenance of the Nonconforming Sign shall not exceed 50% of the replacement cost of the Device in any given calendar year.
6. Nonconforming Signs that require more than 50% of their replacement cost in repairs in any given calendar year to maintain minimum structural integrity and operational functionality will be determined by the Department as being obsolete (*See* Rule 6.03.3 B). Such signs shall not be repaired, shall lose their nonconforming status and shall be removed as Illegal Signs by the sign owner at his or her expense without compensation. [§ 43-1-412 and 413, C.R.S.; 23 C.F.R. 750.707(d)(6)]
7. Any repairs exceeding 50% of the replacement cost of the Nonconforming Sign shall constitute substantial repair in violation of § 43-1-413, C.R.S. if such customary repair or maintenance involves replacing the entire face or head of the sign, or if it involves replacement of all supporting poles of the sign. This shall result in termination of the right to maintain the Nonconforming Sign. (*See* Rule 6.03.3 C 5.)

B. Abandoned, Discontinued or Obsolete Nonconforming Signs.
[23 U.S.C. 131; 23 C.F.R. 750.707; § 43-1-413(2)(f), C.R.S.]

1. Abandoned or Discontinued Signs

a. An abandoned or discontinued sign is one that for one year or more displays out-of-date advertising matter, or is without advertising matter, or is in need of substantial repair. Such signs determined by the Department as abandoned or discontinued are subject to removal as Illegal signs under § 43-1-412, C.R.S.

2. Obsolete Signs

a. For purposes of these Rules, “obsolescence” in § 43-1-413(2)(f), C.R.S. shall refer to sign design, structure or other physical elements of the sign, and not to displayed advertising.

b. A Nonconforming Sign will be determined obsolete and thus irreparable and illegal under § 43-1-413(2) and (4), C.R.S. if the cost to maintain and/or repair or replace the sign exceeds 50 percent of the replacement cost of such device on the date that the Department determined the device is obsolete as set forth in these Rules.

C. Damage or Destruction of Nonconforming Signs.
[23 C.F.R. 750.707(d)(6); § 43-1-413(2)(e), C.R.S.]

1. A Nonconforming Sign that is damaged or destroyed from any cause except willful destruction may lose its nonconforming status and become an Illegal Sign under the law. Illegal Signs shall be removed by the owner at their own expense and without compensation, pursuant to § 43-1-412, C.R.S.

2. Signs that are damaged or destroyed to the degree that the cost to repair such damage or destruction exceeds 50% of the sign’s replacement cost on the date the damage or destruction occurred shall not be repaired or replaced, but shall lose their nonconforming status and shall be removed as Illegal Signs pursuant to § 43-1-413 and 412, C.R.S.

3. A Permittee must notify CDOT prior to performing any repair of damage to or destruction of the Nonconforming Sign if such repair involves replacing of the entire face or head of the sign, or if it involves replacement of all supporting poles of the sign.

4. The Department shall determine whether a sign has been damaged or destroyed to a degree that terminates the Nonconforming Sign’s nonconforming status based on the schedule of compensation referenced in § 43-1-413(2)(e), C.R.S., as

follows:

- a. For purposes of these Rules, the schedule of compensation referenced in § 43-1-413(2)(e), C.R.S. is referred to as the “replacement cost schedule.”
- b. The replacement cost schedule is used to determine whether the cost to repair damage or destruction to a Nonconforming Sign exceeds 50 percent of the replacement cost of the sign, in which case the sign is determined as “obsolete”. The replacement cost is the cost of the sign as if installed new on its existing sign site on the date the damage or destruction occurred.
- c. If the damage or destruction to the sign is the result of willful destruction, the 50 percent rule and the replacement cost schedule do not apply and the sign may be repaired or restored to its same physical characteristics as existed on the date it became nonconforming.
- d. The procedure under (1) through (5) below shall determine whether the damaged or destroyed Nonconforming Sign:
 - (1) The sign owner shall obtain and pay for one but not more than three repair cost estimates of the Nonconforming Sign. The estimates must be made by an independent licensed general contractor or other licensed professional (sign installation contractor or similar). These estimates must be provided in 7 business days from the damage or destruction of the sign;
 - (2) The Department also may obtain an equal number of three repair cost estimates for the Nonconforming Sign under (1) above. The estimates must be made by an independent licensed general contractor or other licensed professional (sign installation contractor or similar). These estimates must be provided in seven days from the damage or destruction;
 - (3) The Department shall, at its discretion, either accept the average of the estimates obtained in section (1) as the repair cost of the sign or shall use the average of all of the estimates obtained in section (1) to establish the repair cost of the Nonconforming Sign.
 - (4) The cost of repairing the entire sign shall be determined according to the replacement cost of the Nonconforming Sign according to the replacement cost schedule that is based on the Federal Highway Administration Non-Regulatory Supplement Federal-Aid Policy Guide, Transmittal 35 Attachment: Sign and

Site Valuation Formula and Schedule Guide for Controlling Outdoor Advertising Pursuant to 23 U.S.C. 131 dated February 16, 2006, NS 23 C.F.R. 750D, Parts I, II, III. The data relied upon shall be processed based on elements of the real estate appraisal methodology known as the Cost Approach. Replacement cost shall not include the cost of land, the cost of renting land, nor any factor other than the Nonconforming Sign itself.

(5) The Department shall make a determination based on (3) and

(6) whether the cost of repairing the sign exceeds 50% of the replacement cost of the Nonconforming Sign on the date of damage or destruction. (Repair cost/replacement cost = percentage of repair to replacement).

5. If the Department determines that the cost to repair the sign is greater than 50% of the sign's replacement cost, the Nonconforming Sign shall not be repaired or replaced and shall lose its right to be maintained. Such determination must be made within five business days of the completion of the procedure in subsection 4. d. above. The Nonconforming Sign shall become illegal as described in § 43-1-413, C.R.S., the Permit shall be revoked and the Sign structure will be removed at the owner's expense without compensation, as described in § 43-1-412, C.R.S.

D. Repairs Authorized

1. No damage or destruction to the Nonconforming Sign shall be repaired without prior written Department approval, which must be given within the time set forth in subsection C.

2. Upon Department notice to the sign owner that the repairs may be made, the repairs must be completed within 60 days from the date of such notification or the Permit shall be revoked and the sign structure will be removed as an Illegal Sign at the sign owner's expense and without compensation.

3. The Department may extend the 60 day repair period an additional 30 days for conditions beyond the Sign owner's control and upon written proof of good faith effort to repair the Sign.

E. Acquisition Procedures for Nonconforming Signs pursuant to § 43-1-414(1), C.R.S. This section of the Rules applies where the Department either acquires a sign by gift, exchange or agreement, or eminent domain.

1. Eminent Domain. If the Nonconforming Sign is acquired by eminent domain, CDOT shall follow the procedures set forth in § 38-1-101, et seq. C.R.S. and § 24-56-101, et seq., C.R.S. If the acquisition is not through eminent domain, the

following procedures apply.

2. Non-Eminent Domain Purchase. The Department and Nonconforming Sign owner may agree on a purchase price for CDOT to acquire the sign for any purpose, which price may be based on an appraisal performed as described below.

a. Appraisal of Nonconforming Sign pursuant to § 43-1-414(4), C.R.S. If the Department appraises the value of the Nonconforming Sign, the appraisal shall be conducted according to the standards and practices set forth in the Uniform Standards of Professional Appraisal Practice (USPAP), 2014-2015 edition.

b. CDOT may compensate the owner and acquire the Nonconforming Sign at a price that is not less than the Sign's appraised market value according to such market value definition referenced in USPAP.

c. The sign appraisal shall take into account normal depreciation of the sign according to appraisal standards and practices set forth in the 2014-2015 USPAP.

d. Nonconforming Sign owners must obtain the Department's prior approval if any modification is made to a Nonconforming Sign in conformance with these Rules. Nonconforming Signs that have been modified without prior approval of the Department may lose their nonconforming status.

e. Nonconforming Signs that have been modified with approval of the Department will be appraised and the owner compensated according to the sign's original design and construction as if no design changes or modifications had been made; however, where these same changes shall have resulted in a decrease in value, the appraisal and compensation shall reflect those design changes or modifications made and any lower value resulting therefrom. [§43-1-414(2), C.R.S.]

3. Sign Site. Where CDOT acquires a sign by gift, exchange, agreement or purchase, the Department also may appraise and compensate the owner of the underlying sign site for any Property right extinguished as a result of the sign acquisition.

6.03.4 Termination of Nonconforming Sign.

1. The right to maintain a Nonconforming Sign shall be terminated by the Department if any of the conditions listed in § 43-1-413(2), C.R.S. occur.

2. If the right to maintain the Nonconforming Sign is terminated, it shall become illegal and be removed pursuant to § 43-1-412 C.R.S., and these Rules.

6.03.5 Tourist-Related Nonconforming Advertising Devices – Exemption

[23 C.F.R. 750.503; § 43-1-414, C.R.S.]

1. Tourist Related Nonconforming Advertising Devices which comply with state and federal requirements may be exempted from removal pursuant to § 43-1-414(5), C.R.S.
2. “Tourist Related Advertising Device” means any legally erected and maintained Advertising Device which was in existence on May 5, 1976, and which provides directional information about goods and services in the interest of the traveling public limited to the following: lodging, campsites, food service, recreational facilities, tourist attractions, educational or historical sites or features, scenic attractions, gasoline stations, or garages.

7.00 Signs in Areas Zoned by Law for Industrial or Commercial Uses

[23 C.F.R. 750.708; § 43-1-404(1)(e)(I); § 43-1-406(2)(b)(I) and (II), C.R.S.]

A. Location

1. Advertising Devices may be located in areas Zoned for Commercial or Industrial Uses areas as defined in section 1.34 of these Rules. Primary land use of the sign location must be commercial or industrial and the zoning must be part of a comprehensive zoning.
2. Advertising Devices located Adjacent to the Interstate Right-of-Way:
 - a. Cotton Area: Adjacent to right-of-way that was acquired prior to July 1, 1956 for roadway purposes and zoned as commercial or industrial prior to January 1, 1970 (Cotton Area, see § 43-1-406(2)(b)(II) C.R.S.); or
 - b. Kerr Area: Outside the boundaries of incorporated municipalities, as those boundaries existed on September 21, 1959 and clearly established by state law as industrial or commercial before that date and zoned industrial or commercial uses under authority of state law prior to January 1, 1970;

see § 43-1-404(1)(d) and § 43-1-406(2)(b)(I) C.R.S.; or

c. Kerr Area: Within the boundaries of incorporated municipalities, as those boundaries existed on September 21, 1959 and zoned industrial or commercial before January 1, 1970 (§ 43-1-406(2)(b)(I) C.R.S.).

B. Size Requirements [§ 43-1-404(1), C.R.S.]

1. Advertising Device measurements shall be inclusive of any border and trim, but excluding the base, apron, supports, and other structural members.
2. The maximum size limitations shall apply to each side of a Sign structure. Signs may be placed back-to-back, or in V-type construction with not more than two displays to each facing.
3. In areas Zoned for Commercial or Industrial Uses by law prior to January 1, 1970, the sign shall have:
 - a. A maximum area for any one sign of 1200 square feet Visible in any one direction of travel;
 - b. A maximum sign face height of 30 feet; and
 - c. A maximum sign face length of 60 feet.
4. In areas Zoned for Commercial or Industrial Uses on or after January 1, 1970, located along non-interstate Controlled Routes, the Sign shall:
 - a. Be no larger than 150 square feet; and
 - b. Be located within one thousand feet of an industrial or commercial building.
5. Requirements for Signs Erected After 1970 Advertising Necessary Goods and Services.
 - a. Advertising Devices located along non-interstate Controlled Routes

shall be subject to the following requirements:

- (1) Only inform the traveling public of necessary goods or services available within a five-mile radius of the Advertising Device. Necessary goods and services shall be limited to those set forth in § 43-1-404(1)(e)(I)(c), C.R.S.
- (2) No person providing necessary goods or services shall be eligible for more than two Advertising Devices.
- (3) The Advertising Device shall predominately display the name and location of the necessary goods or services advertised.
- (4) If the necessary goods and services are not available 12 months out of the year, the Sign must clearly display the dates such goods and services are available.

C. Lighting

1. Advertising Devices that contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, except those giving public service information, such as time, date, temperature, weather, or similar information.
2. Advertising Devices are prohibited that are not effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled ways of the State Highway System and which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle.
3. No sign shall be so illuminated that it interferes with the effectiveness of, or obscures an official traffic sign, device, or signal.
4. All lighting shall be subject to any other provisions relating to lighting of signs presently applicable to all Controlled Routes ~~highways~~ under the jurisdiction of the State.
5. CEVMS technology shall not, in itself, constitute the use of flashing, intermittent or moving light or lights.
6. An Advertising Device may contain a message center display with moveable

parts and a changeable message that is changed by electronic processes or by remote control. The illumination of an Advertising Device containing a message center display is not the use of a flashing, intermittent or moving light for the purposes of these Rules. [§ 43-1-404(1)(f), C.R.S.]

D. Spacing of Signs

1. Advertising Devices on Control Routes may not be located in such a manner as to obscure, or otherwise physically interfere with the effectiveness of any official traffic sign, signal, or device, obstruct or physically interfere with the driver's view of approaching, merging or intersecting traffic.

2. Interstate Highways and Freeways:

a. No two signs shall be spaced less than 500 feet apart.

b. Outside of incorporated villages and cities, no Advertising Device may be located adjacent to or within 500 feet of an interchange, intersection at grade, or safety Rest Area. The 500 feet is to be measured along the Interstate or Freeway from the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way.

3. All other Controlled Routes except Interstate and Freeways

a. Outside of incorporated villages and cities, no two structures shall be spaced less than 300 feet apart.

b. Within incorporated villages and cities, no two structures shall be spaced less than 100 feet apart.

4. The above provisions for spacing-between-structures do not apply to structures separated by buildings or other obstructions in such a manner that only one sign facing located within the above spacing distances is Visible from the highway at any one time.

5. The minimum distance between structures shall be measured along the nearest edge of the pavement between points directly opposite the Advertising Devices along each side of the State Highway and shall apply only to structures located on the same side of the State Highway.

6. Signs that are not lawfully maintained, and Official and On-Premise Signs as defined in 23 U.S.C. 131(c) and these Rules, shall not be counted nor shall measurements be made from them for purposes of determining compliance with spacing requirements.

7. If a sign was erected prior to July 9, 1971 in an area Zoned for Commercial or Industrial Uses, see Rule 6.03.2 “Nonconforming Advertising Devices.”

8.00 Directional and Official Signs

[§ 43-1-403(4), C.R.S.; 23 U.S.C 131(c)(1); 23 C.F.R. 750.105; 23 C.F.R. 750.153]

A. CDOT’s Jurisdiction over Directional and Official Signs.

1. Directional and Official Signs under CDOT control are located within 660 feet of the right-of-way and Directional and Official Signs located beyond 660 feet of the right-of-way outside of Urban Areas, Visible from the Main Traveled Way of the system, and erected with the purpose of their message being read from such Main Traveled Way.

2. Urban Area means an area as designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area, within boundaries to be fixed by CDOT and local officials, subject to approval by the Secretary of Transportation. Such boundaries shall, as a minimum, encompass the entire urban place designated by the Bureau of the Census. [23 C.F.R. 750.153(t)]

B. Definitions. The Definitions listed below are specific to this Rule on Directional and Official Signs.

1. “Directional Sign” includes, but is not limited to:

- a. Signs containing directional information to facilitate emergency vehicle access to remote locations;
- b. Signs referring to public places owned or operated by federal, state, or local governments or their agencies;
- c. Publicly or privately owned natural phenomena, historic, cultural, scientific, educational, and religious sites;
- d. Areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public. 23 C.F.R. 750.153(r); § 43-1-403 (4) C.R.S.; or
- e. Public utility signs, service club and religious notices, and public service signs. [23 C.F.R. 750.153(m)]

2. A “Notice” for purposes of this section of the Rules is a temporary sign providing the content as stated in the “Official Sign” or “Public Utility Sign” definitions but which is posted for a limited time.

3. “Official Sign” is a Sign erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction pursuant to federal, state or local law and for the purposes of carrying out an official duty or responsibility. Historical markers authorized by State law and erected by CDOT or local government agencies or nonprofit historical societies may be considered Official Signs. [23 C.F.R. 750.153 (n)] Official Signs shall not include signs advertising any private business. [§43-1-403(13), C.R.S.]

4. “Public Service Sign” located on school bus stop shelters:

- a. Identifies the donor, sponsor, or contributor of said shelters;
- b. Contains public service messages, which shall occupy not less than 50 percent of the area of the sign;
- c. Contains no other message;
- d. Is located on school bus shelters which are authorized or approved by city, county, or state law, regulation, or ordinance, and at places approved by the city, county, or the Department; and
- e. May not exceed 32 square feet in area. Not more than one sign on each shelter shall face in any one direction. [23 C.F.R. 750.153(q)]

5. “Public Utility Sign” means a warning sign, informational sign, notice, or marker that is customarily erected and maintained by publicly or privately owned public utilities, as essential to their operations. [23 C.F.R. 750.153(o)]

6. “Service club” or “Religious” signs or notices mean a sign or notice whose erection is authorized by law, relating to meetings of nonprofit service clubs or charitable associations, or religious services, which signs or notices do not exceed 8 square feet in area. [23 C.F.R. 750.153(p)]

C. Criteria for Directional Signs [23 C.F.R. 170.154(f)]

1. Prohibited Signs. The following Directional Sign conditions are prohibited:

- a. Directional Signs advertising activities that are illegal under federal or state laws or regulations in effect at the location of those signs or at the location of those activities.
- b. Directional Signs that obscure or otherwise interfere with the effectiveness of any official traffic sign, signal or device, or obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic.
- c. Directional Signs erected or maintained upon trees or painted or drawn upon rocks or other natural features.
- d. Directional Signs that are:
 - (1) Obsolete;
 - (2) Structurally unsafe or in disrepair;
 - (3) Move or have any animated or moving parts;
 - (4) Located in Rest Areas, Parklands or Scenic Areas.

2. Size of Directional Signs

- a. No Directional Sign shall exceed the following limits, including border and trim, but exclude supports:

Maximum area - 150 square feet;

Maximum height - 20 feet;

Maximum length - 20 feet.

3. Lighting of Directional Signs

- a. The following lighting conditions are prohibited:
 - (1) Signs that contain, include, or are illuminated by any flashing, intermittent, or moving light or lights.

(2) Signs that are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle.

(3) Signs that are illuminated so as to interfere with the effectiveness of or obscure an official traffic sign, device, or signal.

4. Spacing of Directional Signs

- a. Each location of a Directional Sign must be approved by the Department.
- b. No Directional Sign may be located within 2,000 feet of an interchange, or intersection at grade along the interstate system or other freeways (measured along the Interstate or freeway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the Main Traveled Way).
- c. No Directional Sign may be located within 2,000 feet of a Rest Area, Parkland, or Scenic Area. A scenic area means any public park or area of particular scenic beauty or historical significance designated by or pursuant to state law as a scenic area.
- d. No two Directional Signs facing the same direction of travel shall be spaced less than one (1) mile apart;
- e. Not more than three Directional Signs pertaining to the same activity and facing the same direction of travel may be erected along a single route approaching the activity;
- f. Directional Signs located adjacent to the interstate system shall be within 75 air miles of the activity; and
- g. Directional Signs located on other than the interstate system, including adjacent to the primary system, shall be within 50 air miles of the activity.

5. Message Content

- a. The message on Directional Signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route numbers, or exit numbers.
- b. Descriptive words or phrases, and pictorial or photographic representations of the activity or its environs are prohibited.

D. Directional Signs Pertaining to Privately-Owned Activities [23 C.F.R. 750.154]

1. Privately-owned activities or attractions eligible for Directional Signing must meet the requirements of these Rules and state and federal law, and must be nationally or regionally known, and of outstanding interest to the traveling public. “Outstanding interest to the travelling public” for purposes of these Rules means for edification and enjoyment of the travelling public and not specifically to generate income for the activity. [23 C.F.R. 750.154 (f)(1) and (2)]
2. Privately owned activities or attractions eligible for Directional Signing are limited to the following: natural phenomena; scenic attractions; historic, educational, cultural, scientific, and religious sites, and outdoor recreational areas.
3. To be eligible, privately owned attractions or activities must be nationally or regionally known, and of outstanding interest to the traveling public.

9.00 Advertising Devices on Scenic Byways [§ 43-1-419, C.R.S.; 23 U.S.C. 131(s)]

- A. A Scenic Byway is a road designated as such by the Colorado Transportation Commission along a Controlled Route.
- B. No new Advertising Device shall be erected along a Scenic Byway that is visible from the Controlled Route with the exception of:
 1. Official Signs;
 2. On-Premise Signs; and
 3. Directional Signs.

C. Existing Advertising Devices along Scenic Byways which are in compliance with state and federal law and these Rules may continue to be maintained; however, they will have the status of Nonconforming Signs.

D. For purposes of this section, an Advertising Device shall be considered to be Visible from a designated highway if it is plainly visible to the driver of a vehicle who is proceeding in a legally designated direction and traveling at the posted speed. [23 C.F.R. 750.153 (j); § 43-1-403(17), C.R.S.]

E. The designation of a Scenic Byway shall specify by Global Positioning System or other technology the precise location of the Scenic Byway.

10.00 Landmark Signs

A. No Landmark Signs have been established in Colorado pursuant to 23 C.F.R. 750.710 (a) and (b).

11.00 Free Coffee Signs [23 U.S.C. 131(c)]

A. Signs, displays, and devices advertising the distribution by nonprofit organizations of free coffee to individuals traveling on an interstate or primary system may be located within the Control Area. Free coffee shall include coffee for which a donation may be made but is not required.

12.00 Off-Premise CEVMS Advertising Devices

A. Authority. The Department has authority to control the brightness, intervals, spacing and location of Off-Premise CEVMS along Controlled Routes for the purpose of ensuring safety to the travelling public. [23 USC 131 (c) (3) and (j); 23 C.F.R. 750.705; § 43-1-404(1)(f), and § 43-1-415(1), C.R.S.]

B. Definitions

B. Definitions

1. "CEVMS" or "Changeable Electronic Variable Message Sign" means a self-luminous advertising sign which emits or projects any kind of light, color, or message change which ranges from static images to full motion video. This shall include "Variable Message Sign" which means an advertising sign, display or device with moving parts whose message may be changed by electronic or by remote control or other process through the use of moving or intermittent light or lights. [43-1-404(1)(f)(I), C.R.S.]

2. "Footcandle" means a unit of Illuminance equivalent to the illumination produced by a source of one candle at a distance of one foot and equal to one lumen incident per square foot.
3. "Glare" means the sensation produced by Illuminance within the visual field that is sufficiently greater than the luminance to which the eyes are adapted to cause annoyance, discomfort, or loss of visual performance and visibility.
4. "Illuminance" means the amount of light that is intercepted by an object that is a distance away from the sign measured in Footcandles. That is, the lighted sign face illuminates objects that are away from it, and the lighting level produced by the sign on a particular object is measured in Footcandles.
5. "Luminance" means the **photometric** measure of the **luminous intensity** per unit area of **light** travelling in a given direction. It describes the amount of light that passes through or is emitted from a particular area, and falls within a given **solid angle**. The unit for luminance is **candela per square meter** (cd/m²), also known as "nit".
6. "Message" means anything displayed on a sign, including copy, art and graphics.
7. "Multiple Message Sign" (Also known as tri-vision signs) means an outdoor advertising sign, display or device whose message is on triangular louvered facings and are changed by electronic or other rotation of the louvers.
8. "NIT" means a unit of visible-light intensity equal to one candle per square meter, measured perpendicular to the rays of the source.
9. "Public Service Information" means a message on an electronic sign which provides the time, date, temperature, weather, or information concerning civic or charitable activities.
10. "Segmented Message" means any message or distinct subunit of a message presented by means of at least one display change on a variable message sign.
11. "Traveling Message" means a message which moves or appears to move across any Advertising Device.

C. General Requirements

1. The CEVMS shall comply with all applicable federal, state, and local laws, rules and regulations.

2. Location

- a. No CEVMS may be placed within one thousand feet of another CEVMS on the same side of a highway ~~or oriented to the same direction of traffic~~. On-Premise Signs inside fifty feet of the advertised activity are not counted for purposes of this spacing requirement. [§ 43-1-404(1)(f)(I), C.R.S.]
- b. A CEVMS shall not prevent the driver of a vehicle from having a clear and unobstructed view of Official Signs and approaching or merging traffic.
- c. A CEVMS shall not interfere with or direct, or attempt to direct, the movement of traffic, or resemble or simulate any warning or danger signal, or any official traffic control device, or contain wording, color, shapes or likenesses of official traffic control devices;
- d. A CEVMS shall not be maintained upon trees or rocks or other natural features.

3. Mechanics

- a. A CEVMS shall not move or have any animated or moving parts.
- b. A CEVMS shall not contain, incorporate or use any inter-active component or medium, and shall not interact with drivers or interfaces with cell phones or any other electronic device.
- c. A CEVMS shall not incorporate, use or emit any sound or noise or any electronic signals capable of being detected or emit any smoke, scent or odors.

4. Operations

- a. CEVMS Advertising Devices found to be brighter than necessary for adequate visibility shall be adjusted by the person owning or controlling the sign to conform to the requirements of state and federal laws and these Rules.
- b. CEVMS must:

(1) Use sufficient safeguards to prevent unauthorized access, use or hacking of CEVMS and related technology, including infrastructure, hardware, software and networks, by unauthorized users;

(2) Include the ability to be held on a static image in the event a malfunction occurs that violates these Rules;

(3) Not contain animation, flashing, scrolling or travelling messages, or intermittent or full-motion video;

(4) Not change intensity or expose its message for less than 4 seconds; and

(5) Not have a transition interval of less than 1 second.

c. The Permit holder is responsible for any changes, alterations or modifications to the display of the CEVMS made by an unauthorized user.

5. Operational Requirements Specific to Off-Premise CEVMS

a. General Requirements.

(1) A CEVMS must include the ability to automatically or technologically modify displays and lighting levels where directed by the Department to assure safety of the motoring public.

(2) The Permit holder, sign owner or third party must have the ability to repair and monitor the brightness.

(3) A CEVMS shall be capable of being remotely monitored to ensure conformance with these Rules and state and federal laws.

b. Brightness.

(1) A CEVMS shall adhere to the brightness standards set forth herein.

(2) CEVMS shall not exceed three-tenths (0.3) Footcandles over ambient light as measured by the distance to the sign set forth below with a Footcandle or illuminance meter that can measure to the 100th of a Footcandle.

(3) The measurement shall be conducted at least 30 minutes after sunset or 30 minutes before sunrise.

(4) If the Footcandle reading exceeds the 0.3 Footcandles, then the nighttime luminance shall not exceed 300 NIT (candelas per square meter) (6800 degrees Kelvin) which may be measured with a nit gun or luminance meter that can read to the accuracy of 5 nits.

(5) Any measurements required pursuant to this subsection shall be taken from a point within the highway right-of-way at a safe distance outside of the Main Traveled Way and as close to perpendicular to the face of the CEVMS as practical.

(6) If a perpendicular measurement is not practical, a measurement shall be taken at an angle up to ten degrees (10 degrees) offset from the perpendicular center point of the sign face.

(7) CEVMS Permit applications shall include the manufacturer's specifications for maximum and design NIT output.

(8) Not be of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.

(9) Have the capability of adjusting brightness level in response to changes in ambient light levels so the signs are not unreasonably bright for the safety of the motoring public.

(10) A CEVMS shall utilize automatic dimming technology to adjust the brightness of the sign relative to ambient light so that at no time shall a sign exceed a brightness level of three tenths (0.3) Footcandles above ambient light, as measured using a Footcandle meter and in conformance with the following distance table:

Brightness / Illuminance Measurements shall be taken as follows:

CEVMS Sign Illuminance Measurement Distance	
Sign Area (square feet)	Distance of Measurement (feet from sign)
700 – 1200	350

300 – 699	250
200 – 299	150
150 – 199	135
100 – 149	110
50 – 99	90
25 – 49	55
0 – 24	45

D. Conversion from a Static Advertising Device to a CEVMS

1. A non-conforming sign shall not be converted to a CEVMS.
2. An existing permitted static outdoor advertising device may be converted to a CEVMS, provided the existing sign:
 - a. Has been approved by the local government, if applicable, and the state prior to conversion;
 - b. Was legally erected;
 - c. Has had all permit fees timely paid; and
 - d. Is in compliance with these Rules and with federal, state and local laws.
3. The conversion of a static outdoor advertising device to a CEVMS must be completed within 1 year of CDOT's written approval of the CEVMS Conversion. The Applicant must reapply if not completed within 1 year.
4. Site Review. The Department may conduct a site review and inspection prior to permitting a conversion to CEVMS to ensure that the description, location and other information contained in the application for conversion is in compliance with these Rules. [43-1-421(1)(f)(I), C.R.S.]
5. Compliance Grace Period. Any CEVMS permitted prior to the effective date of these Rules shall conform with the requirements of these Rules within 180 days of the effective date of the Rules or such CEVMS shall be deemed illegal and non-compensable and subject to removal by the Department at the expense of the sign owner.

6. Appeal Regarding a CEVMS. In the event of an appeal, a CEVMS must be maintained in a static blank sign display until the appeal is resolved.

13.00 Materials Incorporated by Reference

A. These Rules are intended to be consistent with and not be a replacement for 23 United States Code (U.S.C.) 131 dated October 1, 2012, and its implementing regulations contained in 23 Code of Federal Regulations (C.F.R.) Part 750 in effect as of June 20, 1973, 750.705(h) (Sept. 16, 1975) which are hereby incorporated into the Rules by this reference, and do not include any later amendments.

B. Also incorporated by reference are the following documents:

1. Federal Highway Administration (FHWA) Non-Regulatory Supplement Federal-Aid Policy Guide, Transmittal 35 Attachment: Sign and Site Valuation Formula and Schedule Guide for Controlling Outdoor Advertising Pursuant to 23 U.S.C. 131 dated February 16, 2006, NS 23 C.F.R. 750D, Parts I, II, III.
2. Uniform Standards of Professional Appraisal Practice (USPAP), 2014-2015 Edition.

C. All referenced laws and regulations shall be available for copying or public inspection during regular business hours from the Office of Policy and Government Relations, Colorado Department of Transportation, 4201 E. Arkansas Avenue, Denver, Colorado 80222.

Notice of Rulemaking Hearing

Tracking number

2014-01036

Department

700 - Department of Regulatory Agencies

Agency

702 - Division of Insurance

CCR number

3 CCR 702-3

Rule title

FINANCIAL ISSUES

Rulemaking Hearing

Date

11/05/2014

Time

10:00 AM

Location

1560 Broadway, Ste 850, Denver CO 80202

Subjects and issues involved

3-3-3 CREDIT FOR REINSURANCE

Statutory authority

10-1-109(1), 10-3-529(4), 10-3-705, 10-6-129, 10-14-505 and 10-16-109, and provides standards regarding reinsurance agreements under Sections 10-3-701 et. seq., 10-6-122, 10-11-113, 10-14-304, 8-44-20

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DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-3

FINANCIAL ISSUES

Repealed and Repromulgated Regulation 3-3-3

CREDIT FOR REINSURANCE

Section 1	Authority
Section 2	Scope and Purpose
Section 3	Applicability
Section 4	Credit for Reinsurance-Reinsurer Licensed in this State
Section 5	Credit for Reinsurance -Accredited Reinsurers
Section 6	Credit for Reinsurance -Reinsurer Domiciled in Another State
Section 7	Credit for Reinsurance -Reinsurers Maintaining Trust Funds
Section 8	Credit for Reinsurance -Certified Reinsurers
Section 9	Credit for Reinsurance Required by Law
Section 10	Asset or Reduction from Liability for Reinsurance Ceded to Unauthorized Assuming Insurer Not Meeting the Requirements of Sections 4 Through 9
Section 11	Trust Agreements Qualified Under Section 10
Section 12	Letters of Credit Qualified Under Section 10
Section 13	Other Security
Section 14	Reinsurance Contract
Section 15	Contracts Affected
Section 16	Severability
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Section 18	Effective Date
Section 19	History
Form AR-1	Certificate of Assuming Insurer
Form CR-1	Certificate of Certified Reinsurer
Form CR-F	
Form CR-S	

Section 1 Authority

This regulation is promulgated pursuant to the authority granted by Sections 10-1-109(1), 10-3-529(4), 10-3-705, 10-6-129, 10-14-505 and 10-16-109, and provides standards regarding reinsurance agreements under Sections 10-3-701 et. seq., 10-6-122, 10-11-113, 10-14-304, 8-44-204, 8-44-205, 8-45-117, 24-10-115.5, and 29-13-102, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to set forth rules and procedural requirements that the Commissioner deems necessary to carry out the provisions of the Section 10-3-701 et. seq., C.R.S., regarding the conditions and circumstances under which a domestic insurer may reduce their liabilities, or establish an asset associated with risks reinsured. The actions and information required by this regulation are declared to be necessary and appropriate in the public interest and for the protection of the ceding insurers in this state. This regulation addresses credit for reinsurance associated with a valid reinsurance contract. The criteria as to what constitutes a valid reinsurance agreement, limitations on the amount of

credit that can be claimed and other requirements as regards financial reporting are addressed in Colorado Insurance Regulations 3-3-4 and 3-3-5.

Section 3 Applicability

This regulation shall apply to all licensed insurers, as well as to each domestic group captive insurer, fraternal benefit society, health maintenance organization, licensed self-insurance pool, prepaid dental care plan organization, non-profit hospital, medical-surgical and health service corporation, Pinnacle Assurance and title insurance company.

Section 4 Credit for Reinsurance-Reinsurer Licensed in this State

Pursuant to Section 10-3-702(2), C.R.S., the Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that was licensed in this state as of any date on which statutory financial statement credit for reinsurance is claimed.

Section 5 Credit for Reinsurance-Accredited Reinsurers

- A. Pursuant to Section 10-3-702(3), C.R.S., the Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is accredited as a reinsurer in this state as of the date on which statutory financial statement credit for reinsurance is claimed. An accredited reinsurer must:
1. File a properly executed Form AR-1 (attached as an exhibit to this regulation) as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records;
 2. File with the Commissioner a certified copy of a certificate of authority or other acceptable evidence that it is licensed to transact insurance or reinsurance in at least one state, or, in the case of a U.S. branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;
 3. File annually with the Commissioner a copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and
 4. Maintain a surplus as regards policyholders in an amount not less than \$20,000,000, or obtain the affirmative approval of the Commissioner upon a finding that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.
- B. If the Commissioner determines that the assuming insurer has failed to meet or maintain any of these qualifications, the Commissioner may upon written notice and opportunity for hearing, suspend or revoke the accreditation. Credit shall not be allowed a domestic ceding insurer under this section if the assuming insurer's accreditation has been revoked by the Commissioner, or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the Commissioner.

Section 6 Credit for Reinsurance-Reinsurer Domiciled in Another State

- A. Pursuant to Section 10-3-702(4), C.R.S., the Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that, as of any date on which statutory financial statement credit for reinsurance is claimed:

1. Is domiciled in (or, in the case of a U.S. branch of an alien assuming insurer, is entered through) a state that employs standards regarding credit for reinsurance substantially similar to those applicable under Section 10-3-701, et. seq., and this regulation;
 2. Maintains a surplus as regards policyholders in an amount not less than \$20,000,000; and
 3. Files a properly executed Form AR-1 with the Commissioner as evidence of its submission to this state's authority to examine its books and records.
- B. The provisions of this section relating to surplus as regards policyholders shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system. As used in this section, "substantially similar" standards means credit for reinsurance standards that the Commissioner determines equal or exceed the standards of Section 10-3-701, et. seq., and this regulation.

Section 7 Credit for Reinsurance-Reinsurers Maintaining Trust Funds

- A. Pursuant to Section 10-3-702(5), C.R.S., the Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of any date on which statutory financial statement credit for reinsurance is claimed, and thereafter for so long as credit for reinsurance is claimed, maintains a trust fund in an amount prescribed below in a qualified U.S. financial institution as defined in Section 10-3-704(2), C.R.S., for the payment of the valid claims of its U.S. domiciled ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the Commissioner substantially the same information as that required to be reported on the National Association of Insurance Commissioners (NAIC) annual statement form by licensed insurers, to enable the Commissioner to determine the sufficiency of the trust fund.
- B. The following requirements apply to the following categories of assuming insurer:
1. The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by U.S. domiciled insurers, and in addition, the assuming insurer shall maintain a trustee surplus of not less than \$20,000,000, except as provided in paragraph (2) of this subsection.
 2. At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of U.S. ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trustee surplus may not be reduced to an amount less than 30% of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers covered by the trust.
 3. The trust fund for a group including incorporated and individual unincorporated underwriters shall consist of:

- a. For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after January 1, 1993, funds in trust in an amount not less than the respective underwriters' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any underwriter of the group;
 - b. For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this regulation, funds in trust in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and
 - c. In addition to these trusts, the group shall maintain a trustee surplus of which \$100,000,000 shall be held jointly for the benefit of the U.S. domiciled ceding insurers of any member of the group for all the years of account.
4. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members. The group shall, within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the Commissioner:
 - a. An annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or
 - b. If a certification is unavailable, a financial statement, prepared by independent public accountants, of each underwriter member of the group.
5. The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of \$10,000,000,000 (calculated and reported in substantially the same manner as prescribed by the annual statement instructions and Accounting Practices and Procedures Manual of the NAIC), and which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation, shall:
 - a. Consist of funds in trust in an amount not less than the assuming insurers' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group;
 - b. Maintain a joint trustee surplus of which \$100,000,000 shall be held jointly for the benefit of U.S. domiciled ceding insurers of any member of the group; and
 - c. File a properly executed Form AR-1 as evidence of the submission to this state's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination.
6. Within ninety days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the Commissioner an annual certification of each underwriter member's solvency by the member's domiciliary regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group.

C. Trust Instruments

1. Credit for reinsurance shall not be granted unless the form of the trust and any amendments to the trust have been approved by either the Commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that:
 - a. Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied thirty days after entry of the final order of any court of competent jurisdiction in the United States;
 - b. Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's U.S. ceding insurers, their assigns and successors in interest;
 - c. The trust shall be subject to examination as determined by the Commissioner;
 - d. The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; and
 - e. No later than February 28 of each year the trustee of the trust shall report to the Commissioner in writing setting forth the balance in the trust and listing the trust's investments at the preceding year-end, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the following December 31.
2. Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by this subsection or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.
3. The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.
4. If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the U.S. beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.
5. The grantor shall waive any right otherwise available to it under U.S. law that is inconsistent with this provision.

- D. For purposes of this section, the term "liabilities" shall mean the assuming insurer's gross liabilities attributable to reinsurance ceded by U.S. domiciled insurers excluding liabilities that are otherwise secured by acceptable means, and, shall include:

1. For business ceded by domestic insurers authorized to write accident and health, and property and casualty insurance:
 - a. Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;
 - b. Reserves for losses reported and outstanding;
 - c. Reserves for losses incurred but not reported;
 - d. Reserves for allocated loss expenses; and
 - e. Unearned premiums.
 2. For business ceded by domestic insurers authorized to write life, health and annuity insurance:
 - a. Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;
 - b. Aggregate reserves for accident and health policies;
 - c. Deposit funds and other liabilities without life or disability contingencies; and
 - d. Liabilities for policy and contract claims.
- E. Assets deposited in trusts established pursuant to Section 10-3-702, C.R.S., and this section shall be valued according to their current fair market value and shall consist only of cash in U.S. dollars, certificates of deposit issued by a U.S. financial institution as defined in Section 10-3-704(1), C.R.S., clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified U.S. financial institution, as defined in Section 10-3-704(1), C.R.S., and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust shall not exceed 5% of total investments. No more than 20% of the total of the investments in the trust may be foreign investments authorized under Paragraphs (1)(e), (3), (6)(b) or (7) of this subsection, and no more than 10% of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in U.S. dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of Section 10-3-702, C.R.S. shall be invested only as follows:
1. Government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed or guaranteed by:
 - a. The United States or by any agency or instrumentality of the United States;
 - b. A state of the United States;
 - c. A territory, possession or other governmental unit of the United States;
 - d. An agency or instrumentality of a governmental unit referred to in Subparagraphs (b) and (c) of this paragraph if the obligations shall be by law (statutory or otherwise) payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise

appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under this paragraph if payable solely out of special assessments on properties benefited by local improvements; or

- e. The government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;
2. Obligations that are issued in the United States, or that are dollar denominated and issued in a non-U.S. market, by a solvent U.S. institution (other than an insurance company) or that are assumed or guaranteed by a solvent U.S. institution (other than an insurance company) and that are not in default as to principal or interest if the obligations:
- a. Are rated A or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;
 - b. Are insured by at least one authorized insurer (other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer) licensed to insure obligations in this state and, after considering the insurance, are rated AAA (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or
 - c. Have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;
3. Obligations issued, assumed or guaranteed by a solvent non-U.S. institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of U.S. corporations issued in a non-U.S. currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;
4. An investment made pursuant to the provisions of Paragraph (1), (2) or (3) of this subsection shall be subject to the following additional limitations:
- a. An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed 5% of the assets of the trust;
 - b. An investment in any one mortgage-related security shall not exceed 5% of the assets of the trust;
 - c. The aggregate total investment in mortgage-related securities shall not exceed 25% of the assets of the trust; and
 - d. Preferred or guaranteed shares issued or guaranteed by a solvent U.S. institution are permissible investments if all of the institution's obligations are eligible as investments under Paragraphs (2)(a) and (2)(c) of this subsection, but shall not exceed 2% of the assets of the trust.
5. As used in this regulation:

- a. "Mortgage-related security" means an obligation that is rated AA or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC and that either:
- (1) Represents ownership of one or more promissory notes or certificates of interest or participation in the notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates or participation), that:
 - (a) Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C.A. Section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and
 - (b) Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. Sections 1709 and 1715-b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. Section 1703; or
 - (2) Is secured by one or more promissory notes or certificates of deposit or participations in the notes (with or without recourse to the insurer of the notes) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of Items (i)(I) and (i)(II) of this subsection;
- b. "Promissory note," when used in connection with a manufactured home, shall also include a loan, advance or credit sale as evidenced by a retail installment sales contract or other instrument.

6. Equity interests

- a. Investments in common shares or partnership interests of a solvent U.S. institution are permissible if:
- (1) Its obligations and preferred shares, if any, are eligible as investments under this subsection; and
 - (2) The equity interests of the institution (except an insurance company) are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a to 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the Financial Industry Regulatory Authority, or successor organization. A trust shall not invest in equity interests under this

paragraph an amount exceeding 1% of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company;

- b. Investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if:
 - (1) All its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and
 - (2) The equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development;
 - c. An investment in or loan upon any one institution's outstanding equity interests shall not exceed 1% of the assets of the trust. The cost of an investment in equity interests made pursuant to this paragraph, when added to the aggregate cost of other investments in equity interests then held pursuant to this paragraph, shall not exceed 10% of the assets in the trust;
- 7. Obligations issued, assumed or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.
- 8. Investment companies
 - a. Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S.C. § 80a, are permissible investments if the investment company:
 - (1) Invests at least 90% of its assets in the types of securities that qualify as an investment under Paragraph (1), (2) or (3) of this subsection or invests in securities that are determined by the Commissioner to be substantively similar to the types of securities set forth in Paragraph (1), (2) or (3) of this subsection; or
 - (2) Invests at least 90% of its assets in the types of equity interests that qualify as an investment under Paragraph (6)(a) of this subsection;
 - b. Investments made by a trust in investment companies under this paragraph shall not exceed the following limitations:
 - (1) An investment in an investment company qualifying under Subparagraph (a)(1) of this paragraph shall not exceed 10% of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed 25% of the assets in the trust; and
 - (2) Investments in an investment company qualifying under Subparagraph (a)(2) of this paragraph shall not exceed 5% of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to Paragraph (6)(a) of this subsection.
- 9. Letters of Credit

- a. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the Commissioner), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.
 - b. The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.
- F. A specific security provided to a ceding insurer by an assuming insurer pursuant to Section 9 of this regulation shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.

Section 8 Credit for Reinsurance-Certified Reinsurers

- A. Pursuant to Section 10-3-702(6), C.R.S., the Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the Commissioner. The security shall be in a form consistent with the provisions of Section 10-3-702(6), C.R.S., and Section 10-3-703, et. seq., and Sections 11, 12 or 13 of this Regulation. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

1.

Ratings	Security Required
Secure -1	0%
Secure - 2	10%
Secure - 3	20%
Secure - 4	50%
Secure - 5	75%
Vulnerable - 6	100%

- 2. Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.
- 3. The Commissioner shall require the certified reinsurer to post 100%, for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.
- 4. In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first

instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the Commissioner. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

- a. Line 1: Fire
 - b. Line 2: Allied Lines
 - c. Line 3: Farmowners multiple peril
 - d. Line 4: Homeowners multiple peril
 - e. Line 5: Commercial multiple peril
 - f. Line 9: Inland Marine
 - g. Line 12: Earthquake
 - h. Line 21: Auto physical damage
5. Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.
6. Nothing in this section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this section.

B. Certification Procedure.

1. The Commissioner shall post notice on the insurance department's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The Commissioner may not take final action on the application until at least thirty days after posting the notice required by this paragraph.
2. The Commissioner shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice shall be the rating assigned the certified reinsurer in accordance with Subsection A of this section. The Commissioner shall publish a list of all certified reinsurers and their ratings.
3. In order to be eligible for certification, the assuming insurer shall meet the following requirements:
 - a. The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a Qualified Jurisdiction, as determined by the Commissioner pursuant to Subsection C of this section.
 - b. The assuming insurer must maintain capital and surplus, or its equivalent, of no less than \$250,000,000 calculated in accordance with Subparagraph (4)(h) of this subsection. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least \$250,000,000 and a central fund containing a balance of at least \$250,000,000.

c. The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the Commissioner. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the Commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

- (1) Standard & Poor's;
- (2) Moody's Investors Service;
- (3) Fitch Ratings;
- (4) A.M. Best Company; or
- (5) Any other Nationally Recognized Statistical Rating Organization.

d. The certified reinsurer must comply with any other requirements reasonably imposed by the Commissioner.

4. Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating.

Factors that may be considered as part of the evaluation process include, but are not limited to, the following:

a. The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The Commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification:

Ratings	Best	S&P	Moody's	Fitch
Secure -1	A++	AAA	Aaa	AAA
Secure - 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure - 3	A	A+, A	A1, A2	A+, A
Secure - 4	A-	A-	A3	A-
Secure - 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-

Vulnerable -6	B, B- C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

- b. The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;
 - c. For certified reinsurers domiciled in the U.S., a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers);
 - d. For certified reinsurers not domiciled in the U.S., a review annually of Form CR-F (for property/casualty reinsurers) or Form CR-S (for life and health reinsurers) (attached as exhibits to this regulation);
 - e. The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than ninety days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;
 - f. Regulatory actions against the certified reinsurer;
 - g. The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in paragraph (h) below;
 - h. For certified reinsurers not domiciled in the U.S., audited financial statements (audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the non-U.S. jurisdiction supervisor). Upon the initial application for certification, the Commissioner will consider audited financial statements for the last three years filed with its non-U.S. jurisdiction supervisor;
 - i. The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;
 - j. A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. The Commissioner shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and
 - k. Any other information deemed relevant by the Commissioner.
5. Based on the analysis conducted under Subparagraph (4)(e) of a certified reinsurer's reputation for prompt payment of claims, the Commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers, provided that the Commissioner shall, at a minimum, increase

the security the certified reinsurer is required to post by one rating level under Subparagraph (4)(a) if the Commissioner finds that:

- a. more than 15% of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety days or more which are not in dispute and which exceed \$100,000 for each cedent; or
 - b. the aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by ninety days or more exceeds \$50,000,000.
6. The assuming insurer must submit a properly executed Form CR-1 (attached as an exhibit to this regulation) as evidence of its submission to the jurisdiction of this state, appointment of the Commissioner as an agent for service of process in this state, and agreement to provide security for 100% of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment. The Commissioner shall not certify any assuming insurer that is domiciled in a jurisdiction that the Commissioner has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.
7. The certified reinsurer must agree to meet applicable information filing requirements as determined by the Commissioner, both with respect to an initial application for certification and on an ongoing basis. All commercial and financial information submitted by certified reinsurers which are not otherwise public information subject to disclosure shall be exempted from public disclosure under Section 24-72-204(3)(a)(IV), C.R.S. The applicable information filing requirements are, as follows:
 - a. Notification within ten days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefore;
 - b. Annually, Form CR-F or CR-S, as applicable;
 - c. Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in Subsection (d) below;
 - d. Annually, audited financial statements (audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor). Upon the initial certification, audited financial statements for the last three years filed with the certified reinsurer's supervisor;
 - e. At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers;
 - f. A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and
 - g. Any other information that the Commissioner may reasonably require.
8. Change in Rating or Revocation of Certification.

- a. In the case of a downgrade by a rating agency or other disqualifying circumstance, the Commissioner shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of Subparagraph (4) (a).
- b. The Commissioner shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the Commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.
- c. If the rating of a certified reinsurer is upgraded by the Commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the Commissioner shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the Commissioner, the Commissioner shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.
- d. Upon revocation of the certification of a certified reinsurer by the Commissioner, the assuming insurer shall be required to post security in accordance with Section 10 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with Section 7, the Commissioner may allow additional credit equal to the ceding insurer's pro rata share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the Commissioner to be at high risk of uncollectibility.

C. Qualified Jurisdictions.

1. If, upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, the Commissioner determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the Commissioner shall publish notice and evidence of such recognition in an appropriate manner. The Commissioner may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.
2. In order to determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the Commissioner shall evaluate the reinsurance supervisory system of the nonU.S. jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the nonU.S. jurisdiction to reinsurers licensed and domiciled in the U.S. The Commissioner shall determine the appropriate approach for evaluating the qualifications of such jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the Commissioner as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the Commissioner with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the Commissioner, include but are not limited to the following:

- a. The framework under which the assuming insurer is regulated.
 - b. The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.
 - c. The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.
 - d. The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.
 - e. The domiciliary regulator's willingness to cooperate with U.S. regulators in general and the Commissioner in particular.
 - f. The history of performance by assuming insurers in the domiciliary jurisdiction.
 - g. Any documented evidence of substantial problems with the enforcement of final U.S. judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the Commissioner has determined that it does not adequately and promptly enforce final U.S. judgments or arbitration awards.
 - h. Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization.
 - i. Any other matters deemed relevant by the Commissioner.
3. A list of qualified jurisdictions shall be published through the NAIC Committee Process. The Commissioner shall consider this list in determining qualified jurisdictions. If the Commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the Commissioner shall provide thoroughly documented justification with respect to the criteria provided under Subsections 8.C(2)(a) to (i).
 4. U.S. jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

D. Recognition of Certification Issued by an NAIC Accredited Jurisdiction.

1. If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the Commissioner has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed Form CR-1 and such additional information as the Commissioner requires. The assuming insurer shall be considered to be a certified reinsurer in this State.
2. Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this State as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the Commissioner of any change in its status or rating within ten days after receiving notice of the change.
3. The Commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with Subsection B(8) of this section.

4. The Commissioner may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the Commissioner suspends or revokes the certified reinsurer's certification in accordance with Subsection B(8) of this section, the certified reinsurer's certification shall remain in good standing in this State for a period of three months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this State.
- E. **Mandatory Funding Clause.** In addition to the clauses required under Section 14, reinsurance contracts entered into or renewed under this section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.
- F. The Commissioner shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

Section 9 Credit for Reinsurance Required by Law

Pursuant to Section 10-3-702(7), C.R.S., the Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Sections 10-3-702(2,3,4,5,&6), C.R.S, but only as to the insurance of risks located in jurisdictions where the reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means state, district or territory of the United States and any lawful national government.

Section 10 Asset or Reduction from Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer not Meeting the Requirements of Sections 4 through 9

- A Pursuant to Section 10-3-703, C.R.S., the Commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Section 10-3-702, et. seq., C.R.S. in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract. The security shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in Section 10-3-704(2), C.R.S. This security may be in the form of any of the following:
 1. Cash;
 2. Securities listed by the Securities Valuation Office of the NAIC, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;
 3. Clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in Section 10-3-704(1), C.R.S., effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs; or
 4. Any other form of security acceptable to the Commissioner.

- B. An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this section shall be allowed only when the requirements of Section 14 and the applicable portions of Sections 11, 12 or 13 of this regulation have been satisfied.

Section 11 Trust Agreements Qualified under Section 10

- A. As used in this section:

1. "Beneficiary" means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator or liquidator).
2. "Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.
3. "Obligations," as used Subsection B(11) of this section means:
 - a. Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;
 - b. Reserves for reinsured losses reported and outstanding;
 - c. Reserves for reinsured losses incurred but not reported; and
 - d. Reserves for allocated reinsured loss expenses and unearned premiums.

- B. Required conditions.

1. The trust agreement shall be entered into between the beneficiary, the grantor and a trustee, which shall be a qualified United States financial institution as defined in Section 10-3-704(2), C.R.S.
2. The trust agreement shall create a trust account into which assets shall be deposited.
3. All assets in the trust account shall be held by the trustee at the trustee's office in the United States.
4. The trust agreement shall provide that:
 - a. The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;
 - b. No other statement or document is required to be presented to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;
 - c. It is not subject to any conditions or qualifications outside of the trust agreement; and
 - d. It shall not contain references to any other agreements or documents except as provided for in Paragraphs (11) and (12) of this subsection.

5. The trust agreement shall be established for the sole benefit of the beneficiary.
6. The trust agreement shall require the trustee to:
 - a. Receive assets and hold all assets in a safe place;
 - b. Determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any such assets, without consent or signature from the grantor or any other person or entity;
 - c. Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;
 - d. Notify the grantor and the beneficiary within ten (10) days, of any deposits to or withdrawals from the trust account;
 - e. Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and
 - f. Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.
7. The trust agreement shall provide that at least thirty days, but not more than forty-five days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.
8. The trust agreement shall be made subject to and governed by the laws of the state in which the trust is domiciled.
9. The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying commission to, or reimbursing the expenses of, the trustee. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the Commissioner), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.
10. The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.
11. Notwithstanding other provisions of this regulation, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of

the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

- a. To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;
- b. To make payment to the assuming insurer of any amounts held in the trust account that exceed 102% of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or
- c. Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified U.S. financial institution as defined in Section 10-3-704(2), C.R.S. apart from its general assets, in trust for such uses and purposes specified in Subparagraphs (a) and (b) above as may remain executory after such withdrawal and for any period after the termination date.

12. Notwithstanding other provisions of this regulation, when a trust agreement is established to meet the requirements of Section 10 in conjunction with a reinsurance agreement covering life, annuities or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

- a. To pay or reimburse the ceding insurer for:
 - (1) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and
 - (2) The assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;
- b. To pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or
- c. Where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified U.S. financial institution apart from its general assets, in trust for the uses and purposes specified in Subparagraphs (a)

and (b) of this paragraph as may remain executory after withdrawal and for any period after the termination date.

13. Either the reinsurance agreement or the trust agreement must stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the Insurance Code or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed 5% of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities or accident and health risks, then the provisions required by this paragraph must be included in the reinsurance agreement.

C. Permitted conditions.

1. The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than ninety days after the beneficiary and grantor receive the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than ninety days after the trustee and the beneficiary receive the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.
2. The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.
3. The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions that the trustee determines are at least equal in current fair market value to the assets withdrawn and that are consistent with the restrictions in Subsection D(1)(b) of this section.
4. The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.
5. The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered over to the grantor.

D. Additional conditions applicable to reinsurance agreements:

1. A reinsurance agreement may contain provisions that:
 - a. Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover;

- b. Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;
- c. Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and
- d. Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(1) To pay or reimburse the ceding insurer for:

- (a) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;
- (b) The assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; and
- (c) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;

(2) To make payment to the assuming insurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

2. The reinsurance agreement also may contain provisions that:

- a. Give the assuming insurer the right to seek approval from the ceding insurer, which shall not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:
 - (1) The assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a current fair market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or
 - (2) After withdrawal and transfer, the current fair market value of the trust account is no less than 102% of the required amount.

- b. Provide for the return of any amount withdrawn in excess of the actual amounts required for Paragraph (1)(d) of this subsection, and for interest payments at a rate not in excess of the prime rate of interest on such amounts;
 - c. Permit the award by any arbitration panel or court of competent jurisdiction of:
 - (1) Interest at a rate different from that provided in Subparagraph (b) of this paragraph;
 - (2) Court or arbitration costs;
 - (3) Attorney's fees; and
 - (4) Any other reasonable expenses.
- E. Financial reporting. A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department in compliance with the provisions of this regulation when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.
- F. Existing agreements. Notwithstanding the effective date of this regulation, any trust agreement or underlying reinsurance agreement in existence prior to January 1, 2015 will continue to be acceptable until January 1, 2016, at which time the agreements will have to fully comply with this regulation for the trust agreement to be acceptable.
- G. The failure of any trust agreement to specifically identify the beneficiary as defined in Subsection A of this section shall not be construed to affect any actions or rights that the Commissioner may take or possess pursuant to the provisions of the laws of this state.

Section 12 Letters of Credit Qualified under Section 10

- A. The letter of credit must be clean, irrevocable, unconditional and issued or confirmed by a qualified United States financial institution as defined in Section 10-3-704(1), C.R.S. The letter of credit shall contain an issue date and expiration date and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit also shall indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities, except as provided in Subsection I(1) of this section. As used in this section, "beneficiary" means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator or liquidator).
- B. The heading of the letter of credit may include a boxed section containing the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.

- C. The letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.
- D. The term of the letter of credit shall be for at least one year and shall contain an "evergreen clause" that prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" shall provide for a period of no less than thirty days' notice prior to expiration date or nonrenewal.
- E. The letter of credit shall state whether it is subject to and governed by the laws of this state or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600 (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), or any successor publication, and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution.
- F. If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600 (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), or any successor publication, then the letter of credit shall specifically address and provide for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 36 of Publication 600 or any other successor publication, occur.
- G. If the letter of credit is issued by a financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in Subsection A of this section, then the following additional requirements shall be met:
 - 1. The issuing financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and
 - 2. The "evergreen clause" shall provide for thirty days' notice prior to expiration date for nonrenewal.
- H. Reinsurance agreement provisions.
 - 1. The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions that:
 - a. Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover;
 - b. Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:
 - (1) To pay or reimburse the ceding insurer for:
 - (a) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;

- (b) The assuming insurer's share, under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement; and
 - (c) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;
 - (2) Where the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and where the assuming insurer's entire obligations under the reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified U.S. financial institution apart from its general assets, in trust for such uses and purposes specified in Subsection H(1)(b)(i) of this section as may remain after withdrawal and for any period after the termination date.
- c. All of the provisions of Paragraph (1) of this subsection shall be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.
- 2. Nothing contained Paragraph (1) of this subsection shall preclude the ceding insurer and assuming insurer from providing for:
 - a. An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to Subparagraph (1)(b) of this subsection; or
 - b. The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or any amounts that are subsequently determined not to be due.

Section 13 Other Security

A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

Section 14 Reinsurance Contract

Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of Sections 4, 5, 6, 7, 8 or 10 of this regulation or otherwise in compliance with Section 10-3-702, et. seq. after the adoption of this regulation unless the reinsurance agreement:

- A. Includes a proper insolvency clause, which stipulates that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company, pursuant to Section 10-3-531, C.R.S.;
- B. Includes a provision pursuant to Section 10-3-702, et. seq., whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply

with all requirements necessary to give the court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of the court or panel; and

- C. Includes a proper reinsurance intermediary clause, if applicable, which stipulates that the credit risk for the intermediary is carried by the assuming insurer.

Section 15 Contracts Affected

All new and renewal reinsurance transactions entered into after January 1, 2015, shall conform to the requirements of Sections 10-3-701 through 10-3-706, C.R.S., and this regulation if credit is to be given to the ceding insurer for such reinsurance.

Section 16 Severability

If any provision of this regulation or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of this regulation shall not be affected.

Section 17 Enforcement

Noncompliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocation of license, subject to the requirements of due process.

Section 18 Effective Date

This regulation shall become effective on January 1, 2015.

Section 19 History

New regulation effective January 1, 2015

FORM AR-1

CERTIFICATE OF ASSUMING INSURER

I, _____
(name of officer) _____ (title of officer)

of _____, the assuming insurer
(name of assuming insurer)

under a reinsurance agreement with one or more insurers domiciled in

_____, hereby certify that
(name of state)

_____, ("Assuming Insurer")
(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in _____
(Ceding Insurer's state of domicile)

for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement.

2. Designates the Insurance Commissioner of _____
(ceding insurer's state of domicile)

as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.

3. Submits to the authority of the Insurance Commissioner of _____ to
(ceding insurer's state of domicile)

examine its books and records and agrees to bear the expense of any such examination.

4. Submits with this form a current list of insurers domiciled in _____
(ceding insurer's state of domicile)

reinsured by Assuming Insurer and undertakes to submit additions to or deletions from the list to the Insurance Commissioner at least once per calendar quarter.

Dated: _____

(name of assuming insurer)

BY _____
(name of officer)

(title of officer)

FORM CR-1

CERTIFICATE OF CERTIFIED REINSURER

I, _____, _____
(name of officer) (title of officer)

of _____, the assuming insurer
(name of assuming insurer)

under a reinsurance agreement with one or more insurers domiciled in _____
(name of state)

in order to be considered for approval in this state, hereby certify that

_____, ("Assuming insurer"):
(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in _____
(ceding insurer's state of domicile)

for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement.

2. Designates the Insurance Commissioner of _____
(ceding insurer's state of domicile)

as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.

3. Agrees to provide security in an amount equal to 100% of liabilities attributable to U.S. ceding insurers if it resists enforcement of a final U.S. judgment or properly enforceable arbitration award.
4. Agrees to provide notification within ten days of any regulatory actions taken against it, any change in the provisions of its domiciliary license or any change in its rating by an approved rating agency, including a statement describing such changes and the reasons therefore.
5. Agrees to annually file information comparable to relevant provisions of the NAIC financial statement for use by insurance markets in accordance with Section 10-3-701, et. seq.
6. Agrees to annually file the report of the independent auditor on the financial statements of the insurance enterprise.
7. Agrees to annually file audited financial statements, regulatory filings, and actuarial opinion in accordance with Colorado Insurance Regulation 3-3-3(Section 8(B)(7)(d).

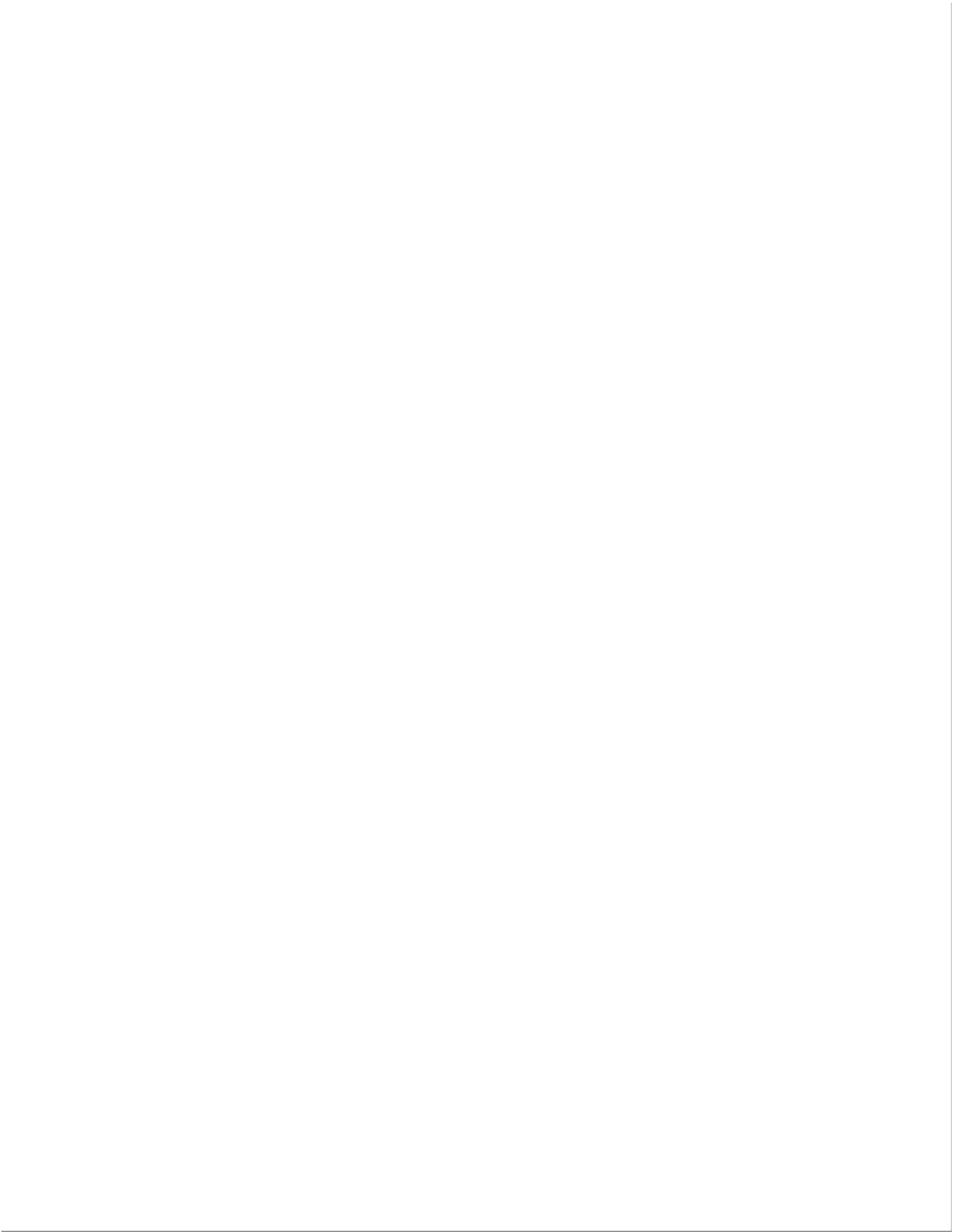
8. Agrees to annually file an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers.
9. Is in good standing as an insurer or reinsurer with the supervisor of its domiciliary jurisdiction.

Dated: _____

(name of assuming insurer)

(name of officer)

(title of officer)



1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
Company Code or ID Number	Name of Reinsurer	Domicile Jurisdiction	Reinsurance Contract No. & Date of Policy	Reinsured's Direct Premium Written	Reinsured's Premiums Coded	Paid Losses	Paid LAE	Known Case Loss Reserves	Known Case LAE Reserves	IBNR Loss Reserves	IBNR LAE Reserves	Unearned Premiums	Contingent Commission	Cols. 7 through 14 Totals	Coded Balances Payable	Other Amounts Due to Reinsurers	Net Amount Recoverable From Reinsurers [16 + 17]	Funds Held by Company Under Reinsurance Treaties
00000000000000000000	00000000000000000000	00000000000000000000	00000000000000000000	00000000000000000000	00000000000000000000	00000000000000000000	00000000000000000000	00000000000000000000	00000000000000000000	00000000000000000000	00000000000000000000	00000000000000000000	00000000000000000000	00000000000000000000	00000000000000000000	00000000000000000000	00000000000000000000	00000000000000000000

Form CR-S - PART 1 - SECTION 1
Reinsurance Assumed Life Insurance, Annuities, Deposit Funds and Other Liabilities
Without Life or Disability Contingencies, and Related Benefits Listed by Reinsured Company as of December 31, Current Year

[illegible]

Total

Form CR-S - PART 2
Reinsurance Recoverable on Paid and Unpaid Losses Listed by Reinsuring Company as of December 31, Current Year

[illegible]

Totals—Life, Annuity and Accident and Health

Form CR-S – PART 3 – SECTION 1
Reinsurance Ceded Life Insurance, Annuities, Deposit Funds and Other Liabilities
Without Life or Disability Contingencies, and Related Benefits Listed by Reinsuring Company as of December 31, Current Year

[illegible]

FORM CR-S

Form CR-S - PART 3 - SECTION 2
Reinsurance Ceded Accident and Health Insurance Listed by Reinsuring Company as of December 31, Current Year

1 Company Code or ID Number	2	3 Effective Date	4 Name of Company	5 Location	6 Type	7 Premiums	8 Unearned Premiums (Guaranty)	9 Reserve Credit Taken Other than for Unearned Premiums	10 Outstanding Surplus Relief		12 Modified Insurance Reserve	13 Funds Withheld Under Contract
									Current Year	Prior Year		
1	100											

Notice of Rulemaking Hearing

Tracking number

2014-01067

Department

700 - Department of Regulatory Agencies

Agency

702 - Division of Insurance

CCR number

3 CCR 702-3

Rule title

FINANCIAL ISSUES

Rulemaking Hearing**Date**

11/05/2014

Time

10:00 AM

Location

1560 Broadway, Ste 850, Denver CO 80202

Subjects and issues involved

3-4-1 HOLDING COMPANY SYSTEM REGULATION WITH REPORTING FORMS AND INSTRUCTIONS

Statutory authority

10-1-109(1) and 10-3-809, C.R.S.

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DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-3

FINANCIAL ISSUES

Proposed Repeal and Repromulgation of Regulation 3-4-1

HOLDING COMPANY SYSTEM REGULATION WITH REPORTING FORMS AND INSTRUCTIONS

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Section 1 **Authority**

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109(1) and 10-3-809, C.R.S.

Section 2 **Scope and Purpose**

The purpose of this regulation is to set forth rules and procedural requirements which the Commissioner deems necessary to carry out the provisions of the Insurance Holding Company Systems Act, Part 8 of Article 3 of Title 10 of the Colorado Revised Statutes. The information called for by this regulation is hereby declared to be necessary and appropriate in the public interest and for the protection of the policyholders in this State.

Section 3 Applicability

This regulation shall apply to all Colorado domestic insurers as well as to each domestic group captive insurer, fraternal benefit society, health maintenance organization, prepaid dental care plan organization, non-profit hospital, medical-surgical and health service corporation, and title insurance company.

Section 4 Definitions

- A. "Executive officer" means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller, and any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.
- B. "Ultimate controlling person" means that person which is not controlled by any other person.
- C. Unless the context otherwise requires, other terms found in this regulation and in § 10-3-801, C.R.S. are used as defined in the said section. Other nomenclature or terminology is according to the Insurance Code, or industry usage if not defined by the Code.

Section 5 Forms – General Requirements

- A. Forms A, B, C, D, E and F are intended to be guides in the preparation of the statements required by §§ 10-3-803, 10-3-803.5, 10-3-804, and 10-3-805, C.R.S. They are not intended to be blank forms which are to be filled in. The statements filed shall contain the numbers and captions of all items, but the text of the items may be omitted provided the answers thereto are prepared in such a manner as to indicate clearly the scope and coverage of the items. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.
- B. Three complete copies of each statement including exhibits and all other papers and documents filed as a part thereof, shall be filed with the Commissioner. At least one of the copies shall be signed in the manner prescribed on the form. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of the power of attorney or other authority shall also be filed with the statement.
- C. If an applicant requests a hearing on a consolidated basis under 10-3-803(8)(e), C.R.S., in addition to filing the Form A with the commissioner, the applicant shall file a copy of Form A with the National Association of Insurance Commissioners in electronic form.
- D. Statements should be prepared electronically. Statements shall be easily readable and suitable for review and reproduction. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies. Statements shall be in the English language and monetary values shall be stated in United States currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency normally shall be converted into United States currency.

Section 6 Forms -Incorporation by Reference, Summaries and Omissions

- A. Information required by any item of Form A, Form B, Form D, Form E or Form F may be incorporated by reference in answer or partial answer to any other item. Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item of Form A, Form B, Form D, Form E or Form F provided the document is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits if the documents are extensive. Documents currently on file with the Commissioner which were filed within three years need not be attached as exhibits. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that such material is to be incorporated by reference in answer to the item. Matter shall not be incorporated by reference in any case where the incorporation would render the statement incomplete, unclear or confusing.
- B. Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document. In addition to the statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the Commissioner which was filed within three years and may be qualified in its entirety by such reference. In any case where two or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, a copy of only one of the documents need be filed with a schedule identifying the omitted documents and setting forth the material details in which the documents differ from the documents, a copy of which is filed.

Section 7 Forms-Information Unknown or Unavailable and Extension of Time to Furnish

If it is impractical to furnish any required information, document or report at the time it is required to be filed, there shall be filed with the Commissioner a separate document:

- A. Identifying the information, document or report in question;
- B. Stating why the filing thereof at the time required is impractical; and
- C. Requesting an extension of time for filing the information, document or report to a specified date. The request for extension shall be deemed granted unless the Commissioner within 60 days after receipt thereof enters an order denying the request.

Section 8 Forms - Additional Information and Exhibits

In addition to the information expressly required to be included in Form A, Form B, Form C, Form D, Form E and Form F, the Commissioner may request such further material information, if any, as may be necessary to make the information contained therein not misleading. The person filing may also file such exhibits as it may desire in addition to those expressly required by the statement. The exhibits shall be so marked as to indicate clearly the subject matters to which they refer. Changes to Forms A, B, C, D, E or F shall include on the top of the cover page the phrase: "Change No. (insert number) to" and shall indicate the date of the change and not the date of the original filing.

Section 9 Subsidiaries of Domestic Insurers

The authority to invest in subsidiaries under 10-3-802(2), C.R.S. is in addition to any authority to invest in subsidiaries which may be contained in any other provision of the Insurance Code.

Section 10 Acquisition of Control - Statement Filing

A person required to file a statement pursuant to § 10-3-803, C.R.S. shall furnish the required information on Form A, hereby made a part of this regulation. Such person shall also furnish the required information on Form E, hereby made a part of this regulation and described in Section 13 of this regulation.

Section 11 Amendments to Form A

The applicant shall promptly advise the Commissioner of any changes in the information furnished on Form A arising subsequent to the date upon which the information was furnished but prior to the Commissioner's disposition of the application.

Section 12 Acquisition of Section 10-3-803(1)(c), C.R.S. Insurers

- A. If the person being acquired is deemed to be a "domestic insurer" solely because of the provisions of § 10-3-803(1)(c), C.R.S., the name of the domestic insurer on the cover page should be indicated as follows:

"ABC Insurance Company, a subsidiary of XYZ Holding Company."

- B. Where a § 10-3-803(1)(c), C.R.S. insurer is being acquired, references to "the insurer" contained in Form A shall refer to both the domestic subsidiary insurer and the person being acquired.

Section 13 Pre-Acquisition Notification

If a domestic insurer, including any person controlling a domestic insurer, is proposing a merger or acquisition pursuant to § 10-3-803(1), C.R.S., that person shall file a pre-acquisition notification form, Form E, which was developed pursuant to § 10-3-803.5(3)(b), C.R.S.

Additionally, if a non-domiciliary insurer licensed to do business in this state is proposing a merger or acquisition pursuant to § 10-3-803.5, C.R.S., that person shall file a pre-acquisition notification form, Form E. No pre-acquisition notification form need be filed if the acquisition is beyond the scope of § 10-3-803.5, C.R.S., as set forth in § 10-3-803.5(2)(b), C.R.S.

In addition to the information required by Form E, the Commissioner may wish to require an expert opinion as to the competitive impact of the proposed acquisition.

Section 14 Annual Registration of Insurers- Statement Filing

An insurer required to file an annual registration statement pursuant to § 10-3-804, C.R.S., shall furnish the required information on Form B, hereby made a part of this regulation.

Section 15 Summary of Registration - Statement Filing

An insurer required to file an annual registration statement pursuant to § 10-3-804, C.R.S., is also required to furnish information required on Form C, hereby made a part of this regulation.

Section 16 Amendments to Form B

- A. An amendment to Form B shall be filed within fifteen days after the end of any month in which there is a material change to the information provided in the annual registration statement.
- B. Amendments shall be filed in the Form B format with only those items which are being amended reported. Each amendment shall include at the top of the cover page "Amendment No. (insert number) to Form B for (insert year)" and shall indicate the date of the change and not the date of the original filings.

Section 17 Alternative and Consolidated Registrations

- A. Any authorized insurer may file a registration statement on behalf of any affiliated insurer or insurers which are required to register under § 10-3-804, C.R.S. A registration statement may include information not required by § 10-3-804, C.R.S. regarding any insurer in the insurance holding company system even if the insurer is not authorized to do business in this State. In lieu of filing a registration statement on Form B, the authorized insurer may file a copy of the registration statement or similar report which it is required to file in its state of domicile, provided:
 - 1. The statement or report contains substantially similar information required to be furnished on Form B; and
 - 2. The filing insurer is the principal insurance company in the insurance holding company system.
- B. The question of whether the filing insurer is the principal insurance company in the insurance holding company system is a question of fact and an insurer filing a registration statement or report in lieu of Form B on behalf of an affiliated insurer, shall set forth a brief statement of facts which will substantiate the filing insurer's claim that it, in fact, is the principal insurer in the insurance holding company system.
- C. With the prior approval of the Commissioner, an unauthorized insurer may follow any of the procedures which could be done by an authorized insurer under Subsection A above.
- D. Any insurer may take advantage of the provisions of §§ 10-3-804(8) and 10-3-804(9), C.R.S. without obtaining the prior approval of the Commissioner. The Commissioner, however, reserves the right to require individual filings if he or she deems such filings necessary in the interest of clarity, ease of administration or the public good.

Section 18 Disclaimers and Termination of Registration

- A. A disclaimer of affiliation or a request for termination of registration claiming that a person does not, or will not upon the taking of some proposed action, control another person (hereinafter referred to as the "subject") shall contain the following information:
 - 1. The number of authorized, issued and outstanding voting securities of the subject;
 - 2. With respect to the person whose control is denied and all affiliates of such person, the number and percentage of shares of the subject's voting securities which are held of record or known to be beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly;
 - 3. All material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of such person;
 - 4. A statement explaining why the person should not be considered to control the subject.
- B. A request for termination of registration shall be deemed to have been granted unless the Commissioner, within 30 days after receipt of the request, notifies the registrant otherwise.

Section 19 Transactions Subject to Prior Notice - Notice Filing

- A. An insurer required to give notice of a proposed transaction pursuant to § 10-3-805, C.R.S. shall furnish the required information on Form D, hereby made a part of this regulation.

- B. Agreements for cost sharing services and management services shall at a minimum and as applicable:
1. Identify the person providing services and the nature of such services;
 2. Set forth the methods to allocate costs;
 3. Require timely settlement, not less frequently than on a quarterly basis, and compliance with the requirements in the Accounting Practices and Procedures Manual;
 4. Prohibit advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement;
 5. State that the insurer will maintain oversight for functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance;
 6. Define books and records of the insurer to include all books and records developed or maintained under or related to the agreement;
 7. Specify that all books and records of the insurer are and remain the property of the insurer and are subject to control of the insurer;
 8. State that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer and are subject to the control of the insurer;
 9. Include standards for termination of the agreement with and without cause;
 10. Include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services;
 11. Specify that, if the insurer is placed in receivership or seized by the Commissioner under Section 10-3-501, et. seq., C.R.S.:
 - a. All of the rights of the insurer under the agreement extend to the receiver or Commissioner; and,
 - b. All books and records will immediately be made available to the receiver or the Commissioner, and shall be turned over to the receiver or Commissioner immediately upon the receiver or the Commissioner's request;
 12. Specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed in receivership pursuant to Section 10-3-501, et. seq., C.R.S.; and
 13. Specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding a seizure by the Commissioner under Section 10-3-501, et. seq., C.R.S., and will make them available to the receiver, for so long as the affiliate continues to receive timely payment for services rendered.

Section 20 Enterprise Risk Report

The ultimate controlling person of an insurer required to file an enterprise risk report pursuant to § 10-3-804(12), C.R.S. shall furnish the required information on Form F, hereby made a part of this regulation.

Section 21 Extraordinary Dividends and Other Distributions

- A. Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following:
1. The amount of the proposed dividend;
 2. The date established for payment of the dividend;
 3. A statement as to whether the dividend is to be in cash or other property and, if in property, a description thereof, its cost, and its fair market value together with an explanation of the basis for valuation;
 4. A copy of the calculations determining that the proposed dividend is extraordinary. The work paper shall include the following information:
 - a. The amounts, dates and form of payment of all dividends or distributions (including regular dividends but excluding distributions of the insurer's own securities) paid within the period of twelve consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year;
 - b. Surplus as regards policyholders (total capital and surplus) as of the 31st day of December next preceding;
 - c. If the insurer is a life insurer, the net gain from operations for the 12- month period ending the 31st day of December next preceding;
 - d. If the insurer is not a life insurer, the net income less realized capital gains for the 12-month period ending the 31st day of December next preceding and the two preceding 12-month periods; and
 - e. If the insurer is not a life insurer, the dividends paid to stockholders excluding distributions of the insurer's own securities in the preceding two calendar years;
 5. A balance sheet and statement of income for the period intervening from the last Annual Statement filed with the Commissioner and the end of the month preceding the month in which the request for dividend approval is submitted; and
 6. A brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs.
- B. Subject to § 10-3-805(2), C.R.S., each registered insurer shall report to the Commissioner all dividends and other distributions to shareholders within fifteen business days following the declaration thereof, including the same information required by Subsection A(4).

Section 22 Adequacy of Surplus

The factors set forth in § 10-3-805(3), C.R.S. are not intended to be an exhaustive list. In determining the adequacy and reasonableness of an insurer's surplus, no single factor is necessarily controlling. The Commissioner instead will consider the net effect of all of these factors plus other factors bearing on the financial condition of the insurer. In comparing the surplus maintained by other insurers, the Commissioner will consider the extent to which each of these factors varies from company to company and in determining the quality and liquidity of investments in subsidiaries, the Commissioner will consider

the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.

Section 23 Severability

If any provision of this regulation or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of this regulation shall not be affected.

Section 24 Enforcement

Noncompliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocation of license, subject to the requirements of due process.

Section 25 Effective Date

This regulation shall become effective on January 1, 2015.

Section 26 History

Amended, effective April 30, 1995.

Amended, effective April 1, 2001.

Amended effective July 1, 2012.

Amended regulation effective January 1, 2015

APPENDIX A
FORM A
STATEMENT REGARDING THE
ACQUISITION OF CONTROL OF OR MERGER WITH A DOMESTIC INSURER

Name of Domestic Insurer

BY

Name of Acquiring Person (Applicant)

Filed with the Insurance Department of

(State of domicile of insurer being acquired)

Dated: _____, 20____.

Name, Title, address and telephone number of Individual to Whom Notices and Correspondence
Concerning this Statement Should be Addressed:

ITEM 1. METHOD OF ACQUISITION

State the name and address of the domestic insurer to which this application relates and a brief description of how control is to be acquired.

ITEM 2. IDENTITY AND BACKGROUND OF THE APPLICANT

State the name and address of the applicant seeking to acquire control over the insurer.

If the applicant is not an individual, state the nature of its business operations for the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence. Briefly describe the business intended to be done by the applicant and the applicant's subsidiaries.

Furnish a chart or listing clearly presenting the identities of the interrelationships among the applicant and all affiliates of the applicant. Indicate in such chart or listing the percentage of voting securities of each such person which is owned or controlled by the applicant or by any other such person. If control of any

person is maintained other than by the ownership or control of voting securities, indicate the basis of such control. As to each person specified in such chart or listing indicate the type of organization (e.g. corporation, trust, partnership) and the state or other jurisdiction of domicile. If court proceedings involving a reorganization or liquidation are pending with respect to any such person, indicate which person, and set forth the title of the court, nature of proceedings and the date when commenced.

ITEM 3. IDENTITY AND BACKGROUND OF INDIVIDUALS ASSOCIATED WITH THE APPLICANT

On the biographical affidavit, include a third party background check, and state the following with respect to (1) the applicant if (s)he is an individual, or (2) all persons who are directors, executive officers or owners of 10% or more of the voting securities of the applicant if the applicant is not an individual.

Name and business address.

Present principal business activity, occupation or employment including position and office held and the name, principal business and address of any corporation or other organization in which such employment is carried on.

Material occupations, positions, offices or employment during the last five years, giving the starting and ending dates of each and the name, principal business and address of any business corporation or other organization in which each such occupation, position, office or employment was carried on; if any such occupation, position, office or employment required licensing by or registration with any federal, state or municipal governmental agency, indicate such fact, the current status of such licensing or registration, and an explanation of any surrender, revocation, suspension or disciplinary proceedings in connection therewith.

Whether or not such person has ever been convicted in a criminal proceeding (excluding minor traffic violations) during the last ten years and, if so, give the date, nature of conviction, name and location of court, and penalty imposed or other disposition of the case.

ITEM 4. NATURE, SOURCE AND AMOUNT OF CONSIDERATION

Describe the nature, source and amount of funds or other considerations used or to be used in effecting the merger or other acquisition of control. If any part of the same is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding or trading securities, furnish a description of the transaction, the names of the parties thereto, the relationship, if any, between the borrower and the lender, the amounts borrowed or to be borrowed, and copies of all agreements, promissory notes and security arrangements relating thereto.

Explain the criteria used in determining the nature and amount of such consideration.

If the source of the consideration is a loan made in the lender's ordinary course of business and if the applicant wishes the identity of the lender to remain confidential, he must specifically request that the identity be kept confidential.

ITEM 5. FUTURE PLANS OF INSURER

Describe any plans or proposals which the applicant may have to declare an extraordinary dividend, to liquidate the insurer, to sell its assets to or merge it with any person or persons or to make any other material change in its business operations or corporate structure or management.

ITEM 6. VOTING SECURITIES TO BE ACQUIRED

State the number of shares of the insurer's voting securities which the applicant, its affiliates and any person listed in Item 3 plan to acquire, and the terms of the offer, request, invitation, agreement or acquisition, and a statement as to the method by which the fairness of the proposal was arrived at.

ITEM 7. OWNERSHIP OF VOTING SECURITIES

State the amount of each class of any voting security of the insurer which is beneficially owned or concerning which there is a right to acquire beneficial ownership by the applicant, its affiliates or any person listed in Item 3.

ITEM 8. CONTRACTS, ARRANGEMENTS, OR UNDERSTANDINGS WITH RESPECT TO VOTING SECURITIES OF THE INSURER

Give a full description of any contracts, arrangements or understandings with respect to any voting security of the insurer in which the applicant, its affiliates or any person listed in Item 3 is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom the contracts, arrangements or understandings have been entered into.

ITEM 9. RECENT PURCHASES OF VOTING SECURITIES

Describe any purchases of any voting securities of the insurer by the applicant, its affiliates or any person listed in Item 3 during the twelve calendar months preceding the filing of this statement. Include in the description the dates of purchase, the names of the purchasers, and the consideration paid or agreed to be paid therefor. State whether any shares so purchased are hypothecated.

ITEM 10. RECENT RECOMMENDATIONS TO PURCHASE

Describe any recommendations to purchase any voting security of the insurer made by the applicant, its affiliates or any person listed in Item 3, or by anyone based upon interviews or at the suggestion of the applicant, its affiliates or any person listed in Item 3 during the twelve calendar months preceding the filing of this statement.

ITEM 11. AGREEMENTS WITH BROKER-DEALERS

Describe the terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of voting securities of the insurer for tender and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.

ITEM 12. FINANCIAL STATEMENTS AND EXHIBITS

Financial statements, exhibits, and three year financial projections of the insurer(s) shall be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.

The financial statements shall include the annual financial statements of the persons identified in Item 2(c) for the preceding five fiscal years (or for such lesser period as such applicant and its affiliates and any predecessors thereof shall have been in existence), and similar information covering the period from the end of such person's last fiscal year, if the information is available. The statements may be prepared on either an individual basis, or, unless the Commissioner otherwise requires, on a consolidated basis if consolidated statements are prepared in the usual course of business.

The annual financial statements of the applicant shall be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the applicant is an insurer which is actively engaged in the business of insurance, the financial statements need not be certified, provided they are based on the Annual Statement of the person filed with the insurance department of the person's domiciliary state and are in accordance with the requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of the state.

File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer and (if distributed) of additional soliciting material relating thereto, any proposed employment, consultation, advisory or management contracts concerning the insurer, annual reports to the stockholders of the insurer and the applicant for the last two fiscal years, and any additional documents or papers required by Form A or Regulation 3-4-1(Sections 5 and 7).

ITEM 13. AGREEMENT REQUIREMENTS FOR ENTERPRISE RISK MANAGEMENT

Applicant agrees to provide, to the best of its knowledge and belief, the information required by Form F within fifteen days after the end of the month in which the acquisition of control occurs.

ITEM 14. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of Section 10-3-804, C.R.S. has caused this application to be duly signed on its behalf in the City of _____ and State of _____ on the _____ day of _____, 20____.

(SEAL) _____

Name of Applicant

BY _____

(Name) (Title)

Attest:

(Signature of Officer)

(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached application date _____, 20____, for and on behalf of _____(Name of Applicant); that (s)he is the (Title of Officer) of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature) _____

(Type or print name beneath) _____

APPENDIX B

FORM B

INSURANCE HOLDING COMPANY SYSTEM ANNUAL REGISTRATION STATEMENT

Filed with the Insurance Department of the State of _____

By

Name of Registrant

On Behalf of Following Insurance Companies

Name	Address

_____	_____
_____	_____
_____	_____
_____	_____

Date: _____, 20____

Name, Title, Address and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Should Be Addressed:

ITEM 1. IDENTITY AND CONTROL OF REGISTRANT

Furnish the exact name of each insurer registering or being registered (hereinafter called "the Registrant"), the home office address and principal executive offices of each; the date on which each registrant became part of the insurance holding company system; and the method(s) by which control of each registrant was acquired and is maintained.

ITEM 2. ORGANIZATIONAL CHART

Furnish a chart or listing clearly presenting the identities of and interrelationships among all affiliated persons within the insurance holding company system. The chart or listing should show the percentage of each class of voting securities of each affiliate which is owned, directly or indirectly, by another affiliate. If control of any person within the system is maintained other than by the ownership or control of voting securities, indicate the basis of control. As to each person specified in the chart or listing indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile.

ITEM 3. THE ULTIMATE CONTROLLING PERSON

As to the ultimate controlling person in the insurance holding company system furnish the following information:

Name;

Home office address;

Principal executive office address;

The organizational structure of the person, i.e., corporation, partnership, individual, trust, etc.;

The principal business of the person;

The name and address of any person who holds or owns 10% or more of any class of voting security, the class of such security, the number of shares held of record or known to be beneficially owned, and the percentage of class so held or owned; and

If court proceedings involving a reorganization or liquidation are pending, indicate the title and location of the court, the nature of proceedings and the date when commenced.

ITEM 4. BIOGRAPHICAL INFORMATION

If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, furnish the following information for the directors and executive officers of the ultimate controlling person: the individual's name and address, his or her principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations. If the ultimate controlling person is an individual, furnish the individual's name and address, his or her principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations.

ITEM 5. TRANSACTIONS AND AGREEMENTS

Briefly describe the following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between the registrant and its affiliates:

Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the Registrant or of the Registrant by its affiliates;

Purchases, sales or exchanges of assets;

Transactions not in the ordinary course of business;

Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the Registrant's assets to liability, other than insurance contracts entered into in the ordinary course of the registrant's business;

All management agreements, service contracts and all cost-sharing arrangements;

Reinsurance agreements;

Dividends and other distributions to shareholders;

Consolidated tax allocation agreements; and

Any pledge of the registrant's stock and/or of the stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

No information need be disclosed if such information is not material for purposes of Section 10-3-804, C.R.S.

Sales, purchases, exchanges, loans or extensions of credit, investments or guarantees involving one-half of 1% or less of the registrant's admitted assets as of the 31st day of December next preceding shall not be deemed material.

The description shall be in a manner as to permit the proper evaluation thereof by the Commissioner, and shall include at least the following: the nature and purpose of the transaction, the nature and amounts of any payments or transfers of assets between the parties, the identity of all parties to the transaction, and relationship of the affiliated parties to the registrant.

ITEM 6. LITIGATION OR ADMINISTRATIVE PROCEEDINGS

A brief description of any litigation or administrative proceedings of the following types, either then pending or concluded within the preceding fiscal year, to which the ultimate controlling person or any of its directors or executive officers was a party or of which the property of any such person is or was the subject; give the names of the parties and the court or agency in which the litigation or proceeding is or was pending:

Criminal prosecutions or administrative proceedings by any government agency or authority which may be relevant to the trustworthiness of any party thereto; and

Proceedings which may have a material effect upon the solvency or capital structure of the ultimate holding company including, but not necessarily limited to, bankruptcy, receivership or other corporate reorganizations.

ITEM 7. STATEMENT REGARDING PLAN OR SERIES OF TRANSACTIONS

The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions, the purpose of which is to avoid statutory threshold amounts and the review that might otherwise occur.

ITEM 8. FINANCIAL STATEMENTS AND EXHIBITS

Financial statements and exhibits should be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.

If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, the financial statements shall include the annual financial statements of the ultimate controlling person in the insurance holding company system as of the end of the person's latest fiscal year.

If at the time of the initial registration, the annual financial statements for the latest fiscal year are not available, annual statements for the previous fiscal year may be filed and similar financial information shall be filed for any subsequent period to the extent such information is available. Such financial statements may be prepared on either an individual basis; or, unless the Commissioner otherwise requires, on a consolidated basis if consolidated statements are prepared in the usual course of business.

Other than with respect to the foregoing, such financial statement shall be filed in a standard form and format adopted by the National Association of Insurance Commissioners, unless an alternative form is accepted by the Commissioner. Documentation and financial statements filed with the Securities and Exchange Commission or audited generally accepted accounting principles financial statements shall be deemed to be an appropriate form and format.

Unless the Commissioner otherwise permits, the annual financial statements shall be accompanied by the certificate of an independent public accountant to the effect that the statements present fairly the financial position of the ultimate controlling person and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under

law. If the ultimate controlling person is an insurer which is actively engaged in the business of insurance, the annual financial statements need not be certified, provided they are based on the Annual Statement of the insurer's domiciliary state and are in accordance with requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of that state.

Any ultimate controlling person who is an individual may file personal financial statements that are reviewed rather than audited by an independent public accountant. The review shall be conducted in accordance with standards for review of personal financial statements published in the Personal Financial Statements Guide by the American Institute of Certified Public Accountants. Personal financial statements shall be accompanied by the independent public accountant's Standard Review Report stating that the accountant is not aware of any material modifications that should be made to the financial statements in order for the statements to be in conformity with generally accepted accounting principles.

Exhibits shall include copies of the latest annual reports to shareholders of the ultimate controlling person and proxy material used by the ultimate controlling person; and any additional documents or papers required by Form B or Regulation 3-4-1(Sections 5 and 7).

ITEM 9. FORM C REQUIRED

A Form C, Summary of Changes to Registration Statement, must be prepared and filed with this Form B.

ITEM 10. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of Section 10-3-804, C.R.S. has caused this application to be duly signed on its behalf in the City of _____ and State of _____ on the _____ day of _____, 20____.

(SEAL)_____

Name of Applicant

BY _____

(Name) (Title)

Attest:

(Signature of Officer)

(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached application dated _____, 20____, for and on behalf of _____(Name of Applicant); that (s)he is the _____(Title of Officer) of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is

familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature)_____

(Type or print name beneath)_____

APPENDIX C
FORM C
SUMMARY OF CHANGES TO REGISTRATION STATEMENT

Filed with the Insurance Department of the State of _____

By

Name of Registrant

On Behalf of Following Insurance Companies

Name Address

Date: _____, 20____

Name, Title, Address and telephone number of Individual to Whom Notices and Correspondence
Concerning This Statement Should Be Addressed:

Furnish a brief description of all items in the current annual registration statement which represent changes from the prior year's annual registration statement. The description shall be in a manner as to permit the proper evaluation thereof by the Commissioner, and shall include specific references to Item numbers in the annual registration statement and to the terms contained therein.

Changes occurring under Item 2 of Form B insofar as changes in the percentage of each class of voting securities held by each affiliate is concerned, need only be included where such changes are ones which result in ownership or holdings of 10% or more of voting securities, loss or transfer of control, or acquisition or loss of partnership interest.

Changes occurring under Item 4 of Form B need only be included where an individual is, for the first time, made a director or executive officer of the ultimate controlling person; a director or executive officer terminates his or her responsibilities with the ultimate controlling person; or in the event an individual is named president of the ultimate controlling person.

If a transaction disclosed on the prior year's annual registration statement has been changed, the nature of such change shall be included. If a transaction disclosed on the prior year's annual registration statement has been effectuated, furnish the mode of completion and any flow of funds between affiliates resulting from the transaction.

The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions whose purpose it is to avoid statutory threshold amounts and the review that might otherwise occur.

ITEM 10. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

Pursuant to the requirements of Section 10-3-804, C.R.S. has caused this application to be duly signed on its behalf in the City of _____ and State of _____ on the _____ day of _____, 20____.

(SEAL) _____
Name of Applicant

BY _____
(Name) (Title)

Attest:

(Signature of Officer)

(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached application dated _____, 20____, for and on behalf of (Name of Applicant); that (s)he is the (Title of Officer) of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature) _____

(Type or print name beneath) _____

APPENDIX D

FORM D

PRIOR NOTICE OF A TRANSACTION

Filed with the Insurance Department of the State of _____

By

Name of Registrant

On Behalf of Following Insurance Companies

Name	Address

_____	_____
_____	_____
_____	_____
_____	_____

Date: _____, 20____

Name, Title, Address and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Should Be Addressed:

ITEM 1. IDENTITY OF PARTIES TO TRANSACTION

Furnish the following information for each of the parties to the transaction:

Name;

Home office address;

Principal executive office address;

The organizational structure, i.e. corporation, partnership, individual, trust, etc.;

A description of the nature of the parties' business operations;

Relationship, if any, of other parties to the transaction to the insurer filing the notice, including any ownership or debtor/creditor interest by any other parties to the transaction in the insurer seeking approval, or by the insurer filing the notice in the affiliated parties;

Where the transaction is with a non-affiliate, the name(s) of the affiliate(s) which will receive, in whole or in substantial part, the proceeds of the transaction.

ITEM 2. DESCRIPTION OF THE TRANSACTION

Furnish the following information for each transaction for which notice is being given:

A statement as to whether notice is being given under Section 10-3-805(1)(b), C.R.S.;

A statement of the nature of the transaction;

A statement of how the transaction meets the 'fair and reasonable' standard of Section 10-3-805(1)(a)(I), C.R.S.; and

The proposed effective date of the transaction.

ITEM 3. SALES, PURCHASES, EXCHANGES, LOANS, EXTENSIONS OF CREDIT,
GUARANTEES OR INVESTMENTS

Furnish a brief description of the amount and source of funds, securities, property or other consideration for the sale, purchase, exchange, loan, extension of credit, guarantee, or investment, whether any provision exists for purchase by the insurer filing notice, by any party to the transaction, or by any affiliate of the insurer filing notice, a description of the terms of any securities being received, if any, and a description of any other agreements relating to the transaction such as contracts or agreements for services, consulting agreements and the like. If the transaction involves other than cash, furnish a description of the consideration, its cost and its fair market value, together with an explanation of the basis for evaluation.

If the transaction involves a loan, extension of credit or a guarantee, furnish a description of the maximum amount which the insurer will be obligated to make available under such loan, extension of credit or guarantee, the date on which the credit or guarantee will terminate, and any provisions for the accrual of or deferral of interest.

If the transaction involves an investment, guarantee or other arrangement, state the time period during which the investment, guarantee or other arrangement will remain in effect, together with any provisions for extensions or renewals of such investments, guarantees or arrangements. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given if the maximum amount which can at any time be outstanding or for which the insurer can be legally obligated under the loan, extension of credit or guarantee is less than (a) in the case of non-life insurers, the lesser of 3% of the insurer's admitted assets or 25% of surplus as regards policyholders, or (b) in the case of life insurers, 3% of the insurer's admitted assets, each as of the 31st day of December next preceding.

ITEM 4. LOANS OR EXTENSIONS OF CREDIT TO A NON-AFFILIATE

If the transaction involves a loan or extension of credit to any person who is not an affiliate, furnish a brief description of the agreement or understanding whereby the proceeds of the proposed transaction, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase the assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit, and specify in what manner the proceeds are to be used to loan to, extend credit to, purchase assets of or make investments in any affiliate. Describe the amount and source of funds, securities, property or other consideration for the loan or extension of credit and, if the transaction is one involving consideration other than cash, a description of its cost and its fair market value together with an explanation of the basis for evaluation. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given if the loan or extension of credit is one which equals less than, in the case of non-life insurers, the lesser of 3% of the insurer's admitted assets or 25% of surplus as regards policyholders or, with respect to life insurers, 3% of the insurer's admitted assets, each as of the 31st day of December next preceding.

ITEM 5. REINSURANCE

If the transaction is a reinsurance agreement or modification thereto, as described by Section 10-3-805(1)(b)(III)(B), C.R.S., or a reinsurance pooling agreement or modification thereto as described by Section 10-3-805(1)(b)(III)(A), C.R.S., furnish a description of the known and/or estimated amount of liability to be ceded and/or assumed in each calendar year, the period of time during which the agreement will be in effect, and a statement whether an agreement or understanding exists between the insurer and non-affiliate to the effect that any portion of the assets constituting the consideration for the agreement will be transferred to one or more of the insurer's affiliates. Furnish a brief description of the consideration involved in the transaction, and a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given for reinsurance agreements or modifications thereto if the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or change in the insurer's liabilities in any of the next three years, in connection with the reinsurance agreement or modification thereto is less than 5% of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding. Notice shall be given for all reinsurance pooling agreements including modifications thereto.

ITEM 6. MANAGEMENT AGREEMENTS, SERVICE AGREEMENTS AND COST SHARING ARRANGEMENTS.

For management and service agreements, furnish:

- A brief description of the managerial responsibilities, or services to be performed;

- A brief description of the agreement, including a statement of its duration, together with brief descriptions of the basis for compensation and the terms under which payment or compensation is to be made.

For cost-sharing arrangements, furnish:

- A brief description of the purpose of the agreement;

- A description of the period of time during which the agreement is to be in effect;

- A brief description of each party's expenses or costs covered by the agreement;

- A brief description of the accounting basis to be used in calculating each party's costs under the agreement;

- A brief statement as to the effect of the transaction upon the insurer's policyholder surplus;

- A statement regarding the cost allocation methods that specifies whether proposed charges are based on "cost or market." If market based, rationale for using market instead of cost, including justification for the company's determination that amounts are fair and reasonable; and

- A statement regarding compliance with the National Association of Insurance Commissioners Accounting Practices and Procedure Manual regarding expense allocation.

ITEM 7. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of Section 10-3-804, C.R.S. has caused this application to be duly signed on its behalf in the City of _____ and State of _____ on the _____ day of, _____ 20 ____.

(SEAL) _____
Name of Applicant

BY _____
(Name) (Title)

Attest:

(Signature of Officer)

(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached application dated _____, 20____, for and on behalf of _____ (Name of Applicant); that (s)he is the _____ (Title of Officer) of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature) _____

(Type or print name beneath) _____

APPENDIX E

FORM E

PRE-ACQUISITION NOTIFICATION FORM REGARDING THE POTENTIAL COMPETITIVE IMPACT OF
A PROPOSED MERGER OR ACQUISITION BY A NON-DOMICILIARY INSURER DOING BUSINESS IN
THIS STATE OR BY A DOMESTIC INSURER

Name of Applicant

Name of Other Person Involved in Merger or Acquisition

Filed with the Insurance Department of

Dated: _____, 20____

Name, Title, address and telephone number of person completing this statement:

ITEM 1. NAME AND ADDRESS

State the names and addresses of the persons who hereby provide notice of their involvement in a pending acquisition or change in corporate control.

ITEM 2. NAME AND ADDRESSES OF AFFILIATED COMPANIES

State the names and addresses of the persons affiliated with those listed in Item 1. Describe their affiliations.

ITEM 3. NATURE AND PURPOSE OF THE PROPOSED MERGER OR ACQUISITION

State the nature and purpose of the proposed merger or acquisition.

ITEM 4. NATURE OF BUSINESS

State the nature of the business performed by each of the persons identified in response to Item 1 and Item 2.

ITEM 5. MARKET AND MARKET SHARE

State specifically what market and market share in each relevant insurance market the persons identified in Item 1 and Item 2 currently enjoy in this state. Provide historical market and market share data for each person identified in Item 1 and Item 2 for the past five years and identify the source of such data. Provide

a determination as to whether the proposed acquisition or merger, if consummated, would violate the competitive standards of the state as stated in Section 10-3-803.5(4), C.R.S. If the proposed acquisition or merger would violate competitive standards, provide justification of why the acquisition or merger would not substantially lessen competition or create a monopoly in the state.

For purposes of this question, "market" means direct written insurance premium in this state for a line of business as contained in the Annual Statement required to be filed by insurers licensed to do business in this state.

APPENDIX F
FORM F
ENTERPRISE RISK REPORT

Filed with the Insurance Department of the State of. _____

By _____
Name of Applicant

On Behalf of/Related to Following Insurance Companies

Name	Address

Date: _____, 20__

Name, Title, address and telephone number of person completing this statement:

ITEM 1. ENTERPRISE RISK

The Registrant/Applicant, to the best of its knowledge and belief, shall provide information regarding the following areas that could produce enterprise risk as defined in Section 10-3-801(4), C.R.S., provided such information is not disclosed in the Insurance Holding Company System Annual Registration Statement filed on behalf of itself or another insurer for which it is the ultimate controlling person:

Any material developments regarding strategy, internal audit findings, compliance or risk management affecting the insurance holding company system;

Acquisition or disposal of insurance entities and reallocating of existing financial or insurance entities within the insurance holding company system;

Any changes of shareholders of the insurance holding company system exceeding 10% or more of voting securities;

Developments in various investigations, regulatory activities litigation that may have a significant bearing or impact on the insurance holding company system;

Business plan of the insurance holding company system and summarized strategies for next twelve months;

Identification of material concerns of the insurance holding company system raised by supervisory college, if any, in last year;

Identification of insurance holding company system capital resources and material distribution patterns;

Identification of any negative movement, or discussions with rating agencies which may have caused, or may cause, potential negative movement in the credit ratings and individual insurer financial strength ratings assessment of the insurance holding company system (including both the rating score and outlook);

Information on corporate or parental guarantees throughout the holding company and the expected source of liquidity should such guarantees be called upon; and

Identification of any material activity or development of the insurance holding company system that, in the opinion of senior management, could adversely affect the insurance holding company system.

The Registrant/Applicant may attach the appropriate form most recently filed with the U.S. Securities and Exchange Commission, provided the Registrant/Applicant includes specific references to those areas listed in Item 1 for which the form provides responsive information. If the Registrant/Applicant is not domiciled in the U.S., it may attach its most recent public audited financial statement filed in its country of domicile, provided the Registrant/Applicant includes specific references to those areas listed in Item 1 for which the financial statement provides responsive information.

ITEM 2: OBLIGATION TO REPORT.

If the Registrant/Applicant has not disclosed any information pursuant to Item 1, the Registrant/Applicant shall include a statement affirming that, to the best of its knowledge and belief, it has not identified enterprise risk subject to disclosure pursuant to Item 1

Notice of Rulemaking Hearing

Tracking number

2014-01068

Department

700 - Department of Regulatory Agencies

Agency

702 - Division of Insurance

CCR number

3 CCR 702-4 Series 4-2

Rule title

LIFE, ACCIDENT AND HEALTH, Series 4-2

Rulemaking Hearing

Date

11/05/2014

Time

10:00 AM

Location

1560 Broadway, Ste 850, Denver CO 80202

Subjects and issues involved

4-2-52 INSURER SPECIAL FEE ASSESSMENTS FOR THE COLORADO HEALTH
BENEFIT EXCHANGE

Statutory authority

10-1-109 and 10-22-109(3)

Contact information

Name

Christine Gonzales-Ferrer

Title

Rulemaking Coordinator

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DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

Proposed Regulation 4-2-52

INSURER SPECIAL FEE ASSESSMENTS FOR THE COLORADO HEALTH BENEFIT EXCHANGE

Section 1	Authority
Section 2	Scope and Purpose
Section 3	Applicability
Section 4	Definitions
Section 5	Insurer Reporting
Section 6	Special Fee Assessment
Section 7	Notice and Collection of Assessed Fees
Section 8	Severability
Section 9	Enforcement
Section 10	Effective Date
Section 11	History
Appendix A	Monthly Total Number of Lives Insured Reporting Form

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109 and 10-22-109(3), C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to establish rules governing the assessment and collection of fees necessary to assist in the funding of the Colorado Health Benefit Exchange.

Section 3 Applicability

This regulation shall apply to all insurers and carriers that are assessed special fees by the Exchange pursuant to state law.

Section 4 Definitions

- A. "Annual assessment" means, for the purpose of this regulation, the special fee amount calculated by the total number of lives insured on March 1 of the previous calendar year for which a special fee is being assessed, multiplied by the per-covered-life fee determined by the Exchange.
- B. "Calendar year" means, for the purpose of this regulation, a year beginning on January 1 and ending on December 31.
- C. "Carrier" shall have the same meaning as found at § 10-16-102(8), C.R.S.
- D. "Exchange" shall have the same meaning as found at § 10-22-103(3), C.R.S.
- E. "Group health plan" shall have the same meaning as found at § 10-22-103(5), C.R.S.

- F. "Health benefit plan" shall have the same meaning as found at § 10-22-103(6), C.R.S.
- G. "Insurer" shall have the same meaning as found at § 10-22-103(7), C.R.S., and shall include, for the purposes of this regulation, carriers.
- H. "Number of lives insured" shall have the same meaning as found at § 10-22-103(10), C.R.S.

Section 5 Insurer Reporting

- A. No later than May 1 of each year, each insurer shall provide a report to the Exchange, for forecasting and annual determination purposes, that includes:
 - 1. The total number of employees, retired employees and individual policyholders/members and/or subscribers in the individual and group markets enrolled in all of its health benefit plans who are residents of this state and whose plans are regulated by the Colorado Division of Insurance as of March of calendar year in which the assessment is being determined; and
 - 2. The number of employees and retired employees who are residents of this state for whom a premium is paid and coverage is provided under an excess loss, stop loss or reinsurance policy issued by such insurer to an employer or group health plan as of March 1 of calendar year in which the assessment is being determined.
- B. The annual report shall not include any employees, retired employees or individual policyholders and/or subscribers who receive health benefits through Medicare, Medicaid, the Children's Basic Health Plan (pursuant to article 8 of title 25.5, C.R.S.), or the Federal Employees Health Benefit Plan.
- C. Insurers providing stop loss, excess loss or reinsurance are permitted to exclude from their annual report those employees, retired employees, or individual policyholders or subscribers who have been counted by the primary insurer or primary reinsurer.
- D. Insurers shall provide the Exchange the monthly total number of lives insured on a quarterly basis utilizing the form found in Appendix A of this regulation. The total monthly number of lives insured shall reflect the total number of lives insured on the last day of that month. The number of total lives insured shall be provided to the Exchange no later than thirty (30) days after the end of the quarter. The monthly total number of lives insured shall assist in the quarterly reconciliation of special fees assessed. The insurer shall include an attestation with the quarterly report that the total number of lives insured provided is accurate.-

Section 6 Special Fee Assessment

- A. The amount of special fees assessed shall be calculated based upon the budgetary needs of the Exchange in compliance with the requirements of §§ 10-22-103(10) and 10-22-109(2)(a), C.R.S. The Exchange shall communicate the amount of the special fees assessed to the Division, and that amount will be made public through the issuance of a bulletin.
- B. The amount of special fees due from each insurer each month is based upon the total number of lives insured in a month multiplied by the special fee assessed as determined by the Exchange.
 - 1. The total of the special fees assessed and paid by insurers shall not exceed the annual assessment amount.

Example: The Exchange has established a special fee assessed amount of \$1.50 per number of lives insured per-month for the current year. Insurer A has 10,000 total number

of lives insured as of May 31. Based upon 10,000 lives insured multiplied by an assessment amount of \$1.50 per life insured, Insurer A will be assessed and will be required to pay \$15,000.00 for that month at the end of the quarter. This amount shall be paid to the Exchange no later than thirty (30) days after the end of the quarter. Insurer A then has 12,000 total number of lives insured as of June 30 of the current calendar year. Based upon 12,000 lives insured multiplied by an assessment amount of \$1.50 per life insured, Insurer A will be assessed and will be required to pay \$18,000 for that month at the end of the quarter. All amounts due for the quarter shall be paid to the Exchange no later than thirty (30) days after the end of the quarter.

2. If it is determined that the special fee assessment received will surpass the total annual assessment amount, the Exchange shall notify insurers no less than thirty (30) days prior to the date the maximum cumulative special fee assessed will be reached so that no further funds are collected for the remainder of the current calendar year.
- C. Special fees assessed shall not be considered as premium for any purpose, including, but not limited to, the calculation of gross premium tax or commission amounts.

Section 7 Notice and Collection of Assessed Fees

- A. The Exchange shall provide notice to each insurer and to the Division of the number of lives insured per month special fee to be assessed for the coming calendar year no later than August 1 of each year.
- B. Insurer shall provide the Exchange with the monthly number of lives insured on a quarterly basis in accordance with the requirements of Section 5.D. of this regulation.
- C. Each insurer shall pay the special fees due to the Exchange on a quarterly basis. Payment for the previous quarter shall be made in such a manner such that it shall be received by the Exchange no later than thirty (30) days after the end of quarter.
- D. In the event that any insurer fails to pay its special fee assessment, the Exchange shall send one notice of nonpayment thirty (30) days after the date payment was to have been received by the Exchange. If the Exchange has not received payment of all amounts due from an insurer within thirty (30) days after the date of the notice of nonpayment, the Exchange shall report the non-payment to the Commissioner of Insurance.
- E. The Commissioner may suspend or revoke an insurer's certificate of authority to transact business in the State of Colorado due to non-payment of the special fees assessed.
1. Prior to suspension or revocation of an insurer's certificate of authority, the Commissioner shall schedule a hearing no less than thirty (30) days prior to the date of revocation or suspension.
 2. The Commissioner shall provide notice to the insurer of the date of the hearing no less than thirty (30) days prior to the date of the hearing. The notice of hearing shall also contain the amount of special fees owed to the Exchange, as well as directions on how the insurer can pay all past-due special fees assessed.
- F. Any payments in arrears accrued after the first instance of non-payment is reported to the Division shall be included in the proceedings initiated to suspend or revoke an insurer's certificate of authority to transact business in the State of Colorado due to non-payment of the special fees assessed.

- G. Any insurer withdrawing from the Colorado market shall be liable for the assessment owed for the month of the date of withdrawal. The date of withdrawal shall be the date on which the last contract or policy of the insurer in Colorado is discontinued by the insurer in accordance with Colorado insurance laws, or is voluntarily terminated by the policyholder/ subscriber, whichever is sooner. The insurer shall not be liable for any assessment thereafter.
- H. Any insurer discontinuing all policies in a particular Colorado market segment (e.g. small group coverage) shall be liable for the assessment owed until the month when the last remaining policy(ies) has been discontinued in accordance with Colorado insurance laws, or is voluntarily terminated by the policyholder/subscriber, whichever is sooner. The insurer shall not be liable for any assessment owing thereafter.
- I. The special fee assessment amount must be clearly identified and listed separately in any billing statement provided to consumers.
- J. Confirmation and reconciliation of special fees assessed and received shall occur on a quarterly basis, and shall be based upon the data provided to the Exchange in accordance with Section 5.D. above.
- K. Any special fees received by the Exchange in excess of the annual assessment amount shall be refunded to insurers. Any special fees collected by insurers in excess of the annual assessment amount shall be refunded to the consumer.

Section 8 Severability

If any provision of this regulation or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of this regulation shall not be affected

Section 9 Enforcement

Noncompliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocation of license, subject to the requirements of due process.

Section 10 Effective Date

This regulation shall become effective January 1, 2015.

Section 11 History

New regulation effective January 1, 2015.

Appendix A: Monthly Total Number of Lives Insured Reporting Form (to be submitted quarterly)

[Insurer Name]

[Insurer Logo]

[Date Submitted]

Exchange Special Fees Assessed –Total Lives Insured Report for [Year]

[Form to include past months]

Month:	Total Lives Insured:	Date Report Run:
January [Year]:		
February [Year]:		
March [Year]:		
April [Year]:		
May [Year]:		
June [Year]:		
July [Year]:		
August [Year]:		
September [Year]:		
October [Year]:		
November [Year]:		
December [Year]:		
Year to Date:		
Total:		

Attestation:

I, [Name], hereby certify and attest that the number of total lives insured contained above is accurate and true, and shall be used in reconciling the amount of special fees owed to the Exchange for Calendar Year [Year].

Signed: _____

Date: _____

Notice of Rulemaking Hearing

Tracking number

2014-00996

Department

700 - Department of Regulatory Agencies

Agency

710 - Division of Professions and Occupations - State Electrical Board

CCR number

3 CCR 710-1

Rule title

STATE ELECTRICAL BOARD RULES AND REGULATIONS

Rulemaking Hearing

Date

11/24/2014

Time

09:00 AM

Location

1560 Broadway, Suite 1250-C, Denver CO 80202

Subjects and issues involved

Amendments to sections 2.2 and 3.1.1

Statutory authority

12-23-104(2)(a), C.R.S.

Contact information

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Title

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**Division of Professions and
Occupations
State Electrical Board**

RULES AND REGULATIONS

JULY 1, 2014

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1.0 STATEMENT OF BASIS AND PURPOSE

- 1.1. Following are the adopted changes to the Rules and Regulations of the Colorado State Electrical Board (“the Board”) for general clarification, for efficient management and expeditious procedures of the Board, and for the safeguarding of the general public in compliance with Title 12, Article 23, of the Colorado Revised Statutes.
- 1.2. The Board adopts the following rules pursuant to the authority granted to the Board by § 12-23-104(2) (a), C.R.S. and hereby repeals all previous rules with the same number.
- 1.3. These Rules shall be binding on every person and legal entity authorized to practice, offer to practice, or perform electrical or electrical contracting in Colorado. All licensees and registrants under Title 12, Article 23 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 electrician license, journeyman electrician license, or residential wireman license. In these Rules, the word “registrant” shall mean any person registered as an electrical apprentice and any person or legal entity registered with the Board as an electrical 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 The Board hereby adopts the National Fire Protection Association standard number 70, hereafter known as the National Electrical Code, 2014 Edition, and as may be amended by the Board. These standards are adopted as the minimum standards governing the planning, laying out, and installing or the making of additions, alterations, and repairs in the installation of wiring apparatus and equipment for electric light, heat, and power in this state. This rule does not include later amendments to or editions of the National Electrical Code, 2014 Edition. The effective date shall be July 1, 2014.
- 2.2 A copy of the provisions of the National Electrical Code, 2014 edition is 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) 894-2300. [The National Electric Code, 2014 Edition, is available directly from the National Fire Protection Association \(NFPA\), 1 Batterymarch Park, Quincy MA 02169-7471, phone 1-800-344-3555. Copies are also available from the NFPA website at NFPA.org, as well as most online and retail book vendors.](#)

3.0 APPRENTICE REGISTRATION AND RECORDKEEPING

3.1 Registration.

- 3.1.1 ~~Apprentice registrations that are submitted more than 30 days after the date of hire require the following: The Board may require the employer of an electrical 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 electrician verifying that the apprentice has been performing electrical 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.~~
- A. ~~Completed apprentice registration signed by the master electrician for, or any signatory authority of, the electrical contractor, and the apprentice ;~~

- B. ~~Registration fee; and,~~
 - C. ~~A written attestation from the responsible master electrician verifying that the apprentice has been performing electrical work during the unregistered period.~~
- 3.1.2 An individual that holds an active residential electrician's license and is working on a commercial job site must be registered as an apprentice.
- 3.1.3 ~~The Board may take disciplinary action upon a finding of a violation of § 12-23-110.5(3), C.R.S., requiring the timely registration of apprentices. An employer who fails to timely register an apprentice as required by section 12-23-110.5(3)(a), C.R.S. and this rule shall be subject to disciplinary action pursuant to section 12-23-118, C.R.S.~~
- 3.2 **Recordkeeping.** Electrical 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 electrical work as defined by § 12-23-101, C.R.S. and should specifically reflect:
- A. Exact dates of employment;
 - B. Number of hours and months of residential electrical experience; and,
 - C. Number of hours and months of commercial, industrial, or substantially similar electrical experience.

4.0 APPLICATION FOR LICENSURE

- 4.1 All applications shall be submitted to the Division of Professions and Occupations in a form and manner approved by the Board.
- 4.2 **Experience.**
- 4.2.1 Applicants cannot verify their own experience.
- 4.2.2 **General Documentation Requirements.** Applicants shall provide documented written evidence of all in state and out of state experience on experience verification forms prepared and furnished by the Board which shall include all of the following:
- A. Exact dates of employment.
 - B. Breakdown of electrical work performed in:
 - 1. Commercial, residential, industrial and/or maintenance/service; and,
 - 2. Increments of hours and months.
 - C. Signature of the master electrician for, or a signatory authority of, the electrical contractor or employer.
- 4.2.3 **Maintenance Experience.** Maintenance experience shall be submitted for evaluation on experience verification forms prepared and furnished by the Board.
- 4.2.3.1 A maximum of two (2) years experience credit may be granted for work performed under the supervision, and verified by, a Colorado (or equivalent) licensed electrician.
 - 4.2.3.2 A maximum of one (1) year of experience credit may be granted for work not required to be performed under the supervision of a licensed electrician, and verified by the employer.
- 4.2.4 **Foreign Experience.**

- 4.2.4.1 Applicants shall have one (1) year of in-country electrical construction experience and familiarity with the National Electrical Code.
- 4.2.4.2 A maximum of three (3) years of out-of-country experience may be applied towards credit for a journeyman license.
- 4.2.4.3 A maximum of four (4) years out-of-country experience may be applied towards credit for a master license.
- 4.2.4.4 Applicants who have electrical experience from a foreign country for which they wish to receive experience credit are required to submit the documentation accompanied by an English language translation and a certification signed by the translator that must be printed legibly or typed. Such certification must include a statement that the translator is competent to translate the document, and that the translation is true and accurate to the best of the translator's abilities.
 - 4.2.4.4.1 This evaluation will be performed at the applicant's expense and the applicant will be responsible for submitting all the necessary information to the evaluating institution.
- 4.2.5 **Calculating Years of Experience.** This rule is intended to clarify the term “years” of experience earned as referenced in the statutes and does not negate any other requirement set forth in the Board’s rules or statutes for requirements for licensure.
 - 4.2.5.1 When evaluating experience earned by an applicant pursuant to § 12-23-106, C.R.S., the minimum practice experience required for examination is calculated in “years” as follows:
 - A. Residential Wireman – 4000 hours earned in no less than 2 years.
 - B. Journeyman Electrician – 8000 hours earned in no less than 4 years.
 - C. Master Electrician – 10,000 hours earned in no less than 5 years.
- 4.3 **Education.**
 - 4.3.1 **Community College Degree.** Applicants that are graduates from an accredited community college shall hold a degree in the electrical field to receive credit pursuant to 12-23-106, C.R.S.
 - 4.3.2 **Trade School.**
 - 4.3.2.1 Apprenticeship training programs are not equivalent to trade schools.
 - 4.3.2.2 A trade school shall meet the following criteria:
 - A. Provide training in the following areas as it relates to the electrical trade:
 1. Maintenance and new construction wiring in residential and commercial buildings;
 2. Basic math related to the electrical industry;
 3. Basic use of hand tools and materials;
 4. Basic electrical resistive theory, wire sizing, circuit construction, and troubleshooting;
 5. Basic to advanced study in motor control, motor theory and maintenance, installation and maintenance of equipment, designing electrical systems, blueprint reading, estimating, and electrical codes;
 6. Electrical theory and practical application; and,

7. OSHA curriculum based safety training.

B. Provide official transcripts noting credit hours.

1. Graduate must obtain no less than 165 credit hours.

2. Each credit hour shall represent no less than 19 classroom hours.

4.3.3 **Transcripts.** Applicants providing documentation of education must submit an official transcript from the school with the application. The transcript must be provided with the application in an official envelope sealed by the granting institution.

4.3.4 **Foreign Education.**

4.3.4.1 Applicants who have an electrical engineering degree or electrical engineering courses from foreign colleges, universities, or their equivalents for which they wish to receive educational credit are required to have the transcripts evaluated by an electrical engineering department in an accredited university to determine if the curriculum is substantially equivalent.

4.3.4.2 This evaluation will be performed at the applicant's expense and the applicant will be responsible for submitting all the necessary information to the evaluating institution.

4.3.4.3 Applicants providing documentation of education must submit the evaluation from the evaluating institution with the application.

4.3.5 **Other Education Credit.** Applicants for licensure with electrical apprenticeship training, other electrical training, non-accredited electrical education, or other electrical education not addressed in statute or Board Rules may be granted a maximum of one (1) year of experience credit provided the applicant meets and provides the following documentation:

A. Course curriculum with the number of classroom hours completed; and,

B. Certification of completed hours.

4.3.5.1. Credit may be awarded as follows:

A. Credit for the successful completion of non-accredited electrical courses or program shall be credited one (1) month of experience for two (2) months of schooling up to a maximum of one (1) year.

B. Education without a certificate of completion may replace actual field experience under a licensed master at the rate of one (1) month credit for every six (6) months training or experience up to maximum of one (1) year.

4.4 **Training.**

4.4.1 **Apprenticeship Training Requirements.** Persons who, on or after January 1, 2011, either, enter an apprenticeship program or register as an apprentice, must comply with the following requirements. Pursuant to § 12-23-106(2)(a)(III) C.R.S., during the last four (4) years of apprenticeship, an applicant for a journeyman electrician's license shall provide documented written evidence of at least two hundred eighty-eight (288) hours of electrical training conducted in compliance with rules promulgated by the Board.

4.4.1.1 One (1) hour of approved training shall consist of not less than fifty (50) minutes of instruction, presentation, or activity spent in structured education.

4.4.1.2 The 288 hours of approved training is in addition to any stipulated on-the-job training requirement and shall include technical and professional subjects related to

the practice of electrical work which the Board deems necessary to safeguard the public. Such subjects include:

- A. Grounding/bonding;
- B. National Electrical Code changes;
- C. Wiring methods;
- D. Theory/calculations; and,
- E. A minimum of ten (10) and a maximum of forty (40) hours of OSHA curriculum based safety training.

4.4.1.3 **288 Hours Training Criteria.** To qualify for credit, training activities must be structured educational efforts meeting all of the following criteria:

- A. Include technical and practical applications which impact criteria listed in Board Rule 4.1.1.1;
- B. Be current and presented by qualified and technically competent instructors; and,
- C. Provide certificates of completion or other documentation for the apprentice electrician and maintain records of attendance.

4.4.1.4 **No Pre-Approval of 288 Hours Training Activities.** The Board will not pre-approve courses or programs. It is within the discretion of the Board to deny credit for any activity that does not meet the training criteria in Board Rule 4.4.1.2.

4.4.1.5 **Acceptable 288 Hours Training Activities.** The Board deems the following types of activities to be acceptable. On-line delivery and participation in Board Rule 4.4.1 may be acceptable if in compliance with these rules, including but not limited to Board Rule 6.4.8

- A. Not-for-credit academic course;
- B. For-credit academic course; and,
- C. Industry training programs.

4.4.1.6 **Non-Acceptable 288 Hours Training Activities.** The Board deems the following types of activities not acceptable training for this requirement:

- A. Serving on federal, state, or municipal boards or commissions;
- B. Rendering pro bono services;
- C. Faculty at college, university, or other educational institution shall not receive credit for teaching their regularly-assigned courses beyond the initial class;
- D. Participation on a public, professional, or technical society board;
- E. Attendance at licensing or registration board meetings or any other professionally relevant board or committee meeting; and,
- F. Participating in or attending exhibit poster sessions or trade shows.

4.4.1.7 **Recordkeeping.** The applicant shall track and document training hour requirements in a process approved by the Board. The applicant shall retain the documentation for a minimum of three (3) years following completion of the activity. Documentation shall contain, at a minimum the following information:

- A. Apprentice electrician name;

- B. Activity type;
- C. Activity location and date(s);
- D. Activity title and description of content and objectives;
- E. Name and contact information of the sponsor or training provider (e.g. organization, institution, association, employer, vendor, or publication);
- F. Instructor or speaker name(s), as applicable;
- G. Name and contact information of the monitor, facilitator, or mentor, as applicable;
- H. Certificate of completion; and,
- I. Number of classroom hours.

4.4.1.8 Training earned under this requirement shall not qualify for any other education, training, or experience credit.

4.5 License by Endorsement.

4.5.1. Applicants may qualify for licensure by endorsement, providing that the applicant has:

- A. An active residential wireman's license, journeyman electrician's license, or master electrician's license in another state, respective to the license you are applying for;
- B. Successfully completed a state or federally-approved apprenticeship program, or obtained the required years and type of experience for the comparable license; and,
- C. Successfully completed a comparable written state electrical examination based on the current edition of the National Electrical Code in effect at the time the application is submitted to the Board.

4.5.2 Proof of successful completion of the requirements in 4.5 shall be submitted on the verification forms prepared and furnished by the Board, as part of the application for endorsement.

4.5.3 Qualification may be accumulated in multiple states, provided the qualifications meet the requirements of 4.5.1.

4.6 License by Reciprocity.

4.6.1 Conditions for reciprocity. Applicants must:

4.6.1.1 Hold, from the licensing state, a journeyman license or a master electrician license, that allows the individual to work as a journeyman electrician, that is current, active, and in good standing;

4.6.1.2 Possess a journeyman electrician's license, or master electrician's license from a state that is a member in good standing of the National Electrical Reciprocal Alliance (NERA), or from any entity or jurisdiction that has a reciprocity agreement with the Board.

4.6.2 Applicants will not be granted a reciprocal license where the license in the licensing state was granted by grandfathering without having passed a state-administered examination.

4.7 **Military.** Education, training, or service gained in military services outlined in §24-34-102(8.5), C.R.S. to be accepted and applied towards receiving a license, must be substantially equivalent, as determined by the Board, to the qualifications otherwise applicable at the time of receipt of application. It is the applicant's responsibility to provide timely and complete evidence for review and consideration. Satisfactory evidence of such education, training, or service will be assessed on a case by case basis.

4.8 **Reconsideration.** An applicant requesting reconsideration of a Board action 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. Any request filed after forty-five (45) days will not be considered by the Board.

4.9 **Temporary Work Permits**

4.9.1 Pursuant to § 12-23-110, 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 § 12-23-110, C.R.S.

4.9.2 A temporary work permit shall not be accepted to meet the requirements for obtaining a new electrical contractor registration.

4.9.2.1 A temporary master electrician work permit may be issued to a qualified applicant of an existing electrical contractor pursuant to § 12-23-110, C.R.S.

4.10 **Application Retention**

4.10.1 **Incomplete Applications.** 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 submitted, after which applicants shall begin the process again including payment of the application fee.

4.10.2 **Approved Applications without Activity.** Effective November 30, 2012, an approved applicant for licensure by examination who does not take the examination within three (3) years from the date of the original approval date will be required to begin the application process again including payment of the application fee.

4.10.3 **Approved Applications with Activity.** Effective November 30, 2012, an approved applicant for licensure by examination who takes the examination but does not pass the examination within five (5) years from the date of the original approval date will be required to begin the application process again including payment of the application fee.

5.0 **EXAMINATIONS**

5.1 The candidate must present positive photo identification in order to be admitted to the examination area.

5.2 **Proprietary Information.** The content and answers to examinations and assessments 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 or assessment 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 or assessments administered by the Board.

5.3 Examination results will be provided in writing to each examinee in a pass or fail format. Results will not be given in any other manner.

5.4 Examinations shall not be subject to review by candidates.

6.0 **RENEWAL AND REINSTATEMENT**

6.1 **Renewal.** Board issued licenses and electrical contractor registrations shall be renewed every three (3) years to correspond with the Board's adoption of the National Electrical Code.

- 6.1.1 A licensee or registrant shall have a sixty (60) day grace period to renew such license or registration without the imposition of a disciplinary sanction for practicing on an expired license or registration. During this grace period, a delinquency fee shall be charged for late renewal.
- 6.1.2 A licensee or registrant who does not renew such license or registration within the sixty (60) day grace period shall be deemed as having an expired license or registration and 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.
- 6.2 **Reinstatement.** An expired license may be reinstated by submitting a reinstatement application, paying the current reinstatement fee, and meeting the appropriate requirements below.
- 6.2.1 **Expired for Less Than Three (3) Years.** To reinstate a license that has expired for less than three (3) years the licensee must comply with the continuing competency requirements contained in Board Rule 6.4.
- 6.2.1.1 If the licensee's performance on the Continuing Competency Assessment necessitates a Learning Plan pursuant to Board Rule 6.4.6, the holder shall satisfactorily complete the Professional Development Units (PDUs) prior to the expiration of the current Continuing Competency Assessment Cycle.
- 6.2.1.2 Demonstration the licensee has maintained their continuing competency by completion of the PDUs assigned during the assessment cycle immediately preceding application, if any were assigned.
- 6.2.2 **Expired for More Than Three (3) Years.** If the license has been expired for more than three (3) years, pursuant to §24-34-102(8)(d)(II), C.R.S. the licensee must demonstrate competency to practice by any of the following:
- A. Satisfactorily pass the state electrical examination;
 - B. Provide verification of an active license with a state where a reciprocal agreement for an equivalent license exists;
 - C. Provide verification of active licensure in a non-reciprocal state as follows:
 - 1. Verify an active residential wireman's license, journeyman electrician's license, or master electrician's license in non-reciprocal state, respective to the license being reinstated; and,
 - 2. Comply with the continuing competency requirements contained in Board Rule 6.4.
 - a. If the licensee's performance on the Continuing Competency Assessment necessitates a Learning Plan pursuant to Board Rule 6.4.6, the holder shall satisfactorily complete the PDUs prior to the expiration of the current Continuing Competency Assessment Cycle.
 - D. By other means approved by the Board.
- 6.3 An individual who has acquired both a master and a journeyman electrician license by examination issued by the state of Colorado, and who has allowed the journeyman license to expire, and holds an active master license, may reinstate the journeyman license after meeting the requirements of Board Rule 6.0.
- 6.4 **Continuing Competency Requirements.**
- 6.4.1 **Statutory Basis.** Pursuant to § 12-23-106(4)(d)(II), C.R.S., the Board shall adopt rules establishing requirements for continuing competency that a licensee shall demonstrate in order to renew a license on or after January 1, 2011. These rules shall require the licensee to

participate in an assessment and a process or procedure that demonstrates whether the licensee obtained the required knowledge and skills to address any areas needing improvement or development through participation in the continuing competency activity.

6.4.2 **Basis of Requirements.** As established by the Colorado General Assembly, the regulatory authority of the Board is to establish continuing competency standards that shall include assessment of knowledge and skills required to renew a license, the methods to obtain the required knowledge and skills, and the documentation necessary to demonstrate compliance.

6.4.3 **Definitions.**

6.4.3.1 *Acceptable Level of Performance:* Acceptable Level of Performance shall be a value assigned by the Board to evaluate a licensee's rating on the Individual Assessment for compliance with the Continuing Competency requirements. Marks below the Acceptable Level of Performance shall indicate one or more areas needing improvement and requiring professional development activity or activities and documentation of required PDUs to demonstrate continuing competency.

6.4.3.2 *Core Competencies:* Core Competencies are technical and professional subjects, related to the practice of electrical work, which the Board deems necessary to safeguard the public. Such subjects include:

- A. Grounding and bonding;
- B. National Electrical Code changes;
- C. Wiring methods; and,
- D. Theory and calculations.

6.4.3.3 *Continuing Competency Assessment Cycle:* The Continuing Competency Assessment Cycle shall be a three (3) year period corresponding to the adoption of the National Electrical Code by the Board.

6.4.3.4 *Inactive Status:* A licensee is not required to comply with continuing competency requirements to renew a license in inactive status. An individual whose license is in inactive status is prohibited by law from practicing as a licensed electrician.

6.4.3.5 *Individual Assessment:* An instrument or process approved by the Board to evaluate the knowledge and/or skills of the licensee in each of the Core Competencies determined by the Board to be essential for practice.

6.4.3.6 *National Electrical Code:* The National Electrical Code shall refer to the code for the safe installation of electrical wiring and equipment, as amended, published by the National Fire Protection Association and approved by the American National Standards Institute, or its successor organization.

6.4.3.7 *Personal Learning Plan:* The Personal Learning Plan shall be the plan of professional development activities undertaken to demonstrate continuing competency especially in the event of an area identified as needing improvement in one (1) or more Core Competency areas, as evaluated by the licensee's performance on the Individual Assessment in relation to the Acceptable Level of Performance.

6.4.3.8 *Professional Development Unit (PDU):* One PDU shall consist of not less than fifty (50) minutes of instruction, presentation, or activity, spent in structured educational efforts intended to increase the licensee's knowledge and competence in Core Competencies identified by the Board.

6.4.4 **Requirements.** Licensees shall demonstrate compliance with the continuing competency requirements and documenting professional development units in order to renew a license to

perform electrical work in Colorado. Licensees shall complete an Individual Assessment of Core Competencies. Core Competencies shall be identified and defined by the Board. An Acceptable Level of Performance in all four (4) core competencies shall result in the award of twenty-four (24) PDUs. A maximum of twenty-four (24) PDUs shall be required per assessment cycle.

- 6.4.4.1 Upon the beginning of an assessment cycle, an Individual Assessment must be completed by the licensee, addressing Core Competency areas identified by the Board.
- 6.4.4.2 A performance rating will be assigned for each licensee in each of the Core Competency areas of the Individual Assessment. A rating below the Acceptable Level of Performance will indicate an area for professional development in a Core Competency area.
- 6.4.4.3 If a rating at or above the Acceptable Level of Performance is assessed in all Core Competency areas, the licensee will be awarded twenty-four (24) PDUs, as defined in these rules, for his or her demonstrated competency.
- 6.4.4.4 A Personal Learning Plan in the Board-prescribed format will be required of any licensee earning a rating below the Acceptable Level of Performance on the Individual Assessment.
 - 6.4.4.4.1 In the event of a rating below the Acceptable Level of Performance in one (1) Core Competency area of the Individual Assessment, sixteen (16) PDUs shall be awarded to the licensee and eight (8) PDUs will be required addressing the area of low rated Core Competency.
 - 6.4.4.4.2 In the event of a rating below the Acceptable Level of Performance in two (2) Core Competency areas of the Individual Assessment, eight (8) PDUs shall be awarded to the licensee and sixteen (16) PDUs will be required addressing the low rated Core Competency areas.
 - 6.4.4.4.3 A low assessment will be indicated by a rating below the Acceptable Level of Performance in three (3) or more Core Competency areas of the Individual Assessment. In this event twenty-four (24) PDUs addressing three (3) areas of Core Competency will be required by the licensee over the corresponding assessment cycle.
 - 6.4.4.4.4 A maximum of twenty-four (24) PDUs shall be required during any single assessment cycle.
 - 6.4.4.4.5 PDU completion in accordance with the Individual Assessment and documentation requirements of the Board will indicate compliance with the continuing competency requirements and shall comprise the elements of the learning plan for each licensee.
 - 6.4.4.4.6 PDUs need not be acquired within Colorado.

6.4.5 **Credit Required for License Renewal.** Licensees shall have acquired PDUs during the period prior to the expiration of each Continuing Competency Assessment Cycle.

6.4.6 **Individual Assessment.** This is an assessment that demonstrates proficiency in core competencies by means of an examination approved by the Board. The Individual Assessment shall be completed by each licensee no later than one hundred fifty (150) days after the adoption of the most recent National Electrical Code. The results of the assessment shall be utilized to identify the need and nature of a Personal Learning Plan for each licensee.

- 6.4.7 **Learning Plan.** The Personal Learning Plan shall be defined by the licensee's performance on the Individual Assessment. Refer to requirements of Board Rule 6.4.4.4 to determine how many PDUs are needed. The licensee must demonstrate compliance by completing continuing competency activities as defined in Board Rule 6.4.10.
- 6.4.8 **Continuing Competency Activity Criteria.** To qualify for PDU credit, continuing competency activities must be structured educational efforts meeting all of the following criteria:
- A. Include technical and practical applications which impact Core Competency areas identified by the Board;
 - B. Improve, expand or enhance the quality of the licensee's existing technical knowledge; or develop new and relevant professional skills and knowledge;
 - C. Have clear purposes and objectives;
 - D. Be well-organized and provide evidence of pre-planning;
 - E. Be current and presented by qualified and technically competent instructors; and,
 - F. Provide certificates of completion or other documentation for the licensee and maintain records of licensee attendance.
- 6.4.9 **No Pre-Approval of Continuing Competency Activities.** The Board will not pre-approve courses or programs. It is within the discretion of the Board to deny credit for any activity that does not meet the continuing competency criteria in Board Rule 6.4.10 or the definition of a core competency subject in Board Rule 6.4.3.2.
- 6.4.10 **Acceptable Continuing Competency Activities.** The Board deems the following types of activities to be acceptable. On-line participation in training programs or courses may be acceptable if in compliance with these rules, including but not limited to Board Rule 6.4.8:
- A. Not-for-credit academic course;
 - B. For-credit academic course; and,
 - C. Industry training programs.
- 6.4.11 **Non-Acceptable Continuing Competency Activities.** The Board deems the following types of activities are not acceptable:
- A. Serving on federal, state, or municipal boards or commissions;
 - B. Rendering pro bono services;
 - C. Faculty at college, university, or other educational institution shall not receive credit for teaching their regularly-assigned courses beyond the initial class;
 - D. Participation on a public, professional, or technical society board;
 - E. Attendance at licensing or registration board meetings or any other professionally relevant board or committee meeting; or,
 - F. Participating in or attending exhibit poster sessions and tradeshow.
- 6.4.12 **Recordkeeping.** The licensee shall track and document PDUs in a process approved by the Board. The licensee shall retain the documentation for a minimum of seven (7) years and contain, at a minimum, the following information:
- A. Licensee name;
 - B. Activity type;

- C. Activity location and date(s);
- D. Activity title and description of content and objectives;
- E. Name and contact information of the sponsor or Continuing Competency provider (e.g. organization, institution, association, employer, vendor, publication);
- F. Instructor or speaker name, as applicable;
- G. Monitor/Facilitator/Mentor name and contact information, as applicable;
- H. Certificate of Completion;
- I. Number of classroom hours or PDUs.

6.4.13 **Exemptions.** The Board may grant exemptions from the Individual Assessment, development of the Personal Learning Plan and demonstration of Continuing Competency requirements set out in Board Rules 6.4.4 and 6.4.5, for the reasons specified herein. It is within the sole discretion of the Board to decide in particular cases whether good cause has been shown in order to grant exemptions. A licensee shall not be eligible for an exemption under this section for two (2) consecutive renewal periods except in the case of an exemption for military service. In the event a licensee cannot complete continuing competency requirements following an exemption, the license will remain expired until the licensee meets all continuing competency requirements unless the licensee applies to place the license on inactive status. Requests for exemptions must be in writing and provide the following information:

- A. Evidence that during the renewal period prior to the expiration of the license, the licensee was working at a location outside of the country, reasonably preventing completion of the continuing competency requirements;
- B. Evidence that the licensee was called to Federally funded active duty for more than one hundred twenty days for the purpose of serving in a war, emergency, or contingency during the renewal cycle for which the exemption is requested or within six months following the completion of the service in a war, emergency, or contingency;
- C. Evidence and written explanation of any other cause citing in as much detail as possible the inability of the licensee to comply with the continuing competency requirements for the renewal period and why the license should remain in active status.

6.4.14 **Audits.** The Board may audit documentation of PDUs for verification of compliance with these requirements at any time. The Board may, at its discretion, disallow any continuing competency activity.

6.4.15 **Compliance with Continuing Competency Requirements.**

- 6.4.15.1 Compliance with the continuing competency requirements, including Individual Assessment, development of a Personal Learning Plan, and demonstration of continuing competency, along with other requirements, must be completed before the last day of the Continuing Competency Assessment Cycle.
- 6.4.15.2 Licensees shall cooperate with the Board to determine compliance with the continuing competency requirements.
- 6.4.15.3 Licensees shall provide all documentation requested for audit within thirty (30) days of the request.

6.4.16 **Multiple Licenses.** Licensees holding multiple licenses issued by the Board shall complete the continuing competency requirements for the most advanced license they hold including the Individual Assessment, Learning Plan and any PDUs required based on their performance on

the Individual Assessment. Completion of the continuing competency requirements for the most advanced license shall satisfy the requirements for all lesser licenses.

6.5 Inactive License Status and Reactivation.

6.5.1 Inactive License. Pursuant to § 12-70-101, C.R.S., any licensee may apply to the Board to transfer his or her license to inactive status. Such application shall be in the form and manner designated by the Board. The holder of an inactive license shall not be required to comply with the continuing competency requirements for renewal so long the license remains inactive.

6.5.1.1 Each holder of an inactive license shall renew once every three (3) years with the Board in the same manner as active license holders and pay a fee pursuant to § 12-23-112, C.R.S.

6.5.1.2 During such time as a license remains in an inactive status, the licensee shall not perform any acts restricted to active licensed electricians pursuant to § 12-23-118, C.R.S. The Board shall retain jurisdiction over an inactive license for the purposes of disciplinary action pursuant to § 12-23-119, C.R.S.

6.5.2 Reactivation of Inactive License. An inactive license may be reactivated by submitting the proper application, paying the current reactivation fee, and meeting the appropriate requirements below.

6.5.2.1 Inactive for Less Than Three (3) Years. To reactivate a license that has been inactive for less than three (3) years, the licensee must comply with the continuing competency requirements contained in Board Rule 6.4.

6.5.2.1.1 If the licensee's performance on the Continuing Competency Assessment necessitates a Learning Plan pursuant to Board Rule 6.4.6, the holder shall satisfactorily complete the PDUs prior to the expiration of the current Continuing Competency Assessment Cycle.

6.5.2.1.2 Demonstrate the licensee has maintained their continuing competency by completion of the PDUs assigned during the assessment cycle immediately preceding application, if any were assigned.

6.5.2.2 Inactive for More Than Three (3) Years. Pursuant to § 12-23-106(4)(c), C.R.S., a licensee whose license has been inactive for more than three (3) years must demonstrate competency to practice by any of the following:

A. Satisfactorily pass the state electrical examination;

B. Provide verification of an active license with a state where a reciprocal agreement for an equivalent license exists;

C. Provide verification of active licensure in a non-reciprocal state as follows:

1. Verify an active residential wireman's license, journeyman electrician's license, or master electrician's license in non-reciprocal state, respective to the license you are reinstating; and,

2. Comply with the continuing competency requirements contained in Board Rule 6.4.

a. If the licensee's performance on the Continuing Competency Assessment necessitates a Learning Plan pursuant to Board Rule 6.4.6, the holder shall satisfactorily complete the PDUs prior to the expiration of the current Continuing Competency Assessment Cycle.

D. By other means approved by the Board.

- 6.5.3 **Practicing with an Inactive License.** Practicing electrical work with a license in inactive status shall constitute practice without an active license and, therefore, may be grounds for injunctive or disciplinary action, up to and including revocation.
- 6.6 **Loss of Responsible Master.** An electrical contractor who loses the services of the responsible master electrician, for any reason, will be allowed twenty (20) days in which to hire another master electrician. If the electrical contractor has not hired another master electrician during that period, the Board shall place the electrical contractor registration into inactive status until such time that the contractor submits evidence that a master electrician has been hired, and the appropriate fee has been paid.
- 6.7 Any licensed or registered individual working as an electrician shall be required to carry on their person the appropriate license, temporary work permit, or registration.
- 6.8 **Name and Address Change.**
- 6.8.1 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.
- 6.8.1.1 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.
- 6.8.1.2 Address change requests for some, but not all, communications or for confidential communications only are not accepted.
- 6.8.2 The Board requires one (1) of the following forms of documentation to change the name or social security number of a licensee or registrant:
- 6.8.2.1 Marriage license;
- 6.8.2.2 Divorce decree;
- 6.8.2.3 Court order; or
- 6.8.2.4 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 Wiring permit applications shall be issued in the name of the qualified applicant (see § 12-23-111 (2), C.R.S.) or registered electrical contractor performing the electrical work. The qualified applicant is defined as a homeowner performing work in accordance with statutory requirements.
- 7.2 A permit shall be required for all systems supplying power that may normally be supplied by an electrical utility, such as, but not limited to, solar, wind, hydroelectric and other generated sources. (The Board or its administrative officer may revoke a permit that was issued in error or on the basis of incorrect information supplied by the applicant.)
- 7.3 Any permit issued as a result of fraudulent or incorrect information supplied on the application shall be cancelled.
- 7.4 Any work commencing prior to the purchase of a permit is subject to twice the prescribed permit fee.
- 7.5 **Stop Work Order**

7.5.1 Notice to owner. Upon notice from the electrical 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.

7.5.2 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.

- 7.6 Additions, alterations or repairs may be made to any electrical system and equipment without requiring the existing electrical system and equipment to comply with all the requirements of the Board standards, provided that the addition, alteration or repair conforms to that required for a new electrical system and equipment, and provided further that no hazard to life, health or safety will be created by such additions, alterations or repairs.
- 7.7 Existing electrical wiring systems may continue to be energized provided that they were lawfully installed and that they present no hazard to life, health or property.
- 7.8 Services to moved buildings shall comply with the standards of the Board for new installations. The existing electrical wiring may be re-energized provided that a registered electrical contractor gives written verification to the Board that the existing electrical installation presents no hazard to life, health or property. Permits and inspections shall be required.
- 7.9 An inspection request will only be accepted from the permit owner or their agent.
- 7.10 An individual requesting an electrical inspection shall provide reasonable access to the inspection area during the normal working hours of the Board office.
- 7.11 Article 110.2, "Approval", in the National Electrical Code, provides that conductors and equipment required or permitted by this code shall be acceptable only when "approved". The Board will accept conductors and equipment that have been tested and approved by a recognized testing agency such as Underwriters Laboratories, Inc., or field-evaluated by a certified Field Evaluation Body (FEB) in accordance with NFPA 790 and 791. FEB certification is to be provided by International Accreditation Service (IAS) or equal. The Board reserves the right of its inspectors to reject any conductors or equipment that in their opinion may be unsafe or injurious to life or property.
- 7.12 **Reinspection Fees.** A reinspection fee may be assessed at the discretion of the inspector for reasons including, but not limited to, the following:

7.12.1 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).

7.12.2 Corrections have not been made to all code violations cited from previous inspection.

7.12.3 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).

7.12.4 Hazardous construction site as determined by the inspector or OSHA guidelines (may include loose dogs, etc.)

7.12.5 Address not posted so as to be visible from the street or road.

7.12.6 Improper directions to jobsite given on permit or inspection requests.

7.13 A reinspection shall not be performed until the reinspection fee has been paid.

7.14 A final inspection shall not be performed until a permanent electrical load consistent with the type of structure is connected.

7.15 As used in § 12-23-118(1)(c), C.R.S., the term “reasonable time” shall mean thirty (30) calendar days.

8.0 ENFORCEMENT

8.1 **Cooperation with Board Investigations.** Licensees and registrants having knowledge of, and/or involvement in, any alleged violation of Title 12, Article 23, and/or Board rules, shall cooperate with any investigation initiated by the Board and timely furnish such information or assistance as may be requested.

8.2 Report Convictions, Judgments, and Administrative Proceedings

8.2.1 A licensee or registrant, as defined in § 12-23-101(1)(2)(3) and (4), C.R.S., including but not limited to registered electrical apprentices, registered electrical contractors, or licensed electricians (residential wireman, journeyman electricians, or master electricians, herein after known collectively as “electricians”) shall inform the Board, in a manner set forth by the Board, within forty-five (45) days of any of the following occurrences: the conviction of the registrant or licensee of a felony under the laws of any State or of the United States.

8.2.2 A licensee or registrant convicted of a felony under the laws of any State or of the United States is grounds for discipline pursuant to § 12-23-118, 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 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:

- A. The imposition of a sentence for a felony conviction; and,
- B. 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 Board Rule 9.2.3.

8.3 Citations.

8.3.1 The citation form shall be completed by the state electrical inspector. Citations will be served by certified mail or in person by a state electrical inspector. Completed, served citation forms will be mailed to the Board for review. The Board maintains the discretion to dismiss the citation at any time.

8.3.2 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; or
- 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.

8.3.3.1 If one of the following actions has not been taken by the citation recipient within ten (10) working days following the service of the citation, the recipient shall be deemed to have failed to comply with the citation and the fine shall become a final Board action:

- 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.

8.3.3.2 In any action to collect a fine, the Board shall seek reasonable attorney fees and costs.

8.3.4 Negotiations.

8.3.4.1 A written request and explanation for negotiation of a stipulated settlement agreement shall be submitted to the Program Director or designee and may include information in mitigation of the violation. The date the request for negotiation of a stipulated 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 the following actions:

- A. Issue a letter of admonition;
- B. Dismiss the citation;
- C. Reduce the fine;
- D. Arrange a payment schedule;
- E. Permit a personal appearance before the Board; and/or,
- F. Refer the matter for a formal administrative hearing.

8.3.4.2 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; and/or,
- F. The recipient has prior violations that need to be brought to the Board's attention prior to attempting settlement negotiations.

- 8.3.4.3 A stipulated settlement agreement shall be considered a violation for the purpose of determining the fine amount in subsequent violations. The stipulated settlement agreement may contain an admission of the violation(s). A stipulated settlement agreement shall be signed and dated by both the Program Director or Board chair or designee and the citation recipient. A stipulated settlement agreement shall be approved by the Board in order to become a final agency order.
- 8.3.4.4 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 a formal administrative hearing shall be submitted within ten (10) calendar days. Written settlement information may be used against the licensee, registrant, applicant or respondent at the hearing when unsuccessful settlement negotiations proceed to a formal hearing.
- 8.3.4.5 When the citation recipient retains an attorney for assistance during stipulated settlement negotiations, the Board or Program Director may request the Attorney General to assist with settlement negotiations.
- 8.3.4.6 **Hearings.** Hearings shall be conducted in accordance with the Administrative Procedure Act. The hearings shall be conducted by an administrative law judge at the Office of Administrative Courts. The citation recipient may be represented by counsel of his or her choosing.
 - 8.3.4.6.1 At the formal administrative hearing, the Board may pursue the award of the maximum fine allowed by statute. At the formal administrative hearing, the Board may also pursue the award of any other disciplinary sanctions such as revocation, suspension or probation. The Board shall review the entire citation history of a licensee, as found in the Board's records, in any disciplinary action against a licensee.
- 8.3.4.7 Inspectors shall not negotiate settlements or accept payment of fines.

8.4 **Fine Schedule.** The following is the current fine schedule adopted by the Board pursuant to § 12-23-118(5)(a), C.R.S.

Violation	Statutory Provision	1st Offense	2nd Offense	Subsequent Offense
Engaging in the business, trade, or calling of a journeyman electrician without a license	12-23-105(1)	\$225	\$600	Up to \$2,000 per day
Engaging in the business, trade, or calling of a master electrician without a license	12-23-105(1)	\$300	\$600	Up to \$2,000 per day
Engaging in the business, trade, or calling of a residential wireman without a license	12-23-105(2)	\$150	\$375	Up to \$2,000 per day
Performing electrical work beyond the authorization of a residential wireman license	12-23-105(1)	\$375	\$750	Up to \$2,000 per day
Failure of an electrical contractor to register an apprentice	12-23-110.5(3) 12-23-118(1)(a)	\$225	\$600	Up to \$2,000 per day

Failure of an apprentice to work under the supervision of a licensed electrician	12-23-110.5(1)	\$50	\$200	Up to \$2,000 per day
Employment by an electrical contractor of unlicensed persons doing electrical work	12-23-118(1)(k)	\$300	\$600	Up to \$2,000 per day
Engaging in the business of an electrical contractor without obtaining registration from the Board	12-23-106(5)(a)	\$750	\$1,500	Up to \$2,000 per day
Failure of a licensed electrician to supervise an apprentice	12-23-110.5(1), 12-23-110.5(3)(b) 12-23-118(1)(j)	\$375	\$600	Up to \$2,000 per day
Failure of an electrical contractor to maintain a supervisory ratio of one licensed electrician to three apprentices	12-23-110.5(1)	\$375	\$600	Up to \$2,000 per day
Failure to obtain a permit and/or failure to obtain an inspection	12-23-116 12-23-118(1)(a)	\$375	\$900	Up to \$2,000 per day
Failure to remove a cause for disapproval of any electrical installation within a reasonable time	12-23-118(1)(c)	\$450	\$900	Up to \$2,000 per day
Advertising by a licensee or registrant which is false or misleading	12-23-118(1)(h)	\$375	\$750	Up to \$2,000 per day
Deception, misrepresentation or fraud in obtaining or attempting to obtain a license (includes loaning a license)	12-23-118(1)(i)	\$1,000	\$2,000	Up to \$2,000 per day
Failure to comply with other state or federal law (safety, health, insurance, tax)	12-23-118(1)(p)	\$375	\$750	Up to \$2,000 per day
Other violations of the state electrical statutes, rules, or Board orders.	12-23-118(1)	Up to \$1,000	Up to \$2,000	Up to \$2,000 per day

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 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 The Board will determine, in 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 The Board shall consider the following matters, among others in determining whether to rule upon a petition filed pursuant to this rule:
 - A. If a rule 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.

- B. If 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.
 - C. If the petition involves any subject, question or issue that is the subject of a formal or informal matter of investigation currently pending before the Board or a court but not involving any petitioner.
 - D. If the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.
 - E. If the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Rule 57, Colo. R. Civ.P., that 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 A petition filed pursuant to this rule shall set forth the following:
- A. The name and 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; and,
 - 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 If the Board determines that it will rule on the petition, the following procedures shall apply:
- A. The Board may rule upon the petition based solely upon the facts presented in the petition. In such a case:
 - 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.
 - 2. The Board may order the petitioner to file a written brief, memorandum or statement of position.
 - 3. The Board may set the petition, upon due notice to petitioner, for a non-evidentiary hearing.
 - 4. The Board may dispose of the petition on the sole basis of the matters set forth in the petition.
 - 5. The Board may request the petitioner to submit additional facts, in writing. In such event, such additional facts will be considered as an amendment to the petition.
 - 6. The Board may take administrative notice of facts pursuant to the Administrative Procedure Act (§ 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.
 - B. The Board may, in 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 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 7.4. 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 A declaratory order or other order disposing of a petition pursuant to this rule shall constitute agency action subject to judicial review pursuant to § 24-4-106, C.R.S.

10.0 STATE ELECTRICAL INSPECTORS

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

- 10.2 **Electrician License.** Electrical inspectors must maintain a current Colorado journeyman or master electrician license.

Notice of Rulemaking Hearing

Tracking number

2014-00993

Department

700 - Department of Regulatory Agencies

Agency

725 - Division of Real Estate

CCR number

4 CCR 725-2

Rule title

RULES OF THE COLORADO BOARD OF REAL ESTATE APPRAISERS

Rulemaking Hearing

Date

11/06/2014

Time

09:00 AM

Location

1560 Broadway, Suite 1250-C, Denver, CO

Subjects and issues involved

CHAPTER 16:&CONSERVATION EASEMENT APPRAISALS

Statutory authority

Chapter 7 of Title 12, Article 61, Colorado Revised Statutes, as amended

Contact information

Name

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Title

Rulemaking Administrator

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DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
BOARD OF REAL ESTATE APPRAISERS
4 CCR 725-2

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
November 6, 2014

CHAPTER 16: CONSERVATION EASEMENT APPRAISALS

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 Board of Real Estate Appraisers (the "Board") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules of the Board.

STATEMENT OF BASIS

The statutory basis for the rules titled Rules of the Board of Real Estate Appraisers is Chapter 7 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 statute and the provisions of the federal Financial Institutions Reform, Recovery and Enforcement Act of 1989.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to amend or repeal existing rules with respect to appraising conservation easements.

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/rulemaking/BOREA/index.htm]

CHAPTER 16: CONSERVATION EASEMENT APPRAISALS

- 16.4 ~~All licensees who prepare and sign an appraisal for a conservation easement pursuant to section 39-22-522, C.R.S., on or after July 1, 2011, shall have completed the "Conservation Easement Appraiser Update Course" once every other year. The content of the "Conservation Easement Appraiser Update Course" shall be developed by the Division of Real Estate and presented by the Division of Real Estate or a provider approved by the Division of Real Estate.~~
[REPEALED]

A hearing on the above subject matter will be held on Thursday, November 6, 2014, at the Colorado Division of Real Estate, 1560 Broadway, Suite 1560-C, Denver, Colorado 80202 beginning at 9:00.

Any interested person may participate in the rule making through submission of written data,

views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.

Notice of Rulemaking Hearing

Tracking number

2014-01000

Department

700 - Department of Regulatory Agencies

Agency

725 - Division of Real Estate

CCR number

4 CCR 725-2

Rule title

RULES OF THE COLORADO BOARD OF REAL ESTATE APPRAISERS

Rulemaking Hearing

Date

11/06/2014

Time

09:00 AM

Location

1560 Broadway, Suite 1250-C, Denver, CO

Subjects and issues involved

CHAPTER 13:&DISCIPLINARY PROCEDURES

Statutory authority

Chapter 7 of Title 12, Article 61, Colorado Revised Statutes, as amended

Contact information

Name

Martha Torres-Recinos

Title

Rulemaking Administrator

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**DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
BOARD OF REAL ESTATE APPRAISERS
4 CCR 725-2**

**NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
November 6, 2014**

CHAPTER 13: DISCIPLINARY PROCEDURES

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 Board of Real Estate Appraisers (the "Board") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules of the Board.

STATEMENT OF BASIS

The statutory basis for the rules titled Rules of the Board of Real Estate Appraisers is Chapter 7 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 statute and the provisions of the federal Financial Institutions Reform, Recovery and Enforcement Act of 1989.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to amend or repeal existing rules with respect to requirements for Board investigations and disciplinary procedures.

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/rulemaking/BOREA/index.htm]

CHAPTER 13: DISCIPLINARY PROCEDURES

13.6 Pursuant to Section 24-34-106, C.R.S., when a licensee is required to complete real estate appraisal education as part of a disciplinary action, **OR AS A TERM OF A STIPULATION FOR DIVERSION**, no portion of any such courses or programs ~~completed to satisfy the terms of a disciplinary action~~ shall be creditable toward continuing education or qualifying education requirements.

13.7 ~~An appraiser licensed or permitted by the Board~~**PURSUANT TO 12-61-713(1)(A) AND 12-61-713(1)(K), C.R.S., A LICENSEE must inform the Board in writing within ten (10) days of conviction of, entering a plea of guilty to, or entering a plea of nolo contendere to any felony, or any other like crime under Colorado law, federal law, or the laws of other states OR MISDEMEANOR OFFENSE, EXCLUDING MISDEMEANOR TRAFFIC OFFENSES, MUNICIPAL CODE VIOLATIONS OR PETTY OFFENSES. A LICENSEE MUST INFORM**

THE BOARD IN WRITING WITHIN TEN (10) DAYS OF ANY DISCIPLINARY ACTION TAKEN AGAINST ANY PROFESSIONAL LICENSES HELD BY THE LICENSEE, EXCLUDING THE LICENSEE'S COLORADO APPRAISAL CREDENTIAL. FOR PURPOSES OF THIS RULE, DISCIPLINARY ACTION SHALL INCLUDE, WITHOUT LIMITATION, ACTIONS SUCH AS IMPOSITION OF FINES, REQUIRED OR REMEDIAL EDUCATION, PROBATION, SUSPENSION, REVOCATION, LETTERS OF CENSURE, DEBARMENT, MANDATORY SUPERVISION, AND THE LIKE.

A hearing on the above subject matter will be held on Thursday, November 6, 2014, at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250C, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.

Notice of Rulemaking Hearing

Tracking number

2014-00997

Department

700 - Department of Regulatory Agencies

Agency

725 - Division of Real Estate

CCR number

4 CCR 725-2

Rule title

RULES OF THE COLORADO BOARD OF REAL ESTATE APPRAISERS

Rulemaking Hearing

Date

11/06/2014

Time

09:00 AM

Location

1560 Broadway, Suite 1250-C, Denver, CO

Subjects and issues involved

CHAPTER 1:&DEFINITIONS

Statutory authority

Chapter 7 of Title 12, Article 61, Colorado Revised Statutes, as amended

Contact information

Name

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**DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
BOARD OF REAL ESTATE APPRAISERS
4 CCR 725-2**

**NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
November 6, 2014**

CHAPTER 1: DEFINITIONS

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 Board of Real Estate Appraisers (the "Board") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules of the Board.

STATEMENT OF BASIS

The statutory basis for the rules titled Rules of the Board of Real Estate Appraisers is Chapter 7 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 statute and the provisions of the federal Financial Institutions Reform, Recovery and Enforcement Act of 1989.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to create a definitions for review appraisers, delete the definition of a supervisory appraiser and amend the definition for real property appraiser qualification criteria.

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/rulemaking/BOREA/index.htm]

CHAPTER 1: DEFINITIONS

- 1.25 ~~Supervisory Appraiser: Any active licensee who acts in a supervisory role in the development and reporting of appraisals, appraisal reports, and other appraisal work products. Includes without limitation, any licensee who signs a report in a manner indicating they exert control over the action of any Trainee or Licensee, or who acts to guide or manage the work of any Trainee or Licensee. A supervisory appraiser must be state-certified and in good standing in the jurisdiction in which the trainee appraiser practices for a period of at least three (3) years. Supervisory appraisers must not have been subject to any disciplinary action within any jurisdiction within the last three (3) years that affects the supervisory appraiser's legal eligibility to engage in appraisal practice.~~
- 1.32 20082015 Real Property Appraiser Qualification Criteria: Pursuant to Section 12-61-706, (1) and (2), C.R.S. (as amended), the Board incorporates reference in compliance with

Section 24-4-103(12.5), C.R.S., the 20082015 Real Property Appraiser Qualification Criteria adopted by the Appraiser Qualifications Board of The Appraisal Foundation on February 20, 2004, and as amended through May 5, 2006, DECEMBER 9, 2011, including the Required Core Curricula, Guide Notes and Interpretations thereof. Amendments to the 2008 Real Property Appraiser Qualification Criteria adopted subsequent to May 5, 2006 are not included in this rule. A certified copy of the 20082015 Real Property Appraiser Qualification Criteria is on file and available for public inspection with the Program Administrator at the offices of the Board of Real Estate Appraisers at 1560 Broadway, Suite 925, Denver, Colorado. Copies of the 20082015 Real Property Appraiser Qualification Criteria may be examined at the Internet website of The Appraisal Foundation at www.appraisalfoundation.org, and copies may be ordered through that mechanism. The Appraisal Foundation may also be contacted at 1155 15th Street, NW, Suite 1111, Washington, DC 20005, or by telephone at (202) 347-7722 or telefax at (202) 347-7727. The 20082015 Real Property Appraiser Qualification Criteria shall WILL go into effect on January 1, 20082015.

- 1.38 REVIEW APPRAISER: AN APPRAISER, WHO IS ACTIVELY CREDENTIALLED IN A STATE RECOGNIZED BY AND IN SUBSTANTIAL COMPLIANCE WITH THE APPRAISAL SUBCOMMITTEE, WHO PERFORMS A REVIEW OF ANOTHER APPRAISER'S WORK IN COMPLIANCE WITH USPAP STANDARD 3. A REVIEW APPRAISER IS NOT REQUIRED TO OBTAIN A COLORADO APPRAISER'S CREDENTIAL UNLESS THE REVIEW APPRAISER ARRIVES AT HIS OR HER OWN OPINION OF VALUE FOR REAL PROPERTY LOCATED IN COLORADO.

A hearing on the above subject matter will be held on Thursday, November 6, 2014, at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250C, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.

Notice of Rulemaking Hearing

Tracking number

2014-00998

Department

700 - Department of Regulatory Agencies

Agency

725 - Division of Real Estate

CCR number

4 CCR 725-2

Rule title

RULES OF THE COLORADO BOARD OF REAL ESTATE APPRAISERS

Rulemaking Hearing

Date

11/06/2014

Time

09:00 AM

Location

1560 Broadway, Suite 1250-C, Denver, CO

Subjects and issues involved

CHAPTER 2: REQUIREMENTS FOR LICENSURE AS A REAL ESTATE APPRAISER

Statutory authority

Part 7 of Title 12, Article 61, Colorado Revised Statutes, as amended

Contact information

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**DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
BOARD OF REAL ESTATE APPRAISERS
4 CCR 725-2**

**NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
November 6, 2014**

CHAPTER 2: REQUIREMENTS FOR LICENSURE AS A REAL ESTATE APPRAISER

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 Board of Real Estate Appraisers (the "Board") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules of the Board.

STATEMENT OF BASIS

The statutory basis for the rules titled Rules of the Board of Real Estate Appraisers is Part 7 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 statute and the provisions of the federal Financial Institutions Reform, Recovery and Enforcement Act of 1989.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to amend or repeal existing rules with license requirements for appraisers.

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/rulemaking/BOREA/index.htm]

CHAPTER 2: REQUIREMENTS FOR LICENSURE AS A REAL ESTATE APPRAISER

2.2 An applicant for licensure as a Colorado Licensed Appraiser ~~shall~~**MUST** successfully complete the following requirements or the substantial equivalent thereof, as set forth in the Required Core Curriculum and Guide Note 1 of the ~~2008~~**2015** Real Property Appraiser Qualification Criteria adopted by the Appraiser Qualifications Board of the Appraisal Foundation on ~~February 20, 2004, and amended through May 5, 2006~~**DECEMBER 9, 2011**, with an effective date of January 1, ~~2008~~**2015**, and incorporated by reference in Rule 1.32:

A. Real estate appraisal education:

1. Basic Appraisal Principles: 30 hours;
2. Basic Appraisal Procedures: 30 hours;
3. 15-Hour National USPAP Course: 15 hours;
4. Residential Market Analysis and Highest and Best Use: 15 hours;
5. Residential Appraiser Site Valuation and Cost Approach: 15 hours;

6. Residential Sales Comparison and Income Approaches: 30 hours; and

7. Residential Report Writing and Case Studies: 15 hours.

- B. ~~Real estate appraisal experience: An applicant shall demonstrate to the satisfaction of the Board that the applicant completed at least 2,000 hours of appraisal experience in conformance with the provisions of Chapter 5 of these Rules and all of the applicant's experience was obtained after January 30, 1989 and in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP). Pursuant to §12-61-706(9), C.R.S., real estate appraisal experience shall be gained over a period of not less than 12 months.~~COLLEGE-LEVEL EDUCATION:

1. AN APPLICANT MUST SUCCESSFULLY COMPLETE THIRTY (30) SEMESTER HOURS OF COLLEGE-LEVEL EDUCATION, FROM AN ACCREDITED COLLEGE, JUNIOR COLLEGE, COMMUNITY COLLEGE, OR UNIVERSITY, AS DEFINED IN BOARD RULE 1.30. IF AN ACCREDITED COLLEGE OR UNIVERSITY ACCEPTS THE COLLEGE-LEVEL EXAMINATION PROGRAM® (CLEP) AND EXAMINATION(S) AND ISSUES A TRANSCRIPT FOR THE EXAM SHOWING ITS APPROVAL, IT WILL BE CONSIDERED AS CREDIT FOR THE COLLEGE COURSE.
2. AN APPLICANT HOLDING AN ASSOCIATE DEGREE, OR HIGHER, FROM AN ACCREDITED COLLEGE, JUNIOR COLLEGE, COMMUNITY COLLEGE, OR UNIVERSITY SATISFY THE THIRTY (30) HOUR COLLEGE-LEVEL EDUCATION REQUIREMENT.
3. AN APPLICANT WITH A COLLEGE DEGREE FROM A FOREIGN COUNTRY MAY HAVE THEIR EDUCATION EVALUATED FOR "EQUIVALENCY" BY ONE OF THE FOLLOWING:
 - a. AN ACCREDITED, DEGREE-GRANTING DOMESTIC COLLEGE OR UNIVERSITY;
 - b. THE AMERICAN ASSOCIATION OF COLLEGIATE REGISTRARS AND ADMISSIONS OFFICERS (AACRAO);
 - c. A FOREIGN DEGREE CREDENTIAL EVALUATION SERVICE COMPANY THAT IS A MEMBER OF THE NATIONAL ASSOCIATION OF CREDENTIAL EVALUATION SERVICES (NACES); OR
 - d. A FOREIGN DEGREE CREDENTIAL EVALUATION SERVICE COMPANY THAT PROVIDES EQUIVALENCY EVALUATION REPORTS ACCEPTED BY AN ACCREDITED DEGREE-GRANTING DOMESTIC COLLEGE OR UNIVERSITY OR BY A STATE LICENSING BOARD THAT ISSUES CREDENTIALS IN ANOTHER DISCIPLINE.

- C. ~~Real estate appraisal examination: Successful completion of the Licensed Appraiser examination as provided in Chapter 4 of these Rules.~~REAL ESTATE APPRAISAL EXPERIENCE: AN APPLICANT MUST DEMONSTRATE TO THE SATISFACTION OF THE BOARD THAT THE APPLICANT COMPLETED AT LEAST 2,000 HOURS OF APPRAISAL EXPERIENCE IN CONFORMANCE WITH THE PROVISIONS OF CHAPTER 5 OF THESE RULES AND ALL OF THE APPLICANT'S EXPERIENCE WAS OBTAINED AFTER JANUARY 30, 1989 AND IN COMPLIANCE WITH THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP). PURSUANT TO §12-61-706(5), C.R.S., REAL ESTATE APPRAISAL EXPERIENCE MUST BE GAINED OVER A PERIOD OF NOT LESS THAN 12 MONTHS.

- D. REAL ESTATE APPRAISAL EXAMINATION:

1. THE PREREQUISITES TO TAKING THE LICENSED APPRAISER EXAMINATION ARE:

- a. ONE HUNDRED FIFTY (150) CREDITABLE CLASS HOURS AS SPECIFIED IN 2.2(A) OF THIS RULE; AND
 - b. COMPLETION OF THE COLLEGE-LEVEL EDUCATION REQUIREMENTS AS SPECIFIED IN 2.2(B) OF THIS RULE;
 - c. TWO THOUSAND (2,000) HOURS OF QUALIFYING EXPERIENCE COMPLETED IN NO FEWER THAN TWELVE (12) MONTHS.
2. AFTER RECEIVING APPROVAL FROM THE BOARD, AN APPLICANT, WHO IS NOT CURRENTLY LICENSED OR CERTIFIED AND IN GOOD STANDING, HAS UP TO TWENTY-FOUR (24) MONTHS TO TAKE AND PASS THE LICENSED APPRAISER EXAMINATION.
 3. AN APPLICANT MUST SUCCESSFULLY COMPLETE THE LICENSED APPRAISER EXAMINATION AS PROVIDED IN CHAPTER 4 OF THESE RULES. THE ONLY ALTERNATIVE TO SUCCESSFUL COMPLETION OF THE LICENSED APPRAISER EXAMINATION IS THE SUCCESSFUL COMPLETION OF THE CERTIFIED RESIDENTIAL OR CERTIFIED GENERAL EXAMINATION.

2.3 An applicant for licensure as a Colorado Certified Residential Appraisal ~~shall~~**MUST** successfully complete the following requirements or the substantial equivalent thereof, as set forth in the Required Core Curriculum and Guide Note 1 of the 2015 Real Property Appraiser Qualification Criteria adopted by the Appraiser Qualifications Board of the Appraisal Foundation on February 20, 2004, and amended through May 5, 2006, DECEMBER 9, 2011, with an effective date of January 1, 20082015, and incorporated by reference in Rule 1.32:

A. Real estate appraisal education:

1. Basic Appraisal Principles: 30 hours;
2. Basic Appraisal Procedures: 30 hours;
3. 15-hour National USPAP Course: 15 hours;
4. Residential Market Analysis and Highest and Best Use: 15 hours;
5. Residential Appraiser Site Valuation and Cost Approach: 15 hours;
6. Residential Sales Comparison and Income Approaches: 30 hours;
7. Residential Report Writing and Case Studies: 15 hours;
8. Statistics, Modeling and Finance: 15 hours;
9. Advanced Residential Applications and Case Studies: 15 HOURS; AND
10. Appraisal Subject Matter Elective: 20 HOURS.;and
- ~~11. hold an associate degree, or higher, from an accredited college, junior college, community college or university as defined in Board Rule 1.30; or~~
- ~~12. Successfully complete at least 21 semester credit hours or 32 quarter credit hours in the following collegiate subject matter courses from an accredited college, junior college, community college or university as defined in Board Rule 1.30. Courses in all the listed topics shall be completed. No topics shall be omitted. Credits earned through the college level examination program ("CLEP") are acceptable to meet the requirement.~~
 - A. English Composition;
 - B. Principles of Economics;
 - C. Finance;

- ~~—— D. Algebra, Geometry or Higher Mathematics;~~
- ~~—— E. Statistics;~~
- ~~—— F. Computer Science; and~~
- ~~—— G. Business or Real Estate Law.~~

B. ~~Real estate appraisal experience:~~COLLEGE-LEVEL EDUCATION:

~~An applicant for licensure as a Colorado Certified Residential Appraiser shall demonstrate to the satisfaction of the Board that the applicant completed at least 2,500 hours of appraisal experience in conformance with the provisions of Chapter 5 of these Rules and all of the applicant's experience was obtained after January 30, 1989 and in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP). Real estate appraisal experience shall have been gained across a period of not less than 24 months.~~

1. AN APPLICANT FOR THE CERTIFIED RESIDENTIAL CREDENTIAL MUST HOLD A BACHELOR'S DEGREE, OR HIGHER, FROM AN ACCREDITED COLLEGE OR UNIVERSITY, AS DEFINED BY BOARD RULE 1.30.
2. AN APPLICANT WITH A COLLEGE DEGREE FROM A FOREIGN COUNTRY MAY HAVE THEIR EDUCATION EVALUATED FOR "EQUIVALENCY" BY ONE OF THE FOLLOWING:
 - a. AN ACCREDITED, DEGREE-GRANTING DOMESTIC COLLEGE OR UNIVERSITY;
 - b. THE AMERICAN ASSOCIATION OF COLLEGIATE REGISTRARS AND ADMISSIONS OFFICERS (AACRAO);
 - c. A FOREIGN DEGREE CREDENTIAL EVALUATION SERVICE COMPANY THAT IS A MEMBER OF THE NATIONAL ASSOCIATION OF CREDENTIAL EVALUATION SERVICES (NACES); OR
 - d. A FOREIGN DEGREE CREDENTIAL EVALUATION SERVICE COMPANY THAT PROVIDES EQUIVALENCY EVALUATION REPORTS ACCEPTED BY AN ACCREDITED DEGREE-GRANTING DOMESTIC COLLEGE OR UNIVERSITY OR BY A STATE LICENSING BOARD THAT ISSUES CREDENTIALS IN ANOTHER DISCIPLINE.

C. ~~Real estate appraisal examination: Successful completion of the Certified Residential Appraiser examination as provided in Chapter 4 of these Rules.~~REAL ESTATE APPRAISAL EXPERIENCE: AN APPLICANT FOR LICENSURE AS A CERTIFIED RESIDENTIAL APPRAISER MUST DEMONSTRATE TO THE SATISFACTION OF THE BOARD THAT THE APPLICANT COMPLETED AT LEAST 2,500 HOURS OF APPRAISAL EXPERIENCE IN CONFORMANCE WITH THE PROVISIONS OF CHAPTER 5 OF THESE RULES AND ALL OF THE APPLICANT'S EXPERIENCE WAS OBTAINED AFTER JANUARY 30, 1989 AND IN COMPLIANCE WITH THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP). REAL ESTATE APPRAISAL EXPERIENCE MUST HAVE BEEN GAINED ACROSS A PERIOD OF NOT LESS THAN TWENTY-FOUR (24) MONTHS.

D. REAL ESTATE APPRAISAL EXAMINATION:

1. THE PREREQUISITES TO TAKING THE CERTIFIED RESIDENTIAL APPRAISER EXAMINATION ARE:
 - a. TWO HUNDRED (200) CREDITABLE CLASS HOURS AS SPECIFIED IN 2.3(A) OF THIS RULE; AND
 - b. COMPLETION OF THE COLLEGE-LEVEL EDUCATION REQUIREMENTS AS SPECIFIED IN 2.3(B) OF THIS RULE;

- c. TWO THOUSAND FIVE HUNDRED (2,500) HOURS OF QUALIFYING EXPERIENCE COMPLETED IN NO FEWER THAN TWENTY-FOUR (24) MONTHS.
2. AFTER RECEIVING APPROVAL FROM THE BOARD, AN APPLICANT, WHO IS NOT CURRENTLY LICENSED OR CERTIFIED AND IN GOOD STANDING, HAS UP TO TWENTY-FOUR (24) MONTHS TO TAKE AND PASS THE CERTIFIED RESIDENTIAL APPRAISER EXAMINATION.
3. AN APPLICANT MUST SUCCESSFULLY COMPLETE THE CERTIFIED RESIDENTIAL APPRAISER EXAMINATION AS PROVIDED IN CHAPTER 4 OF THESE RULES. THE ONLY ALTERNATIVE TO SUCCESSFUL COMPLETION OF THE CERTIFIED RESIDENTIAL APPRAISER EXAMINATION IS THE SUCCESSFUL COMPLETION OF THE CERTIFIED GENERAL EXAMINATION.

2.4 An applicant for licensure as a Colorado Certified General Appraiser shall successfully complete the following requirements or the substantial equivalent thereof, as set forth in the Required Core Curriculum and Guide Note 1 of the 20082015 Real Property Appraiser Qualification Criteria adopted by the Appraiser Qualifications Board of the Appraisal Foundation on February 20, 2004, and amended through May 5, 2006DECEMBER 9, 2011, with an effective date of January 1, 20082015, as incorporated by reference in Rule 1.32:

A. Real estate appraisal education:

1. Basic Appraisal Principles: 30 hours;
2. Basic Appraisal Procedures: 30 hours;
3. 15-Hour National USPAP Course: 15 hours;
4. General Appraiser Market Analysis and Highest and Best Use: 30 hours;
5. Statistics, Modeling and Finance; 15 hours;
6. General Appraiser Sales Comparison Approach: 30 hours;
7. General Appraiser Site Valuation and Cost Approach: 30 hours;
8. General Appraiser Income Approach: 60 hours;
9. General Appraiser Report Writing and Case Studies; 30 hours; AND
10. Appraisal Subject Matter Electives: 30 hours.; and
- ~~11. hold a bachelor's degree or higher from an accredited college or university as defined in Board Rule 1.30, or~~
- ~~12. successfully complete not less than 30 semester hours or 45 quarter credit hours in the following collegiate subject matter courses from an accredited college, junior college, community college or university as defined in Board Rule 1.30. Courses in all of the listed topics shall be successfully completed. No topics shall be omitted. Credits earned through the college level examination program ("CLEP" are acceptable to meet this requirement.~~
 - ~~—A. English Composition;~~
 - ~~—B. Macro Economics;~~
 - ~~—C. Micro Economics;~~
 - ~~—D. Finance;~~
 - ~~—E. Algebra, Geometry or Higher Mathematics;~~
 - ~~—F. Statistics;~~

~~—G. Computer Science;~~

~~—H. Business or Real Estate Law; and~~

~~I. Two elective courses in Accounting, Geography, Agricultural Economics, Business Management or Real Estate~~

B. Real estate appraisal experience:COLLEGE-LEVEL EDUCATION:

~~An applicant submitting an application in the offices of the Board for licensure as a Colorado Certified General Appraiser shall demonstrate to the satisfaction of the Board that the applicant completed at least 3,000 hours of appraisal experience in conformance with the provisions of Chapter 5 of these Rules and all of the applicant's experience was obtained after January 30, 1989 and in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP). Real estate appraisal experience shall have been gained across a period of not less than 30 months and shall include at least 1,500 hours of appraisal of non-residential property, as defined in Chapter 1 of these Rules.~~

1. AN APPLICANT FOR THE CERTIFIED GENERAL CREDENTIAL MUST HOLD A BACHELOR'S DEGREE, OR HIGHER, FROM AN ACCREDITED COLLEGE OR UNIVERSITY, AS DEFINED BY BOARD RULE 1.30.
2. AN APPLICANT WITH A COLLEGE DEGREE FROM A FOREIGN COUNTRY MAY HAVE THEIR EDUCATION EVALUATED FOR "EQUIVALENCY" BY ONE OF THE FOLLOWING:
 - a. AN ACCREDITED, DEGREE-GRANTING DOMESTIC COLLEGE OR UNIVERSITY;
 - b. THE AMERICAN ASSOCIATION OF COLLEGIATE REGISTRARS AND ADMISSIONS OFFICERS (AACRAO);
 - c. A FOREIGN DEGREE CREDENTIAL EVALUATION SERVICE COMPANY THAT IS A MEMBER OF THE NATIONAL ASSOCIATION OF CREDENTIAL EVALUATION SERVICES (NACES); OR
 - d. A FOREIGN DEGREE CREDENTIAL EVALUATION SERVICE COMPANY THAT PROVIDES EQUIVALENCY EVALUATION REPORTS ACCEPTED BY AN ACCREDITED DEGREE-GRANTING DOMESTIC COLLEGE OR UNIVERSITY OR BY A STATE LICENSING BOARD THAT ISSUES CREDENTIALS IN ANOTHER DISCIPLINE.

C. ~~Real estate appraisal examination: Successful completion of the Certified Residential Appraiser examination as provided in Chapter 4 of these Rules.~~REAL ESTATE APPRAISAL EXPERIENCE: AN APPLICANT FOR LICENSURE AS A CERTIFIED GENERAL APPRAISER MUST DEMONSTRATE TO THE SATISFACTION OF THE BOARD THAT THE APPLICANT COMPLETED AT LEAST 3,000 HOURS OF APPRAISAL EXPERIENCE, OF WHICH 1,500 HOURS MUST BE IN NON-RESIDENTIAL APPRAISAL WORK, IN CONFORMANCE WITH THE PROVISIONS OF CHAPTER 5 OF THESE RULES AND ALL OF THE APPLICANT'S EXPERIENCE WAS OBTAINED AFTER JANUARY 30, 1989 AND IN COMPLIANCE WITH THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP). REAL ESTATE APPRAISAL EXPERIENCE MUST HAVE BEEN GAINED ACROSS A PERIOD OF NOT LESS THAN THIRTY (30) MONTHS.

D. REAL ESTATE APPRAISAL EXAMINATION:

1. THE PREREQUISITES TO TAKING THE CERTIFIED GENERAL APPRAISER EXAMINATION ARE:
 - a. THREE HUNDRED (300) CREDITABLE CLASS HOURS AS SPECIFIED IN 2.4(A) OF THIS RULE; AND

- b. COMPLETION OF THE COLLEGE-LEVEL EDUCATION REQUIREMENTS AS SPECIFIED IN 2.4(B) OF THIS RULE;
 - c. THREE THOUSAND (3,000) HOURS OF QUALIFYING EXPERIENCE, OF WHICH NO LESS THAN 1,500 HOURS MUST BE IN NON-RESIDENTIAL APPRAISAL WORK, COMPLETED IN NO FEWER THAN THIRTY (30) MONTHS.
- 2. AFTER RECEIVING APPROVAL FROM THE BOARD, AN APPLICANT, WHO IS NOT CURRENTLY LICENSED OR CERTIFIED AND IN GOOD STANDING, HAS UP TO TWENTY-FOUR (24) MONTHS TO TAKE AND PASS THE CERTIFIED GENERAL APPRAISER EXAMINATION.
 - 3. AN APPLICANT MUST SUCCESSFULLY COMPLETE THE CERTIFIED GENERAL APPRAISER EXAMINATION AS PROVIDED IN CHAPTER 4 OF THESE RULES.

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A hearing on the above subject matter will be held on Thursday, November 6, 2014, at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250C, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.

Notice of Rulemaking Hearing

Tracking number

2014-00999

Department

700 - Department of Regulatory Agencies

Agency

725 - Division of Real Estate

CCR number

4 CCR 725-2

Rule title

RULES OF THE COLORADO BOARD OF REAL ESTATE APPRAISERS

Rulemaking Hearing

Date

11/06/2014

Time

09:00 AM

Location

1560 Broadway, Suite 1250-C, Denver, CO

Subjects and issues involved

CHAPTER 7:&CONTINUING EDUCATION REQUIREMENTS

Statutory authority

Part 7 of Title 12, Article 61, Colorado Revised Statutes, as amended

Contact information

Name

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Title

Rulemaking Administrator

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**DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
BOARD OF REAL ESTATE APPRAISERS
4 CCR 725-2**

**NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
November 6, 2014**

CHAPTER 7: CONTINUING EDUCATION REQUIREMENTS

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 Board of Real Estate Appraisers (the "Board") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules of the Board.

STATEMENT OF BASIS

The statutory basis for the rules titled Rules of the Board of Real Estate Appraisers is Part 7 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 statute and the provisions of the federal Financial Institutions Reform, Recovery and Enforcement Act of 1989.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to amend or repeal existing rules with respect to the continuing education requirements for licensed and certified appraisers.

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/rulemaking/BOREA/index.htm]

CHAPTER 7: CONTINUING EDUCATION REQUIREMENTS

7.6 Continuing appraisal education shall be at least TWO (2) class hours in duration including examination time (if any). Continuing appraisal education programs and courses are intended to maintain and improve the appraiser's skill, knowledge and competency. Continuing appraisal education courses and programs may include, without limitation, these real estate and real estate appraisal topics:

- A. Ad valorem taxation;
- B. Arbitration, DISPUTE RESOLUTION;
- C. ~~Business courses related to practice of real estate appraisal~~ COURSES RELATED TO THE PRACTICE OF REAL ESTATE APPRAISAL OR CONSULTING;
- D. ~~Construction~~ DEVELOPMENT cost estimating;
- E. Ethics and standards of professional practice, USPAP;
- F. Land use planning, zoning and taxation;
- G. Management, leasing, brokerage and timesharing;
- H. Property development, PARTIAL INTERESTS;
- I. ~~Real estate appraisal (valuation/evaluation)~~ REAL ESTATE LAW, EASEMENTS, AND LEGAL INTERESTS;

- J. ~~Real estate law~~REAL ESTATE LITIGATION, DAMAGES, CONDEMNATION;
- K. ~~Real estate litigation~~REAL ESTATE FINANCING AND INVESTMENT;
- L. ~~Real estate financing and investment~~REAL ESTATE APPRAISAL RELATED COMPUTER APPLICATIONS;
- M. ~~Real estate appraisal related computer applications~~REAL ESTATE SECURITIES AND SYNDICATION;
- N. ~~Real estate securities and syndication~~DEVELOPING OPINIONS OF REAL PROPERTY VALUE IN APPRAISALS THAT ALSO INCLUDE PERSONAL PROPERTY AND/OR BUSINESS VALUE;
- O. ~~Real property exchange~~SELLER CONCESSIONS AND IMPACT ON VALUE; and
- P. ~~Such other topics as the Board may approve, upon its own motion or upon petition by the course provider or the licensee in a form acceptable to the Board.~~ENERGY EFFICIENT ITEMS AND "GREEN BUILDING" APPRAISALS; AND/OR
- Q. SUCH OTHER TOPICS AS THE BOARD MAY APPROVE, UPON ITS OWN MOTION OR UPON PETITION BY THE COURSE PROVIDER OR THE LICENSEE IN A FORM ACCEPTABLE TO THE BOARD.

- 7.11 An appraiser may repeat courses or programs previously completed, subject to the limitation that no course or program may be repeated more frequently than once every ~~two (2) years,~~ except as authorized by the Board CONTINUING EDUCATION CYCLE, WHICH IS THE SAME AS THE APPRAISER'S LICENSE CYCLE. Education in appraisal ethics and the Uniform Standards of Professional Appraisal Practice, OR ITS AQB-APPROVED EQUIVALENT, ~~are~~IS not subject to this limitation.

A hearing on the above subject matter will be held on Thursday, November 6, 2014, at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250C, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.

Notice of Rulemaking Hearing

Tracking number

2014-01032

Department

700 - Department of Regulatory Agencies

Agency

725 - Division of Real Estate

CCR number

4 CCR 725-4

Rule title

CONSERVATION EASEMENTS

Rulemaking Hearing

Date

11/03/2014

Time

09:00 AM

Location

1560 Broadway, Suite 1250-C, Denver, CO

Subjects and issues involved

RULE CHAPTER 4. CONSERVATION EASEMENT DONATIONS MADE ON OR AFTER JANUARY 1, 2014

Statutory authority

Chapter 7 of Title 12, Article 61, Colorado Revised Statutes, as amended

Contact information

Name

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**DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
CONSERVATION EASEMENTS**

**NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
November 3, 2014**

**RULE CHAPTER 4. CONSERVATION EASEMENT DONATIONS MADE ON OR AFTER JANUARY 1,
2014**

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 Department of Regulatory Agencies and the Division of Real Estate to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to conservation easements.

STATEMENT OF BASIS

The statutory basis for the rules titled Conservation Easements is Chapter 7 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 sections 12-61-722 and 12-61-723, C.R.S.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to define the requirements and procedures regarding the submission and review of an application for a tax credit certificate for conservation easements donated on or after January 1, 2014.

Proposed New, Amended and Repealed Rules

[Deleted material showed ~~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 Division at <http://www.sos.state.co.us>]

CHAPTER 4: CONSERVATION EASEMENT DONATIONS MADE ON OR AFTER JANUARY 1, 2014

4.1. APPLICATION SUBMISSION AND REVIEW FOR A TAX CREDIT CERTIFICATE

- A. AN APPLICATION IS DEEMED COMPLETE BY THE DIVISION IN ACCORDANCE WITH SECTION 12-61-723, C.R.S., WHEN THE APPLICATION AND ALL OTHER REQUIRED DOCUMENTS ARE SIGNED AND INITIALED, PROPERLY FILLED OUT, AND DATE-STAMPED BY THE DIVISION UPON RECEIPT. THE DIVISION IS NOT RESPONSIBLE FOR ANY APPLICATION NOT RECEIVED. ONLY AFTER THE

APPLICATION IS DEEMED COMPLETE WILL THE APPLICATION BE REVIEWED.

- B. FOR AN APPLICATION TO BE DEEMED COMPLETE AND A TAX CREDIT CERTIFICATE TO BE ASSIGNED IN ACCORDANCE WITH RULE 4.2., THE APPLICATION MUST INCLUDE THE DOCUMENTATION AND FEE AS REQUIRED IN SECTION 12-61-723(5), C.R.S., AND ALSO PROVIDE A SIGNED AND COMPLETED FORM TITLED: "APPLICATION FOR A CONSERVATION EASEMENT TAX CREDIT CERTIFICATE," APPROVED BY THE DIVISION. THE FEE IS NONREFUNDABLE.
- C. UPON THE APPLICATION BEING DEEMED COMPLETE, THE DIRECTOR OR COMMISSION MAY REQUEST ADDITIONAL INFORMATION OR DOCUMENTATION NECESSARY TO MAKE A FINAL DETERMINATION REGARDING THE APPLICATION.
- D. THE LANDOWNER OR ITS AUTHORIZED DESIGNEE TO SIGN ON BEHALF OF THE LANDOWNER MUST SIGN, UNDERSTAND, AND ADHERE TO ALL DISCLOSURES LISTED IN THE "APPLICATION FOR A CONSERVATION EASEMENT TAX CREDIT CERTIFICATE," IN THE FORM APPROVED BY THE DIVISION AT THE TIME THE APPLICATION IS MADE. THE SIGNATORY FOR THE APPLICATION MUST BE AUTHORIZED AS DESCRIBED IN THIS SUB PARAGRAPH D.
 - 1. IF THE LANDOWNER IS A CORPORATION, ONE OF THE OFFICERS OR DIRECTORS AUTHORIZED TO APPLY ON BEHALF OF THE CORPORATION;
 - 2. IF THE LANDOWNER IS A PARTNERSHIP, ONE OF THE GENERAL PARTNERS OF THE PARTNERSHIP AUTHORIZED TO APPLY ON BEHALF OF THE PARTNERSHIP;
 - 3. IF THE LANDOWNER IS A JOINT OWNER, SUCH INDIVIDUAL AUTHORIZED TO APPLY ON BEHALF OF ALL JOINT OWNERS;
 - 4. IF THE LANDOWNER IS A LIMITED LIABILITY COMPANY, ONE OF THE MANAGERS OR MEMBER-MANAGERS AUTHORIZED TO APPLY ON BEHALF OF THE COMPANY;
 - 5. IF THE LANDOWNER IS A TRUST, ONE OF THE TRUSTEES AUTHORIZED TO APPLY ON BEHALF OF THE TRUST;
 - 6. IF THE LANDOWNER IS A S CORPORATION, ONE OF THE SHAREHOLDERS AUTHORIZED TO APPLY ON BEHALF OF THE S CORPORATION; AND
 - 7. IF THE LANDOWNER IS AN ESTATE, ONE OF THE PERSONAL REPRESENTATIVES AUTHORIZED TO APPLY ON BEHALF OF THE ESTATE.
- E. A TAX CREDIT CERTIFICATE APPLICATION IS INELIGIBLE AND WILL NOT BE APPLIED TOWARDS THE LIMIT FOR THE APPLICABLE YEAR IF IT IS BASED ON A CONSERVATION EASEMENT DONATION IN WHICH:
 - 1. THE APPRAISER WHO CONDUCTED THE APPRAISAL SUBMITTED WITH THE APPLICATION DOES NOT HOLD

A VALID ACTIVE LICENSE AS A CERTIFIED GENERAL APPRAISER AS OF THE EFFECTIVE DATE OF VALUE IN THE APPRAISAL REPORT OR THE CERTIFIED GENERAL APPRAISER HAS A PRACTICE RESTRICTION PROHIBITING THAT APPRAISER FROM CONDUCTING AN APPRAISAL FOR A CONSERVATION EASEMENT; OR

2. THE CONSERVATION EASEMENT HOLDER IS NOT CERTIFIED BY THE DIVISION AT THE TIME OF THE DONATION.

- F. SUBMISSION OF AN APPLICATION DOES NOT GUARANTEE ISSUANCE OF A TAX CREDIT CERTIFICATE.
- G. THE DIRECTOR OR COMMISSION MAY CONSULT WITH THE LANDOWNER, THE LANDOWNER'S AUTHORIZED REPRESENTATIVE, THE CONSERVATION EASEMENT HOLDER, THE APPRAISER, THE DEPARTMENT OF REVENUE AND ANY OTHER ENTITY OR INDIVIDUAL NECESSARY TO ASSIST IN THE REVIEW OF AN APPLICATION FOR A TAX CREDIT CERTIFICATE.
- H. APPLICATIONS DEEMED COMPLETED WILL BE REVIEWED IN AN AVERAGE OF 120 DAYS IN ACCORDANCE WITH SECTION 12-61-723, C.R.S.
- I. ANY EXTENSIONS OF DEADLINES IN ACCORDANCE WITH SECTION 12-61-723(7) (D), C.R.S., MUST BE AGREED TO IN WRITING.
- J. THE DIRECTOR HAS THE AUTHORITY, IN ACCORDANCE WITH SECTION 12-61-723(9), C.R.S., TO REQUEST A SECOND APPRAISAL IF THE COMMISSION AND THE DIRECTOR DETERMINE THE ORIGINAL APPRAISAL IS NOT CREDIBLE. THE SECOND APPRAISAL MUST BE CONDUCTED BY AN APPRAISER WHO HOLDS A VALID ACTIVE LICENSE AS A CERTIFIED GENERAL APPRAISER WITH NO PRACTICE RESTRICTIONS PROHIBITING THAT APPRAISER FROM CONDUCTING THE ASSIGNMENT AND WHO IS INDEPENDENT AND NOT AFFILIATED WITH THE FIRST APPRAISER. THE REQUEST FOR A SECOND APPRAISAL MAY INCLUDE A NEW APPRAISAL OR A USPAP STANDARD 3 REVIEW WITH AN OPINION OF VALUE.
- K. THE DIRECTOR OR THE COMMISSION MAY CONDUCT SETTLEMENT DISCUSSIONS WITH THE LANDOWNER AT ANY TIME DURING THE APPLICATION REVIEW PROCESS.

4.2. ASSIGNMENT AND ISSUANCE OF A TAX CREDIT CERTIFICATE

- A. ONCE AN APPLICATION IS DEEMED COMPLETE, THE DOLLAR AMOUNT APPLIED FOR IN THE APPLICATION WILL BE ASSIGNED TO THE LANDOWNER AND APPLIED TOWARD THE AGGREGATE ANNUAL CAP IN THE ORDER THE APPLICATION IS DEEMED COMPLETE. THE AMOUNT APPLIED TOWARD THE AGGREGATE ANNUAL CAP WILL NOT BE AVAILABLE TO ANY SUBSEQUENT APPLICATION.
- B. IF MORE THAN ONE APPLICATION IS DEEMED COMPLETE BY THE DIVISION ON THE SAME DAY, THE AMOUNT APPLIED FOR WILL BE APPLIED TOWARD THE AGGREGATE ANNUAL CAP IN THE ORDER THAT THE CONSERVATION EASEMENT DEEDS WERE RECORDED WITH THE RESPECTIVE COUNTIES.
- C. A TAX CREDIT CERTIFICATE WILL ONLY BE ISSUED IN WHOLE DOLLAR

AMOUNTS.

- D. A TAX CREDIT CERTIFICATE MAY NOT BE USED TO CLAIM AN INCOME TAX CREDIT WITH THE DEPARTMENT OF REVENUE PRIOR TO THE YEAR FOR WHICH THE TAX CREDIT CERTIFICATE IS ISSUED BY THE DIVISION.
- E. IN THE EVENT A PORTION OF AN APPROVED TAX CREDIT CERTIFICATE APPLICATION CANNOT BE ISSUED UNDER THE AVAILABLE TAX CREDIT CAP FOR ANY GIVEN YEAR, A SECOND CERTIFICATE WILL BE ISSUED FOR THE REMAINING TAX CREDIT AMOUNT FOR THE SUBSEQUENT YEAR SUBJECT TO THE WAITLIST LIMIT SET FORTH IN SECTION 39-22-522 (2.5), C.R.S.
- F. IN THE EVENT THAT ALL OR A PORTION OF AN APPROVED TAX CREDIT CERTIFICATE APPLICATION CANNOT BE ISSUED UNDER THE AVAILABLE WAITLIST LIMIT FOR THE FOLLOWING CALENDAR YEAR, THE REMAINING AMOUNT WILL BE ISSUED A TAX CREDIT CERTIFICATE IN THE NEXT AVAILABLE CALENDAR YEAR.
- G. IN THE EVENT THE AGGREGATE LIMIT FOR A GIVEN CALENDAR YEAR IS NOT EXCEEDED AND THE DIVISION RECEIVES AND APPROVES A COMPLETE APPLICATION FOR A TAX CREDIT CERTIFICATE FOR A CONSERVATION EASEMENT DONATED ON OR AFTER JANUARY 1, 2011, THE DIVISION MAY ISSUE A TAX CREDIT CERTIFICATE FROM THE REMAINING LIMIT. ISSUANCE OF THE TAX CREDIT CERTIFICATE IN THIS CIRCUMSTANCE CAN ONLY OCCUR IF THE CONSERVATION EASEMENT DONATION WAS RECORDED PRIOR TO OR DURING THE YEAR IN WHICH THE AGGREGATE LIMIT WAS NOT REACHED.

4.3. APPLICATION DENIAL AND APPEAL

- A. IF AN APPLICATION IS DENIED, THE ASSIGNED DOLLAR AMOUNT APPLIED TOWARD THE AGGREGATE ANNUAL CAP FOR THAT APPLICATION WILL NOT BE AVAILABLE FOR USE BY ANY SUBSEQUENT APPLICATION.
- B. THE LANDOWNER MAY SUBMIT A NEW APPLICATION IF THE DENIAL OF THE ORIGINAL APPLICATION IS FINAL PURSUANT TO SECTION 12-61-723(12), C.R.S. THE NEW APPLICATION MUST BE SUBMITTED PURSUANT TO RULE 4.1. AND WILL BE APPLIED TOWARD THE AGGREGATE ANNUAL CAP IN THE ORDER THE NEW APPLICATION IS DEEMED COMPLETE.
- C. APPEAL OF THE DIRECTOR'S OR THE COMMISSION'S DENIAL OF AN APPLICATION MUST BE MADE IN WRITING BY EITHER THE LANDOWNER OR THE LANDOWNER'S AUTHORIZED REPRESENTATIVE. THE WRITTEN APPEAL OF THE DENIAL MUST BE SENT BY CERTIFIED MAIL AND POSTMARKED WITHIN 30 DAYS OF THE ISSUANCE OF THE DENIAL.

4.4. PRELIMINARY ADVISORY OPINIONS

- A. PRIOR TO AN APPLICATION FOR A TAX CREDIT CERTIFICATE, A LANDOWNER MAY REQUEST A PRELIMINARY ADVISORY OPINION REGARDING THE ISSUANCE OF A TAX CREDIT CERTIFICATE. SUCH OPINIONS MAY CONSIDER:
 - 1. THE CREDIBILITY OF THE APPRAISAL PURSUANT TO SECTION 12-61-723(3)(B), C.R.S.; AND/OR

2. WHETHER A CONSERVATION EASEMENT DONATION FOR WHICH A TAX CREDIT IS TO BE CLAIMED IS A QUALIFIED CONSERVATION CONTRIBUTION PURSUANT TO SECTION 12-61-723(3)(d), C.R.S.

B. A LANDOWNER REQUESTING SUCH AN OPINION MUST DO SO IN A FORM TITLED: "APPLICATION FOR A CONSERVATION EASEMENT TAX CREDIT CERTIFICATE PRELIMINARY ADVISORY OPINION," APPROVED BY THE DIVISION. AN APPLICATION FOR A PRELIMINARY ADVISORY OPINION IS DEEMED COMPLETE BY THE DIVISION WHEN THE APPLICATION AND ALL OTHER REQUIRED DOCUMENTS ARE SIGNED AND INITIALED, PROPERLY FILLED OUT AND DATE-STAMPED BY THE DIVISION UPON RECEIPT. THE DIVISION IS NOT RESPONSIBLE FOR ANY APPLICATIONS NOT RECEIVED. ONLY AFTER THE APPLICATION IS DEEMED COMPLETE WILL THE APPLICATION BE REVIEWED.

C. THE LANDOWNER OR ITS AUTHORIZED DESIGNEE TO SIGN ON BEHALF OF THE LANDOWNER MUST SIGN, UNDERSTAND, AND ADHERE TO ALL DISCLOSURES LISTED IN THE "APPLICATION FOR A CONSERVATION EASEMENT TAX CREDIT CERTIFICATE PRELIMINARY ADVISORY OPINION," IN THE FORM APPROVED BY THE DIVISION AT THE TIME THE APPLICATION IS MADE. THE SIGNATORY FOR THE APPLICATION MUST BE AUTHORIZED AS DESCRIBED IN THIS SUB PARAGRAPH C.

1. IF THE LANDOWNER IS A CORPORATION, ONE OF THE OFFICERS OR DIRECTORS AUTHORIZED TO APPLY ON BEHALF OF THE CORPORATION;
2. IF THE LANDOWNER IS A PARTNERSHIP, ONE OF THE GENERAL PARTNERS OF THE PARTNERSHIP AUTHORIZED TO APPLY ON BEHALF OF THE PARTNERSHIP;
3. IF THE LANDOWNER IS A JOINT OWNER, SUCH INDIVIDUAL AUTHORIZED TO APPLY ON BEHALF OF ALL JOINT OWNERS;
4. IF THE LANDOWNER IS A LIMITED LIABILITY COMPANY, ONE OF THE MANAGERS OR MEMBER-MANAGERS AUTHORIZED TO APPLY ON BEHALF OF THE COMPANY;
5. IF THE LANDOWNER IS A TRUST, ONE OF THE TRUSTEES AUTHORIZED TO APPLY ON BEHALF OF THE TRUST;
6. IF THE LANDOWNER IS A S CORPORATION, ONE OF THE SHAREHOLDERS AUTHORIZED TO APPLY ON BEHALF OF THE S CORPORATION; AND
7. IF THE LANDOWNER IS AN ESTATE, ONE OF THE PERSONAL REPRESENTATIVES AUTHORIZED TO APPLY ON BEHALF OF THE ESTATE.

D. A LANDOWNER REQUESTING A PRELIMINARY ADVISORY OPINION IS NOT AN

APPLICANT FOR A TAX CREDIT CERTIFICATE. THE ISSUANCE OF A FAVORABLE PRELIMINARY ADVISORY OPINION DOES NOT GUARANTEE THE APPROVAL OF A TAX CREDIT CERTIFICATE APPLICATION OR THE ISSUANCE OF THE TAX CREDIT CERTIFICATE. THE ISSUANCE OF EITHER A FAVORABLE OR NONFAVORABLE PRELIMINARY ADVISORY OPINION BY THE DIVISION WILL NOT ACT TO PROHIBIT A LANDOWNER FROM SUBMITTING AN APPLICATION FOR A TAX CREDIT CERTIFICATE.

- E. TO BE DEEMED COMPLETE, A REQUEST FOR A PRELIMINARY ADVISORY OPINION REGARDING THE CREDIBILITY OF THE APPRAISAL MUST INCLUDE:
 - 1. THE DRAFT OR FINAL APPRAISAL TO BE CONSIDERED; AND
 - 2. ANY OTHER RELEVANT INFORMATION OR DOCUMENTATION THE DIRECTOR DEEMS NECESSARY TO MAKE A PRELIMINARY OPINION REGARDING THE APPRAISAL; AND
 - 3. THE REQUIRED FEE AS PRESCRIBED BY THE DIVISION. THE FEE IS NONREFUNDABLE.
- F. TO BE DEEMED COMPLETE, A REQUEST FOR A PRELIMINARY ADVISORY OPINION REGARDING THE QUALIFICATION OF THE CONSERVATION CONTRIBUTION MUST INCLUDE:
 - 1. THE DRAFT OR RECORDED DEED OF CONSERVATION EASEMENT TO BE CONSIDERED;
 - 2. DOCUMENTATION SUPPORTING THE CONSERVATION PURPOSE OF THE EASEMENT;
 - 3. ANY OTHER RELEVANT INFORMATION OR DOCUMENTATION THE COMMISSION DEEMS NECESSARY TO MAKE A PRELIMINARY OPINION REGARDING THE QUALIFICATION OF THE CONSERVATION CONTRIBUTION; AND
 - 4. THE REQUIRED FEE AS PRESCRIBED BY THE DIVISION. THE FEE IS NONREFUNDABLE.
- G. THE DIRECTOR AND THE COMMISSION WILL REVIEW APPLICATIONS FOR PRELIMINARY ADVISORY OPINIONS AND ISSUE EITHER A FAVORABLE OR NONFAVORABLE OPINION WITHIN AN AVERAGE OF 120 DAYS.
- H. A NONFAVORABLE OPINION WILL INCLUDE A DESCRIPTION OF ANY POTENTIAL DEFICIENCIES IDENTIFIED BY THE DIRECTOR OR THE COMMISSION IN WRITING.
- I. THE ISSUANCE OF A PRELIMINARY ADVISORY OPINION WILL NOT LIMIT THE AUTHORITY OF THE DIRECTOR OR THE COMMISSION TO MAKE A FINAL DETERMINATION TO APPROVE OR DENY AN APPLICATION FOR A TAX CREDIT CERTIFICATE CONTRARY TO THE PRELIMINARY ADVISORY OPINION; LIMIT THE DIRECTOR'S AUTHORITY TO INVESTIGATE A CONSERVATION EASEMENT HOLDER; OR LIMIT THE BOARD OF REAL ESTATE APPRAISERS' AUTHORITY TO INVESTIGATE AN APPRAISER.

- J. THE DIRECTOR OR COMMISSION MAY CONSULT WITH THE LANDOWNER, THE LANDOWNER'S AUTHORIZED REPRESENTATIVE, THE CONSERVATION EASEMENT HOLDER, THE APPRAISER, THE DEPARTMENT OF REVENUE AND ANY OTHER ENTITY OR INDIVIDUAL NECESSARY IN ASSISTING IN THE REVIEW OF AN APPLICATION FOR A PRELIMINARY ADVISORY OPINION.
- K. PRELIMINARY ADVISORY OPINIONS ARE NOT APPEALABLE.

A hearing on the above subject matter will be held on Monday, November 3, 2014, at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250-C, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.

Notice of Rulemaking Hearing

Tracking number

2014-01015

Department

700 - Department of Regulatory Agencies

Agency

725 - Division of Real Estate

CCR number

4 CCR 725-4

Rule title

CONSERVATION EASEMENTS

Rulemaking Hearing

Date

11/03/2014

Time

09:00 AM

Location

1560 Broadway, Suite 1250-C, Denver, CO

Subjects and issues involved

A-1&QUALIFICATIONS FOR CERTIFICATION TO HOLD CONSERVATION EASEMENTS

Statutory authority

Chapter 7 of Title 12, Article 61, Colorado Revised Statutes, as amended

Contact information

Name

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Title

Rulemaking Administrator

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DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
CONSERVATION EASEMENTS
4CCR 725-4

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
November 3, 2014

A-1 ~~QUALIFICATIONS FOR CERTIFICATION TO HOLD CONSERVATION EASEMENTS~~

~~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 Division of Real Estate (the "Division") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules of the Division regarding the conservation easement certification program.~~

Section 1. Authority

~~The Division of Real Estate adopts the following permanent rule entitled, Qualifications for Certification to Hold Conservation Easements, according to the authority found in section 12-61-720 (11) C.R.S.~~

Section 2. Scope and Purpose

~~In 2008, Governor Bill Ritter, Jr. signed House Bill 08-1353 into law. This law effectively established the regulatory framework for conservation easement holders that accept a conservation easement donation for which a state tax credit is claimed. Pursuant to section 12-61-720(1), C.R.S., the Colorado Division of Real Estate, in consultation with the conservation easement oversight commission, shall establish and administer a certification program for qualified nonprofit and government entities that hold a conservation easement for which a tax credit is claimed. The purpose of the program is to establish minimum qualifications for certifying organizations to encourage professionalism and stability; and identify fraudulent or unqualified applicants as defined by the rules of the division to prevent them from becoming certified.~~

~~In determining whether to grant or deny certification, the Division of Real Estate and the conservation easement oversight commission may consider the following: the applicant's process for accepting conservation easements, stewardship practices and capacity, finances, governance, unique circumstances, and any other information deemed relevant by the Division of Real Estate or the conservation easement oversight commission. Accordingly, the Division of Real Estate created an application for certification based on these considerations.~~

~~The purpose of this rule is to establish the required minimum qualifications for certification.~~

Section 3. Applicability

~~This rule applies to any nonprofit entity and any government entity that hold conservation easements for which a tax credit is claimed pursuant to section 39-22-522, C.R.S.~~

Section 4. Definitions

- ~~1) "Conservation easements" means conservation easements that have a charitable donation component. This includes full donation and bargain sale conservation easements.~~

Section 5. A-1 Qualifications for Certification to Hold Conservation Easements

- ~~1) The Division may deny, refuse to renew, or revoke the certification of a conservation easement holder who fails to meet any of the following minimum qualifications:~~

- ~~a) Organization~~

- ~~i) The conservation easement holder:~~

- ~~(1) Meets the qualifications under section 170(h) of the federal "Internal Revenue Code of 1986," as amended, and section 38-30.5-104 (2);~~

~~C.R.S., to hold a conservation easement for which a state tax credit is claimed;~~

~~(2) Has a sufficient number of board members, staff, and/or volunteers to accomplish the work of the organization;~~

~~(3) Has a sufficient number of board meetings per year to accomplish the work of the organization; and~~

~~(4) Is in good standing with the Colorado Secretary of State.~~

~~(b) Process: Conservation Easement Selection, Review and Approval~~

~~i) The conservation easement holder has and follows reasonable policies and procedures for selecting conservation easements. These include, but are not limited to:~~

~~(1) Establishing and following selection criteria to identify conservation easements with a conservation purpose as defined by Section 170(h)(4)(A) of the federal "Internal Revenue Code of 1986," as amended, and Treasury Regulations section 1.170A-14;~~

~~(2) Identifying and documenting the conservation values and the public benefits from protecting those values prior to accepting the conservation easement;~~

~~(3) Working with the conservation easement donor to identify and design the allowable uses, reserved rights, and prohibited uses for the conservation easement on an individual basis; and~~

~~(4) Receiving and reviewing a baseline documentation report for the conservation easement before accepting the donation, and updating the report as needed. The baseline report documents the conservation values and condition of the property.~~

~~ii) The conservation easement holder has and follows reasonable policies and procedures for reviewing conservation easements. These include, but are not limited to:~~

~~(1) Performing proper due diligence on the title, water and mineral rights on the property before approving the transaction;~~

~~(2) Ensuring any liens or encumbrances are correctly subordinated or addressed in a manner so that the conservation rights set forth in the agreement will be ensured in perpetuity.~~

~~(3) Having and following a policy that each conservation easement of a phased project has a independent conservation purpose as defined by Section 170(h)(4)(A) of the federal "Internal Revenue Code of 1986," as amended, and Treasury Regulations section 1.170A-14;~~

~~(4) Obtaining a legal review of the transaction appropriate to the complexity of the transaction;~~

~~(5) Using appropriate scientific expertise to substantiate the conservation values; and~~

~~(6) Receiving and adequately reviewing a copy of the appraisal that was used to determine the fair market value of the property for Form 8283.~~

~~iii) The conservation easement holder has and follows reasonable policies~~

~~and procedures for approving conservation easements. These include, but are not limited to:~~

- ~~(1) Declining projects that do not have conservation value or appear to be fraudulent;~~
- ~~(2) Having the board approve all charitable conservation easement donations, or establishing policies delegating the authority to approve transactions to a qualified committee or other designee;~~
- ~~(3) Providing sufficient information to the board, a qualified committee or other designee for review before a charitable conservation easement donation is approved; and~~
- ~~(4) Advising potential conservation easement donors that the organization does not guarantee the qualification of the conservation easement for tax credit purposes, and that they should seek their own legal, financial and tax advice.~~

~~e) Stewardship: Practices and Capacity~~

- ~~i) The conservation easement holder has and follows reasonable policies and procedures to ensure the short and long-term management of its conservation easements. These include, but are not limited to:~~

- ~~(1) Having adequate resources and policies in place to provide annual monitoring of each conservation easement held in Colorado, except for any conservation easement granted to a local government that did not involve a charitable donation.~~
- ~~(2) Monitoring all conservation easements on an annual basis, including visually inspecting the property and performing other types of monitoring actions as appropriate;~~
- ~~(3) Monitoring is performed and documented by a qualified individual, and reviewed by the board, a qualified committee or other designee;~~
- ~~(4) Enforcing every conservation easement agreement, and properly addressing violations in a manner appropriate to the scale of the violation;~~
- ~~(5) Amendments made to a conservation easement agreement do not result in a net loss of conservation value and do not create a private benefit to the donor; and~~
- ~~(6) Preserving original and duplicate copies of necessary and important records, such as agreements, baseline reports, and appraisals, in a safe and secure manner.~~

- ~~ii) The conservation easement holder has the necessary personnel and financial capacity and policies and procedures to ensure the short and long-term management of its conservation easements. These may include, but are not limited to:~~

- ~~(1) Establishing lasting dedicated stewardship and enforcement funds for the management and enforcement of every conservation easement held;~~
- ~~(2) Only using the dedicated stewardship and enforcement funds for stewardship and enforcement-related purposes, or other allowable~~

~~uses established through written policies;~~

~~(3) Determining the approximate amount of stewardship and enforcement funds that will be needed for the short and long term management of all conservation easements that have a donation component; and~~

~~(4) Collecting the stewardship and enforcement funds needed with all conservation easements that have a donation component, or collecting the required funds through other means, such as fundraising.~~

~~d) Finance~~

~~i) The conservation easement holder has and follows reasonable fiscal policies and procedures to ensure the transparent and responsible management of its assets. These may include, but are not limited to:~~

~~(1) Having the board review and/or regularly discuss the organization's financial status, including the annual budget and any financial changes that have occurred; and~~

~~(2) Having a qualified individual conduct a reasonable financial audit or other financial review on an annual basis.~~

~~e) Governance~~

~~i) The conservation easement holder demonstrates it has and follows reasonable policies and procedures to ensure the responsible management of conflicts of interest and any transactions with insiders.~~

Section 6. Enforcement

~~Conservation easement holders who violate this rule shall be subject to disciplinary action pursuant to the Division of Real Estate's authority set forth in section 12-61-720 (11), C.R.S. Disciplinary actions include, but are not limited to:~~

~~a) Revocation of certification;~~

~~b) Refusal to renew certification;~~

~~c) Denial of an application for certification; and~~

~~d) Fines.~~

Section 7. Effective Date

~~This permanent rule is effective July 1, 2009. [REPEALED]~~

A hearing on the above subject matter will be held on Monday, November 3, 2014, at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250-C, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.

Notice of Rulemaking Hearing

Tracking number

2014-01016

Department

700 - Department of Regulatory Agencies

Agency

725 - Division of Real Estate

CCR number

4 CCR 725-4

Rule title

CONSERVATION EASEMENTS

Rulemaking Hearing

Date

11/03/2014

Time

09:00 AM

Location

1560 Broadway, Suite 1250-C, Denver, CO

Subjects and issues involved

A-2&EXPIRATION DATE FOR CERTIFICATION

Statutory authority

Chapter 7 of Title 12, Article 61, Colorado Revised Statutes, as amended

Contact information

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DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
CONSERVATION EASEMENTS
4CCR 725-4

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
November 3, 2014

~~A-2~~ — EXPIRATION DATE FOR CERTIFICATION

~~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 Division of Real Estate (the "Division") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules of the Division regarding the conservation easement certification program.~~

~~Section 1. Authority~~

~~The Division of Real Estate adopts the following permanent rule entitled, A-2 Expiration Date for Certification, according to the authority found in section 12-61-720 (11) C.R.S.~~

~~Section 2. Scope and Purpose~~

~~Pursuant to section 12-61-720 (11), C.R.S., the Division shall have the authority to promulgate rules for the conservation easement certification program. The specific purpose of this rule is to define a time when annual certification for a conservation easement holder will expire.~~

~~Section 3. Applicability~~

~~This rule applies to any nonprofit entity and any government entity that hold conservation easements for which a tax credit is claimed pursuant to section 39-22-522, C.R.S.~~

~~Section 4. A-2 Expiration Date for Certification~~

~~Certification for a conservation easement holder expires on December 31 following the date of issuance. [REPEALED]~~

A hearing on the above subject matter will be held on Monday, November 3, 2014, at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250-C, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.

Notice of Rulemaking Hearing

Tracking number

2014-01017

Department

700 - Department of Regulatory Agencies

Agency

725 - Division of Real Estate

CCR number

4 CCR 725-4

Rule title

CONSERVATION EASEMENTS

Rulemaking Hearing

Date

11/03/2014

Time

09:00 AM

Location

1560 Broadway, Suite 1250-C, Denver, CO

Subjects and issues involved

A-3&ELIGIBILITY FOR CONSERVATION EASEMENT HOLDERS AFTER REVOCATION

Statutory authority

Chapter 7 of Title 12, Article 61, Colorado Revised Statutes, as amended

Contact information

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**DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
CONSERVATION EASEMENTS
4CCR 725-4**

**NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
November 3, 2014**

A-3 ELIGIBILITY FOR CONSERVATION EASEMENT HOLDERS AFTER REVOCATION

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 Division of Real Estate (the "Division") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules of the Division regarding the conservation easement certification program.

Section 1. Authority

The Division of Real Estate adopts the following permanent rule entitled, A-3 Eligibility for Conservation Easement Holders after Revocation, according to the authority found in section 12-61-720 (11) C.R.S.

Section 2. Scope and Purpose

Pursuant to section 12-61-720 (11), C.R.S., the Division shall have the authority to promulgate rules for the conservation easement certification program. The specific purpose of this rule is to define a time when a conservation easement holder may reapply for certification after revocation of their original certification by the Division.

Section 3. Applicability

This rule applies to any nonprofit entity and any government entity that hold conservation easements for which a tax credit is claimed pursuant to section 39-22-522, C.R.S.

Section 4. A-3 Eligibility for Conservation Easement Holders after Revocation

Any conservation easement holder whose certification to hold a conservation easement is revoked is rendered ineligible to apply again for certification until more than two years have elapsed from the date of revocation of the certification. Any re-application after such two-year period shall be required to be submitted on a new application. **[REPEALED]**

A hearing on the above subject matter will be held on Monday, November 3, 2014, at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250-C, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.

Notice of Rulemaking Hearing

Tracking number

2014-01019

Department

700 - Department of Regulatory Agencies

Agency

725 - Division of Real Estate

CCR number

4 CCR 725-4

Rule title

CONSERVATION EASEMENTS

Rulemaking Hearing

Date

11/03/2014

Time

09:00 AM

Location

1560 Broadway, Suite 1250-C, Denver, CO

Subjects and issues involved

A-4&CERTIFICATION RENEWAL

Statutory authority

Chapter 7 of Title 12, Article 61, Colorado Revised Statutes, as amended

Contact information

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DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
CONSERVATION EASEMENTS
4CCR 725-4

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
November 3, 2014

~~A-4~~ — CERTIFICATION RENEWAL

~~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 Division of Real Estate (the "Division") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules of the Division regarding the conservation easement certification program.~~

Section 1. Authority

~~The Division of Real Estate adopts the following permanent rule entitled, A-4 Certification Renewal, according to the authority found in section 12-61-720 (11) C.R.S.~~

Section 2. Scope and Purpose

~~Pursuant to section 12-61-720 (11), C.R.S., the Division shall have the authority to promulgate rules for the conservation easement certification program. The specific purpose of this rule is to define a time when and how a conservation easement holder may renew their certification.~~

Section 3. Applicability

~~This rule applies to any nonprofit entity and any government entity that hold conservation easements for which a tax credit is claimed pursuant to section 39-22-522, C.R.S.~~

Section 4. A-4 Certification Renewal

~~Renewal of a conservation easement holder certification can be executed only with the renewal application provided by the Division, submitted and accompanied by the proper fee by December 31st of each year. [REPEALED]~~

A hearing on the above subject matter will be held on Monday, November 3, 2014, at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250-C, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.

Notice of Rulemaking Hearing

Tracking number

2014-01020

Department

700 - Department of Regulatory Agencies

Agency

725 - Division of Real Estate

CCR number

4 CCR 725-4

Rule title

CONSERVATION EASEMENTS

Rulemaking Hearing

Date

11/03/2014

Time

09:00 AM

Location

1560 Broadway, Suite 1250-C, Denver, CO

Subjects and issues involved

A-5&REINSTATEMENT OF CERTIFICATION

Statutory authority

Chapter 7 of Title 12, Article 61, Colorado Revised Statutes, as amended

Contact information

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DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
CONSERVATION EASEMENTS
4CCR 725-4

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
November 3, 2014

~~A-5~~ REINSTATEMENT OF CERTIFICATION

~~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 Division of Real Estate (the "Division") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules of the Division regarding the conservation easement certification program.~~

Section 1. Authority

~~The Division of Real Estate adopts the following permanent rule entitled, A-5 Reinstatement of Certification, according to the authority found in section 12-61-720 (11) C.R.S.~~

Section 2. Scope and Purpose

~~Pursuant to section 12-61-720 (11), C.R.S., the Division shall have the authority to promulgate rules for the conservation easement certification program. The specific purpose of this rule is to define a time when and how a conservation easement holder may reinstate their certification should their certification expire.~~

Section 3. Applicability

~~This rule applies to any nonprofit entity and any government entity that hold conservation easements for which a tax credit is claimed pursuant to section 39-22-522, C.R.S.~~

Section 4. A-5 Reinstatement of Certification

~~A certification that has expired may be reinstated within one year after the date of expiration if a proper renewal application and renewal fee is submitted to the Division of Real Estate and if the applicant meets all other requirements of section 12-61-720, C.R.S. and any rules promulgated by the Division. Certification is effective on the date of issuance or reinstatement and cannot be applied retroactively. Any certification that has been expired greater than one year may not be reinstated. [REPEALED]~~

A hearing on the above subject matter will be held on Monday, November 3, 2014, at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250-C, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.

Notice of Rulemaking Hearing

Tracking number

2014-01021

Department

700 - Department of Regulatory Agencies

Agency

725 - Division of Real Estate

CCR number

4 CCR 725-4

Rule title

CONSERVATION EASEMENTS

Rulemaking Hearing

Date

11/03/2014

Time

09:00 AM

Location

1560 Broadway, Suite 1250-C, Denver, CO

Subjects and issues involved

A-6& CONDITIONAL CERTIFICATION

Statutory authority

Chapter 7 of Title 12, Article 61, Colorado Revised Statutes, as amended

Contact information

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DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
CONSERVATION EASEMENTS
4CCR 725-4

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
November 3, 2014

~~A-6 CONDITIONAL CERTIFICATION~~

~~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 Department of Regulatory Agencies and the Division of Real Estate (the "Division") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to conservation easements.~~

~~Section 1. Authority~~

~~The statutory basis for the adoption of these rules regarding conservation easement holders is in Part 11 of Title 12, Article 61, C.R.S. The specific rulemaking provisions contained therein are section 12-61-720(11), C.R.S.~~

~~Section 2. Scope and Purpose~~

~~The purpose of this rule is to formally establish a conditional certification for conservation easement holders.~~

~~Section 3. Applicability~~

~~The provisions of this section shall be applicable to qualified organizations that meet the requirements of section 170(h) of the federal "Internal Revenue Code of 1986", as amended, and section 38-30.5-104(2), C.R.S. to hold conservation easements for which a tax credit is claimed pursuant to section 39-22-522, C.R.S. ("Conservation Easement Holders").~~

~~Section 4. A-6 Conditional Certification~~

~~The Director of the Division of Real Estate in consultation with the Conservation Easement Oversight Commission may issue conditional certification to any Conservation Easement Holder that does not clearly demonstrate, to the satisfaction of the Director, compliance with rule A-1 Qualifications for Certification to Hold Conservation Easements.~~

~~The terms and length of conditional certification will be determined by the Director and may include but are not limited to:~~

- ~~1. A requirement that the conditionally certified Conservation Easement Holder co-hold conservation easements for which a state tax credit is claimed with a fully certified Conservation Easement Holder.
 - ~~a. For the purpose of Rule A-6 "co-hold" shall mean more than one nonprofit entity or government entity is named as a grantee of the conservation easement.~~~~
- ~~2. Submission of all requested project and governance documentation in a manner prescribed by the Director.~~
- ~~3. Approval of project documentation by the Director prior to the conservation easement holder accepting a new conservation easement.~~
- ~~4. Any other restriction or term deemed necessary by the Director to ensure ongoing compliance with all applicable rules and statutes.~~

~~Conservation Easement Holders granted conditional certification are subject to all fees, statutes and rules promulgated for certified Conservation Easement Holders, including, but not limited to rule A-1 Qualifications for Certification to Hold Conservation Easements, and all other rules regarding expiration and renewal of state certification. [REPEALED]~~

A hearing on the above subject matter will be held on Monday, November 3, 2014, at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250-C, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.

Notice of Rulemaking Hearing

Tracking number

2014-01022

Department

700 - Department of Regulatory Agencies

Agency

725 - Division of Real Estate

CCR number

4 CCR 725-4

Rule title

CONSERVATION EASEMENTS

Rulemaking Hearing

Date

11/03/2014

Time

09:00 AM

Location

1560 Broadway, Suite 1250-C, Denver, CO

Subjects and issues involved

B-1&DISCIPLINARY ACTION

Statutory authority

Chapter 7 of Title 12, Article 61, Colorado Revised Statutes, as amended

Contact information

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DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
CONSERVATION EASEMENTS
4CCR 725-4

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
November 3, 2014

~~B-1~~ — DISCIPLINARY ACTION

~~Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Director of the Colorado Division Real Estate to promulgate rules, or to amend, repeal or repeal and re-enact the present rules of the Colorado Division of Real Estate.~~

Section 1. Authority

~~The Division of Real Estate adopts the following permanent rule entitled, B-1 Disciplinary Action, according to the authority found in section 12-61-720 (11) C.R.S.~~

Section 2. Scope and Purpose

~~Pursuant to section 12-61-720(1), C.R.S., the Colorado Division of Real Estate, in consultation with the Conservation Easement Oversight Commission, shall establish and administer a certification program for qualified organizations that hold conservation easements for which a state tax credit is claimed. The purpose of the program shall be to identify fraudulent or unqualified applicants as defined by the rules of the Division of Real Estate.~~

~~The purpose of this rule is to establish specific disciplinary action the Division may impose upon conservation easement holders that violate statutory requirements or the rules established by the Division.~~

Section 3. Applicability

~~This rule applies to any nonprofit entity and any government entity required to hold conservation easements for which a tax credit is claimed pursuant to section 39-22-522, C.R.S.~~

Section 4. B-1 Disciplinary Action

~~The Director may impose an administrative fine not to exceed two thousand five hundred dollars for each separate offense; may issue a letter of admonition; may place an easement holder on probation under the Director's close supervision on such terms and for such time as the Director deems appropriate; and may refuse, revoke, or suspend the certification of any easement holder if, after an investigation and after notice and hearing pursuant to the provisions of section 24-4-104, C.R.S. the Director determines that the easement holder or any director, officer, or board member:~~

- ~~(a) — Has made false or misleading statements or material omission in their application for certification;~~
- ~~(b) — Has misrepresented or concealed any material fact from an easement donor;~~
- ~~(c) — Has employed any device, scheme, or artifice with intent to defraud an easement donor or any government agency;~~
- ~~(d) — Has failed to comply with any stipulation or agreement made with the Director; or~~
- ~~(e) — Has failed to comply with any of the certification requirements, or any lawful rule or regulation promulgated by the Director.~~

Section 5. Effective Date

~~This permanent rule is effective September 14, 2011.~~ [REPEALED]

A hearing on the above subject matter will be held on Monday, November 3, 2014, at the Colorado

Division of Real Estate, 1560 Broadway, Suite 1250-C, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.

Notice of Rulemaking Hearing

Tracking number

2014-01023

Department

700 - Department of Regulatory Agencies

Agency

725 - Division of Real Estate

CCR number

4 CCR 725-4

Rule title

CONSERVATION EASEMENTS

Rulemaking Hearing

Date

11/03/2014

Time

09:00 AM

Location

1560 Broadway, Suite 1250-C, Denver, CO

Subjects and issues involved

B-2&INFORMATION REQUEST

Statutory authority

Chapter 7 of Title 12, Article 61, Colorado Revised Statutes, as amended

Contact information

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DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
CONSERVATION EASEMENTS
4CCR 725-4

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
November 3, 2014

~~B-2~~ INFORMATION REQUEST

~~Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Director of the Colorado Division Real Estate to promulgate rules, or to amend, repeal or repeal and re-enact the present rules of the Colorado Division of Real Estate.~~

Section 1. Authority

~~The Division of Real Estate adopts the following permanent rule entitled, B-2 Information Request, according to the authority found in section 12-61-720 (11) C.R.S.~~

Section 2. Scope and Purpose

~~Pursuant to section 12-61-720(1), C.R.S., the Colorado Division of Real Estate, in consultation with the Conservation Easement Oversight Commission, shall establish and administer a certification program for qualified organizations that hold conservation easements for which a state tax credit is claimed. The purpose of the program shall be to identify fraudulent or unqualified applicants as defined by the rules of the Division of Real Estate.~~

~~The purpose of this rule is to establish administrative regulations for the program so the Division of Real Estate can properly certify easement holders and provide effective oversight.~~

Section 3. Applicability

~~This rule applies to any nonprofit entity and any government entity required to be certified to hold conservation easements for which a tax credit is claimed pursuant to section 39-22-522, C.R.S.~~

Section 4. B-2 Information Request

~~A conservation easement holder shall furnish to the Director such information or documentation as the Director in her/his sole discretion deems reasonably necessary for the enforcement of Title 12, Article 61, Part 7, C.R.S. or any rules enacted by the Division. If information or documentation is required, the Director shall give written notice, in detail, of the information so required and shall allow an additional twenty-one (21) days from delivery to present such material, which period may be extended only upon showing of good cause. Written notice may be faxed, hand-delivered or mailed to the party entitled thereto. If faxed or hand delivered, said notice shall be deemed delivered upon confirmation of successful transmission of the fax or upon hand delivery. If mailed, said notice shall be mailed by registered or certified mail, return receipt requested, and said notice shall be deemed delivered the date of mailing.~~

Section 5. Enforcement

~~Individuals who violate this rule shall be subject to disciplinary action pursuant to section 12-61-720 (11), C.R.S., section 12-61-720(6) C.R.S. and section 24-4-104 C.R.S. Disciplinary actions include, but are not limited to:~~

- ~~a) — Revocation of certification;~~
- ~~b) — Refusal to renew certification;~~
- ~~c) — Denial of an application for certification; and~~
- ~~d) — Fines.~~

Section 6. Effective Date

~~This permanent rule is effective September 14, 2011.~~ [REPEALED]

A hearing on the above subject matter will be held on Monday, November 3, 2014, at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250-C, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.

Notice of Rulemaking Hearing

Tracking number

2014-01024

Department

700 - Department of Regulatory Agencies

Agency

725 - Division of Real Estate

CCR number

4 CCR 725-4

Rule title

CONSERVATION EASEMENTS

Rulemaking Hearing

Date

11/03/2014

Time

09:00 AM

Location

1560 Broadway, Suite 1250-C, Denver, CO

Subjects and issues involved

C-1& SUBMISSION OF A TAX CREDIT CERTIFICATE CLAIM FOR DONATIONS MADE ON OR AFTER JANUARY 1, 2011, BUT PRIOR TO JANUARY 1, 2014

Statutory authority

Chapter 7 of Title 12, Article 61, Colorado Revised Statutes, as amended

Contact information

Name

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DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
CONSERVATION EASEMENTS
4CCR 725-4

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
November 3, 2014

***C-1 SUBMISSION OF A TAX CREDIT CERTIFICATE CLAIM FOR DONATIONS MADE ON OR AFTER
JANUARY 1, 2011, BUT PRIOR TO JANUARY 1, 2014***

1. ~~A valid Deed of Conservation Easement must be recorded before a claim can be submitted and a tax credit certificate issued.~~
2. ~~A claim for a tax credit certificate must include the following:~~
 - a. ~~a signed and completed form entitled: "Application for a Conservation Easement Tax Credit Certificate," approved by the Division of Real Estate;~~
 - b. ~~a signed and completed form entitled: "Affidavit for Conservation Easement Appraisals," approved by the Colorado Board of Real Estate Appraisers; and~~
 - c. ~~a copy of the Recorded Deed of Conservation Easement.~~
3. ~~A taxpayer who submits a claim for a tax credit certificate to the Division of Real Estate shall pay the Division a fee as prescribed by the Division.~~
4. ~~An alternative document may be substituted for the copy of the recorded Deed of Conservation Easement as evidence a conservation easement was conveyed. The alternative document must originate from the county or counties in which the conservation easement was recorded and disclose the following:~~
 - a. ~~the reception number;~~
 - b. ~~a description of the property;~~
 - c. ~~the date and time which the easement was recorded; and~~
 - d. ~~the name of the grantor and grantee.~~
5. ~~A claim for a tax credit certificate is deemed received by the Division of Real Estate for purposes of Section 39-22-522 (2.5), C.R.S. when the application and all other required documents are signed and initialed, properly filled out, and date stamped by the Division of Real Estate upon receipt. The Division of Real Estate is not responsible for any claims not received. Only after the claim is deemed to be received will the claim be applied towards the limit for the applicable year.~~
6. ~~The taxpayer must sign, understand, and adhere to all disclosures listed in part three of the form entitled: "Application for a Conservation Easement Tax Credit Certificate," in the form approved by the Division of Real Estate at the time the claim is made.~~
7. ~~After the tax credit certificate has been issued, the Department of Revenue has the authority to determine if the conservation easement tax credit does not comply with statutory and regulatory requirements. The Division of Real Estate is not responsible should the Department of Revenue determine a conservation easement tax credit does not comply with statutory and regulatory requirements.~~
8. ~~A claim for a tax credit certificate is ineligible to receive a tax credit certificate and shall not be applied towards the limit for the applicable year if it is based on a conservation easement donation where:~~
 - a. ~~The appraiser associated with the claim does not hold a valid license as a certified general appraiser or fails to meet all of the education and experience requirements established in accordance with Section 12-61-719 (7), C.R.S.; or~~
 - b. ~~The conservation easement holder is not certified by the Division of Real Estate~~

at the time of the donation or fails to comply with Section 24-33-112, C.R.S.

9. ~~A tax credit certificate may not be used to claim an income tax credit with the Department of Revenue prior to the year for which the tax credit certificate is issued by the Division of Real Estate.~~
10. ~~If more than one claim is submitted to the Division of Real Estate on the same day, the tax credit certificates with respect to those claims will be issued in the order that conservation easement donations were first recorded with the appropriate county or counties.~~
11. ~~In the event a portion of a claim does not qualify under the aggregate limit for 2011 or 2012, a second certificate will be issued for the remaining tax credit amount for the subsequent year.~~
12. ~~In the event a tax credit certificate has been issued for a conservation easement donation and the donation value increases pursuant to a revised appraisal, the taxpayer may submit a second claim to the Division of Real Estate for the increased amount. A second claim must be submitted to the Division of Real Estate in accordance with this rule and will be assigned a tax credit certificate in the order received among all other claims submitted to the Division of Real Estate. A second tax credit certificate for a second claim may be issued for a different year.~~
13. ~~The Division of Real Estate may consult with the taxpayer, a taxpayer's Authorized Representative, the conservation easement holder, appraiser, the Conservation Easement Oversight Commission and the Department of Revenue regarding a claim for a tax credit certificate.~~
14. ~~In the event the aggregate limit for a given calendar year is not exceeded and the Division receives and approves a complete application for a tax credit certificate for a conservation easement donated within that year, the Division may issue a tax credit certificate from the remaining limit. Issuance of the tax credit certificate in this circumstance can only occur if the conservation easement donation was recorded during the year in which the aggregate limit was not reached.~~

~~C-2 — DEFINITIONS~~

1. ~~Assignment of a Tax Credit Certificate: occurs when the application is deemed complete and the requested dollar amount from the tax credit certificate application is encumbered for the Landowner and the cap is credited the encumbered amount.~~
2. ~~Authorized Representative: means the individual designated in writing by the Landowner on the applications prescribed by the Division. An Authorized Representative is the primary individual for the application that Division will contact.~~
3. ~~Commission: means the Conservation Easement Oversight Commission created by Section 12-61-721, C.R.S.~~
4. ~~Days: means calendar days for the purposes of implementing Section 12-61-723, C.R.S.~~
5. ~~Deemed Complete: means the application is date stamped by the Division and the application package includes, at a minimum, the final appraisal, the recorded conservation easement deed, baseline document report and fee. Once deemed complete, there is an assignment of the tax credit certificate.~~
6. ~~Examination: means the review conducted by the Division and preparation of a report to be presented to the Director and Commission.~~
7. ~~Final Determination: means the final decision by the Director and/or the Commission to approve or deny a tax credit certificate application. A negative Final Determination triggers the 30 day period the Landowner has to request a hearing.~~
8. ~~Issuance of a Tax Credit Certificate: occurs after the Director and the Commission have made the Final Determination to approve the application. The tax credit certificate for the assigned amount is mailed to the Landowner.~~

9. ~~Settlement: means an official agreement intended to compromise on any deficiencies identified in the application and any supporting documentation, including the dollar amount of the tax credit certificate to be issued by the Division.~~

**~~C-3 APPLICATION SUBMISSION AND REVIEW FOR DONATIONS MADE ON OR AFTER
JANUARY 1, 2014~~**

1. ~~An application is deemed complete by the Division of the Real Estate ("Division") in accordance with Section 12-61-723, C.R.S. when the application and all other required documents are signed and initialed, properly filled out, and date-stamped by the Division upon receipt. The Division is not responsible for any application not received. Only after the application is deemed complete will the application be reviewed.~~
2. ~~For an application to be deemed complete and a tax credit certificate to be assigned in accordance with C-4, the application must include the documentation and fee as required in Section 12-61-723 (5), C.R.S., and also provide a signed and completed form entitled: "Application for a Conservation Easement Tax Credit Certificate," approved by the Division. The fee is nonrefundable.~~
3. ~~Upon the application being deemed complete, the Director or Commission may request other information or documentation necessary to make a final determination regarding the application.~~
4. ~~The Landowner or the signatory designated to sign on behalf of the Landowner must sign, understand, and adhere to all disclosures listed in the "Application for a Conservation Easement Tax Credit Certificate," in the form approved by the Division at the time the application is made. The signatory for the application must be authorized as described in this sub paragraph 4.~~
 - a. ~~If the Landowner is a corporation, the individual applying on behalf of the corporation must be an officer or director to apply on behalf of the corporation;~~
 - b. ~~If the Landowner is a partnership, one of the general partners of the partnership must apply on behalf of the partnership;~~
 - c. ~~If the Landowner is a joint owner, such individual may apply on behalf of all joint owners;~~
 - d. ~~If the Landowner is a limited liability company, one of the managers or member-managers must apply on behalf of the company;~~
 - e. ~~If the Landowner is a trust, one of the trustees must apply on behalf of the trust;~~
 - f. ~~If the Landowner is a S corporation, one of the shareholders must apply on behalf of the S corporation; and~~
 - g. ~~If the Landowner is an estate, one of the personal representatives must apply on behalf of the estate.~~
5. ~~A tax credit certificate application is ineligible and will not be applied towards the limit for the applicable year if it is based on a conservation easement donation in which:~~
 - a. ~~The appraiser who conducted the appraisal submitted with the application does not hold a valid license as a certified general appraiser or fails to meet all of the education and experience requirements established in accordance with Section 12-61-719 (7), C.R.S.; or~~
 - b. ~~The conservation easement holder is not certified by the Division at the time of the donation.~~
6. ~~Submission of an application does not guarantee issuance of a tax credit certificate.~~
7. ~~The Director or Commission may consult with the Landowner, a Landowner's Authorized Representative, the conservation easement holder, the appraiser, the Department of Revenue and any other entity or individual deemed necessary to review an application for a tax credit certificate.~~
8. ~~Any extensions of deadlines in accordance with Section 12-61-723 (7)(d), C.R.S.,~~

must be agreed to in writing.

9. ~~The Director has the authority, in accordance with Section 12-61-723 (9), C.R.S., to request a second appraisal if the Commission and the Director determine the original appraisal is not credible. The second appraisal must be conducted by a certified general appraiser in good standing and not affiliated with the first appraiser. The request for a second appraisal may include a new appraisal or a USPAP Standard 3 Review with an opinion of value.~~

~~C-4~~ ASSIGNMENT AND ISSUANCE OF A TAX CREDIT CERTIFICATE FOR DONATIONS MADE ON OR AFTER JANUARY 1, 2014

1. ~~Once an application is deemed complete, the dollar amount applied for in the application will be assigned to the Landowner and applied toward the aggregate annual cap in the order the application is deemed complete. The amount applied toward the aggregate annual cap will not be available to any subsequent application.~~
2. ~~If more than one application is deemed complete by the Division on the same day, the amount applied for will be applied toward the aggregate annual cap in the order that the conservation easements were recorded with the respective counties.~~
3. ~~A tax credit certificate will only be issued in whole dollar amounts.~~
4. ~~A tax credit certificate may not be used to claim an income tax credit with the Department of Revenue prior to the year for which the tax credit certificate is issued by the Division.~~
5. ~~In the event a portion of an approved tax credit certificate application cannot be issued under the available tax credit cap for any given year, a second certificate will be issued for the remaining tax credit amount for the subsequent year subject to the fifteen million dollar waitlist limit set forth in Section 39-22-522 (2.5), C.R.S.~~
6. ~~In the event that all or a portion of an approved tax credit certificate application cannot be issued under the available fifteen million dollar waitlist limit for the following calendar year, the remaining amount will be issued a tax credit certificate in the next available calendar year.~~
7. ~~In the event the aggregate limit for a given calendar year is not exceeded and the Division receives and approves a complete application for a tax credit certificate for a conservation easement donated within that year, the Division may issue a tax credit certificate from the remaining limit. Issuance of the tax credit certificate in this circumstance can only occur if the conservation easement donation was recorded during the year in which the aggregate limit was not reached.~~

~~C-5~~ APPLICATION DENIAL AND APPEAL FOR DONATIONS MADE ON OR AFTER JANUARY 1, 2014

1. ~~If an application is denied, the assigned dollar amount applied toward the aggregate annual cap for that application will not be available for use by any subsequent application.~~
2. ~~The Landowner may submit a new application if the denial of the original application is final pursuant to Section 12-61-723 (12), C.R.S. The new application must be submitted pursuant to Rule C-3 and will be applied toward the aggregate annual cap in the order the new application is deemed complete.~~
3. ~~Appeal of the Director's or the Commission's denial of an application must be made in writing by either the Landowner, the individual who applied on behalf of the Landowner, or the Landowner's Authorized Representative. The written appeal of the denial must be sent by first class mail and postmarked within 30 days of the issuance of the denial.~~
4. ~~The Director and the Commission may conduct settlement discussions with the Landowner at any time during the application review process.~~

~~C-6 PRELIMINARY ADVISORY OPINION FOR DONATIONS MADE ON OR AFTER JANUARY 1, 2014~~

- ~~1. Prior to an application for a tax credit certificate, a Landowner may request a preliminary advisory opinion regarding the issuance of a tax credit certificate. Such opinions may consider:
 - ~~a. The credibility of the appraisal pursuant to Section 12-61-723 (3)(b)(i)-(iv), C.R.S.; and/or~~
 - ~~b. Whether a conservation easement donation for which a tax credit is to be claimed is a qualified conservation contribution pursuant to Section 12-61-723 (3)(d), C.R.S.~~~~
- ~~2. A Landowner requesting such an opinion must do so in a form entitled: "Application for a Conservation Easement Tax Credit Certificate Preliminary Advisory Opinion," approved by the Division. An application for a preliminary advisory opinion is deemed complete by the Division when the application and all other required documents are signed and initialed, properly filled out, and date stamped by the Division upon receipt. The Division is not responsible for any applications not received. Only after the application is deemed complete will the application be reviewed.~~
- ~~3. The Landowner or the signatory designated to sign on behalf of the Landowner must sign, understand, and adhere to all disclosures listed in the "Application for a Conservation Easement Tax Credit Certificate Preliminary Advisory Opinion," in the form approved by the Division at the time the application is made. The signatory for the application must be authorized as described in this sub paragraph 3.
 - ~~a. If the Landowner is a corporation, the individual applying on behalf of the corporation must be an officer or director to apply on behalf of the corporation;~~
 - ~~b. If the Landowner is a partnership, one of the general partners of the partnership must apply on behalf of the partnership;~~
 - ~~c. If the Landowner is a joint owner, such individual may apply on behalf of all joint owners;~~
 - ~~d. If the Landowner is a limited liability company, one of the managers or member-managers must apply on behalf of the company;~~
 - ~~e. If the Landowner is a trust, one of the trustees must apply on behalf of the trust;~~
 - ~~f. If the Landowner is a S corporation, one of the shareholders must apply on behalf of the S corporation; and~~
 - ~~g. If the Landowner is an estate, one of the personal representatives must apply on behalf of the estate.~~~~
- ~~4. A Landowner requesting a preliminary advisory opinion is not an applicant for a tax credit certificate. No tax credit certificate will be issued for a favorable preliminary advisory opinion. The issuance of either a favorable or nonfavorable preliminary advisory opinion by the Division will not act to prohibit a Landowner from submitting an application for a tax credit certificate.~~
- ~~5. A request for a preliminary advisory opinion regarding the credibility of the appraisal must include:
 - ~~a. The draft or final appraisal to be considered; and~~
 - ~~b. Any other relevant information or documentation the Director deems necessary to make a preliminary opinion regarding the appraisal; and~~
 - ~~c. The required fee as prescribed by the Division. The fee is nonrefundable.~~~~
- ~~6. A request for a preliminary advisory opinion regarding the qualification of the conservation contribution must include:
 - ~~a. The draft or recorded deed of conservation easement to be considered;~~
 - ~~b. Documentation supporting the conservation purpose of the easement;~~~~

- c. ~~Any other relevant information or documentation the Commission deems necessary to make a preliminary opinion regarding the qualification of the conservation contribution; and~~
- d. ~~The required fee as prescribed by the Division. The fee is nonrefundable.~~
- 7. ~~The Director and the Commission will review applications for preliminary advisory opinions and issue either a favorable opinion or a nonfavorable opinion within an average of 120 days.~~
- 8. ~~A nonfavorable opinion will include a description of any potential deficiencies identified by the Director or the Commission in writing.~~
- 9. ~~The issuance of a preliminary advisory opinion will not limit the authority of the Director or the Commission to make a final determination to approve or deny an application for a tax credit certificate contrary to the preliminary advisory opinion; limit the Director's authority to investigate a conservation easement holder; or limit the Board of Real Estate Appraisers' authority to investigate an appraiser.~~
- 10. ~~The Director or Commission may consult with the Landowner, a Landowner's Authorized Representative, the conservation easement holder, the appraiser, the Department of Revenue and any other entity or individual deemed necessary in reviewing an application for a preliminary advisory opinion.~~
- 11. ~~Preliminary advisory opinions are not appealable.~~ [REPEALED]

A hearing on the above subject matter will be held on Monday, November 3, 2014, at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250-C, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.

Notice of Rulemaking Hearing

Tracking number

2014-01025

Department

700 - Department of Regulatory Agencies

Agency

725 - Division of Real Estate

CCR number

4 CCR 725-4

Rule title

CONSERVATION EASEMENTS

Rulemaking Hearing

Date

11/03/2014

Time

09:00 AM

Location

1560 Broadway, Suite 1250-C, Denver, CO

Subjects and issues involved

D-1&CEASE AND DESIST

Statutory authority

Chapter 7 of Title 12, Article 61, Colorado Revised Statutes, as amended

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DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
CONSERVATION EASEMENTS
4CCR 725-4

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
November 3, 2014

~~D-1 — CEASE AND DESIST~~

~~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 Department of Regulatory Agencies and the Division of Real Estate (the "Division") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to conservation easements.~~

~~Section 1. Authority~~

~~The Division adopts the following permanent rule entitled, D-1 Cease and Desist, according to the authority found in section 12-61-722, C.R.S.~~

~~Section 2. Scope and Purpose~~

~~The purpose of these rules is to effectuate the legislative directive to promulgate necessary and appropriate rules in conformity with the Colorado Revised Statutes concerning the state income tax credit that may be claimed for the donation of a conservation easement.~~

~~The specific purpose of this rule is to allow the Director of the Division of Real Estate the ability to impose discipline on an organization if it is not in compliance with section 38-30.5-104 (2), C.R.S. and section 12-61-720, C.R.S.~~

~~Section 3. Applicability~~

~~This rule applies to any nonprofit entity and any government entity that hold conservation easements for which a tax credit is claimed pursuant to section 39-22-522, C.R.S.~~

~~Section 4. D-1 Cease and Desist~~

~~If the Division of Real Estate has reasonable cause to believe any public or private organization is not in compliance with section 38-30.5-104 (2), C.R.S. and section 12-61-720, C.R.S., the Director of the Division of Real Estate may enter an order requiring such organization to cease and desist from attempting to hold a conservation easement for which a state tax credit may be claimed.~~

~~Section 5. Effective Date~~

~~This permanent rule is effective September 14, 2011. [REPEALED]~~

A hearing on the above subject matter will be held on Monday, November 3, 2014, at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250-C, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.

Notice of Rulemaking Hearing

Tracking number

2014-01026

Department

700 - Department of Regulatory Agencies

Agency

725 - Division of Real Estate

CCR number

4 CCR 725-4

Rule title

CONSERVATION EASEMENTS

Rulemaking Hearing

Date

11/03/2014

Time

09:00 AM

Location

1560 Broadway, Suite 1250-C, Denver, CO

Subjects and issues involved

D-2& TRANSFERRING CONSERVATION EASEMENTS TO NON-CERTIFIED ENTITIES

Statutory authority

Chapter 7 of Title 12, Article 61, Colorado Revised Statutes, as amended

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DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
CONSERVATION EASEMENTS
4CCR 725-4

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
November 3, 2014

~~D-2 TRANSFERRING CONSERVATION EASEMENTS TO NON-CERTIFIED ENTITIES~~

~~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 Division of Real Estate (the "Division") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules of the Division regarding the conservation easement certification program.~~

Section 1. Authority

~~The Division of Real Estate adopts the following permanent rule entitled, D-2 Transferring Conservation Easements to Non-Certified Entities, according to the authority found in section 12-61-720 (11) C.R.S.~~

Section 2. Scope and Purpose

~~Pursuant to section 12-61-720 (11), C.R.S., the Division shall have the authority to promulgate rules for the conservation easement certification program. The specific purpose of this rule is to prevent a non-certified organization from holding a transferred conservation easement for which a tax credit is claimed.~~

Section 3. Applicability

~~This rule applies to any nonprofit entity and any government entity that holds a conservation easement for which a tax credit is claimed pursuant to section 39-22-522, C.R.S.~~

Section 4. Definitions

- ~~1. "Conservation easement" means conservation easements that have a charitable donation component. This includes full donation and bargain sale conservation easements.~~

Section 5. D-2 Transferring Conservation Easements to Non-Certified Entities

~~A conservation easement holder may not assign or otherwise transfer all or a partial interest in a conservation easement for which a state tax credit is claimed to an organization that is not certified. An organization may not accept an assigned or otherwise transferred interest in a conservation easement for which a state tax credit is claimed if they are not certified at the time of acceptance. Governmental entities transferring a partial interest in a conservation easement to another governmental entity in accordance with an established written agreement shall be exempt from this prohibition on transferring a partial interest in a conservation easement. The certified grantee and all certified organizations retaining a partial interest in the conservation easement shall remain responsible for stewardship and defense of the conservation easement at all times. [REPEALED]~~

A hearing on the above subject matter will be held on Monday, November 3, 2014, at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250-C, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to

the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.

Notice of Rulemaking Hearing

Tracking number

2014-01027

Department

700 - Department of Regulatory Agencies

Agency

725 - Division of Real Estate

CCR number

4 CCR 725-4

Rule title

CONSERVATION EASEMENTS

Rulemaking Hearing

Date

11/03/2014

Time

09:00 AM

Location

1560 Broadway, Suite 1250-C, Denver, CO

Subjects and issues involved

E-1&COURTESY FILING

Statutory authority

Chapter 7 of Title 12, Article 61, Colorado Revised Statutes, as amended

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DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
CONSERVATION EASEMENTS
4CCR 725-4

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
November 3, 2014

~~E-1~~ — ~~COURTESY FILING~~

~~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 Division of Real Estate (the "Division") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules of the Division regarding the conservation easement certification program.~~

~~Section 1. Authority~~

~~The Division of Real Estate adopts the following permanent rule entitled, E 1 Courtesy Filing, according to the authority found in section 12-61-720 (11) C.R.S.~~

~~Section 2. Scope and Purpose~~

~~Pursuant to section 12-61-720 (11), C.R.S., the Division shall have the authority to promulgate rules for the conservation easement certification program.~~

~~Section 3. Applicability~~

~~This rule applies to any certified nonprofit entity and any certified government entity defined in section 12-61-720 (4), C.R.S. that holds a conservation easements for which a tax credit is claimed pursuant to section 39-22-522, C.R.S.~~

~~Section 4. E-1 Courtesy Filing~~

~~A certified conservation easement holder shall provide the following information and/or documentation to the Division within 30 days of a substantive change in:~~

- ~~1. — physical or mailing address of the organization;~~
- ~~2. — authorized contact person; or~~
- ~~3. — policy necessary for compliance with rule A-1.~~

~~Section 5. Effective Date~~

~~This permanent rule is effective September 14, 2011. [REPEALED]~~

A hearing on the above subject matter will be held on Monday, November 3, 2014, at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250-C, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.

Notice of Rulemaking Hearing

Tracking number

2014-01033

Department

700 - Department of Regulatory Agencies

Agency

725 - Division of Real Estate

CCR number

4 CCR 725-4

Rule title

CONSERVATION EASEMENTS

Rulemaking Hearing

Date

11/03/2014

Time

09:00 AM

Location

1560 Broadway, Suite 1250-C, Denver, CO

Subjects and issues involved

RULE CHAPTER 5. DECLARATORY ORDERS

Statutory authority

Chapter 7 of Title 12, Article 61, Colorado Revised Statutes, as amended

Contact information

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**DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
CONSERVATION EASEMENTS**

**NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
November 3, 2014**

RULE CHAPTER 5. DECLARATORY ORDERS

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Colorado Department of Regulatory Agencies and the Division of Real Estate to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to conservation easements.

STATEMENT OF BASIS

The statutory basis for the rules titled Conservation Easements is Chapter 7 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 pursuant to sections 12-61-720 and 12-61-722, C.R.S.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to define the requirements and procedures to petition for a declaratory order.

Proposed New, Amended and Repealed Rules

[Deleted material showed ~~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 Division at <http://www.sos.state.co.us>]

CHAPTER 5: DECLARATORY ORDERS

5.1. PETITION FOR AN ORDER

ANY PERSON MAY PETITION THE DIRECTOR OR THE COMMISSION FOR A DECLARATORY ORDER TO TERMINATE CONTROVERSIES OR TO REMOVE UNCERTAINTIES AS TO THE APPLICABILITY TO THE PETITIONER OF ANY STATUTORY PROVISIONS OR OF ANY RULE OR ORDER OF EITHER THE DIRECTOR OR THE COMMISSION.

- A. A PETITIONER MAY PETITION THE DIRECTOR FOR A DECLARATORY ORDER BASED UPON HIS/HER AUTHORITY AND RESPONSIBILITY DESCRIBED IN SECTION 12-61-723(3)(b) and (c), C.R.S.
- B. A PETITIONER MAY PETITION THE COMMISSION FOR A DECLARATORY ORDER BASED UPON ITS AUTHORITY AND RESPONSIBILITY DESCRIBED IN SECTION 12-61-723(3)(d), C.R.S.

5.2. DETERMINATION WHETHER TO RULE
WITHOUT PRIOR NOTICE TO THE PETITIONER, THE DIRECTOR IN HIS/HER DISCRETION OR THE COMMISSION IN ITS DISCRETION WILL DETERMINE WHETHER TO RULE UPON ANY SUCH PETITION. IF THE DIRECTOR OR THE COMMISSION DETERMINES TO NOT RULE UPON SUCH A PETITION, THE DIRECTOR OR THE COMMISSION WILL ISSUE A WRITTEN ORDER DISPOSING OF THE SAME, STATING THEREIN THE REASONS FOR SUCH ACTION. A COPY OF SUCH ORDER WILL BE PROVIDED TO THE PETITIONER.

5.3. CONSIDERATIONS WHETHER TO RULE
IN DETERMINING WHETHER TO RULE UPON A PETITION FILED PURSUANT TO THIS RULE, THE DIRECTOR OR THE COMMISSION MAY CONSIDER THE FOLLOWING MATTERS, AMONG OTHERS:

- A. 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 DIRECTOR OR THE COMMISSION;
- B. WHETHER THE PETITION INVOLVES ANY SUBJECT, QUESTION OR ISSUE WHICH IS THE SUBJECT OF A FORMAL OR INFORMAL MATTER OR APPLICATION CURRENTLY PENDING BEFORE THE DIRECTOR OR THE COMMISSION OR A COURT INVOLVING ONE OR MORE OF THE PETITIONERS WHICH WILL TERMINATE THE CONTROVERSY OR REMOVE THE UNCERTAINTIES AS TO THE APPLICABILITY TO THE PETITIONER OF ANY STATUTORY PROVISION OR OF ANY RULE OR ORDER OF THE DIRECTOR OR THE COMMISSION, WHICH MATTER OR APPLICATION WILL BE SPECIFIED BY THE DIRECTOR OR THE COMMISSION;
- C. WHETHER THE PETITION INVOLVES ANY SUBJECT, QUESTION OR ISSUE WHICH IS THE SUBJECT OF A FORMAL OR INFORMAL MATTER OR APPLICATION CURRENTLY PENDING BEFORE THE DIRECTOR OR THE COMMISSION OR A COURT BUT NOT INVOLVING ANY PETITIONER WHICH WILL TERMINATE THE CONTROVERSY OR REMOVE THE UNCERTAINTIES AS TO THE APPLICABILITY TO THE PETITIONER OF ANY STATUTORY PROVISION OR OF ANY RULE OR ORDER OF THE DIRECTOR OR THE COMMISSION, WHICH MATTER OR APPLICATION WILL BE SPECIFIED BY THE DIRECTOR OR THE COMMISSION AND IN WHICH PETITIONER MAY INTERVENE;
- D. WHETHER THE PETITION SEEKS A RULING ON A MOOT OR HYPOTHETICAL QUESTION AND WILL RESULT IN MERELY AN ADVISORY RULING OR OPINION;
- E. WHETHER THE PETITIONER HAS SOME OTHER ADEQUATE LEGAL REMEDY, OTHER THAN AN ACTION FOR DECLARATORY RELIEF, WHICH WILL TERMINATE THE CONTROVERSY OR REMOVE ANY UNCERTAINTY AS TO THE APPLICABILITY TO THE PETITIONER OF THE STATUTE, RULE OR ORDER IN QUESTION.

5.4. PETITION CONTENTS

ANY PETITION FILED PURSUANT TO THIS RULE MUST SET FORTH THE FOLLOWING:

- A. THE NAME AND ADDRESS OF THE PETITIONER AND WHETHER THE PETITIONER IS CERTIFIED PURSUANT TO SECTION 12-61-720, C.R.S.
- B. THE STATUTE, RULE OR ORDER TO WHICH THE PETITION RELATES.
- C. A CONCISE STATEMENT OF ALL THE FACTS NECESSARY TO SHOW THE NATURE OF THE CONTROVERSY OR UNCERTAINTY AND THE MANNER IN WHICH THE STATUTE, RULE OR ORDER IN QUESTION APPLIES OR POTENTIALLY APPLIES TO THE PETITIONER.
- D. A CONCISE STATEMENT OF THE LEGAL AUTHORITIES IF ANY, AND SUCH OTHER REASONS UPON WHICH THE PETITIONER RELIES.
- E. A CONCISE STATEMENT OF THE DECLARATORY ORDER SOUGHT BY THE PETITIONER.

5.5. PROCEDURES TO RULE

IF THE DIRECTOR OR THE COMMISSION DETERMINES TO RULE ON THE PETITION, THE FOLLOWING PROCEDURES WILL APPLY.

- A. THE DIRECTOR OR THE COMMISSION MAY RULE UPON THE PETITION WITHOUT A HEARING. IN SUCH A CASE:
 - 1. THE DIRECTOR OR THE COMMISSION MAY DISPOSE OF THE PETITION ON THE SOLE BASIS OF THE MATTERS SET FORTH IN THE PETITION;
 - 2. THE PETITIONER MAY BE REQUESTED TO SUBMIT ADDITIONAL FACTS IN WRITING. IN SUCH EVENT, SUCH ADDITIONAL FACTS WILL BE CONSIDERED AS AN AMENDMENT TO THE PETITION;
 - 3. THE PETITIONER MAY BE REQUIRED TO FILE A WRITTEN BRIEF, MEMORANDUM OR STATEMENT OF POSITION BASED ON THE FACTS SET FORTH IN PETITION AND ANY AMENDMENT;
 - 4. ANY RULING WILL APPLY ONLY TO THE EXTENT OF THE FACTS PRESENTED IN THE PETITION AND ANY AMENDMENT TO THE PETITION;
 - 5. THE DIRECTOR OR THE COMMISSION MAY TAKE ADMINISTRATIVE NOTICE OF FACTS PURSUANT TO THE ADMINISTRATIVE PROCEDURE ACT (C.R.S. 1973, SECTION 24-4-105(8)) AND UTILIZE THEIR EXPERIENCE, TECHNICAL COMPETENCE AND SPECIALIZED KNOWLEDGE IN THE DISPOSITION OF THE PETITION;
 - 6. IF THE DIRECTOR OR COMMISSION RULES UPON THE PETITION WITHOUT A HEARING, A WRITTEN ORDER, STATING THEREIN THE BASIS FOR THE ORDER WILL ISSUED. A COPY OF SUCH ORDER WILL PROMPTLY BE TRANSMITTED TO THE PETITIONER.
- B. THE DIRECTOR OR THE COMMISSION MAY, IN THEIR DISCRETION, SET THE PETITION FOR HEARING, UPON DUE NOTICE TO THE PETITIONER, FOR THE

PURPOSE OF OBTAINING ADDITIONAL FACTS OR INFORMATION OR TO DETERMINE THE TRUTH OF ANY FACT SET FORTH IN THE PETITION OR TO HEAR ORAL ARGUMENT ON THE PETITION. NOTICE TO THE PETITIONER SETTING SUCH HEARING WILL SET FORTH, TO THE EXTENT KNOWN, THE FACTUAL OR OTHER MATTERS INTO WHICH THE DIRECTOR OR THE COMMISSION INTENDS TO INQUIRE AND WHETHER THE HEARING WILL BE EVIDENTIARY OR NON-EVIDENTIARY IN NATURE. FOR THE PURPOSE OF SUCH A HEARING, TO THE EXTENT NECESSARY, THE PETITIONER WILL HAVE THE BURDEN OF PROVING ALL OF THE FACTS STATED IN THE PETITION, ALL OF THE FACTS NECESSARY TO SHOW THE NATURE OF THE CONTROVERSY OR UNCERTAINTY AND THE MANNER IN WHICH THE STATUTE, RULE OR ORDER IN QUESTION APPLIES OR POTENTIALLY APPLIES TO PETITIONER AND ANY OTHER FACTS THE PETITIONER DESIRES THE DIRECTOR OR THE COMMISSION TO CONSIDER.

5.6. PARTIES TO PROCEEDINGS

THE PARTIES TO ANY PROCEEDING PURSUANT TO THIS RULE WILL BE THE DIRECTOR OR THE COMMISSION AND THE PETITIONER. ANY OTHER PERSON MAY SEEK LEAVE OF THE DIRECTOR OR THE COMMISSION TO INTERVENE IN SUCH A PROCEEDING, AND LEAVE TO INTERVENE WILL BE GRANTED AT THE SOLE DISCRETION OF THE DIRECTOR OR COMMISSION. A PETITION TO INTERVENE MUST SET FORTH THE SAME MATTERS AS REQUIRED BY RULE 5.4.

5.7. ORDERS SUBJECT TO JUDICIAL REVIEW

ANY DECLARATORY ORDER OR OTHER ORDER DISPOSING OF A PETITION PURSUANT TO THIS RULE WILL CONSTITUTE AGENCY ACTION SUBJECT TO JUDICIAL REVIEW PURSUANT TO SECTION 24-4-106, C.R.S. AS AMENDED.

A hearing on the above subject matter will be held on Monday, November 3, 2014, at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250-C, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.

Notice of Rulemaking Hearing

Tracking number

2014-01028

Department

700 - Department of Regulatory Agencies

Agency

725 - Division of Real Estate

CCR number

4 CCR 725-4

Rule title

CONSERVATION EASEMENTS

Rulemaking Hearing

Date

11/03/2014

Time

09:00 AM

Location

1560 Broadway, Suite 1250-C, Denver, CO

Subjects and issues involved

RULE CHAPTER 1. DEFINITIONS

Statutory authority

Chapter 7 of Title 12, Article 61, Colorado Revised Statutes, as amended

Contact information

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Title

Rulemaking Administrator

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**DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
CONSERVATION EASEMENTS**

**NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
November 3, 2014**

RULE CHAPTER 1. DEFINITIONS

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 Department of Regulatory Agencies and the Division of Real Estate to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to conservation easements.

STATEMENT OF BASIS

The statutory basis for the rules titled Conservation Easements is Chapter 7 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 Colorado Revised Statute.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to define key terms pertaining to the conservation easement program pursuant to sections 12-61-720, 12-61-722 and 12-61-723, C.R.S.

Proposed New, Amended and Repealed Rules

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CHAPTER 1: DEFINITIONS

- 1.1. ASSIGNMENT OF A TAX CREDIT CERTIFICATE: OCCURS WHEN THE TAX CREDIT CERTIFICATE APPLICATION PURSUANT TO SECTION 12-61-723, C.R.S. IS DEEMED COMPLETE AND THE REQUESTED DOLLAR AMOUNT FROM THE APPLICATION IS ENCUMBERED AND CREDITED FROM THE TAX CREDIT CAP.
- 1.2. AUTHORIZED REPRESENTATIVE: THE LANDOWNER'S DESIGNEE WHO IS DESIGNATED IN WRITING BY THE LANDOWNER ON THE APPLICATIONS PRESCRIBED BY THE DIVISION. AN AUTHORIZED REPRESENTATIVE MAY CONDUCT THE FOLLOWING ACTIVITIES ON THE LANDOWNER'S BEHALF, INCLUDING, BUT NOT LIMITED TO: ANSWERING QUESTIONS CONCERNING THE APPLICATION, CONDUCTING

SETTLEMENT DISCUSSIONS, AND PREPARING AND SUBMITTING A WRITTEN APPEAL.

- 1.3. CO-HOLD: TWO OR MORE NONPROFIT OR GOVERNMENT ENTITIES ARE NAMED GRANTEES OF THE CONSERVATION EASEMENT AND BOTH ENTITIES HOLD THE EASEMENT FOR THE PURPOSES OF IMPLEMENTING RULE 2.6.
- 1.4. COMMISSION: THE CONSERVATION EASEMENT OVERSIGHT COMMISSION CREATED BY SECTION 12-61-721, C.R.S.
- 1.5. CONSERVATION EASEMENTS: CONSERVATION EASEMENTS THAT HAVE A CHARITABLE DONATION COMPONENT. THIS INCLUDES FULL DONATIONS AND BARGAIN SALE CONSERVATION EASEMENTS.
- 1.6. DAYS: CALENDAR DAYS FOR THE PURPOSES OF IMPLEMENTING SECTION 12-61-723, C.R.S.
- 1.7. DEEMED COMPLETE: THE APPLICATION PURSUANT TO SECTION 12-61-723, C.R.S. IS DATE STAMPED BY THE DIVISION AND INCLUDES, AT A MINIMUM, THE FINAL APPRAISAL, THE RECORDED CONSERVATION EASEMENT DEED, BASELINE DOCUMENT REPORT AND PRESCRIBED NONREFUNDABLE FEE.
- 1.8. DIRECTOR: THE DIRECTOR OF THE DIVISION OF REAL ESTATE WITHIN THE DEPARTMENT OF REGULATORY AGENCIES.
- 1.9. DIVISION: THE DIVISION OF REAL ESTATE WITHIN THE DEPARTMENT OF REGULATORY AGENCIES.
- 1.10. EXAMINATION: THE REVIEW CONDUCTED BY THE DIVISION AND PREPARATION OF A REPORT TO BE PRESENTED TO THE DIRECTOR AND COMMISSION FOR THE PURPOSES OF IMPLEMENTING SECTION 12-61-723, C.R.S.
- 1.11. FINAL DETERMINATION: THE FINAL DECISION BY THE DIRECTOR AND/OR THE COMMISSION TO APPROVE OR DENY A TAX CREDIT CERTIFICATE APPLICATION PURSUANT TO SECTION 12-61-723, C.R.S.
- 1.12. ISSUANCE OF A TAX CREDIT CERTIFICATE: OCCURS AFTER THE DIRECTOR AND THE COMMISSION HAVE MADE THE FINAL DETERMINATION TO APPROVE THE APPLICATION PURSUANT TO SECTION 12-61-723, C.R.S. THE TAX CREDIT CERTIFICATE FOR THE ASSIGNED AMOUNT IS MAILED TO THE LANDOWNER.
- 1.13. PETITIONER: ANY PERSON WHO HAS BEEN GRANTED LEAVE TO INTERVENE BY EITHER THE DIRECTOR OR COMMISSION FOR THE PURPOSES OF IMPLEMENTING THE PROVISIONS OF CHAPTER 5 OF THESE RULES.
- 1.14. SAFE AND SECURE MANNER: REASONABLE MEASURES ARE TAKEN TO MINIMIZE THE RISK OF LOSS, DAMAGE, OR THEFT.
- 1.15. SETTLEMENT: FOR THE PURPOSES OF IMPLEMENTING SECTION 12-61-723, C.R.S., AN OFFICIAL AGREEMENT INTENDED TO COMPROMISE ON ANY DEFICIENCIES IDENTIFIED IN THE APPLICATION AND ANY SUPPORTING DOCUMENTATION, INCLUDING THE DOLLAR AMOUNT OF THE TAX CREDIT CERTIFICATE TO BE ISSUED BY THE DIVISION.
- 1.16. TAX CREDIT CAP: THE TOTAL DOLLAR AMOUNT OF TAX CREDITS AVAILABLE FOR A GIVEN YEAR AS DEFINED IN SECTION 39-22-522, C.R.S.

A hearing on the above subject matter will be held on Monday, November 3, 2014, at the Colorado

Division of Real Estate, 1560 Broadway, Suite 1250-C, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.

Notice of Rulemaking Hearing

Tracking number

2014-01034

Department

700 - Department of Regulatory Agencies

Agency

725 - Division of Real Estate

CCR number

4 CCR 725-4

Rule title

CONSERVATION EASEMENTS

Rulemaking Hearing**Date**

11/03/2014

Time

09:00 AM

Location

1560 Broadway, Suite 1250-C, Denver, CO

Subjects and issues involved

RULE CHAPTER 6. EXCEPTIONS AND REVIEW OF INITIAL DECISIONS BY THE DIRECTOR OR THE COMMISSION

Statutory authority

Chapter 7 of Title 12, Article 61, Colorado Revised Statutes, as amended

Contact information**Name**

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**DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
CONSERVATION EASEMENTS**

**NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
November 3, 2014**

**RULE CHAPTER 6. EXCEPTIONS AND REVIEW OF INITIAL DECISIONS BY THE DIRECTOR OR
THE COMMISSION**

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 Department of Regulatory Agencies and the Division of Real Estate to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to conservation easements.

STATEMENT OF BASIS

The statutory basis for the rules titled Conservation Easements is Chapter 7 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 pursuant to sections 12-61-720 and 12-61-723(12)(d), C.R.S.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to define the requirements and procedures regarding exceptions and the review of initial decisions by the Director or the Commission.

Proposed New, Amended and Repealed Rules

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**CHAPTER 6: EXCEPTIONS AND REVIEW OF INITIAL DECISIONS BY THE DIRECTOR OR THE
COMMISSION**

6.1. WRITTEN FORM, SERVICE AND FILING REQUIREMENTS

- A. ALL DESIGNATIONS OF RECORD, REQUESTS, EXCEPTIONS AND RESPONSIVE PLEADINGS ("PLEADINGS") MUST BE IN WRITTEN FORM, MAILED WITH A CERTIFICATE OF MAILING OR HAND-DELIVERED TO THE DIRECTOR OR THE COMMISSION.

- B. ALL PLEADINGS MUST BE RECEIVED BY THE DIRECTOR OR THE COMMISSION BY 5:00 P.M. ON THE DATE THE FILING IS DUE. A PLEADING IS CONSIDERED FILED UPON RECEIPT BY THE DIRECTOR OR THE COMMISSION. THESE RULES DO NOT PROVIDE FOR ANY ADDITIONAL TIME FOR SERVICE BY MAIL.
- C. ANY PLEADINGS MUST BE SERVED ON THE OPPOSING PARTY BY MAIL OR BY HAND DELIVERY ON THE DATE WHICH THE PLEADINGS ARE FILED WITH THE DIRECTOR OR THE COMMISSION.
- D. ALL PLEADINGS MUST BE FILED WITH THE DIRECTOR OR THE COMMISSION AND NOT WITH THE OFFICE OF ADMINISTRATIVE COURTS. ANY DESIGNATIONS OF RECORD, REQUESTS, EXCEPTIONS OR RESPONSIVE PLEADINGS FILED IN ERROR WITH THE OFFICE OF ADMINISTRATIVE COURTS WILL NOT BE CONSIDERED. THE DIRECTOR'S AND THE COMMISSION'S ADDRESS IS:

DIVISION OF REAL ESTATE

1560 BROADWAY, SUITE 925

DENVER, COLORADO 80202

6.2. AUTHORITY TO REVIEW

- A. THE DIRECTOR HEREBY PRESERVES THE DIRECTOR'S OPTION TO INITIATE A REVIEW OF AN INITIAL DECISION ON HIS/HER OWN MOTION PURSUANT TO SECTION 24-4-105(14)(A)(II) AND (B)(III), C.R.S. OUTSIDE OF THE (30) THIRTY DAY PERIOD AFTER SERVICE OF THE INITIAL DECISION UPON THE PARTIES.
- B. THE COMMISSION HEREBY PRESERVES THE COMMISSION'S OPTION TO INITIATE A REVIEW OF AN INITIAL DECISION ON ITS OWN MOTION PURSUANT TO SECTION 24-4-105(14)(A)(II) AND (B)(III), C.R.S. OUTSIDE OF THE (30) THIRTY DAY PERIOD AFTER SERVICE OF THE INITIAL DECISION UPON THE PARTIES WITHOUT REQUIRING A VOTE OF EACH CASE.
- C. THIS OPTION TO REVIEW WILL APPLY REGARDLESS OF WHETHER A PARTY FILES EXCEPTIONS TO THE INITIAL DECISION.

6.3. DESIGNATION OF RECORD AND TRANSCRIPTS

- A. ANY PARTY SEEKING TO REVERSE OR MODIFY THE INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE MUST FILE WITH THE DIRECTOR OR THE COMMISSION A DESIGNATION OF THE RELEVANT PARTS OF THE RECORD FOR REVIEW ("DESIGNATION OF RECORD"). DESIGNATIONS OF RECORD MUST BE FILED WITH THE DIRECTOR OR THE COMMISSION WITHIN (20) TWENTY DAYS OF THE DATE ON WHICH THE DIRECTOR OR THE COMMISSION MAILES THE INITIAL DECISION TO THE PARTIES' ADDRESS OF RECORD WITH THE DIRECTOR OR THE COMMISSION.
- B. WITHIN (10) TEN DAYS AFTER A PARTY'S DESIGNATION OF RECORD IS DUE,

ANY OTHER PARTY MAY FILE A SUPPLEMENTAL DESIGNATION OF RECORD REQUESTING INCLUSION OF ADDITIONAL PARTS OF THE RECORD.

C. EVEN IF NO PARTY FILES A DESIGNATION OF RECORD, THE RECORD MUST INCLUDE THE FOLLOWING:

1. ALL PLEADINGS;
2. ALL APPLICATIONS PRESENTED OR CONSIDERED DURING THE HEARING;
3. ALL DOCUMENTARY OR OTHER EXHIBITS ADMITTED INTO EVIDENCE;
4. ALL DOCUMENTARY OR OTHER EXHIBITS PRESENTED OR CONSIDERED DURING THE HEARING;
5. ALL MATTERS OFFICIALLY NOTICED;
6. ANY FINDINGS OF FACT AND CONCLUSIONS OF LAW PROPOSED BY ANY PARTY; AND
7. ANY WRITTEN BRIEF FILED.

D. TRANSCRIPTS: TRANSCRIPTS WILL NOT BE DEEMED PART OF A DESIGNATION OF RECORD UNLESS SPECIFICALLY IDENTIFIED AND ORDERED. SHOULD A PARTY WISH TO DESIGNATE A TRANSCRIPT OR PORTION THEREOF, THE FOLLOWING PROCEDURES WILL APPLY:

1. THE DESIGNATION OF THE RECORD MUST IDENTIFY WITH SPECIFICITY THE TRANSCRIPT OR PORTION THEREOF TO BE TRANSCRIBED. FOR EXAMPLE, A PARTY MAY DESIGNATE THE ENTIRE TRANSCRIPT, OR MAY IDENTIFY WITNESS(ES) WHOSE TESTIMONY IS TO BE TRANSCRIBED, THE LEGAL RULING OR ARGUMENT TO BE TRANSCRIBED, OR OTHER INFORMATION NECESSARY TO IDENTIFY A PORTION OF THE TRANSCRIPT.
2. ANY PARTY WHO INCLUDES A TRANSCRIPT OR A PORTION THEREOF AS PART OF THE DESIGNATION OF RECORD MUST ORDER THE TRANSCRIPT OR RELEVANT PORTIONS BY THE DATE ON WHICH THE DESIGNATION OF RECORD MUST BE FILED (WITHIN (20) TWENTY DAYS OF THE DATE ON WHICH THE DIRECTOR OR THE COMMISSION MAILES THE INITIAL DECISION TO THE PARTIES).
3. WHEN ORDERING THE TRANSCRIPT, THE PARTY MUST REQUEST A COURT REPORTER OR TRANSCRIBING SERVICE TO PREPARE THE TRANSCRIPT WITHIN (30) THIRTY DAYS. THE PARTY MUST TIMELY PAY THE NECESSARY FEES TO OBTAIN AND FILE WITH THE DIRECTOR OR THE COMMISSION AN ORIGINAL TRANSCRIPTION AND ONE COPY WITHIN (30) THIRTY DAYS.
4. THE PARTY ORDERING THE TRANSCRIPT MUST DIRECT THE COURT REPORT OR TRANSCRIBING SERVICE TO COMPLETE AND FILE WITH

THE DIRECTOR OR THE COMMISSION THE TRANSCRIPT AND ONE COPY OF THE TRANSCRIPT WITHIN (30) THIRTY DAYS.

5. IF A PARTY DESIGNATES A PORTION OF THE TRANSCRIPT, THE OPPOSING PARTY MAY ALSO FILE A SUPPLEMENTAL DESIGNATION OF RECORD, IN WHICH THE OPPOSING PARTY MAY DESIGNATE ADDITIONAL PORTIONS OF THE TRANSCRIPT.
6. AN OPPOSING PARTY FILING A SUPPLEMENTAL DESIGNATION OF RECORD DESIGNATING ADDITIONAL PORTIONS OF THE TRANSCRIPT MUST ORDER AND PAY FOR SUCH TRANSCRIPTS OR PORTIONS THEREOF WITHIN THE DEADLINES SET FORTH ABOVE. AN OPPOSING PARTY MUST ALSO CAUSE THE COURT REPORTER TO COMPLETE AND FILE WITH THE DIRECTOR OR THE COMMISSION THE TRANSCRIPT AND ONE COPY OF THE TRANSCRIPT WITHIN (30) THIRTY DAYS.
7. TRANSCRIPTS THAT ARE ORDERED AND NOT FILED WITH THE DIRECTOR OR THE COMMISSION IN A TIMELY MANNER BY THE REPORTER OR THE TRANSCRIPTION SERVICE DUE TO NON-PAYMENT, INSUFFICIENT PAYMENT OR FAILURE TO DIRECT AS SET FORTH ABOVE WILL NOT BE CONSIDERED BY THE DIRECTOR OR THE COMMISSION.

6.4. FILING OF EXCEPTIONS AND RESPONSIVE PLEADINGS.

- A. ANY PARTY WISHING TO FILE EXCEPTIONS MUST ADHERE TO THE FOLLOWING TIMELINES:
 1. IF NO TRANSCRIPTS ARE ORDERED, EXCEPTIONS ARE DUE WITHIN (30) THIRTY DAYS FROM THE DATE ON WHICH THE DIRECTOR OR THE COMMISSION MAILES THE INITIAL DECISION TO THE PARTIES. BOTH PARTIES' EXCEPTIONS ARE DUE ON THE SAME DATE.
 2. IF TRANSCRIPTS ARE ORDERED BY EITHER PARTY, THE FOLLOWING PROCEDURE WILL APPLY. UPON RECEIPT OF ALL TRANSCRIPTS IDENTIFIED IN ALL DESIGNATIONS OF RECORD AND SUPPLEMENTAL DESIGNATIONS OF RECORD, THE DIRECTOR OR THE COMMISSION WILL MAIL NOTIFICATION TO THE PARTIES STATING THAT THE TRANSCRIPTS HAVE BEEN RECEIVED BY THE DIRECTOR OR THE COMMISSION. EXCEPTIONS ARE DUE WITHIN (30) THIRTY DAYS FROM THE DATE ON WHICH SUCH NOTIFICATION IS MAILED. BOTH PARTIES' EXCEPTIONS ARE DUE ON THE SAME DATE.
- B. EITHER PARTY MAY FILE A RESPONSIVE PLEADING TO THE OTHER PARTY'S EXCEPTIONS. ALL RESPONSIVE PLEADINGS MUST BE FILED WITHIN (10) TEN DAYS OF THE DATE ON WHICH THE EXCEPTIONS WERE FILED WITH THE DIRECTOR OR THE COMMISSION. NO OTHER PLEADINGS WILL BE CONSIDERED EXCEPT FOR GOOD CAUSE SHOWN.
- C. IT IS WITHIN THE SOLE DISCRETION OF THE DIRECTOR OR THE COMMISSION TO GRANT AN EXTENSION OF TIME TO FILE EXCEPTIONS OR RESPONSIVE

PLEADINGS. THE DIRECTOR OR THE COMMISSION MAY DELEGATE THE DISCRETION TO GRANT SUCH AN EXTENSION OF TIME TO THEIR DESIGNEE.

6.5. REQUEST FOR ORAL ARGUMENT.

- A. ALL REQUESTS FOR ORAL ARGUMENT MUST BE IN WRITING AND FILED BY THE DEADLINE FOR RESPONSIVE PLEADINGS.
- B. IT IS WITHIN THE SOLE DISCRETION OF THE DIRECTOR OR THE COMMISSION TO GRANT OR DENY A REQUEST FOR ORAL ARGUMENT. IF ORAL ARGUMENT IS GRANTED, BOTH PARTIES WILL HAVE THE OPPORTUNITY TO PARTICIPATE.
- C. IF A REQUEST FOR ORAL ARGUMENT IS GRANTED, EACH SIDE WILL BE PERMITTED (10) TEN MINUTES OF ORAL ARGUMENT UNLESS SUCH TIME IS EXTENDED BY THE DIRECTOR OR THE COMMISSION OR THEIR DESIGNEE.

A hearing on the above subject matter will be held on Monday, November 3, 2014, at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250-C, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.

Notice of Rulemaking Hearing

Tracking number

2014-01029

Department

700 - Department of Regulatory Agencies

Agency

725 - Division of Real Estate

CCR number

4 CCR 725-4

Rule title

CONSERVATION EASEMENTS

Rulemaking Hearing

Date

11/03/2014

Time

09:00 AM

Location

1560 Broadway, Suite 1250-C, Denver, CO

Subjects and issues involved

RULE CHAPTER 2. CERTIFICATION OF CONSERVATION EASEMENT HOLDERS

Statutory authority

Chapter 7 of Title 12, Article 61, Colorado Revised Statutes, as amended

Contact information

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**DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
CONSERVATION EASEMENTS**

**NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
November 3, 2014**

RULE CHAPTER 2. CERTIFICATION OF CONSERVATION EASEMENT HOLDERS

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 Department of Regulatory Agencies and the Division of Real Estate to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to conservation easements.

STATEMENT OF BASIS

The statutory basis for the rules titled Conservation Easements is Chapter 7 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 section 12-61-720, C.R.S.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to establish and implement the requirements necessary for the certification and discipline of qualified organizations that hold conservation easements for which a tax credit is claimed.

Proposed New, Amended and Repealed Rules

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CHAPTER 2: CERTIFICATION OF CONSERVATION EASEMENT HOLDERS

2.1. QUALIFICATIONS FOR CERTIFICATION TO HOLD CONSERVATION EASEMENTS
THE DIVISION MAY DENY, REFUSE TO RENEW, OR REVOKE THE CERTIFICATION OF A CONSERVATION EASEMENT HOLDER WHO FAILS TO MEET ANY OF THE FOLLOWING MINIMUM QUALIFICATIONS:

A. ORGANIZATION
THE CONSERVATION EASEMENT HOLDER:

1. MEETS THE REQUIREMENTS OF A QUALIFIED

ORGANIZATION UNDER SECTION 12-61-720 C.R.S. AND THE QUALIFICATIONS IN SECTION 38-30.5-104(2), C.R.S., TO HOLD A CONSERVATION EASEMENT FOR WHICH A STATE TAX CREDIT MAY BE CLAIMED;

2. HAS THE CAPACITY, INCLUDING, BUT NOT LIMITED TO, A SUFFICIENT NUMBER OF BOARD MEMBERS, STAFF, AND/OR VOLUNTEERS, TO ACCOMPLISH THE WORK OF THE ORGANIZATION;
3. HAS A SUFFICIENT NUMBER OF BOARD MEETINGS PER YEAR TO ACCOMPLISH THE WORK OF THE ORGANIZATION; AND
4. IF A NON-GOVERNMENTAL ENTITY, THE ORGANIZATION IS IN GOOD STANDING WITH THE COLORADO SECRETARY OF STATE.

B. PROCESS: CONSERVATION EASEMENT SELECTION, REVIEW AND APPROVAL

1. THE CONSERVATION EASEMENT HOLDER HAS AND FOLLOWS REASONABLE POLICIES AND PROCEDURES FOR SELECTING CONSERVATION EASEMENTS. THESE INCLUDE, BUT ARE NOT LIMITED TO:
 - a. ESTABLISHING AND FOLLOWING SELECTION CRITERIA TO IDENTIFY CONSERVATION EASEMENTS WITH A CONSERVATION PURPOSE AS DEFINED IN SECTION 12-61-723(1)(b), C.R.S.;
 - b. IDENTIFYING AND DOCUMENTING THE CONSERVATION VALUES AND THE PUBLIC BENEFITS FROM PROTECTING THOSE VALUES PRIOR TO ACCEPTING THE CONSERVATION EASEMENT;
 - c. WORKING WITH THE CONSERVATION EASEMENT GRANTOR TO IDENTIFY AND DESIGN THE PERMITTED USES, RESERVED RIGHTS, AND PROHIBITED USES FOR THE CONSERVATION EASEMENT ON AN INDIVIDUAL BASIS; AND
 - d. RECEIVING AND REVIEWING A BASELINE DOCUMENTATION REPORT FOR THE CONSERVATION EASEMENT BEFORE ACCEPTING THE DONATION, AND UPDATING THE REPORT AS NEEDED. THE BASELINE REPORT DOCUMENTS THE CONSERVATION VALUES AND CONDITION OF THE PROPERTY AT THE TIME OF CONVEYANCE.
2. THE CONSERVATION EASEMENT HOLDER HAS AND FOLLOWS

REASONABLE POLICIES AND PROCEDURES FOR REVIEWING CONSERVATION EASEMENTS. THESE INCLUDE, BUT ARE NOT LIMITED TO:

- a. PERFORMING DUE DILIGENCE ON THE TITLE, WATER AND MINERAL RIGHTS ON THE PROPERTY BEFORE APPROVING THE TRANSACTION;
- b. ENSURING ANY LIENS OR ENCUMBRANCES ARE SUBORDINATED OR ADDRESSED IN A MANNER SO THAT THE CONSERVATION RIGHTS SET FORTH IN THE DEED WILL BE ENSURED IN PERPETUITY;
- c. HAVING AND FOLLOWING A POLICY FOR PHASED CONSERVATION EASEMENTS SUCH THAT EACH CONSERVATION EASEMENT OF A PHASED PROJECT HAS AN INDEPENDENT CONSERVATION PURPOSE AS DEFINED IN SECTION 12-61-723(1)(B), C.R.S.;
- d. OBTAINING A LEGAL REVIEW OF THE TRANSACTION APPROPRIATE TO THE COMPLEXITY OF THE TRANSACTION;
- e. USING APPROPRIATE EXPERTISE TO SUBSTANTIATE THE CONSERVATION VALUES; AND
- f. RECEIVING AND ADEQUATELY REVIEWING A COPY OF THE APPRAISAL FOR A CONSERVATION EASEMENT FOR WHICH A TAX CREDIT MAY BE CLAIMED PURSUANT TO SECTION 39-22-522, C.R.S.

3. THE CONSERVATION EASEMENT HOLDER HAS AND FOLLOWS REASONABLE POLICIES AND PROCEDURES FOR APPROVING CONSERVATION EASEMENTS. THESE INCLUDE, BUT ARE NOT LIMITED TO:

- a. DECLINING PROJECTS THAT DO NOT HAVE CONSERVATION VALUE, THE NECESSARY DONATIVE INTENT OR APPEAR TO BE FRAUDULENT;
- b. HAVING THE BOARD APPROVE ALL CONSERVATION EASEMENT DONATIONS, OR ESTABLISHING POLICIES DELEGATING THE AUTHORITY TO APPROVE TRANSACTIONS TO A QUALIFIED COMMITTEE OR OTHER DESIGNEE;

c. PROVIDING SUFFICIENT INFORMATION TO THE BOARD, A QUALIFIED COMMITTEE OR OTHER DESIGNEE FOR REVIEW BEFORE A CONSERVATION EASEMENT IS APPROVED; AND

d. ADVISING POTENTIAL CONSERVATION EASEMENT GRANTORS THAT THE ORGANIZATION DOES NOT GUARANTEE THE QUALIFICATION OF THE CONSERVATION EASEMENT FOR TAX CREDIT PURPOSES, AND THAT THEY SHOULD SEEK THEIR OWN LEGAL, FINANCIAL AND TAX ADVICE.

C. STEWARDSHIP: PRACTICES AND CAPACITY

1. THE CONSERVATION EASEMENT HOLDER HAS AND FOLLOWS REASONABLE POLICIES AND PROCEDURES TO ENSURE THE SHORT- AND LONG-TERM MANAGEMENT OF ITS CONSERVATION EASEMENTS. THESE INCLUDE, BUT ARE NOT LIMITED TO:

a. HAVING ADEQUATE CAPACITY AND RESOURCES IN PLACE TO PROVIDE ANNUAL MONITORING OF EACH CONSERVATION EASEMENT HELD IN COLORADO;

b. MONITORING ALL CONSERVATION EASEMENTS ON AT LEAST AN ANNUAL BASIS, INCLUDING VISUALLY INSPECTING THE PROPERTY AND PERFORMING OTHER TYPES OF MONITORING ACTIONS AS APPROPRIATE;

c. MONITORING IS DOCUMENTED BY A QUALIFIED INDIVIDUAL, AND THE DOCUMENTATION IS REVIEWED BY THE BOARD, A QUALIFIED COMMITTEE OR OTHER DESIGNEE;

d. ENFORCING EVERY CONSERVATION EASEMENT DEED, AND ADDRESSING VIOLATIONS IN A MANNER APPROPRIATE TO THE SCALE OF THE VIOLATION;

e. REVIEWING PROPOSED AMENDMENTS TO CONSERVATION EASEMENT DEEDS TO CONFIRM THEY DO NOT RESULT IN A NET LOSS OF CONSERVATION VALUE AND DO NOT CREATE AN IMPERMISSIBLE PRIVATE BENEFIT TO THE GRANTOR; AND

f. PRESERVING ORIGINAL AND
DUPLICATE COPIES OF NECESSARY
AND IMPORTANT RECORDS, SUCH AS
DEEDS, BASELINE REPORTS,
MONITORING REPORTS AND
APPRAISALS, IN A SAFE AND SECURE
MANNER.

2. THE CONSERVATION EASEMENT HOLDER HAS THE NECESSARY
PERSONNEL AND FINANCIAL CAPACITY AND POLICIES AND
PROCEDURES TO ENSURE THE SHORT- AND LONG-TERM
MANAGEMENT OF ITS CONSERVATION EASEMENTS. THESE MAY
INCLUDE, BUT ARE NOT LIMITED TO:

a. ESTABLISHING LASTING DEDICATED
STEWARDSHIP AND ENFORCEMENT
FUNDS FOR THE MANAGEMENT AND
ENFORCEMENT OF EVERY
CONSERVATION EASEMENT HELD;

b. USING THE DEDICATED
STEWARDSHIP AND ENFORCEMENT
FUNDS FOR STEWARDSHIP- AND
ENFORCEMENT-RELATED PURPOSES
ONLY, OR OTHER ALLOWABLE USES
ONLY AS ESTABLISHED THROUGH
WRITTEN POLICIES;

c. DETERMINING THE APPROXIMATE
AMOUNT OF STEWARDSHIP AND
ENFORCEMENT FUNDS THAT WILL BE
NEEDED FOR THE SHORT- AND
LONG-TERM MANAGEMENT OF ALL
CONSERVATION EASEMENTS; AND

d. PROCURING THE ADEQUATE
STEWARDSHIP AND ENFORCEMENT
FUNDS NEEDED WITH ALL
CONSERVATION EASEMENTS.

D. FINANCE

THE CONSERVATION EASEMENT HOLDER HAS AND FOLLOWS REASONABLE
FISCAL POLICIES AND PROCEDURES TO ENSURE THE TRANSPARENT AND
RESPONSIBLE MANAGEMENT OF ITS ASSETS. THESE MAY INCLUDE, BUT ARE NOT
LIMITED TO:

1. HAVING THE BOARD REVIEW AND/OR REGULARLY ASSESS THE
ORGANIZATION'S FINANCIAL STATUS, INCLUDING THE ANNUAL BUDGET
AND ANY FINANCIAL CHANGES THAT HAVE OCCURRED; AND

2. HAVING A QUALIFIED INDIVIDUAL CONDUCT A FINANCIAL AUDIT OR OTHER FINANCIAL REVIEW ON AN ANNUAL BASIS.

E. GOVERNANCE

THE CONSERVATION EASEMENT HOLDER DEMONSTRATES IT HAS AND FOLLOWS REASONABLE POLICIES AND PROCEDURES TO ENSURE THE RESPONSIBLE MANAGEMENT OF CONFLICTS OF INTEREST AND ANY TRANSACTIONS WITH INSIDERS.

- 2.2. EXPIRATION DATE FOR CERTIFICATION
CERTIFICATION FOR A CONSERVATION EASEMENT HOLDER EXPIRES ON DECEMBER 31 FOLLOWING THE DATE OF ISSUANCE.
- 2.3. ELIGIBILITY FOR CONSERVATION EASEMENT HOLDERS AFTER REVOCATION
A CONSERVATION EASEMENT HOLDER WHOSE CERTIFICATION TO HOLD A CONSERVATION EASEMENT HAS BEEN REVOKED IS RENDERED INELIGIBLE TO RE-APPLY FOR CERTIFICATION UNTIL MORE THAN TWO YEARS HAVE ELAPSED FROM THE DATE OF REVOCATION OF THE CERTIFICATION. ANY RE-APPLICATION AFTER SUCH TWO-YEAR PERIOD IS REQUIRED TO BE SUBMITTED ON A NEW APPLICATION.
- 2.4. CERTIFICATION RENEWAL
RENEWAL OF A CONSERVATION EASEMENT HOLDER CERTIFICATION CAN BE EXECUTED ONLY WITH THE RENEWAL APPLICATION PROVIDED BY THE DIVISION, SUBMITTED AND ACCOMPANIED BY THE PRESCRIBED NONREFUNDABLE FEE BY DECEMBER 31 OF EACH YEAR.
- 2.5. REINSTATEMENT OF CERTIFICATION
A CERTIFICATION THAT HAS EXPIRED MAY BE REINSTATED WITHIN ONE YEAR AFTER THE DATE OF EXPIRATION IF THE HOLDER MEETS ALL THE REQUIREMENTS IN SECTION 12-61-720, C.R.S. AND RULE 2.1. A COMPLETE RENEWAL APPLICATION AND THE PRESCRIBED NONREFUNDABLE RENEWAL FEE MUST BE SUBMITTED TO THE DIVISION FOR REINSTATEMENT. CERTIFICATION IS EFFECTIVE ON THE DATE REINSTATEMENT IS ISSUED AND CANNOT BE APPLIED RETROACTIVELY. ANY CERTIFICATION THAT HAS BEEN EXPIRED GREATER THAN ONE YEAR MAY NOT BE REINSTATED.
- 2.6. CONDITIONAL CERTIFICATION
 - A. THE DIRECTOR IN CONSULTATION WITH THE COMMISSION MAY ISSUE CONDITIONAL CERTIFICATION TO ANY CONSERVATION EASEMENT HOLDER THAT DOES NOT CLEARLY DEMONSTRATE, TO THE SATISFACTION OF THE DIRECTOR, COMPLIANCE WITH RULE 2.1. TITLED QUALIFICATIONS FOR CERTIFICATION TO HOLD CONSERVATION EASEMENTS. THE TERMS AND LENGTH OF CONDITIONAL CERTIFICATION WILL BE DETERMINED BY THE DIRECTOR AND MAY INCLUDE, BUT ARE NOT LIMITED TO:
 1. A REQUIREMENT THAT THE CONDITIONALLY CERTIFIED CONSERVATION EASEMENT HOLDER CO-HOLD CONSERVATION EASEMENTS FOR WHICH A STATE TAX CREDIT MAY BE CLAIMED WITH A FULLY CERTIFIED CONSERVATION EASEMENT HOLDER.

2. SUBMISSION OF ALL REQUESTED PROJECT AND GOVERNANCE DOCUMENTATION IN A MANNER PRESCRIBED BY THE DIRECTOR.
 3. APPROVAL OF PROJECT DOCUMENTATION BY THE DIRECTOR PRIOR TO THE CONSERVATION EASEMENT HOLDER ACCEPTING A NEW CONSERVATION EASEMENT.
 4. ANY OTHER RESTRICTION OR TERM DEEMED NECESSARY BY THE DIRECTOR TO ENSURE ONGOING COMPLIANCE WITH ALL APPLICABLE STATUTES AND RULES.
- B. CONSERVATION EASEMENT HOLDERS GRANTED CONDITIONAL CERTIFICATION ARE SUBJECT TO ALL FEES, STATUTES AND RULES PROMULGATED FOR CERTIFIED CONSERVATION EASEMENT HOLDERS, INCLUDING, BUT NOT LIMITED TO RULE 2.1. TITLED QUALIFICATIONS FOR CERTIFICATION TO HOLD CONSERVATION EASEMENTS, AND ALL OTHER RULES REGARDING EXPIRATION AND RENEWAL OF STATE CERTIFICATION.

2.7. DISCIPLINARY ACTION

THE DIRECTOR MAY IMPOSE AN ADMINISTRATIVE FINE NOT TO EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) FOR EACH SEPARATE OFFENSE; MAY ISSUE A LETTER OF ADMONITION; MAY PLACE A CONSERVATION EASEMENT HOLDER ON PROBATION UNDER THE DIRECTOR'S CLOSE SUPERVISION ON SUCH TERMS AND FOR SUCH TIME AS THE DIRECTOR DEEMS APPROPRIATE; AND MAY REFUSE TO RENEW, REVOKE, OR SUSPEND THE CERTIFICATION OF ANY CONSERVATION EASEMENT HOLDER IF, AFTER AN INVESTIGATION AND AFTER NOTICE AND HEARING PURSUANT TO THE PROVISIONS OF SECTION 24-4-104, C.R.S., THE DIRECTOR DETERMINES THAT THE CONSERVATION EASEMENT HOLDER OR ANY DIRECTOR, OFFICER, OR BOARD MEMBER:

- A. HAS MADE FALSE OR MISLEADING STATEMENTS OR MATERIAL OMISSION IN THEIR APPLICATION FOR CERTIFICATION;
- B. HAS MISREPRESENTED OR CONCEALED ANY MATERIAL FACT FROM A CONSERVATION EASEMENT GRANTOR;
- C. HAS EMPLOYED ANY DEVICE, SCHEME, OR ARTIFICE WITH INTENT TO DEFRAUD A CONSERVATION EASEMENT GRANTOR OR ANY GOVERNMENT AGENCY;
- D. HAS FAILED TO COMPLY WITH ANY STIPULATION OR AGREEMENT MADE WITH THE DIRECTOR; OR
- E. HAS FAILED TO COMPLY WITH ANY OF THE CERTIFICATION REQUIREMENTS, OR ANY LAWFUL RULE OR REGULATION PROMULGATED BY THE DIRECTOR.

2.8. INFORMATION REQUEST

A CONSERVATION EASEMENT HOLDER MUST FURNISH TO THE DIRECTOR SUCH INFORMATION OR DOCUMENTATION AS THE DIRECTOR IN HER/HIS SOLE DISCRETION DEEMS REASONABLY NECESSARY FOR THE ENFORCEMENT OF TITLE 12, ARTICLE 61, PART 7, C.R.S. OR ANY RULES ENACTED BY THE DIVISION. IF INFORMATION OR DOCUMENTATION IS REQUIRED, THE DIRECTOR MUST GIVE WRITTEN NOTICE, IN DETAIL, OF THE INFORMATION SO REQUIRED AND MUST ALLOW AN ADDITIONAL TWENTY-ONE (21) DAYS FROM DELIVERY TO PRESENT SUCH MATERIAL, WHICH PERIOD MAY BE EXTENDED ONLY UPON SHOWING OF GOOD

CAUSE. WRITTEN NOTICE MAY BE FAXED, HAND-DELIVERED OR MAILED TO THE PARTY ENTITLED THERETO. IF FAXED OR HAND DELIVERED, SAID NOTICE IS DEEMED DELIVERED UPON CONFIRMATION OF SUCCESSFUL TRANSMISSION OF THE FAX OR UPON HAND DELIVERY. IF MAILED, SAID NOTICE MUST BE MAILED BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND SAID NOTICE IS DEEMED DELIVERED THE DATE OF MAILING.

2.9. CEASE AND DESIST

IF THE DIVISION HAS REASONABLE CAUSE TO BELIEVE ANY PUBLIC OR PRIVATE ORGANIZATION IS NOT IN COMPLIANCE WITH SECTION 38-30.5-104 (2), C.R.S. AND SECTION 12-61-720, C.R.S., THE DIRECTOR MAY ENTER AN ORDER REQUIRING SUCH ORGANIZATION TO CEASE AND DESIST FROM ATTEMPTING TO HOLD A CONSERVATION EASEMENT FOR WHICH A STATE TAX CREDIT MAY BE CLAIMED.

2.10. TRANSFERRING CONSERVATION EASEMENTS TO NON-CERTIFIED ENTITIES

A CONSERVATION EASEMENT HOLDER MUST NOT ASSIGN OR OTHERWISE TRANSFER ALL OR A PARTIAL INTEREST IN A CONSERVATION EASEMENT FOR WHICH A STATE TAX CREDIT MAY BE CLAIMED TO A NON-CERTIFIED ORGANIZATION. AN ORGANIZATION MUST NOT ACCEPT AN ASSIGNED OR OTHERWISE TRANSFERRED INTEREST IN A CONSERVATION EASEMENT FOR WHICH A STATE TAX CREDIT MAY BE CLAIMED IF THEY ARE NOT CERTIFIED AT THE TIME OF ACCEPTANCE. GOVERNMENTAL ENTITIES TRANSFERRING A PARTIAL INTEREST IN A CONSERVATION EASEMENT TO ANOTHER GOVERNMENTAL ENTITY IN ACCORDANCE WITH AN ESTABLISHED WRITTEN AGREEMENT ARE EXEMPT FROM THIS PROHIBITION ON TRANSFERRING A PARTIAL INTEREST IN A CONSERVATION EASEMENT. THE CERTIFIED GRANTEE AND ALL CERTIFIED ORGANIZATIONS RETAINING A PARTIAL INTEREST IN THE CONSERVATION EASEMENT MUST REMAIN RESPONSIBLE FOR STEWARDSHIP AND DEFENSE OF THE CONSERVATION EASEMENT AT ALL TIMES.

2.11. COURTESY FILING

A CERTIFIED CONSERVATION EASEMENT HOLDER MUST PROVIDE THE FOLLOWING INFORMATION AND/OR DOCUMENTATION TO THE DIVISION WITHIN 30 DAYS OF A SUBSTANTIVE CHANGE IN:

- A. PHYSICAL OR MAILING ADDRESS OF THE ORGANIZATION;
- B. AUTHORIZED CONTACT PERSON; OR
- C. POLICY NECESSARY FOR COMPLIANCE WITH RULE 2.1.

A hearing on the above subject matter will be held on Monday, November 3, 2014, at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250-C, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.

Notice of Rulemaking Hearing

Tracking number

2014-01030

Department

700 - Department of Regulatory Agencies

Agency

725 - Division of Real Estate

CCR number

4 CCR 725-4

Rule title

CONSERVATION EASEMENTS

Rulemaking Hearing

Date

11/03/2014

Time

09:00 AM

Location

1560 Broadway, Suite 1250-C, Denver, CO

Subjects and issues involved

RULE CHAPTER 2. CERTIFICATION OF CONSERVATION EASEMENT HOLDERS

Statutory authority

Chapter 7 of Title 12, Article 61, Colorado Revised Statutes, as amended

Contact information

Name

Martha Torres-Recinos

Title

Rulemaking Administrator

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303-894-2359

Email

martha.torres-recinos@state.co.us

**DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
CONSERVATION EASEMENTS**

**NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
November 3, 2014**

RULE CHAPTER 2. CERTIFICATION OF CONSERVATION EASEMENT HOLDERS

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 Department of Regulatory Agencies and the Division of Real Estate to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to conservation easements.

STATEMENT OF BASIS

The statutory basis for the rules titled Conservation Easements is Chapter 7 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 section 12-61-720, C.R.S.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to establish and implement the requirements necessary for the certification and discipline of qualified organizations that hold conservation easements for which a tax credit is claimed.

Proposed New, Amended and Repealed Rules

[Deleted material showed ~~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 Division at <http://www.sos.state.co.us>]

CHAPTER 2: CERTIFICATION OF CONSERVATION EASEMENT HOLDERS

2.1. QUALIFICATIONS FOR CERTIFICATION TO HOLD CONSERVATION EASEMENTS
THE DIVISION MAY DENY, REFUSE TO RENEW, OR REVOKE THE CERTIFICATION OF A CONSERVATION EASEMENT HOLDER WHO FAILS TO MEET ANY OF THE FOLLOWING MINIMUM QUALIFICATIONS:

A. ORGANIZATION
THE CONSERVATION EASEMENT HOLDER:

1. MEETS THE REQUIREMENTS OF A QUALIFIED

ORGANIZATION UNDER SECTION 12-61-720 C.R.S. AND THE QUALIFICATIONS IN SECTION 38-30.5-104(2), C.R.S., TO HOLD A CONSERVATION EASEMENT FOR WHICH A STATE TAX CREDIT MAY BE CLAIMED;

2. HAS THE CAPACITY, INCLUDING, BUT NOT LIMITED TO, A SUFFICIENT NUMBER OF BOARD MEMBERS, STAFF, AND/OR VOLUNTEERS, TO ACCOMPLISH THE WORK OF THE ORGANIZATION;
3. HAS A SUFFICIENT NUMBER OF BOARD MEETINGS PER YEAR TO ACCOMPLISH THE WORK OF THE ORGANIZATION; AND
4. IF A NON-GOVERNMENTAL ENTITY, THE ORGANIZATION IS IN GOOD STANDING WITH THE COLORADO SECRETARY OF STATE.

B. PROCESS: CONSERVATION EASEMENT SELECTION, REVIEW AND APPROVAL

1. THE CONSERVATION EASEMENT HOLDER HAS AND FOLLOWS REASONABLE POLICIES AND PROCEDURES FOR SELECTING CONSERVATION EASEMENTS. THESE INCLUDE, BUT ARE NOT LIMITED TO:
 - a. ESTABLISHING AND FOLLOWING SELECTION CRITERIA TO IDENTIFY CONSERVATION EASEMENTS WITH A CONSERVATION PURPOSE AS DEFINED IN SECTION 12-61-723(1)(b), C.R.S.;
 - b. IDENTIFYING AND DOCUMENTING THE CONSERVATION VALUES AND THE PUBLIC BENEFITS FROM PROTECTING THOSE VALUES PRIOR TO ACCEPTING THE CONSERVATION EASEMENT;
 - c. WORKING WITH THE CONSERVATION EASEMENT GRANTOR TO IDENTIFY AND DESIGN THE PERMITTED USES, RESERVED RIGHTS, AND PROHIBITED USES FOR THE CONSERVATION EASEMENT ON AN INDIVIDUAL BASIS; AND
 - d. RECEIVING AND REVIEWING A BASELINE DOCUMENTATION REPORT FOR THE CONSERVATION EASEMENT BEFORE ACCEPTING THE DONATION, AND UPDATING THE REPORT AS NEEDED. THE BASELINE REPORT DOCUMENTS THE CONSERVATION VALUES AND CONDITION OF THE PROPERTY AT THE TIME OF CONVEYANCE.
2. THE CONSERVATION EASEMENT HOLDER HAS AND FOLLOWS

REASONABLE POLICIES AND PROCEDURES FOR REVIEWING CONSERVATION EASEMENTS. THESE INCLUDE, BUT ARE NOT LIMITED TO:

- a. PERFORMING DUE DILIGENCE ON THE TITLE, WATER AND MINERAL RIGHTS ON THE PROPERTY BEFORE APPROVING THE TRANSACTION;
- b. ENSURING ANY LIENS OR ENCUMBRANCES ARE SUBORDINATED OR ADDRESSED IN A MANNER SO THAT THE CONSERVATION RIGHTS SET FORTH IN THE DEED WILL BE ENSURED IN PERPETUITY;
- c. HAVING AND FOLLOWING A POLICY FOR PHASED CONSERVATION EASEMENTS SUCH THAT EACH CONSERVATION EASEMENT OF A PHASED PROJECT HAS AN INDEPENDENT CONSERVATION PURPOSE AS DEFINED IN SECTION 12-61-723(1)(B), C.R.S.;
- d. OBTAINING A LEGAL REVIEW OF THE TRANSACTION APPROPRIATE TO THE COMPLEXITY OF THE TRANSACTION;
- e. USING APPROPRIATE EXPERTISE TO SUBSTANTIATE THE CONSERVATION VALUES; AND
- f. RECEIVING AND ADEQUATELY REVIEWING A COPY OF THE APPRAISAL FOR A CONSERVATION EASEMENT FOR WHICH A TAX CREDIT MAY BE CLAIMED PURSUANT TO SECTION 39-22-522, C.R.S.

3. THE CONSERVATION EASEMENT HOLDER HAS AND FOLLOWS REASONABLE POLICIES AND PROCEDURES FOR APPROVING CONSERVATION EASEMENTS. THESE INCLUDE, BUT ARE NOT LIMITED TO:

- a. DECLINING PROJECTS THAT DO NOT HAVE CONSERVATION VALUE, THE NECESSARY DONATIVE INTENT OR APPEAR TO BE FRAUDULENT;
- b. HAVING THE BOARD APPROVE ALL CONSERVATION EASEMENT DONATIONS, OR ESTABLISHING POLICIES DELEGATING THE AUTHORITY TO APPROVE TRANSACTIONS TO A QUALIFIED COMMITTEE OR OTHER DESIGNEE;

c. PROVIDING SUFFICIENT INFORMATION TO THE BOARD, A QUALIFIED COMMITTEE OR OTHER DESIGNEE FOR REVIEW BEFORE A CONSERVATION EASEMENT IS APPROVED; AND

d. ADVISING POTENTIAL CONSERVATION EASEMENT GRANTORS THAT THE ORGANIZATION DOES NOT GUARANTEE THE QUALIFICATION OF THE CONSERVATION EASEMENT FOR TAX CREDIT PURPOSES, AND THAT THEY SHOULD SEEK THEIR OWN LEGAL, FINANCIAL AND TAX ADVICE.

C. STEWARDSHIP: PRACTICES AND CAPACITY

1. THE CONSERVATION EASEMENT HOLDER HAS AND FOLLOWS REASONABLE POLICIES AND PROCEDURES TO ENSURE THE SHORT- AND LONG-TERM MANAGEMENT OF ITS CONSERVATION EASEMENTS. THESE INCLUDE, BUT ARE NOT LIMITED TO:

a. HAVING ADEQUATE CAPACITY AND RESOURCES IN PLACE TO PROVIDE ANNUAL MONITORING OF EACH CONSERVATION EASEMENT HELD IN COLORADO;

b. MONITORING ALL CONSERVATION EASEMENTS ON AT LEAST AN ANNUAL BASIS, INCLUDING VISUALLY INSPECTING THE PROPERTY AND PERFORMING OTHER TYPES OF MONITORING ACTIONS AS APPROPRIATE;

c. MONITORING IS DOCUMENTED BY A QUALIFIED INDIVIDUAL, AND THE DOCUMENTATION IS REVIEWED BY THE BOARD, A QUALIFIED COMMITTEE OR OTHER DESIGNEE;

d. ENFORCING EVERY CONSERVATION EASEMENT DEED, AND ADDRESSING VIOLATIONS IN A MANNER APPROPRIATE TO THE SCALE OF THE VIOLATION;

e. REVIEWING PROPOSED AMENDMENTS TO CONSERVATION EASEMENT DEEDS TO CONFIRM THEY DO NOT RESULT IN A NET LOSS OF CONSERVATION VALUE AND DO NOT CREATE AN IMPERMISSIBLE PRIVATE BENEFIT TO THE GRANTOR; AND

f. PRESERVING ORIGINAL AND
DUPLICATE COPIES OF NECESSARY
AND IMPORTANT RECORDS, SUCH AS
DEEDS, BASELINE REPORTS,
MONITORING REPORTS AND
APPRAISALS, IN A SAFE AND SECURE
MANNER.

2. THE CONSERVATION EASEMENT HOLDER HAS THE NECESSARY
PERSONNEL AND FINANCIAL CAPACITY AND POLICIES AND
PROCEDURES TO ENSURE THE SHORT- AND LONG-TERM
MANAGEMENT OF ITS CONSERVATION EASEMENTS. THESE MAY
INCLUDE, BUT ARE NOT LIMITED TO:

a. ESTABLISHING LASTING DEDICATED
STEWARDSHIP AND ENFORCEMENT
FUNDS FOR THE MANAGEMENT AND
ENFORCEMENT OF EVERY
CONSERVATION EASEMENT HELD;

b. USING THE DEDICATED
STEWARDSHIP AND ENFORCEMENT
FUNDS FOR STEWARDSHIP- AND
ENFORCEMENT-RELATED PURPOSES
ONLY, OR OTHER ALLOWABLE USES
ONLY AS ESTABLISHED THROUGH
WRITTEN POLICIES;

c. DETERMINING THE APPROXIMATE
AMOUNT OF STEWARDSHIP AND
ENFORCEMENT FUNDS THAT WILL BE
NEEDED FOR THE SHORT- AND
LONG-TERM MANAGEMENT OF ALL
CONSERVATION EASEMENTS; AND

d. PROCURING THE ADEQUATE
STEWARDSHIP AND ENFORCEMENT
FUNDS NEEDED WITH ALL
CONSERVATION EASEMENTS.

D. FINANCE

THE CONSERVATION EASEMENT HOLDER HAS AND FOLLOWS REASONABLE
FISCAL POLICIES AND PROCEDURES TO ENSURE THE TRANSPARENT AND
RESPONSIBLE MANAGEMENT OF ITS ASSETS. THESE MAY INCLUDE, BUT ARE NOT
LIMITED TO:

1. HAVING THE BOARD REVIEW AND/OR REGULARLY ASSESS THE
ORGANIZATION'S FINANCIAL STATUS, INCLUDING THE ANNUAL BUDGET
AND ANY FINANCIAL CHANGES THAT HAVE OCCURRED; AND

2. HAVING A QUALIFIED INDIVIDUAL CONDUCT A FINANCIAL AUDIT OR OTHER FINANCIAL REVIEW ON AN ANNUAL BASIS.

E. GOVERNANCE

THE CONSERVATION EASEMENT HOLDER DEMONSTRATES IT HAS AND FOLLOWS REASONABLE POLICIES AND PROCEDURES TO ENSURE THE RESPONSIBLE MANAGEMENT OF CONFLICTS OF INTEREST AND ANY TRANSACTIONS WITH INSIDERS.

- 2.2. EXPIRATION DATE FOR CERTIFICATION
CERTIFICATION FOR A CONSERVATION EASEMENT HOLDER EXPIRES ON DECEMBER 31 FOLLOWING THE DATE OF ISSUANCE.
- 2.3. ELIGIBILITY FOR CONSERVATION EASEMENT HOLDERS AFTER REVOCATION
A CONSERVATION EASEMENT HOLDER WHOSE CERTIFICATION TO HOLD A CONSERVATION EASEMENT HAS BEEN REVOKED IS RENDERED INELIGIBLE TO RE-APPLY FOR CERTIFICATION UNTIL MORE THAN TWO YEARS HAVE ELAPSED FROM THE DATE OF REVOCATION OF THE CERTIFICATION. ANY RE-APPLICATION AFTER SUCH TWO-YEAR PERIOD IS REQUIRED TO BE SUBMITTED ON A NEW APPLICATION.
- 2.4. CERTIFICATION RENEWAL
RENEWAL OF A CONSERVATION EASEMENT HOLDER CERTIFICATION CAN BE EXECUTED ONLY WITH THE RENEWAL APPLICATION PROVIDED BY THE DIVISION, SUBMITTED AND ACCOMPANIED BY THE PRESCRIBED NONREFUNDABLE FEE BY DECEMBER 31 OF EACH YEAR.
- 2.5. REINSTATEMENT OF CERTIFICATION
A CERTIFICATION THAT HAS EXPIRED MAY BE REINSTATED WITHIN ONE YEAR AFTER THE DATE OF EXPIRATION IF THE HOLDER MEETS ALL THE REQUIREMENTS IN SECTION 12-61-720, C.R.S. AND RULE 2.1. A COMPLETE RENEWAL APPLICATION AND THE PRESCRIBED NONREFUNDABLE RENEWAL FEE MUST BE SUBMITTED TO THE DIVISION FOR REINSTATEMENT. CERTIFICATION IS EFFECTIVE ON THE DATE REINSTATEMENT IS ISSUED AND CANNOT BE APPLIED RETROACTIVELY. ANY CERTIFICATION THAT HAS BEEN EXPIRED GREATER THAN ONE YEAR MAY NOT BE REINSTATED.
- 2.6. CONDITIONAL CERTIFICATION
 - A. THE DIRECTOR IN CONSULTATION WITH THE COMMISSION MAY ISSUE CONDITIONAL CERTIFICATION TO ANY CONSERVATION EASEMENT HOLDER THAT DOES NOT CLEARLY DEMONSTRATE, TO THE SATISFACTION OF THE DIRECTOR, COMPLIANCE WITH RULE 2.1. TITLED QUALIFICATIONS FOR CERTIFICATION TO HOLD CONSERVATION EASEMENTS. THE TERMS AND LENGTH OF CONDITIONAL CERTIFICATION WILL BE DETERMINED BY THE DIRECTOR AND MAY INCLUDE, BUT ARE NOT LIMITED TO:
 1. A REQUIREMENT THAT THE CONDITIONALLY CERTIFIED CONSERVATION EASEMENT HOLDER CO-HOLD CONSERVATION EASEMENTS FOR WHICH A STATE TAX CREDIT MAY BE CLAIMED WITH A FULLY CERTIFIED CONSERVATION EASEMENT HOLDER.

2. SUBMISSION OF ALL REQUESTED PROJECT AND GOVERNANCE DOCUMENTATION IN A MANNER PRESCRIBED BY THE DIRECTOR.
 3. APPROVAL OF PROJECT DOCUMENTATION BY THE DIRECTOR PRIOR TO THE CONSERVATION EASEMENT HOLDER ACCEPTING A NEW CONSERVATION EASEMENT.
 4. ANY OTHER RESTRICTION OR TERM DEEMED NECESSARY BY THE DIRECTOR TO ENSURE ONGOING COMPLIANCE WITH ALL APPLICABLE STATUTES AND RULES.
- B. CONSERVATION EASEMENT HOLDERS GRANTED CONDITIONAL CERTIFICATION ARE SUBJECT TO ALL FEES, STATUTES AND RULES PROMULGATED FOR CERTIFIED CONSERVATION EASEMENT HOLDERS, INCLUDING, BUT NOT LIMITED TO RULE 2.1. TITLED QUALIFICATIONS FOR CERTIFICATION TO HOLD CONSERVATION EASEMENTS, AND ALL OTHER RULES REGARDING EXPIRATION AND RENEWAL OF STATE CERTIFICATION.

2.7. DISCIPLINARY ACTION

THE DIRECTOR MAY IMPOSE AN ADMINISTRATIVE FINE NOT TO EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) FOR EACH SEPARATE OFFENSE; MAY ISSUE A LETTER OF ADMONITION; MAY PLACE A CONSERVATION EASEMENT HOLDER ON PROBATION UNDER THE DIRECTOR'S CLOSE SUPERVISION ON SUCH TERMS AND FOR SUCH TIME AS THE DIRECTOR DEEMS APPROPRIATE; AND MAY REFUSE TO RENEW, REVOKE, OR SUSPEND THE CERTIFICATION OF ANY CONSERVATION EASEMENT HOLDER IF, AFTER AN INVESTIGATION AND AFTER NOTICE AND HEARING PURSUANT TO THE PROVISIONS OF SECTION 24-4-104, C.R.S., THE DIRECTOR DETERMINES THAT THE CONSERVATION EASEMENT HOLDER OR ANY DIRECTOR, OFFICER, OR BOARD MEMBER:

- A. HAS MADE FALSE OR MISLEADING STATEMENTS OR MATERIAL OMISSION IN THEIR APPLICATION FOR CERTIFICATION;
- B. HAS MISREPRESENTED OR CONCEALED ANY MATERIAL FACT FROM A CONSERVATION EASEMENT GRANTOR;
- C. HAS EMPLOYED ANY DEVICE, SCHEME, OR ARTIFICE WITH INTENT TO DEFRAUD A CONSERVATION EASEMENT GRANTOR OR ANY GOVERNMENT AGENCY;
- D. HAS FAILED TO COMPLY WITH ANY STIPULATION OR AGREEMENT MADE WITH THE DIRECTOR; OR
- E. HAS FAILED TO COMPLY WITH ANY OF THE CERTIFICATION REQUIREMENTS, OR ANY LAWFUL RULE OR REGULATION PROMULGATED BY THE DIRECTOR.

2.8. INFORMATION REQUEST

A CONSERVATION EASEMENT HOLDER MUST FURNISH TO THE DIRECTOR SUCH INFORMATION OR DOCUMENTATION AS THE DIRECTOR IN HER/HIS SOLE DISCRETION DEEMS REASONABLY NECESSARY FOR THE ENFORCEMENT OF TITLE 12, ARTICLE 61, PART 7, C.R.S. OR ANY RULES ENACTED BY THE DIVISION. IF INFORMATION OR DOCUMENTATION IS REQUIRED, THE DIRECTOR MUST GIVE WRITTEN NOTICE, IN DETAIL, OF THE INFORMATION SO REQUIRED AND MUST ALLOW AN ADDITIONAL TWENTY-ONE (21) DAYS FROM DELIVERY TO PRESENT SUCH MATERIAL, WHICH PERIOD MAY BE EXTENDED ONLY UPON SHOWING OF GOOD

CAUSE. WRITTEN NOTICE MAY BE FAXED, HAND-DELIVERED OR MAILED TO THE PARTY ENTITLED THERETO. IF FAXED OR HAND DELIVERED, SAID NOTICE IS DEEMED DELIVERED UPON CONFIRMATION OF SUCCESSFUL TRANSMISSION OF THE FAX OR UPON HAND DELIVERY. IF MAILED, SAID NOTICE MUST BE MAILED BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND SAID NOTICE IS DEEMED DELIVERED THE DATE OF MAILING.

2.9. CEASE AND DESIST

IF THE DIVISION HAS REASONABLE CAUSE TO BELIEVE ANY PUBLIC OR PRIVATE ORGANIZATION IS NOT IN COMPLIANCE WITH SECTION 38-30.5-104 (2), C.R.S. AND SECTION 12-61-720, C.R.S., THE DIRECTOR MAY ENTER AN ORDER REQUIRING SUCH ORGANIZATION TO CEASE AND DESIST FROM ATTEMPTING TO HOLD A CONSERVATION EASEMENT FOR WHICH A STATE TAX CREDIT MAY BE CLAIMED.

2.10. TRANSFERRING CONSERVATION EASEMENTS TO NON-CERTIFIED ENTITIES

A CONSERVATION EASEMENT HOLDER MUST NOT ASSIGN OR OTHERWISE TRANSFER ALL OR A PARTIAL INTEREST IN A CONSERVATION EASEMENT FOR WHICH A STATE TAX CREDIT MAY BE CLAIMED TO A NON-CERTIFIED ORGANIZATION. AN ORGANIZATION MUST NOT ACCEPT AN ASSIGNED OR OTHERWISE TRANSFERRED INTEREST IN A CONSERVATION EASEMENT FOR WHICH A STATE TAX CREDIT MAY BE CLAIMED IF THEY ARE NOT CERTIFIED AT THE TIME OF ACCEPTANCE. GOVERNMENTAL ENTITIES TRANSFERRING A PARTIAL INTEREST IN A CONSERVATION EASEMENT TO ANOTHER GOVERNMENTAL ENTITY IN ACCORDANCE WITH AN ESTABLISHED WRITTEN AGREEMENT ARE EXEMPT FROM THIS PROHIBITION ON TRANSFERRING A PARTIAL INTEREST IN A CONSERVATION EASEMENT. THE CERTIFIED GRANTEE AND ALL CERTIFIED ORGANIZATIONS RETAINING A PARTIAL INTEREST IN THE CONSERVATION EASEMENT MUST REMAIN RESPONSIBLE FOR STEWARDSHIP AND DEFENSE OF THE CONSERVATION EASEMENT AT ALL TIMES.

2.11. COURTESY FILING

A CERTIFIED CONSERVATION EASEMENT HOLDER MUST PROVIDE THE FOLLOWING INFORMATION AND/OR DOCUMENTATION TO THE DIVISION WITHIN 30 DAYS OF A SUBSTANTIVE CHANGE IN:

- A. PHYSICAL OR MAILING ADDRESS OF THE ORGANIZATION;
- B. AUTHORIZED CONTACT PERSON; OR
- C. POLICY NECESSARY FOR COMPLIANCE WITH RULE 2.1.

A hearing on the above subject matter will be held on Monday, November 3, 2014, at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250-C, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.

Notice of Rulemaking Hearing

Tracking number

2014-01031

Department

700 - Department of Regulatory Agencies

Agency

725 - Division of Real Estate

CCR number

4 CCR 725-4

Rule title

CONSERVATION EASEMENTS

Rulemaking Hearing

Date

11/03/2014

Time

09:00 AM

Location

1560 Broadway, Suite 1250-C, Denver, CO

Subjects and issues involved

RULE CHAPTER 3. CONSERVATION EASEMENT DONATIONS MADE ON OR AFTER JANUARY 1, 2011, BUT PRIOR TO JANUARY 1, 2014

Statutory authority

Chapter 7 of Title 12, Article 61, Colorado Revised Statutes, as amended

Contact information

Name

Martha Torres-Recinos

Title

Rulemaking Administrator

Telephone

303-894-2359

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**DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
CONSERVATION EASEMENTS**

**NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
November 3, 2014**

RULE CHAPTER 3. CONSERVATION EASEMENT DONATIONS MADE ON OR AFTER JANUARY 1, 2011, BUT PRIOR TO JANUARY 1, 2014

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 Department of Regulatory Agencies and the Division of Real Estate to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to conservation easements.

STATEMENT OF BASIS

The statutory basis for the rules titled Conservation Easements is Chapter 7 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 section 12-61-722, C.R.S.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to define the requirements and procedures to submit an application for a tax credit certificate for conservation easements donated on or after January 1, 2011, but prior to January 1, 2014.

Proposed New, Amended and Repealed Rules

[Deleted material showed ~~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 Division at <http://www.sos.state.co.us>]

CHAPTER 3: CONSERVATION EASEMENT DONATIONS MADE ON OR AFTER JANUARY 1, 2011, BUT PRIOR TO JANUARY 1, 2014

- 1.1. A VALID DEED OF CONSERVATION EASEMENT MUST BE RECORDED BEFORE A CLAIM CAN BE SUBMITTED AND A TAX CREDIT CERTIFICATE ISSUED.
- 1.2. A CLAIM FOR A TAX CREDIT CERTIFICATE MUST INCLUDE THE FOLLOWING:
 - A. A SIGNED AND COMPLETED FORM TITLED: "APPLICATION FOR A CONSERVATION

EASEMENT TAX CREDIT CERTIFICATE," APPROVED BY THE DIVISION;

B. A SIGNED AND COMPLETED FORM TITLED: "AFFIDAVIT FOR CONSERVATION EASEMENT APPRAISALS," APPROVED BY THE COLORADO BOARD OF REAL ESTATE APPRAISERS; AND

C. A COPY OF THE RECORDED DEED OF CONSERVATION EASEMENT.

1.3. A TAXPAYER WHO SUBMITS A CLAIM FOR A TAX CREDIT CERTIFICATE TO THE DIVISION MUST PAY A NONREFUNDABLE FEE AS PRESCRIBED BY THE DIVISION.

1.4. AN ALTERNATIVE DOCUMENT MAY BE SUBSTITUTED FOR THE COPY OF THE RECORDED DEED OF CONSERVATION EASEMENT AS EVIDENCE A CONSERVATION EASEMENT WAS CONVEYED. THE ALTERNATIVE DOCUMENT MUST ORIGINATE FROM THE COUNTY OR COUNTIES IN WHICH THE CONSERVATION EASEMENT WAS RECORDED AND DISCLOSE THE FOLLOWING:

A. THE RECEPTION NUMBER;

B. A DESCRIPTION OF THE PROPERTY;

C. THE DATE AND TIME WHICH THE EASEMENT WAS RECORDED; AND

D. THE NAME OF THE GRANTOR AND GRANTEE.

1.5. A CLAIM FOR A TAX CREDIT CERTIFICATE IS DEEMED RECEIVED BY THE DIVISION FOR PURPOSES OF SECTION 39-22-522 (2.5), C.R.S., WHEN THE APPLICATION AND ALL OTHER REQUIRED DOCUMENTS ARE SIGNED AND INITIALED, PROPERLY FILLED OUT, AND DATE-STAMPED BY THE DIVISION UPON RECEIPT. THE DIVISION IS NOT RESPONSIBLE FOR ANY CLAIMS NOT RECEIVED. ONLY AFTER THE CLAIM IS DEEMED TO BE RECEIVED WILL THE CLAIM BE APPLIED TOWARDS THE LIMIT FOR THE APPLICABLE YEAR.

1.6. THE TAXPAYER MUST SIGN, UNDERSTAND, AND ADHERE TO ALL DISCLOSURES LISTED IN PART THREE OF THE FORM TITLED: "APPLICATION FOR A CONSERVATION EASEMENT TAX CREDIT CERTIFICATE," IN THE FORM APPROVED BY THE DIVISION AT THE TIME THE CLAIM IS MADE.

1.7. AFTER THE TAX CREDIT CERTIFICATE HAS BEEN ISSUED, THE DEPARTMENT OF REVENUE HAS THE AUTHORITY TO DETERMINE IF THE CONSERVATION EASEMENT TAX CREDIT DOES NOT COMPLY WITH STATUTORY AND REGULATORY REQUIREMENTS UNDER ITS JURISDICTION. THE DIVISION IS NOT RESPONSIBLE SHOULD THE DEPARTMENT OF REVENUE DETERMINE A CONSERVATION EASEMENT TAX CREDIT DOES NOT COMPLY WITH STATUTORY AND REGULATORY REQUIREMENTS UNDER ITS JURISDICTION.

1.8. A CLAIM FOR A TAX CREDIT CERTIFICATE IS INELIGIBLE TO RECEIVE A TAX CREDIT CERTIFICATE AND WILL NOT BE APPLIED TOWARDS THE LIMIT FOR THE APPLICABLE YEAR IF IT IS BASED ON A CONSERVATION EASEMENT DONATION WHERE:

A. THE APPRAISER ASSOCIATED WITH THE CLAIM DOES NOT HOLD A VALID ACTIVE LICENSE AS A CERTIFIED GENERAL APPRAISER AS OF THE EFFECTIVE DATE OF VALUE IN THE APPRAISAL REPORT OR THE CERTIFIED GENERAL APPRAISER HAS A PRACTICE RESTRICTION PROHIBITING THAT APPRAISER FROM CONDUCTING AN APPRAISAL FOR A CONSERVATION EASEMENT; OR

- B. THE CONSERVATION EASEMENT HOLDER IS NOT CERTIFIED BY THE DIVISION AT THE TIME OF THE DONATION.
- 1.9. A TAX CREDIT CERTIFICATE MAY NOT BE USED TO CLAIM AN INCOME TAX CREDIT WITH THE DEPARTMENT OF REVENUE PRIOR TO THE YEAR FOR WHICH THE TAX CREDIT CERTIFICATE IS ISSUED BY THE DIVISION.
- 1.10. IF MORE THAN ONE CLAIM IS SUBMITTED TO THE DIVISION ON THE SAME DAY, THE TAX CREDIT CERTIFICATES WITH RESPECT TO THOSE CLAIMS WILL BE ISSUED IN THE ORDER THAT THE CONSERVATION EASEMENT DEEDS WERE FIRST RECORDED WITH THE APPROPRIATE COUNTY OR COUNTIES.
- 1.11. IN THE EVENT A PORTION OF A CLAIM DOES NOT QUALIFY UNDER THE AGGREGATE LIMIT FOR 2011 OR 2012, A SECOND CERTIFICATE WILL BE ISSUED FOR THE REMAINING TAX CREDIT AMOUNT FOR THE SUBSEQUENT YEAR.
- 1.12. IN THE EVENT A TAX CREDIT CERTIFICATE HAS BEEN ISSUED FOR A CONSERVATION EASEMENT DONATION AND THE DONATION VALUE INCREASES PURSUANT TO A REVISED APPRAISAL, THE TAXPAYER MAY SUBMIT A SECOND CLAIM TO THE DIVISION FOR THE INCREASED AMOUNT. A SECOND CLAIM MUST BE SUBMITTED TO THE DIVISION IN ACCORDANCE WITH THIS RULE AND WILL BE ASSIGNED A TAX CREDIT CERTIFICATE IN THE ORDER RECEIVED AMONG ALL OTHER CLAIMS SUBMITTED TO THE DIVISION. A SECOND TAX CREDIT CERTIFICATE FOR A SECOND CLAIM MAY BE ISSUED FOR A DIFFERENT YEAR.
- 1.13. THE DIVISION MAY CONSULT WITH THE TAXPAYER, THE TAXPAYER'S AUTHORIZED REPRESENTATIVE, THE CONSERVATION EASEMENT HOLDER, APPRAISER, THE COMMISSION AND THE DEPARTMENT OF REVENUE REGARDING A CLAIM FOR A TAX CREDIT CERTIFICATE.
- 1.14. IN THE EVENT THE AGGREGATE LIMIT FOR A GIVEN CALENDAR YEAR IS NOT EXCEEDED AND THE DIVISION RECEIVES AND APPROVES A COMPLETE APPLICATION FOR A TAX CREDIT CERTIFICATE FOR A CONSERVATION EASEMENT DONATED ON OR AFTER JANUARY 1, 2011, THE DIVISION MAY ISSUE A TAX CREDIT CERTIFICATE FROM THE REMAINING LIMIT. ISSUANCE OF THE TAX CREDIT CERTIFICATE IN THIS CIRCUMSTANCE CAN ONLY OCCUR IF THE CONSERVATION EASEMENT DONATION WAS RECORDED PRIOR TO OR DURING THE YEAR IN WHICH THE AGGREGATE LIMIT WAS NOT REACHED.

A hearing on the above subject matter will be held on Monday, November 3, 2014, at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250-C, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.

Notice of Rulemaking Hearing

Tracking number

2014-00992

Department

1000 - Department of Public Health and Environment

Agency

1002 - Water Quality Control Commission (1002 Series)

CCR number

5 CCR 1002-11

Rule title

REGULATION NO. 11 - COLORADO PRIMARY DRINKING WATER REGULATIONS

Rulemaking Hearing

Date

01/12/2015

Time

10:00 AM

Location

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

Subjects and issues involved

Revised Total Coliform Rule, Storage Tank Rule, Backflow Prevention and Cross Connection Control Rule and Water Hauler Rule

Statutory authority

section 25-1.5-202, C.R.S., section 24-4-103(4), C.R.S.

Contact information

Name

Steve Scherma

Title

Unit Manager

Telephone

303-692-3406

Email

steve.scherma@state.co.us



COLORADO

Water Quality
Control Commission

Department of Public Health & Environment

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

SUBJECT:

For consideration of the adoption of revisions to the Colorado Primary Drinking Water Regulations, Regulation #11 (5 CCR 1002-11).

The revisions to Regulation #11 proposed by the Water Quality Control Division (Division), along with a proposed Statement of Basis, Specific Statutory Authority and Purpose are attached to this notice as Exhibit 1.

Proposed new language is shown with double-underlining and proposed deletions are shown with ~~strikeouts~~. Any alternative proposals related to the revisions proposed in Exhibit 1 and developed in response to those proposed revisions will also be considered.

HEARING SCHEDULE:

DATE: Monday, January 12, 2015
TIME: 10:00 a.m.
PLACE: Florence Sabin Conference Room
Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, CO 80246

PUBLIC PARTICIPATION ENCOURAGED:

The Commission encourages all interested persons to provide their opinions or recommendations regarding the matters to be addressed in this rulemaking hearing, either orally at the hearing or in writing prior to or at the hearing. Although oral testimony from those with party status (see below) and other interested persons will be received at the hearing, the time available for such oral testimony may be limited. The Commission requests that all interested persons submit to the Commission any available information that may be relevant in considering the noticed proposals.

Written submissions prior to the hearing by interested members of the public that do not have party status are encouraged. In order to be distributed to the Commission for review prior to the hearing, such submissions need to be received in the Commission Office or the Colorado Department of Public Health and Environment's (Department's) mail room by December 29, 2014. Written submissions received after this date will be distributed to Commissioners at the hearing. However, for logistical reasons, the Commission office cannot guarantee that electronic submissions received after 1:00 p.m. Friday, January 9, 2015 will be provided to Commissioners. Interested persons wishing to submit comments or other documents after that date and time should bring paper copies to the hearing and provide PDF versions to the Commission office as soon as possible after the hearing.

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

PARTY STATUS:

Participation as a "party" to this hearing will require compliance with section 21.3(D) of the Procedural Rules, Regulation #21 (5 CCR 1002-21). It is not necessary to acquire party status in order to testify or comment. **For each request for party status, please provide the organization's name, a contact person, mailing address, phone number, and email address.** Written party status requests are due in the Commission Office on or before:

DATE: Tuesday, October 23, 2014
TIME: 5:00 p.m.

A single copy of the party status request may be transmitted as an email attachment to cdphe.wqcc@state.co.us, submitted by fax to 303-691-7702, mailed or otherwise conveyed so as to be received in the Department's mail room no later than this deadline.

PREHEARING STATEMENTS:

PLEASE NOTE that for this hearing two separate deadlines for prehearing statements are established:

- (1) A PDF version of a **Proponent's Prehearing Statement** from the Division, as the proponent of revisions proposed in Exhibit 1 attached to this notice, including written testimony and exhibits providing the basis for the proposals, must be submitted to the Commission office no later than **November 4, 2014**. In addition, one complete paper copy, including written testimony and exhibits providing the basis for the proposals, **AND** 13 paper copies of the Proponent's Prehearing Statements, **without** written testimony and exhibits, must be received in the Department's mail room no later than **November 4, 2014**; and
- (2) A PDF version of a **Responsive Prehearing Statement**, including any exhibits, written testimony, and alternative proposals of **anyone seeking party status and intending to respond to the proponent's proposal** must be submitted to the Commission office no later than **November 25, 2014**. In addition, one complete paper copy, including written testimony and exhibits providing the basis for the proposals, **AND** 13 paper copies, **without** written testimony and exhibits, must be received in the Department's mail room no later than **November 25, 2014**.

The PDF versions of all prehearing statements may be emailed to cdphe.wqcc@state.co.us, provided via an FTP site or submitted on a CD so as to be received no later than the specified due date.

As soon as prehearing statements are posted on the Commission's web site, the Commission office will email a link to the page containing the prehearing statements to proponents, parties and the Attorney General's Office representatives for the Commission and the Division.

Please **note** that the Commission has prepared a document entitled **Information for Parties to Water Quality Control Commission Rulemaking Hearings**. A copy of this document will be emailed to all persons requesting party status. It is also posted on the Commission's web site as Appendix C to the [Public Participation Handbook](#). Following the suggestions set forth in this document will enhance the effectiveness of parties' input for this proceeding. **Please note the request that all parties submit two-sided copies of all hearing documents on three-hole punch paper.**

REBUTTAL STATEMENTS:

Written rebuttal statements responding to the prehearing statements due on **November 25, 2014** may be submitted by the Division or anyone seeking party status. Any such rebuttal statements must be received in the Commission Office by **December 29, 2014**. A PDF version (emailed to

cdphe.wqcc@state.co.us, provided via an FTP site or submitted on a CD) must be submitted to the Commission office by this deadline. **In addition**, one complete paper copy of written rebuttal statements, including any exhibits, **AND** 14 paper copies **without** exhibits must be received in the Department's mail room by this deadline. No other written materials will be accepted following this deadline except for good cause shown.

PREHEARING CONFERENCE:

DATE: Tuesday, December 9, 2014
TIME: 1:00 p.m.
PLACE: Sabin Conference Room
Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246

Attendance at the prehearing conference is mandatory for all persons requesting party status. An opportunity may be available to participate in this prehearing conference by telephone. Persons wishing to participate by telephone should notify the Commission Office as early as possible.

Any motions regarding the conduct of this rulemaking shall be submitted by Thursday, December 4, 2014, so that they can be considered at the prehearing conference. No motions will be accepted after December 4, 2014, except for good cause shown.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-1.5-202; 25-8-202(1)(n); and 25-8-401 C.R.S. provide the specific statutory authority for consideration of the regulatory amendments proposed by this notice. Should the Commission adopt the regulatory language as proposed in this notice or alternative amendments, it will also adopt, in compliance with section 24-4-103(4) C.R.S., an appropriate Statement of Basis, Specific Statutory Authority, and Purpose.

NOTIFICATION OF POTENTIAL MATERIAL INJURY TO WATER RIGHTS:

In accordance with section 25-8-104(2)(d), C.R.S., any person who believes that the actions proposed in this notice have the potential to cause material injury to his or her water rights is requested to so indicate in the party status request submitted. In order for this potential to be considered fully by the Commission and the other agencies listed in the statute, persons must fully explain the basis for their claim in their prehearing statement which is due in the Commission Office on the date specified above. This explanation should identify and describe the water right(s), and explain how and to what degree the material injury will be incurred.

Dated this 22nd day of September, 2014 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION



Trisha Oeth
cn=Trisha Oeth, o, ou=Water Quality
Control Commission,
email=trisha.oeth@state.co.us, c=US
2014.09.22 08:48:35 -06'00'

Trisha Oeth, Administrator

EXHIBIT 1
WATER QUALITY CONTROL DIVISION

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
WATER QUALITY CONTROL COMMISSION

REGULATION NO. 11

COLORADO PRIMARY DRINKING WATER REGULATIONS
(5 CCR 1002-11)

....

11.3 DEFINITIONS, ACRONYMS AND ABBREVIATIONS

Definitions of general applicability to the *Colorado Primary Drinking Water Regulations* are as specified here and shall be liberally construed to protect public health and the quality of drinking water supplied to the public. Additional definitions are specified throughout the *Colorado Primary Drinking Water Regulations* and are applicable to the rule in which they are defined. As used in the *Colorado Primary Drinking Water Regulations*:

- (1) "4-LOG TREATMENT OF VIRUSES" means 99.99 percent inactivation and/or removal of viruses.
- (2) "ACT" means the federal Public Health Service Act, as amended by the Safe Drinking Water Act, Public Law 93-523.
- (3) "AVERAGE RESIDENCE TIME" means a point in the distribution system where treated water has been in the system for approximately half of its longest or maximum time in the system, as measured by water transport time. Sample locations between 25 and 75 percent of the maximum are considered to be representative of average residence time, provided that in total, the average of the selected locations approximate 50 percent of the maximum residence time and take into account population densities and their locations.
- (4) "BACKFLOW CONTAMINATION EVENT" means backflow into a public water system from an uncontrolled cross connection such that the water quality no longer meets the *Colorado Primary Drinking Water Regulations* or presents an immediate health and/or safety risk to the public.
- (45) "BAG FILTERS" means pressure-driven separation devices that remove particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed of a non-rigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to the outside.
- (56) "BEST AVAILABLE TECHNOLOGY" or "BAT" means the best technology, treatment techniques, or other means that the EPA Administrator finds available, considering cost and after examination for efficacy under field conditions and not solely under laboratory conditions.

- (67) "CARTRIDGE FILTERS" means pressure-driven separation devices that remove particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed as rigid or semi-rigid, self-supporting filter elements housed in pressure vessels in which flow is from the outside of the cartridge to the inside.
- (78) "CERTIFIED LABORATORY" means a laboratory certified by the State of Colorado for analysis of drinking water.
- (89) "COAGULATION" means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into flocs.
- (910) "COMBINED DISTRIBUTION SYSTEM" means an interconnected distribution system consisting of the distribution systems of wholesale systems and of the consecutive systems that receive finished water.
- (1011) "COMMUNITY WATER SYSTEM" means a public water system that supplies at least 15 service connections used by year-round residents or that regularly supplies at least 25 year-round residents.
- (112) "COMPLIANCE CYCLE" means the nine-year calendar year cycle during which the supplier must monitor. Each compliance cycle consists of three three-year compliance periods.
- (123) "COMPLIANCE PERIOD" means a three-year calendar year period within a compliance cycle.
- (1314) "CONSECUTIVE SYSTEM" means a public water system that receives some or all of its finished water from one or more wholesale systems. Delivery may be through a direct connection or through the distribution system of one or more consecutive systems.
- (1415) "CONSTRUCTION" means the erection, building, modification, reconstruction, improvement or expansion of waterworks.
- (1516) "CONTAMINANT" means any physical, chemical, biological, or radiological substance or matter in water.
- (1617) "CONSUMER" means any person that has the opportunity to consume finished water from a public water system.
- (1718) "CONVENTIONAL FILTRATION TREATMENT" means a series of processes including coagulation, flocculation, sedimentation (or equivalent form of clarification), and granular media filtration resulting in substantial particulate removal.
- (1819) "CROSS-CONNECTION" means any connection that which could allow any used water, industrial fluid, gas, or water of a quality below the drinking water standards in these regulations water, fluid, or gas such that the water quality no longer meets the *Colorado Primary Drinking Water Regulations*, or such that the water quality could present an unacceptable health and/or safety risk to the public, to flow from any pipe, plumbing fixture, or a ~~consumer's~~ customer's water system into a public water system's distribution system or any other part of the public water system through backflow. ~~Examples of cross-connections include: by-pass arrangements, jumper connections, removable sections, swivel or changeover devices and other temporary or permanent devices through which or because of which backflow can or may occur.~~
- (1920) "CT" or "CT_{calc}" means the product of residual disinfectant concentration (C) in mg/L determined before or at the first customer, and the corresponding disinfectant contact time (T) in minutes (i.e., C x T).

- (~~20~~21) "CUSTOMER" means billing units or service connections that receive finished water.
- (~~24~~22) "DEPARTMENT" means the Colorado Department of Public Health and Environment as created by section 25-1-102(1), Colorado Revised Statutes.
- (~~22~~23) "DIATOMACEOUS EARTH FILTRATION" means a process resulting in substantial particulate removal in which (1) a precoat cake of diatomaceous earth filter media is deposited on a support membrane (septum), and (2) while the water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the feed water to maintain the permeability of the filter cake.
- (~~23~~24) "DIRECT FILTRATION" means a series of processes including coagulation and filtration but excluding sedimentation resulting in substantial particulate removal.
- (~~24~~25) "DISINFECTANT" means any oxidant, including but not limited to chlorine, chlorine dioxide, chloramines, ozone, and ultraviolet light, added to water in any part of the treatment or distribution process that is intended to kill or inactivate pathogenic microorganisms.
- (~~25~~26) "DISINFECTANT CONTACT TIME" means the time in minutes that it takes for water to move from the point of disinfectant application, or the previous point of disinfectant residual measurement, to a point before or at the point where residual disinfectant concentration (C) is measured.
- (~~26~~27) "DISINFECTION" means a process that inactivates pathogenic microorganisms in water by chemical oxidants, ultraviolet light, or equivalent agents.
- (~~27~~28) "EMERGENCY SOURCE/CONNECTION" means a water facility that is only used as the result of extreme circumstances, and is otherwise kept offline. These facilities may be either connected or disconnected from a treatment plant/distribution system.
- (~~28~~29) "ENFORCEMENT ORDER" means an order issued for the purpose of notifying the supplier of a public water system that it is in violation of the *Colorado Primary Drinking Water Regulations* or for the purpose of requiring the supplier of a public water system to cease such violations. Enforcement orders may prescribe corrective measures necessary to achieve compliance with the *Colorado Primary Drinking Water Regulations*.
- (~~29~~30) "ENTRY POINT" means a location before or at the first customer which is representative of finished water. The entry point may represent finished water from multiple treatment plants and/or multiple sources.
- (~~30~~31) "FILTRATION" means a process for removing particulate matter from water by passage through porous media.
- (~~34~~32) "FINISHED WATER" means water that is supplied to the distribution system of a public water system and intended for distribution and human consumption without further treatment, including disinfection contact time, except treatment as necessary to maintain water quality in the distribution system (e.g., booster disinfection, addition of corrosion control chemicals).
- (~~32~~33) "FIRST CUSTOMER" means the first potable water service connection that serves finished water. Typically, the first customer is the water treatment plant's domestic water system.
- (~~33~~34) "FLOCCULATION" means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settled particles through gentle stirring by hydraulic or mechanical means.

- (3435) "GROUNDWATER" means any water under the surface of the ground that is not surface water or groundwater under the direct influence of surface water.
- (3536) "GROUNDWATER SYSTEM" means a public water system that uses groundwater not under the direct influence of surface water as its sole source of water and does not include public water systems that combine all of their groundwater with surface water or groundwater under the direct influence of surface water before to treatment.
- (3637) "GROUNDWATER UNDER THE DIRECT INFLUENCE OF SURFACE WATER" or "GWUDI" means any water beneath the surface of the ground with:
- (a) Significant occurrence of insects or other macro-organisms, algae, or large-diameter pathogens such as *Giardia lamblia* or *Cryptosporidium*; or
 - (b) Significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH, which closely correlate to climatological or surface water conditions.
- (3738) "INACTIVATION" means the use of a disinfectant (e.g., chorine, chloramines, ozone) to interrupt the ability of a pathogen to replicate therefore leaving it unable to infect.
- (3839) "LEAD FREE" means:
- (a) Less than or equal to ($\leq$) 0.2 percent lead ~~When~~when used with respect to solders and flux, ~~solders and flux containing less than or equal to ($\leq$) 0.2 percent lead.~~
 - (b) A weighted average of less than or equal to ($\leq$) 0.25 percent lead ~~When~~when used with respect to the wetted surfaces of pipes, and pipe fittings, plumbing fittings, and fixtures ~~pipes and pipe fittings containing less than or equal to ($\leq$) 8.0 percent lead.~~
- (40) "LEVEL 1 ASSESSMENT" means, beginning April 1, 2016, an evaluation conducted by the supplier to identify sanitary defects, inadequate or inappropriate distribution system coliform sampling practices, and the possible cause(s) that triggered the assessment. Level 1 assessments must meet the requirements specified in 11.16(10).
- (41) "LEVEL 2 ASSESSMENT" means, beginning April 1, 2016, an evaluation conducted by the Department or Department-approved party to identify sanitary defects, inadequate or inappropriate distribution system coliform sampling practices, and the possible cause(s) that triggered the assessment. Level 2 assessments must meet the requirements specified in 11.16(10). A Level 2 assessment is a more detailed examination of the system than a Level 1 assessment. A Level 2 assessment involves a comprehensive investigation and review of available information, additional internal and external resources, and other relevant practices.
- (3942) "LOCATIONAL RUNNING ANNUAL AVERAGE" or "LRAA" means the average of sample results for samples collected at a particular monitoring location during the most recent four calendar quarters. If the supplier fails to complete four consecutive quarters of sampling, the LRAA is based on the available sample results from the most recent four calendar quarters.
- (4043) "MAXIMUM CONTAMINANT LEVEL" or "MCL" means the maximum level of a contaminant allowed in drinking water, which is delivered to any consumer.
- (4144) "MAXIMUM CONTAMINANT LEVEL GOAL" or "MCLG" means the maximum level of a contaminant in drinking water at which no known or anticipated adverse effects on human health would occur, and which allows an adequate margin of safety. Maximum contaminant level goals are non-enforceable health goals.

- (~~42~~45) "MAXIMUM RESIDENCE TIME" means a point in the distribution system where the treated water has been in the system for the longest or maximum time, as measured by water transport time. Sample locations between 90 and 100 percent of the maximum are considered to be representative of maximum residence time.
- (~~43~~46) "MAXIMUM RESIDUAL DISINFECTANT LEVEL" or "MRDL" means the level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap without an unacceptable possibility of adverse effects on human health.
- (~~44~~47) "MAXIMUM RESIDUAL DISINFECTANT LEVEL GOAL" or "MRDLG" means the maximum level of a disinfectant added for water treatment at which no known or anticipated adverse effect on the human health would occur, and which allows an adequate margin of safety. MRDLGs are non-enforceable health goals and do not reflect the benefit of the addition of the chemical for control of waterborne microbial contaminants.
- (~~45~~48) "MEMBRANE FILTRATION" means a pressure or vacuum driven separation process in which particulate matter larger than 1 micrometer is rejected by an engineered barrier, primarily through a size-exclusion mechanism, and which has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test. This definition includes the common membrane technologies of microfiltration, ultrafiltration, nanofiltration, and reverse osmosis.
- (~~46~~49) "NEW SOURCE" means a source not previously used by the public water system or a source not previously approved by the Department.
- (~~47~~50) "NON-COMMUNITY WATER SYSTEM" means a public water system that is not a community water system. A non-community water system is either a "transient, non-community water system" or a "non-transient, non-community water system."
- (~~48~~51) "NON-TRANSIENT, NON-COMMUNITY WATER SYSTEM" means a public water system that regularly serves a population of at least 25 of the same people for at least six months per year and is not a community water system.
- (~~49~~52) "NON-TRANSIENT POPULATION" means the average number of people served per day during the year or normal operating period(s), who do not reside at the place supplied by the system, but have a regular opportunity to consume water produced by the system. Regular opportunity is defined as four or more hours per day, for four or more days per week, for six or more months per year.
- (~~50~~53) "NOTIFY" means to inform by written, verbal, or other means, unless otherwise stated.
- (~~51~~54) "PERSON" means an individual, corporation, company, association, partnership, municipality, or State, Federal, or tribal agency.
- (~~52~~55) "PLANS AND SPECIFICATIONS" means the technical design drawings and specifications for waterworks. For new waterworks, this also includes technical, financial, and managerial plans.
- (~~53~~56) "PLANT INTAKE" or "INTAKE" means the works or structures at the head of a conduit through which water is diverted from a source (e.g., river or lake) into the treatment plant.
- (~~54~~57) "POINT-OF-ENTRY TREATMENT DEVICE" or "POE" means a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in the drinking water distributed throughout the house or building.

- (~~55~~58) "POPULATION SUPPLIED" means the average daily population that occurs during the busiest month of the year or normal operating period(s). Population supplied is further defined as the sum of resident, non-transient, and transient populations.
- (~~56~~59) "PRESEDIMENTATION" means a preliminary treatment process used to remove gravel, sand and other particulate material from the source water through settling before the water enters the primary clarification and filtration processes in a treatment plant.
- (~~57~~60) "PUBLIC WATER SYSTEM" or "PWS" means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least 25 individuals daily at least 60 days per year. A public water system is either a community water system or a non-community water system. Such term does not include any special irrigation district. Such term includes:
- (a) Any collection, treatment, storage, and distribution facilities under control of the supplier of such system and used primarily in connection with such system.
 - (b) Any collection or pretreatment storage facilities not under such control, which are used primarily in connection with such system.
- (61) "PUBLIC WATER SYSTEM THAT HAULS WATER" means a public water system that delivers, by vehicle, finished water through a non-piped conveyance such as a vehicle mounted tank or container.
- (~~58~~62) "RECYCLE" means the act of returning recycle flows to a plant's primary treatment process.
- (~~59~~63) "RECYCLE FLOWS" means any water, solid or semi-solid, generated by a plant's treatment processes, operational processes, and residual treatment processes, that is returned to the plant's primary treatment process.
- (~~60~~64) "RESIDENT POPULATION" means the average number of people whose primary residence is supplied by the system. The resident does not have to live at the residence for 365 days per year for it to be considered his/her primary residence.
- (~~64~~65) "RESIDUAL DISINFECTANT CONCENTRATION" means the concentration of disinfectant measured in mg/L in a representative sample of water.
- (~~62~~66) "RUNNING ANNUAL AVERAGE or "RAA" means the average of sample results for samples collected during the most recent four calendar quarters. If the supplier fails to complete four consecutive quarters of sampling, the RAA is based on the available sample results from the most recent four calendar quarters.
- (67) "SANITARY DEFECT" means, beginning April 1, 2016, a defect:
- (i) That could provide a pathway of entry for microbial contamination into the distribution system; or
 - (ii) That is indicative of a failure or imminent failure in a barrier that is already in place.
- (~~63~~68) "SECONDARY MAXIMUM CONTAMINANT LEVELS or "SMCLs" means the maximum level of a contaminant allowed in water which is delivered to the consumer of a public water system. The SMCLs apply to public water systems and which, in the judgment of the EPA Administrator, are requisite to protect the public health. Contaminants added to the water under circumstances controlled by the consumer, except those resulting from corrosion of piping and plumbing caused by water quality, are excluded from this definition. The SMCLs are not enforceable, but are

intended as guidelines. The SMCLs are defined in 40 CFR 143.3 as amended ~~July 1, 2013~~ July 1, 2014.

- (~~6469~~) "SEDIMENTATION" means a process for removal of solids before filtration by gravity or separation.
- (~~6570~~) "SERVICE CONNECTION" means a connection to a system that delivers water by constructed conveyance. The definition does not include connections that deliver water by a constructed conveyance other than a pipe if:
- (i) The water is used exclusively for purposes other than residential uses (consisting of drinking, bathing, and cooking, or other similar uses);
 - (ii) The Department determines that an alternative water source to achieve the equivalent level of public health protection provided by the applicable *Colorado Primary Drinking Water Regulations* is provided for residential or similar uses for drinking and cooking; or
 - (iii) The Department determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable *Colorado Primary Drinking Water Regulations*.
- (~~6671~~) "SIGNIFICANT DEFICIENCY" means any situation, practice, or condition in a public water system with respect to design, operation, maintenance, or administration, that the state determines may result in or have the potential to result in production of finished drinking water that poses an unacceptable risk to health and welfare of the public served by the water system. Significant deficiencies include, but are not limited to, defects in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage, or distribution system that the Department determines to be causing, or have potential for causing, the introduction of contamination into the water delivered to consumers.
- (~~6772~~) "SMALL SYSTEM COMPLIANCE TECHNOLOGY" or "SSCT" means a treatment technology that is affordable (according to the affordability criteria set forth by the EPA) by small systems and allows systems to achieve compliance with the MCL or treatment technique.
- (~~6873~~) "SLOW SAND FILTRATION" means a process involving passage of raw water through a bed of sand at low velocity (generally less than 0.4 meters per hour (m/h)) resulting in substantial particulate removal by physical and biological mechanisms.
- (~~6974~~) "SOURCE" means the point at which a public water system diverts water from its natural or man-made origin.
- (~~7075~~) "SOURCE WATER SAMPLE" means a sample collected before any treatment that represents influent raw source water quality.
- (~~7176~~) "SPECIAL IRRIGATION DISTRICT" means an irrigation district in existence before May 18, 1994 that provides primarily agricultural service through a piped water system with only incidental residential or similar use where the system or the residential or similar users of the system comply with the exclusion provisions outlined in the definition of service connections.
- (77) "SPECIAL PURPOSE SAMPLE" means, beginning April 1, 2016, a total coliform sample that is not collected in accordance with the sampling plan. Special purpose samples will not be used to determine compliance with sampling requirements, the *E. coli* MCL, or in determining if a treatment technique is triggered.

- (~~72~~78) "SPENT FILTER BACKWASH WATER" means a stream containing particles that are dislodged from filter media when water is forced back through a filter (backwashed) to clean the filter. Spent filter backwash water contains particles including coagulants, metals, and microbes such as *Cryptosporidium*.
- (~~73~~79) "STATE" means the State of Colorado.
- (~~74~~80) "SUPPLIER OF WATER" or "SUPPLIER" means any person who owns or operates a public water system.
- (~~75~~81) "SURFACE WATER" means any water source that is open to the atmosphere and subject to surface runoff. Groundwater found to be under the direct influence of surface water is classified as surface water.
- (~~76~~82) "SURFACE WATER SYSTEM" means a public water system that uses, in whole or in part, surface water or groundwater under the direct influence of surface water as a source of water.
- (~~77~~83) "TRANSIENT, NON-COMMUNITY WATER SYSTEM" means a non-community water system that serves a population of at least 25 people per day for at least 60 days per year and is not a non-transient, non-community water system or a community water system.
- (~~78~~84) "TRANSIENT POPULATION" means the average number of individuals served per day during the year or annual operating period(s), who have an opportunity to consume water from the system, but who do not meet the definition of either resident population or non-transient population.
- (~~79~~85) "TREATMENT TECHNIQUE REQUIREMENT" means a requirement that specifies a treatment technique(s) for a contaminant which leads to a sufficient reduction in the level of the contaminant to comply with the requirements of the *Colorado Primary Drinking Water Regulations*. A treatment technique may also be a requirement that is intended to prevent situations that have the potential to have serious adverse effects on human health.
- (~~80~~86) "VIOLATION" means failure to comply with any requirement of the *Colorado Primary Drinking Water Regulations*.
- (~~81~~87) "VIRUS" means a virus of fecal origin, which is infectious to humans by waterborne transmission.
- (~~82~~88) "WATERBORNE DISEASE OUTBREAK" means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment, as determined by the appropriate local or State agency.
- (~~83~~89) "WATERWORKS" means the facilities that are directly involved in the production, treatment, or distribution of water for public water systems.
- (~~84~~90) "WATER QUALITY CONTROL COMMISSION" means the commission that has been created within the Colorado Department of Public Health and Environment pursuant to section 25-8-201, Colorado Revised Statutes.
- (~~84~~91) "WATER VENDING AND DISPENSING MACHINES" means any device which, upon payment dispenses water into a container.
- (~~85~~92) "WHOLESALE" means any person who owns or operates and is legally responsible for a wholesale system.

- (8693) "WHOLESALE SYSTEM" means a public water system that treats source water as necessary to produce finished water and then delivers some or all of that finished water to another public water system. Delivery may be through a direct connection or through the distribution system of one or more consecutive systems.

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11.4 PLANS APPROVAL FOR THE LOCATION AND CONSTRUCTION OF WATERWORKS

11.4(1) Prior Approval Requirements

- (a) For new community or non-transient, non-community water systems, the supplier must not begin construction of the new water system until the supplier completes and receives Department approval of a capacity (technical, managerial and financial) assessment using the criteria found in the *New Public Water System Capacity Planning Manual*.
- (b) For all public water systems, the supplier must not begin construction of any new waterworks, make improvements to or modify existing waterworks, or begin using a new source until the supplier submits and receives Department approval of plans and specifications for such construction, improvements, modifications, or use.
 - (i) "BEGIN CONSTRUCTION" means initiation of the physical effort to construct a project, excluding engineering, architectural, legal, fiscal and economic investigations, studies, and completion of plans and specifications, and surveys. Physical effort includes, but is not limited to, site clearance, excavation, construction, or the establishment of an office or construction building on site.
 - ~~(ii) "WATERWORKS" means the facilities that are directly involved in the production, treatment, or distribution of water for public water systems.~~
 - (iii) "NEW WATERWORKS" means:
 - (A) Any newly constructed public water system; or
 - (B) An existing system that becomes, by definition, a public water system by extending its infrastructure through physical expansion by virtue of increasing the number of connections, the number of individuals served, or by extending the number of days of service.
 - ~~(iviii)~~ For community water systems, a Professional Engineer registered in the State of Colorado must design all treatment systems.
 - ~~(viiv)~~ Decisions regarding the review and approval of plans and specifications for new waterworks or improvements or modifications to existing waterworks shall be based on conformance to the design criteria developed by the Department specified in Policy DW-005, *State of Colorado Design Criteria for Potable Water Systems*.
 - ~~(viiv)~~ The Department shall grant approval upon finding that the proposed facilities conform to the design criteria specified in Policy DW-005, *State of Colorado Design Criteria for Potable Water Systems*, and are capable of continuously complying with all applicable laws, standards, rules and regulations.

11.4(2) Siting Requirements

Waterworks must ~~not~~ avoid being located at a site which:

- (a) Is subject to a significant risk from earthquakes, floods, fires or other disasters which could cause a breakdown of the public water system or a portion of the public water system; or
- (b) Is within the floodplain of a 100-year flood, except for intake structures.¹
 - (i) The Department shall not seek to override land use decisions affecting public water systems siting which are made at the local government level.

¹ Records of the 100-year projections are available at the office of the Colorado Water Conservation Board, 1313 Sherman Street, Denver, Colorado 80203.

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11.5 MONITORING PLAN RULE

11.5(1) Applicability

For all public water systems, the supplier must comply with the monitoring plan requirements specified in this rule.

11.5(2) General Requirements

- (a) The supplier must develop and implement a monitoring plan which must ensure that the water quality monitoring performed by the supplier is representative of the water supplied to consumers and is consistent with regulatory requirements of the *Colorado Primary Drinking Water Regulations*.
- (b) The supplier must maintain the monitoring plan and make it available for inspection by the Department.

11.5(3) Monitoring Plan Required Elements

- (a) The supplier must include all of the following information in the monitoring plan:
 - (i) Part 1 - System Summary:
 - (A) The Colorado public water system identification number (PWSID).
 - (B) The full name of the supplier (e.g., the name of a corporation, LLC, partnership, sole proprietor, HOA, etc.).
 - (C) The system's mailing address.
 - (D) The name of the supplier's authorized contact person(s) responsible for the development and implementation of the monitoring plan, if other than the supplier.
 - (E) The telephone number of the supplier or the supplier's authorized monitoring plan contact person.
 - (F) The system's classification (i.e., community, non-transient, non-community, or transient, non-community).

- (G) The total population supplied by the system, by population type (i.e., the number of resident, non-transient, and transient consumers).
- (H) The physical addresses of all system facilities, including master meters, and the latitude and longitude of all facilities.
- (I) The physical location of all records required under 11.36.
- (ii) Part 2 - Water Sources Details:
 - (A) Identification of all water sources capable of being used by the system, (i.e., those connected by conveyances, whether currently producing or not).
 - (B) A schematic, diagram or sketch showing how the flow from each source is connected to the treatment processes and the distribution system.
- (iii) Part 3 - Water Treatment Details:
 - (A) A summary of the system's operating characteristics.
 - (B) A schematic of the water treatment plant(s) identifying:
 - (I) All treatment processes, including all chemical feed points, and the associated periods of operation that were assumed in the design of the monitoring plan (e.g., use of peaking facilities, alternative water sources, maintenance schedules that take facilities offline, etc.).
 - (II) All treatment plant monitoring locations.
- (iv) Part 4 - Distribution System Details:
 - (A) A schematic of the distribution system identifying all of the following:
 - (I) All entry points.
 - (II) All treatment facilities located after the entry point(s) (e.g., booster chlorination).
 - (III) All storage facilities and finished water reservoirs.
 - (IV) All distribution system sampling locations.
 - (V) All master meters to other public water systems.
 - (VI) All pump stations.
- (v) Part 5 - Individual Rule Sampling Plans:
 - (A) For each applicable monitoring or sampling requirement:
 - (i) The frequency and approximate time of collection.
 - (ii) The monitoring and sampling location identification and associated identification number.

- (~~iii~~III) The justification for distribution system monitoring location selections and, if appropriate, the justification for all other monitoring and sampling location selections.
- (~~iv~~IV) The sample preservation, quality assurance, and quality control procedures, including procedures for equipment calibration.
- (~~v~~V) The analysis procedure (i.e., certified laboratory or on-site by a Department-approved party).
- (~~vi~~VI) The monitoring and sampling results presentation format.
- (~~vii~~VII) Procedures to assess and report compliance status for MCLs, MRDLs, action levels, treatment techniques and, if applicable, disinfection byproduct precursor removal efficiency.
- (~~viii~~VIII) A process to review and update the selected distribution system monitoring and sampling locations to account for changes due to growth or other significant changes to the distribution system.

- (b) The supplier may use one schematic if it includes all elements specified in 11.5(3)(a)(ii-iv).

11.5(4) Monitoring Plan Reporting Requirements

- (a) For new systems, the supplier must submit the information specified in 11.5(3)(a)(i-iv) to the Department no later than the 10th of the month following the end of the first quarter in which monitoring is required.
 - (i) For surface water systems supplying greater than (>) 3,300 people, the supplier must also submit a copy of the Individual Rule Sampling Plan for the following no later than the date the supplier collects the first sample: 11.23: Maximum Residual Disinfectant Levels Rule, 11.24: Disinfection Byproduct Precursors Rule, 11.25(2): Chlorite, and 11.25(3): Bromate.
 - (A) The Department may review and require the supplier to revise the sampling plan.
- (b) The supplier must submit the Individual Rule Sampling Plan information specified in 11.5(3)(a)(v) to the Department as specified in the following rules: for integrated systems in 11.42(4) and for the Disinfection Byproducts Rule in 11.25(1)(d), and for the Groundwater Rule: Disinfection Waivers in 11.13(2), and beginning April 1, 2016 for the Revised Total Coliform Rule in 11.16(4).

11.5(5) Monitoring Plan Revisions

The supplier must submit any changes to the monitoring plan no later than 30 days after the effective date of the change.

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11.8 SURFACE WATER TREATMENT RULE

11.8(1) General Requirements

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- (b) Treatment Technique Requirements

- (i) The supplier must provide filtration and disinfection of surface water sources that meets the treatment technique requirements for all of the following: *Cryptosporidium*, *Giardia lamblia*, viruses, Heterotrophic Plate Count bacteria, *Legionella*, and turbidity. These treatment techniques are as follows:
 - (A) At a point between where the source water is not subject to recontamination and the entry point, the supplier must install and properly operate water treatment processes that reliably achieve at least the following levels of treatment:
 - (I) 99 percent (2-log) removal of *Cryptosporidium*.
 - (II) 99.9 percent (3-log) treatment, including filtration and disinfection, of *Giardia lamblia*.
 - (III) 99.99 percent (4-log) treatment, including filtration and disinfection, of viruses.
- (ii) The supplier is considered to be in compliance with the requirements specified in 11.8(1)(b)(i), if the supplier meets all of the following:
 - (A) The filtration requirements specified in 11.8(2)(b).
 - (B) The disinfection requirements specified in 11.8(3)(b).
- (iii) Until March 31, 2016, the supplier must not use uncovered finished water storage facilities.
 - (A) “UNCOVERED FINISHED WATER STORAGE FACILITY” means, until March 31, 2016, a tank, reservoir, or other facility used to store water that will undergo no further treatment except residual disinfection and that is open to the atmosphere without properly screened vents, screened overflow pipe, or cover.
- (iv) When the Department determines that a groundwater source is under the direct influence of surface water, and therefore the system is reclassified as a surface water system, the supplier must comply with the requirements specified in this section, 11.8(1)(b), no later than 18 months after receiving written notification from the Department of the source’s reclassification.
- (c) Additional Requirements
 - (i) The supplier must have the system operated by qualified personnel who meet the requirements of Regulation 100, the *Water and Wastewater Facility Operators Certification Requirements*.

....

11.8(3) Disinfection Treatment Technique Requirements

- (a) Applicability for Disinfection Treatment Technique Requirements
 - (i) For all surface water systems, the supplier must comply with the disinfection treatment technique requirements specified in this section, 11.8(3).

- (ii) When the Department determines that a groundwater source is under the direct influence of surface water, and therefore the system is reclassified as a surface water system, the supplier must comply with all of the following:
 - (A) Either Department-determined interim disinfection requirements or disinfection treatment technique requirements specified in 11.8(3)(b), no later than 60 days after written notification from the Department of the decision to change the source's classification; and
 - (B) All requirements specified in this section, 11.8(3), no later 18 months after written notification from the Department of the decision to change the source's classification or no later than when the filtration is installed, whichever is sooner.

(b) Treatment Technique Requirements for Disinfection

- (i) The disinfection treatment technique requirements are as follows:
 - (A) The supplier must maintain disinfection treatment sufficient to ensure that the total treatment processes, including filtration and disinfection, achieve 99.9 percent (3-log) treatment of *Giardia lamblia* cysts and 99.99 percent (4-log) treatment of viruses, as determined by the Department.
 - (B) The supplier must maintain a residual disinfectant concentration at each entry point and throughout the distribution system.
 - (I) At each entry point, the residual disinfectant concentration cannot be less than ($<$) 0.2 mg/L for more than four hours.
 - (II) In the distribution system, until March 31, 2016, the residual disinfectant concentration cannot be undetectable in more than 5 percent of the samples collected in each month, for two consecutive months during which the supplier system supplies water to the public.
 - (III) In the distribution system, beginning April 1, 2016, the residual disinfectant concentration must be greater than or equal to ($\geq$) 0.2 mg/L.
- (ii) No later than December 31, 2015, the supplier may apply to the Department for an extension for complying with the treatment technique requirements specified in 11.8(3)(b)(i)(B)(III).
 - (A) In the application, the supplier must include all of the following information:
 - (I) An explanation of why the supplier is unable to comply with the treatment technique requirements specified in 11.8(3)(b)(i)(B)(III).
 - (II) A distribution system disinfectant residual data analysis demonstrating the inability to comply with the treatment technique requirements specified in 11.8(3)(b)(i)(B)(III).
 - (III) An engineering report prepared by a professional engineer registered in the state of Colorado demonstrating that capital improvements are necessary to comply with the treatment technique requirements specified in 11.8(3)(b)(i)(B)(III).
 - (IV) A proposed schedule for completing the system modifications.

(B) The Department shall consider the following criteria when determining if an extension will be granted:

(I) The supplier submitted a complete application that included the information specified above;

(II) The supplier has complied with the monitoring requirements specified in 11.17 in the last 36 months; and

(III) The supplier has not incurred an MCL violation specified in 11.17(9) in the last 36 months.

(iii) The Department will only grant an extension for up to four years.

(iv) If the supplier receives written Department-approval for an extension, the supplier must:

(A) Continue to comply with the treatment technique requirements specified in 11.8(3)(b)(i)(B)(II) and is subject to the violation specified in 11.8(3)(d)(i)(B) until the capital improvements are completed or the extension expires, whichever comes first; and

(B) Comply with any Department-specified requirements.

(c) Monitoring Requirements for Disinfection Treatment Technique Requirements

(i) To determine compliance with the disinfection treatment technique requirements, the supplier must monitor the residual disinfectant concentration.

(A) At each entry point, the supplier must continuously monitor the residual disinfectant concentration.

(I) The supplier must record the lowest monitoring result each day.

(II) If there is a failure of the continuous monitoring equipment, the supplier must monitor the residual disinfectant concentration by collecting a grab sample no later than four hours after the equipment failure and continue collecting grab samples every four hours until the continuous monitoring equipment is returned to service.

(a) The supplier must resume continuous residual disinfectant concentration monitoring no later than five working days after the equipment failure.

(III) For systems supplying less than or equal to ($\leq$) 3,300 people, the supplier is not required to monitor continuously if the supplier collects grab samples at the frequency specified in Table 11.8-II.

(a) If more than one sample per day is required, the supplier must collect the samples throughout the day. The sampling intervals are subject to Department approval.

(b) If any grab sample result is less than ($<$) 0.2 mg/L, the supplier must increase the monitoring frequency of the residual disinfectant concentration at that entry point to at least every four

hours until the residual disinfectant concentration is greater than or equal to ($\geq$) 0.2 mg/L.

TABLE 11.8-II MINIMUM GRAB SAMPLES	
Population supplied by the system	Samples per day
≤ 500	1
501 – 1,000	2
1,001 – 2,500	3
2,501 – 3,300	4

- (B) In the distribution system, the supplier must monitor the residual disinfectant concentration at the same time and at the same sampling locations that total coliform samples are collected under 11.17(3) until March 31, 2016, and collected under 11.16(6-7) beginning April 1, 2016.
- (I) The supplier must measure the residual disinfectant concentration as free chlorine unless the supplier uses a disinfection process that results in a monochloramine residual disinfectant, then the supplier must measure the residual disinfectant concentration as total chlorine. If the supplier uses a different type of chemical disinfectant (e.g., ozone or chlorine dioxide), the supplier must measure the appropriate residual disinfectant concentration.
- (II) For systems using both surface water and groundwater sources, the Department may allow the supplier to collect residual disinfectant concentration samples at locations other than the total coliform sampling locations if the Department determines that other locations are more representative of finished water quality in the distribution system.

(d) Treatment Technique Violations for Disinfection

- (i) The following constitute disinfection treatment technique violations:
- (A) At any entry point, the residual disinfectant concentration is less than ($<$) 0.2 mg/L for more than four hours.
- (B) In the distribution system, until March 31, 2016, the residual disinfectant concentration is not detectable in more than 5 percent of the samples collected in each month, for two consecutive months that the supplier system supplies water to the public.
- (I) If the Department grants an extension under 11.8(3)(b)(ii), the supplier is subject to this violation after March 31, 2016 and until capital improvements are completed or the extension expires, whichever comes first.
- (C) In the distribution system, beginning April 1, 2016:
- (I) If the supplier collects greater than or equal to ($\geq$) 40 residual disinfectant concentration samples per month, the residual disinfectant concentration is less than ($<$) 0.2 mg/L in more than 5 percent of the samples collected.

(II) If the supplier collects greater than (>) one but less than (<) 40 residual disinfectant concentration samples per month, the residual disinfectant concentration is less than (<) 0.2 mg/L in more than one sample collected.

(III) If the supplier collects greater than (>) one but less than (<) 40 residual disinfectant concentration samples per month, the residual disinfectant concentration is less than (<) 0.2 mg/L in more than 5 percent of the samples collected in each month for two consecutive months that the system supplies water to the public.

(IV) If the supplier collects only one residual disinfectant concentration sample per monitoring period, the residual disinfectant concentration is less than (<) 0.2 mg/L.

(C) Any time the supplier fails to comply with the treatment technique requirements specified in 11.8(3)(b)(i)(A).

(e) Response to Disinfection Treatment Technique Violations

(i) In the event of an entry point disinfection treatment technique violation as specified in 11.8(3)(d)(i)(A), the supplier must:

(A) Notify the Department no later than the end of the next business day.

(B) Distribute Tier 2 public notice as specified in 11.33.

(ii) In the event of a disinfection treatment technique violation as specified in 11.8(3)(d)(i)(B-D) ~~or 11.8(3)(d)(i)(C)~~, the supplier must:

(A) Notify the Department no later than 48 hours after the violation occurs.

(B) Distribute Tier 2 public notice as specified in 11.33.

(f) Reporting Requirements for Disinfection Monitoring

(i) If at any time the entry point residual disinfectant concentration is less than (<) 0.2 mg/L, the supplier must notify the Department as soon as possible but no later than the end of the next business day.

(A) The supplier must also report, no later than the end of the next business day, whether the entry point residual disinfectant concentration was restored to at least 0.2 mg/L within four hours.

(ii) For residual disinfectant concentration samples collected under 11.8(3)(c), the supplier must submit all of the following information no later than the 10th of the following month:

(A) For each entry point, the lowest daily residual disinfectant concentration result in mg/L.

(B) The date and duration of each period when the entry point residual disinfectant concentration fell below 0.2 mg/L and when the Department was notified of the occurrence.

(C) For distribution system residual disinfectant concentration samples until March 31, 2016:

(I) The number of sample results that were undetectable.

(II) The percentage of sample results that were undetectable for each of the last two months.

(D) For distribution system residual disinfectant concentration samples beginning April 1, 2016:

(I) The number of sample results that were less than (<) 0.2 mg/L.

(II) The percentage of sample results that were less than (<) 0.2 mg/L for each of the last two months.

~~(iii) If the Department determines that the supplier has submitted all the residual disinfectant concentration information as specified in 11.8(3)(f)(ii)(A-C) for at least 12 months and the supplier keeps records of the information, the supplier is not required to submit the lowest daily entry point residual disinfectant concentration results as specified in 11.8(3)(f)(ii)(A).~~

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11.11 GROUNDWATER RULE

11.11(1) General Applicability and Definitions

(a) For all groundwater systems, the supplier must comply with the requirements specified in this rule.

(i) For the purposes of this rule, a "GROUNDWATER SYSTEM" means any public water system that meets one or more of the following criteria:

(A) The system only uses groundwater sources.

(B) The system uses both surface water and groundwater sources and does not combine the groundwater sources and surface water sources before treatment.

(I) This rule only applies to the groundwater sources.

(II) Systems that combine groundwater sources with surface water sources before treatment are not considered groundwater systems.

(C) The system is a consecutive system that receives finished water from a groundwater system.

(b) "DETECTABLE" means until March 31, 2015, at or above the detection limit of the approved methods specified in 11.46(8)(b).

11.11(2) Minimum Disinfection Treatment Requirements

(a) Applicability for Minimum Disinfection Treatment Requirements

(i) The supplier must comply with the requirements specified in this section, 11.11(2), unless one or more of the following conditions apply:

- (A) The groundwater system is operating under a disinfection waiver and the supplier is required to comply with 11.13.
- (B) The groundwater system has only hand-pumped wells and the supplier is required to comply with 11.12.
- (C) The groundwater system has hand-pumped wells and other sources and the supplier is required to comply with this section, 11.11(2), for the groundwater sources that are not hand-pumped wells and with 11.12 for the groundwater sources that are hand-pumped wells.
- (D) The groundwater system is a consecutive system that only supplies finished groundwater received from a wholesale system and therefore supplier is required to comply with 11.11(2)(b)(i)(B)(II-III), 11.11(2)(c)(i)(B), 11.11(2)(c)(i)(C), 11.11(2)(d)(i)(B-C), and 11.11(2)(e)(ii).

(b) Treatment Technique Requirements for Minimum Disinfection Treatment

- (i) The minimum disinfection treatment technique requirements are as follows:
 - (A) When a groundwater source is used to supply water to the public, the supplier must disinfect the water using a chemical treatment method.
 - (B) When a groundwater source is used to supply water to the public, the supplier must maintain a residual disinfectant concentration at each entry point and throughout the distribution system.
 - (I) At each entry point, the residual disinfectant concentration must be greater than or equal to ($\geq$) 0.2 mg/L.
 - (II) In the distribution system, until March 31, 2016, the residual disinfectant concentration must be detectable throughout the distribution system.
 - (III) In the distribution system, beginning April 1, 2016, the residual disinfectant concentration must be greater than or equal to ($\geq$) 0.2 mg/L.
- (ii) No later than December 31, 2015, the supplier may apply to the Department for an extension for complying with the treatment technique requirements specified in 11.11(2)(b)(i)(B)(III).
 - (A) In the application, the supplier must include all of the following information:
 - (I) An explanation of why the supplier is unable to comply with the treatment technique requirements specified in 11.11(2)(b)(i)(B)(III).
 - (II) A distribution system disinfectant residual data analysis demonstrating the inability to comply with the treatment technique requirements specified in 11.11(2)(b)(i)(B)(III).
 - (III) An engineering report prepared by a professional engineer registered in the state of Colorado demonstrating that capital improvements are necessary to comply with the treatment technique requirements specified in 11.11(2)(b)(i)(B)(III).
 - (IV) A proposed schedule for completing the system modifications.

- (B) The Department shall consider the following criteria when determining if an extension will be granted:
 - (I) The supplier submitted a complete application that included the information specified above;
 - (II) The supplier has complied with the monitoring requirements specified in 11.17 in the last 36 months; and
 - (III) The supplier has not incurred an MCL violation specified in 11.17(9) in the last 36 months.
- (iii) The Department will only grant an extension for up to four years.
- (iv) If the supplier receives written Department-approval for an extension, the supplier must:
 - (A) Continue to comply with the treatment technique requirements specified in 11.11(2)(b)(i)(B)(II) and is subject to the violation specified in 11.11(2)(d)(i)(B) until the capital improvements are completed or the extension expires, whichever comes first; and
 - (B) Comply with any Department-specified requirements.
- (c) Monitoring Requirements for Minimum Disinfection Treatment Technique Requirements
 - (i) To determine compliance with the minimum disinfection treatment technique requirements, the supplier must monitor the residual disinfectant concentration.
 - (A) At each entry point, the supplier must monitor the residual disinfectant concentration at least once each week that water is supplied to the public from that entry point.
 - (I) If any entry point residual disinfectant concentration result is less than (<) 0.2 mg/L, the supplier must increase the residual disinfectant concentration monitoring frequency at that entry point to at least once every 24 hours from the time of discovery until the residual disinfectant concentration is greater than or equal to (≥) 0.2 mg/L.
 - (B) In the distribution system, the supplier must, at a minimum, monitor the residual disinfectant concentration at the same time and at the same sampling locations as the total coliform samples collected under 11.17(3) until March 31, 2016, and collected under 11.16(6-7) beginning April 1, 2016.
 - (C) The supplier must measure the residual disinfectant concentration as free chlorine unless the supplier uses a disinfection process that results in a monochloramine residual disinfectant, then the supplier must measure the residual disinfectant concentration as total chlorine. If the supplier uses a different type of chemical disinfectant (e.g., ozone or chlorine dioxide), the supplier must measure the appropriate residual disinfectant concentration.
- (d) Treatment Technique Violations for the Minimum Disinfection Treatment Requirements
 - (i) The following constitute disinfection treatment technique violations:

- (A) At any entry point, the residual disinfectant concentration is less than (<) 0.2 mg/L for more than 72 hours after the time of discovery.
- (B) In the distribution system, until March 31, 2016, the residual disinfectant concentration is not detectable in more than 5 percent of the samples collected each monitoring period (i.e., month or quarter), for two consecutive monitoring periods during which the supplier system supplies water to the public.
 - (I) If the Department grants an extension under 11.11(2)(b)(ii), the supplier is subject to this violation after March 31, 2016 and until capital improvements are completed or the extension expires, whichever comes first.
- (C) In the distribution system, beginning April 1, 2016:
 - (I) If the supplier collects greater than or equal to ($\geq$) 40 residual disinfectant concentration samples per month, the residual disinfectant concentration is less than (<) 0.2 mg/L in more than 5 percent of the samples collected.
 - (II) If the supplier collects greater than (>) one but less than (<) 40 residual disinfectant concentration samples per month, the residual disinfectant concentration is less than (<) 0.2 mg/L in more than one sample collected.
 - (III) If the supplier collects greater than (>) one but less than (<) 40 residual disinfectant concentration samples per month, the residual disinfectant concentration is less than (<) 0.2 mg/L in more than 5 percent of the samples collected in each month for two consecutive months that the system supplies water to the public.
 - (IV) If the supplier collects only one residual disinfectant concentration sample per monitoring period, the residual disinfectant concentration is less than (<) 0.2 mg/L.
- (e) Response to Treatment Technique Violations for the Minimum Disinfection Treatment Requirements
 - (i) In the event of an entry point treatment technique violation as specified in 11.11(2)(d)(i)(A), the supplier must:
 - (A) Notify the Department as soon as possible but no later than the end of the next business day.
 - (B) Determine and resolve the failure that resulted in the treatment technique violation.
 - (C) No later than 48 hours after the resolution of the failure, document all of the following:
 - (I) The date, time and duration of the failure.
 - (II) The cause of the failure.
 - (III) The steps taken to correct the failure.

- (IV) What steps will be taken to prevent future failures.
- (D) Submit the documentation specified above in 11.11(2)(e)(i)(C) if required by the Department.
- (E) Distribute Tier 2 public notice as specified in 11.33.
- (ii) In the event of a distribution system treatment technique violation as specified in 11.11(2)(d)(i)(B-C), the supplier must:
 - (A) Notify the Department no later than 48 hours after the violation occurs.
 - (B) Distribute Tier 2 public notice as specified in 33.

11.11(3) Requirements for 4-Log Treatment of Viruses

(a) Applicability for 4-Log Treatment of Viruses

- (i) For any new or existing groundwater source that is treated to at least 4-log treatment of viruses at the entry point, either by choice or because the supplier is required to as specified in 11.38(3)(a)(i)(D) or 11.11(6), the supplier must comply with the requirements specified in this section, 11.11(3).
 - (A) If the supplier is subject to the requirements specified in this section, 11.11(3), the supplier is not required to meet the source water monitoring requirements specified in 11.11(4) and 11.11(5).

(b) Notification of 4-Log Treatment of Viruses

- (i) The supplier must submit notification that the system is providing at least 4-log treatment of viruses at the entry point(s).
 - (A) The submission must include engineering, operational, or other information that the Department requests to evaluate the submission.

(c) Treatment Technique Requirements for 4-Log Treatment of Viruses

- (i) The supplier may use one of the following to comply with the 4-log treatment of viruses treatment technique requirements, as approved by the Department:
 - (A) Chemical disinfection.
 - ~~(B) Membrane filtration.~~
 - ~~(CB)~~ Alternative treatment methods.
- (ii) If the supplier uses chemical disinfection to comply with the 4-log treatment of viruses treatment technique requirements, the supplier must maintain the Department-approved residual disinfectant concentration at the Department-approved location(s) that represent treated water at the entry point.
- ~~(iii) If the supplier uses membrane filtration to comply with the 4-log treatment of viruses treatment technique requirements, the supplier must operate the membrane filtration process according to Department specified requirements.~~

~~(A) The membrane must reliably achieve at least 4-log removal of viruses.~~

~~(I) The membrane must have an absolute molecular weight cut-off, or an alternative parameter that describes the exclusion characteristics of the membrane and demonstrates that the membrane can achieve 4-log removal of viruses.~~

~~(B) The integrity of the membrane must remain intact.~~

(iviii) If the supplier uses a Department-approved alternative treatment method to comply with the 4-log treatment of viruses treatment technique requirements, the supplier must operate the alternative treatment according to Department-specified requirements.

(d) Monitoring Requirements for 4-Log Treatment of Viruses

(i) To determine compliance with the 4-log treatment of viruses treatment technique requirements, the supplier must:

(A) Begin monitoring no later than 30 days after placing the source in service.

(B) Monitor at the Department-approved location and/or according to the Department-specified requirements.

(ii) If the supplier uses chemical disinfection to comply with the 4-log treatment of viruses treatment technique requirements, the supplier must also:

(A) For a system that supplies greater than ($>$) 3,300 people, continuously monitor the residual disinfectant concentration at the Department-approved location(s).

(I) If there is a failure in the continuous monitoring equipment, the supplier must monitor the residual disinfectant concentration by collecting grab samples every four hours until the continuous monitoring equipment is returned to service.

(a) The supplier must resume continuous residual disinfectant concentration monitoring no later than 14 days after the equipment failure.

(B) For a system that supplies less than or equal to ($\leq$) 3,300 people, monitor the residual disinfectant concentration daily by collecting grab samples at the Department-approved location(s).

(I) The supplier must collect a daily grab sample during the hour of peak flow or at another time specified by the Department.

(II) If any daily grab sample result is less than ($<$) the Department-approved residual disinfectant concentration, the supplier must monitor the residual disinfectant concentration every four hours until it is greater than or equal to ($\geq$) the Department-approved residual disinfectant concentration.

(III) Alternatively, the supplier may monitor continuously as specified in 11.11(3)(d)(ii)(A).

(C) When a groundwater source is used to supply water to the public, record the lowest residual disinfectant concentration monitored each day.

~~(iii) If the supplier uses membrane filtration to comply with the 4-log treatment of viruses treatment technique requirements, the supplier must monitor the membrane filtration process according to Department-specified requirements.~~

(iviii) If the supplier uses a Department-approved alternative treatment method to comply with the 4-log treatment of viruses treatment technique requirements, the supplier must monitor according to Department-specified requirements.

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11.11(4) Triggered Source Water Monitoring

(a) Applicability for Triggered Source Water Monitoring

(i) The supplier must conduct triggered source water monitoring if:

~~(A) The supplier does not provide at least 4-log treatment of viruses at the entry point for each groundwater source as specified in 11.11(3); and either~~

~~(A)(B) Until March 31, 2016, the supplier is notified that a sample collected under 11.17(3)(b) is total coliform-positive and the sample was not invalidated under 11.17(5); and/or~~

~~(B) The supplier does not provide at least 4-log treatment of viruses at the entry point for each groundwater source as specified in 11.11(3).~~

~~(C) Beginning April 1, 2016, the supplier is notified that a sample collected under 11.16(6)(b-d) is total coliform-positive and the sample was not invalidated under 11.16(8).~~

(ii) The supplier is not required to conduct triggered source water monitoring if either of the following conditions are met:

(A) The Department determines and documents in writing that the routine total coliform-positive sample was caused by a distribution system deficiency and not by the source water.

(B) The supplier collected the routine total coliform-positive sample at a location that meets Department criteria for distribution system conditions that will cause total coliform-positive sample results and therefore the total coliform-positive sample result was not caused by the source water.

(I) No later than 30 days after receiving the total coliform-positive sample result, the supplier must submit documentation that demonstrates the sample location met Department criteria.

(b) Monitoring Requirements for Triggered Source Water Monitoring

(i) The supplier must collect triggered source water monitoring samples no later than 24 hours after being notified of a total coliform-positive sample collected under 11.17(3)(b) until March 31, 2016, or collected under 11.16(6)(b-d) beginning April 1, 2016.

(A) If the supplier experiences circumstances beyond their control that prevent the supplier from collecting the source water samples, the Department may extend the 24-hour limit on a case-by-case basis.

- (I) If the Department approves the extension, the Department shall specify how much time the supplier has to collect the source water samples.
 - (ii) The supplier must collect at least one triggered source water monitoring sample from each groundwater source that was in use at the time the total coliform-positive sample was collected. These samples must be collected at the well, before any treatment is applied.
 - (A) If the system's configuration does not allow for the supplier to sample at the well itself, the Department may:
 - (I) Approve the collection of triggered source water monitoring samples at a location that represents the water quality of that well or a location after treatment; and/or
 - (II) Require that sampling equipment be installed at the well itself.
 - (B) For systems with more than one groundwater source, the Department may approve collection of the triggered source water monitoring samples from a representative groundwater source(s).
 - (I) The representative source(s) must supply water to the section of the distribution system where the total coliform-positive sample was collected.
 - (II) If required by the Department, the supplier must submit, for approval, a triggered source water monitoring plan to use a representative source(s).
 - (a) The triggered source water monitoring plan must identify which source(s) the supplier intends to use for representative sampling of groundwater sources. For each representative source identified, the supplier must identify each total coliform sampling location that the source represents in the system's sampling plan specified in 11.17(3)(a)(ii) until March 31, 2016, or 11.16(4) beginning April 1, 2016.
 - (C) For a groundwater system supplying less than or equal to ($\leq$) 1,000 people that uses *E. coli* as a fecal indicator for triggered source water monitoring, the supplier may use a triggered source water monitoring sample to meet both the repeat sampling requirements specified in 11.17(3)(c) until March 31, 2016, or 11.16(7) beginning April 1, 2016, and the triggered source water monitoring requirements.
 - (iii) The supplier must have all groundwater source samples analyzed for the presence of one of the following fecal indicators: *E. coli*, enterococci, or coliphage.
- (c) Additional Triggered Source Water Monitoring Requirements for Consecutive and Wholesale Systems
 - (i) For consecutive systems, no later than 24 hours after being notified of the sample result, the supplier responsible for the consecutive system must notify all of their wholesalers of a total coliform-positive sample result collected under 11.17(3)(b) until March 31, 2016, or collected under 11.16(6)(b-d) beginning April 1, 2016 ~~no later than 24 hours after being notified of the sample result.~~

- (ii) For wholesale systems, the wholesaler must sample the groundwater source(s) as specified above in 11.11(4)(b) no later than 24 hours after being notified by the supplier responsible for the consecutive system of their total coliform-positive sample result collected under 11.17(3)(b) until March 31, 2016, or collected under 11.16(6)(b-d) beginning April 1, 2016.
- (d) Response to Triggered Source Water Monitoring Fecal Indicator-Positive Sample Results
 - (i) If the supplier has a fecal indicator-positive triggered source water monitoring sample result, that is not invalidated under 11.11(4)(e)(i), the supplier must:
 - (A) Notify the Department and initiate consultation no later than 24 hours after being notified of the fecal indicator-positive initial triggered source water monitoring sample result.
 - (B) Distribute Tier 1 public notice as specified in 11.33.
 - (I) For all consecutive systems supplied by the groundwater source that tested positive for a fecal indicator, the supplier responsible for the consecutive system must also distribute Tier 1 public notice as specified in 11.33.
 - (C) No later than 24 hours after being notified of the fecal indicator-positive triggered source water monitoring sample result, collect five confirmation samples from the same source unless the Department requires the supplier to implement corrective action as specified in 11.11(6).
 - (I) Beginning April 1, 2016, if the supplier collects more than one triggered source water monitoring sample at the location required to meet the total coliform repeat sampling requirements specified in 11.16(7)(g)(i), the supplier may use any of those triggered source water monitoring samples that were *E. coli*-negative toward complying with the five required confirmation samples.
 - (~~II~~) If one or more of the confirmation samples is fecal indicator-positive, the supplier must implement corrective action as specified in 11.11(6).
 - (D) For a wholesale system, notify all consecutive systems that are supplied by that source of the original fecal indicator-positive sample result no later than 24 hours after being notified of the sample result.

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11.13 GROUNDWATER RULE: DISINFECTION WAIVERS

11.13(1) Applicability for Disinfection Waivers

- (a) The Department shall not approve new disinfection waivers.
- (b) If the system has an existing disinfection waiver, the supplier must comply with the requirements specified in this rule.
 - (i) The supplier is not required to comply with the minimum residual disinfectant concentration requirements specified in 11.11(2).

11.13(2) Requirements for Maintaining a Disinfection Waiver

To maintain a disinfection waiver, the supplier must:

- (a) Only supply water from groundwater sources.
- (b) Distribute a special public notice regarding the disinfection waiver.
 - (i) For community water systems, the supplier must distribute the special public notice annually to inform consumers of the disinfection waiver.
 - (A) The supplier may use the consumer confidence report required under 11.34 to satisfy this requirement.
 - (ii) For non-community water systems, the supplier must continuously post the special public notice in conspicuous locations.
 - (iii) The special public notice must include the following language and provide the specific information for the text in brackets:
 - (A) [Name of groundwater system] has a waiver from disinfection requirements and serves well water that has not been chlorinated.
 - (iv) The supplier must comply with the public notice requirements specified in 11.33(5)(e-f).
 - (v) The Department may require the supplier to distribute the special public notice to new billing units or new customers as specified in 11.33(6)(b).
- (c) Have the ability to provide a residual disinfectant concentration for the groundwater system in an emergency.
 - (i) The supplier must have Department-approved emergency disinfection equipment or be operating in accordance with the Department-approved emergency operating plan.
- (d) Have a Department-approved monitoring plan that meets the requirements specified in 11.5.
 - (i) The supplier must operate in accordance with the Department-approved monitoring plan.
- (e) Have a Department-approved distribution system protection plan.
 - (i) The supplier must operate in accordance with the Department-approved distribution system protection plan.
 - (ii) At a minimum, the distribution system protection plan must include all of the following:
 - (A) A description of protection measures designed to reduce public health risks for water provided through storage and the distribution system.
 - (B) A description of distribution system operation and maintenance practices (e.g., flushing schedules, scheduled upgrades, disinfection schedules);
 - (C) Until December 31, 2015, A description of a cross-connection control program that meets the requirements specified in 11.37.

- (D) Beginning January 1, 2016, the backflow prevention and cross-connection control program that meets the requirements specified in 11.39.
 - (~~ED~~) Identification of each potential point of entry for hazards and/or contaminants into the storage and distribution system and a description of the hazard and/or contaminant control measures to be used to mitigate the potential public health risks.
 - (~~FE~~) A description of monitoring locations and parameters that will be used to verify and document that the hazard and/or contaminant control measures are effective.
 - (~~GF~~) A description of incident response procedures to be followed in the case of a distribution system breach, hazard condition and/or contamination event. The procedure must at least include confirmation and repeat sampling protocols and flushing procedures.
- (f) Have a Department-approved source water protection plan.
- (i) The supplier must operate in accordance with the Department-approved source water protection plan.
 - (ii) At a minimum, the source water protection plan must include all of the following:
 - (A) A description of protection measures designed to reduce public health risks for water provided from groundwater sources.
 - (B) Delineation of source water protection areas.
 - (C) An inventory of potential sources of contamination.
 - (D) A plan for management of potential sources of contamination.
 - (E) Well failure emergency and contingency plans.
 - (F) Capacity development plan for new wells.
 - (G) A description of the methods to be used to involve and educate the public during the source water protection planning and implementation process.
- (g) Keep records of chlorination activities as specified in 11.36(4)(c)(i)(C).

11.13(3) Disinfection Waiver Health-based Evaluations

- (a) The Department may evaluate a groundwater system's wells and storage systems to determine if there are potential health risks from these sources. The Department shall conduct the evaluation based on criteria found in:
 - (i) Well construction and location criteria outlined in the rules, regulations, and Colorado statutes governing water well construction as enforced by the State Board of Examiners of Water Well and Pump Installation Contractors.
 - (ii) The *State of Colorado Design Criteria for Potable Water Systems* or other criteria developed by the Department.

- (b) For new or existing sources, the Department may require assessment source water monitoring as specified in 11.11(5), additional testing, and additional information to establish that the water being supplied to the public is from a groundwater source determined to be free from microbial contamination.
 - (i) For new sources, the Department may require that all testing and evaluation be completed before the source may be used to supply water to the public.
- (c) The Department may, at any time, conduct a full or partial sanitary survey to establish that the groundwater system is at low risk for contamination.

11.13(4) Disinfection Waiver Withdrawal

- (a) A disinfection waiver may be withdrawn immediately if:
 - (i) The supplier fails to correct significant deficiencies as specified in 11.38(3).
 - (ii) Until March 31, 2016, the supplier fails to comply with 11.17 Total Coliform Rule, or beginning April 1, 2016, the supplier fails to comply with 11.16 Revised Total Coliform Rule or a treatment technique for a Level 1 or Level 2 assessment is triggered under 11.16(3).
 - (iii) The supplier fails to comply with the triggered source water monitoring and reporting requirements specified in 11.11(4).
 - (iv) Until December 31, 2015, the supplier fails to comply with 11.37 Cross-Connection Control Rule, or beginning January 1, 2016 the supplier fails to comply with 11.39 Backflow Prevention and Cross-Connection Control Rule.
 - (v) There is an incidence of microbial disease, the source of which is reasonably identified by the Department as originating from consumption of drinking water from the groundwater system.
 - (vi) There is an occurrence of unforeseeable situations or conditions which are reasonably identified by the Department as having the potential to contribute to a microbial disease incident.
 - (vii) The supplier fails to have the system operated by qualified personnel who meet the requirements of Regulation 100, *Water and Wastewater Facility Operators Certification Requirements*, and are included in a State register of qualified operators.
 - (viii) The groundwater system is in violation of the *Colorado Primary Drinking Water Regulations*.
 - (ix) The groundwater system is not in compliance with all disinfection waiver requirements specified in 11.13(2), or if based on other information obtained, it appears that the water being supplied to the public presents a potential risk to public health.
- (b) If the groundwater system has a source that has been determined by the Department to be fecally contaminated or is required to comply with the 4-log treatment of viruses requirements specified in 11.11(3), the waiver shall be withdrawn immediately.

11.13(5) Response to a Disinfection Waiver Withdrawal

- (a) If the Department withdraws the disinfection waiver, the supplier must disinfect the groundwater and comply with the minimum disinfectant residual concentration requirements as specified in 11.11(2).
- (b) The supplier may request a hearing to contest the withdrawal of the waiver. The request for such a hearing must be filed in writing no later than 60 days after service of the Department's withdrawal. The hearing must be conducted under the procedures established by Article 4 of Title 24, Colorado Revised Statutes.

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11.16 REVISED TOTAL COLIFORM RULE

11.16(1) Applicability and Definitions

- (a) For all public water systems, the supplier must comply with the requirements specified in this rule beginning April 1, 2016 unless otherwise specified.
- (b) "CLEAN COMPLIANCE HISTORY" means a record of no MCL violations, no sampling violations, and no treatment technique triggers or treatment technique violations under this rule.
- (c) "SEASONAL SYSTEM" means a non-community water system that is not operated as a public water system on a year-round basis.

11.16(2) MCL for *Escherichia coli* (*E. coli*)

- (a) The system exceeds the *E. coli* MCL if:
 - (i) A repeat sample is *E. coli*-positive following a total coliform-positive routine sample.
 - (ii) A repeat sample is total coliform-positive following an *E. coli*-positive routine sample.
 - (iii) The supplier fails to collect the required repeat samples following an *E. coli*-positive routine sample.
 - (iv) The supplier fails to analyze a total coliform-positive repeat sample for *E. coli*.
- (b) The BATs for achieving compliance with the MCLs for *E. coli* are specified in 40 CFR 141.63(e-f) as amended July 1, 2014.

11.16(3) Total Coliform Treatment Technique Triggers

- (a) The treatment technique triggers for a Level 1 assessment are as follows:
 - (i) If the supplier collects greater than or equal to ($\geq$) 40 samples per month, more than 5.0 percent of the samples collected for the month are total coliform-positive.
 - (ii) If the supplier collects less than ($<$) 40 samples per month, more than one sample collected for the monitoring period is total coliform-positive.
 - (iii) The supplier fails to collect all required repeat samples after any single total coliform-positive sample.
- (b) The treatment technique triggers for a Level 2 assessment are as follows:

- (i) An *E. coli* MCL violation occurs as specified in 11.16(12)(a).
- (ii) A second treatment technique trigger for a Level 1 assessment, as specified in 11.16(3)(a), occurred within 12 consecutive months, except:
 - (A) If the Department has determined the possible cause(s) for the total coliform-positive sample(s) that caused the first Level 1 assessment to be triggered and the Department has established that the supplier has corrected the problem(s), a second Level 1 assessment that is triggered will not result in a Level 2 assessment.

11.16(4) Individual Rule Sampling Plan for the Revised Total Coliform Rule

- (a) No later than March 31, 2016, as part of the monitoring plan specified in 11.5, the supplier must develop a written sampling plan that identifies all of the following:
 - (i) A sample collection schedule that meets the requirements specified in 11.16(6)(a)(iii).
 - (ii) Routine total coliform sample sites that are representative of water throughout the distribution system.
 - (iii) Any sample sites necessary to meet the triggered source water monitoring requirements specified in 11.11(4)(b).
 - (iv) Repeat sample sites.
 - (A) The supplier must identify repeat sampling sites in one of the following ways:
 - (I) Identify sampling sites based on the following requirements:
 - (a) One total coliform sample at the site where the original total coliform-positive sample was collected.
 - (b) One total coliform sample at a site within five service connections upstream from the site where the original total-coliform positive sample was collected.
 - (c) One total coliform sample at a site within five service connections downstream from the site where the original total-coliform positive sample was collected.
 - (d) If the supplier collected the original total coliform-positive sample from the end of the distribution system or one site away from the end of the distribution system, the Department may allow an alternative sampling site for collecting repeat samples at the upstream or downstream sites.
 - (II) Identify alternative fixed repeat sampling sites that the supplier believes to be representative of a pathway for contamination of the distribution system.
 - (III) Develop criteria for selecting repeat sampling sites on a situational basis that the supplier believes to best verify and determine the extent of potential contamination and a potential pathway for contamination of the

distribution system in a standard operating procedure (SOP) that is included in the sampling plan.

(a) The Department may modify the SOP or require alternative repeat sampling sites.

(b) Sample sites may include a customer's premises, dedicated sampling station, or other designated compliance sampling site.

(c) The Department may review, revise, and approve the written sampling plan. [

11.16(5) Start-up Requirements for Seasonal Systems

(a) The supplier must complete Department-approved start-up procedures and certify that the start-up procedures were completed before supplying water to the public each season.

(i) No later than the 10th of the month following the month that the system began supplying water to the public, the supplier must submit the certification that start-up procedures were completed.

(b) The supplier must either submit start-up procedures for Department approval or use the pre-approved procedures in the Department's *Revised Total Coliform Rule Start-up Procedures for Seasonal Systems Handbook*.

(c) As part of the start-up procedures, the supplier must collect a total coliform sample in the distribution system before supplying water to the public.

11.16(6) Sampling Requirements for Total Coliform

(a) General Sampling Requirements for Total Coliform

(i) To determine compliance with the MCL for *E. coli* or to determine if a treatment technique is triggered, the supplier must collect total coliform samples as specified in 11.16(6) and 11.16(7).

(A) If an *E. coli* MCL violation occurs or if a treatment technique is triggered, the supplier must still collect at least the minimum number of required routine samples.

(ii) The supplier must collect total coliform samples according to the written sampling plan as specified in 11.16(4).

(iii) The supplier must collect total coliform samples at regular time intervals throughout the month, except:

(A) For groundwater systems that supply less than or equal to ($\leq$) 4,900 people, the supplier may collect all required samples on a single day if the samples are collected from different sites.

(iv) The supplier may collect more samples than the minimum number of routine total coliform samples required as specified in Table 11.16-I as a tool to investigate potential problems in the distribution system.

(A) The supplier must use these sample results to determine if a treatment technique has been triggered if:

- (I) The supplier collects these samples in accordance with the sampling plan; and
 - (II) The supplier collects these samples from sites that are representative of water throughout the distribution system.
- (B) If any of the sample results are total coliform-positive, the supplier must collect repeat samples as specified in 11.16(7).
- (v) If the supplier collects special purpose samples, these samples are not routine or repeat samples and these sample results will not be used to determine compliance with the *E. coli* MCL or to determine if a treatment technique is triggered.
 - (A) The supplier is not required to submit special purpose samples unless the sample result is *E. coli*-positive and is representative of water in the distribution system.
 - (I) The supplier must submit *E. coli*-positive special purpose sample results as specified in 11.35(2)(a).
- (b) Routine Sampling Requirements for Total Coliform
 - (i) For all public water systems, the supplier must collect the number of routine total coliform samples specified in Table 11.16-I each month except:
 - (A) For non-community groundwater systems that supply less than or equal to ($\leq$) 1,000 people, the supplier must collect one total coliform sample during each quarter that water is supplied to the public, unless the supplier is required to increase the routine sampling frequency as specified in 11.16(6)(c).
 - (I) In any month where the system supplies greater than ($>$) 1,000 people, the supplier must collect the number of routine total coliform samples specified in Table 11.16-I each month.
 - (a) The supplier must have written Department-approval to alternate between quarterly and monthly sampling frequencies based on when the population supplied is less than or equal to ($\leq$) 1,000 people or when the population supplied is greater than ($>$) 1,000 people.
 - (ii) For public water systems that haul water, the water hauler must collect at least one total coliform sample from the outlet port of each tank or container each month that the tank or container is used to supply water to the public.
 - (iii) For hand-pumped wells, the supplier must collect at least one total coliform sample from each hand-pumped well each month that it supplies water to the public.
 - (iv) For the following public water systems, the supplier is not eligible for a quarterly sampling frequency as specified in 11.16(6)(b)(i)(A):
 - (A) Seasonal systems.
 - (B) Public water systems that do not provide chemical disinfection.
 - (C) Public water systems that haul water.

(D) Groundwater systems with hand-pumped wells.

(v) The Department shall perform a sampling evaluation during each sanitary survey to determine whether the supplier is collecting total coliform samples on an appropriate frequency.

(A) Based on the sampling evaluation, the Department may modify the sampling frequency.

<u>TABLE 11.16-I NUMBER OF ROUTINE TOTAL COLIFORM SAMPLES REQUIRED PER MONITORING PERIOD</u>			
<u>Population supplied</u>	<u>Minimum number of samples required</u>	<u>Population supplied</u>	<u>Minimum number of samples required</u>
25 to 1,000 ¹	1	59,001 to 70,000	70
1,001 to 2,500	2	70,001 to 83,000	80
2,501 to 3,300	3	83,001 to 96,000	90
3,301 to 4,100	4	96,001 to 130,000	100
4,101 to 4,900	5	130,001 to 220,000	120
4,901 to 5,800	6	220,001 to 320,000	150
5,801 to 6,700	7	320,001 to 450,000	180
6,701 to 7,600	8	450,001 to 600,000	210
7,601 to 8,500	9	600,001 to 780,000	240
8,501 to 12,900	10	780,001 to 970,000	270
12,901 to 17,200	15	970,001 to 1,230,000	300
17,201 to 21,500	20	1,230,001 to 1,520,000	330
21,501 to 25,000	25	1,520,001 to 1,850,000	360
25,001 to 33,000	30	1,850,001 to 2,270,000	390
33,001 to 41,000	40	2,270,001 to 3,020,000	420
41,001 to 50,000	50	3,020,001 to 3,960,000	450
50,001 to 59,000	60	3,960,001 or more	480

1 Includes systems that have greater than or equal to ($\geq$) 15 service connections, but supply less than ($<$) 25 people.

(c) For Non-community Groundwater Systems Supplying Less Than or Equal to ($\leq$) 1,000 People – Increased Routine Sampling Requirements for Total Coliform

- (i) If the supplier is sampling quarterly, the supplier must increase the routine sampling frequency to monthly if any of the following events occur:
 - (A) A Level 2 assessment is triggered under 11.16(3)(b).
 - (B) A treatment technique violation occurs under 11.16(12)(b).
 - (C) Two sampling violations occur within 12 consecutive months.
 - (D) A Level 1 assessment is triggered and a sampling violation occurs within 12 consecutive months.
- (ii) The supplier must begin the monthly sampling frequency in the month following the month that the event occurred under 11.16(6)(c)(i).
- (iii) If the supplier is sampling monthly, the Department may allow the supplier to return to a routine quarterly sampling frequency if all of the following criteria are met:
 - (A) Within the last 12 months, the Department or a Department-approved party has completed a sanitary survey or a Level 2 assessment.
 - (B) The system is free of sanitary defects and all significant deficiencies have been corrected.
 - (C) The system's water source(s) is protected from the direct influence of surface water or any other source of contamination.
 - (D) The system has a clean compliance history for at least 12 consecutive months.
- (d) For Non-community Groundwater Systems Supplying Less Than or Equal to ($\leq$) 1,000 People – Additional Routine Sampling Requirements in the Month Following a Total Coliform-positive Sample Result
 - (i) If the supplier is collecting total coliform samples on a quarterly frequency and one or more of the samples collected is total coliform-positive, the supplier must collect at least three routine samples during the following month.
 - (A) The supplier may either collect the samples at regular time intervals throughout the month or collect all required additional routine samples on a single day if the samples are collected from different sites.
 - (ii) If any of the additional routine sample results are total coliform-positive, the supplier must collect repeat samples as specified in 11.16(7).
 - (iii) The supplier must use the results of additional routine samples to determine whether an *E. coli* MCL violation has occurred or if a treatment technique is triggered.
 - (iv) If all three additional routine samples are total coliform-negative, the supplier may return to collecting one total coliform sample on a quarterly sampling frequency. The supplier must begin collecting the quarterly sampling frequency in the calendar quarter following the month that the three additional routine samples were required.

11.16(7) Repeat Sampling Requirements for Total Coliform

- (a) For each routine sample result that is total coliform-positive, the supplier must collect a sample set of at least three repeat total coliform samples no later than 24 hours after being notified of the positive sample result.
 - (i) If the supplier has a logistical problem beyond their control that prevents the supplier from collecting the repeat samples within the 24-hour limit, the Department may extend the 24-hour limit on a case-by-case basis.
 - (A) If the Department grants the extension, the Department shall specify how much time the supplier has to collect the repeat samples.
- (b) The supplier must collect repeat samples in accordance with the written sampling plan required under 11.16(4)(a)(iv).
- (c) The supplier must collect all repeat samples on the same day.
 - (i) If the system has only one service connection, the Department may allow the supplier to collect a larger volume repeat sample(s) in one or more sample containers of any size, as long as the total volume collected is at least 300 ml.
- (d) If a treatment technique is triggered based only on routine sample results, the supplier is required to collect only one repeat sample set for each total coliform-positive routine sample and is not required to comply with the requirements specified in 11.16(7)(e).
- (e) If one or more of the repeat sample results is total coliform-positive, the supplier must:
 - (i) Collect an additional repeat sample set as specified in 11.16(7)(a-d) for each site that had a total coliform-positive sample result.
 - (A) The additional repeat sample set(s) must be collected no later than 24 hours after being notified of the total coliform-positive sample result(s), unless the Department extends the 24-hour limit as specified in 11.16(7)(a)(i).
 - (ii) Continue to collect additional repeat sample sets as specified in 11.16(7)(e)(i) until either:
 - (A) Total coliforms are not detected in one complete repeat sample set; or
 - (B) A treatment technique is triggered as specified in 11.16(3) based on total coliform-positive repeat sample results and the supplier has notified the Department.
- (f) If the supplier collects a routine sample, which after analysis is found to be total coliform-positive, but before receiving that sample result the supplier collects another routine sample within five service connections of the original sample, the supplier may use the subsequent routine sample as a repeat sample instead of as a routine sample.
- (g) For groundwater systems, the supplier must collect triggered source water monitoring samples as specified in 11.11(4) in addition to repeat samples required in this section, 11.16(7).
 - (i) For a groundwater system with a single well supplying less than or equal to ($\leq$) 1,000 people, if the supplier is required to collect a triggered source water monitoring sample, the supplier, with written Department approval, may collect one of the repeat total coliform samples at the sample site required for triggered source water monitoring under 11.11(4).

(A) If approved by the Department, the supplier may use the repeat total coliform sample to meet both the triggered source water monitoring requirements specified in 11.11(4) and the total coliform repeat sampling requirements specified in this section, 11.16(7).

(h) The Department shall not waive the requirement to collect repeat samples.

(i) Repeat samples are not considered special purpose samples and must be used to determine if a treatment technique is triggered.

11.16(8) Invalidation of Total Coliform Samples

(a) The Department may invalidate a total coliform-positive sample result only if one or more of the following conditions are met:

(i) The laboratory establishes that improper sample analysis caused the total coliform-positive sample result.

(ii) Based on repeat sample results, the Department determines that the total coliform-positive sample resulted from a domestic or other non-distribution system plumbing problem.

(A) “DOMESTIC OR OTHER NON-DISTRIBUTION SYSTEM PLUMBING PROBLEM” means coliform contamination that is limited to the specific service connection from which the total coliform-positive sample was collected in a public water system with more than one service connection.

(B) The Department shall not invalidate a total coliform-positive sample result on the basis of repeat sample results unless all repeat sample(s) collected at the same site as the original total coliform-positive sample are also total coliform-positive, and all repeat samples collected at a site other than the original site are total coliform-negative.

(I) The Department shall not invalidate a total coliform-positive sample result solely on the basis that all repeat sample results are total coliform-negative.

(iii) The Department has substantial grounds to believe that a total coliform-positive sample result was due to a circumstance or condition that does not reflect water quality in the distribution system.

(A) The Department shall document the decision and supporting rationale for invalidating a total coliform-positive sample result in writing, have it approved and signed by a supervisor of the Department official who recommended the decision, and make this document available to the EPA and the public.

(I) The written documentation must state the specific cause of the total coliform-positive sample result and what action the supplier has taken, or will take, to correct the problem.

(II) The Department shall not invalidate a total coliform-positive sample result solely on the basis that all repeat sample results are total coliform-negative.

- (B) If the Department makes this determination, the supplier must still collect the required number of repeat samples and use them to determine if a treatment technique is triggered as specified in 11.16(3).
- (b) The Department shall not invalidate total coliform-positive samples if the system has only one service connection.
- (c) If a total coliform-positive sample result is invalidated, the sample result will not count towards determining any of the following:
 - (i) Compliance with the sampling requirements specified in this rule.
 - (ii) Compliance with the *E. coli* MCL.
 - (iii) Whether a treatment technique has been triggered.
- (d) The laboratory shall invalidate a total coliform-negative sample result if one or more of the following conditions are met:
 - (i) The sample produces a turbid culture in the absence of gas production using an analytical method where gas formation is examined (e.g., the Multiple-Tube Fermentation Technique).
 - (ii) The sample produces a turbid culture in the absence of an acid reaction in the Presence-Absence (P-A) Coliform Test.
 - (iii) The sample exhibits confluent growth or produces colonies too numerous to count with an analytical method using a membrane filter (e.g., Membrane Filter Technique).
 - (A) “CONFLUENT GROWTH” means, in the context of bacterial testing, a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion thereof, in which bacterial colonies are not discrete.
 - (B) “TOO NUMEROUS TO COUNT” means that the total number of bacterial colonies exceeds 200 on a 47-millimeter (mm) diameter membrane filter used for coliform detection.
- (e) The laboratory shall not invalidate a total coliform-positive sample result.
- (f) If the laboratory invalidates a total coliform-negative sample result, the supplier must collect a replacement total coliform sample from the same site as the invalidated sample no later than 24 hours after being notified of the invalidation, and have it analyzed for the presence of total coliforms.
 - (i) The Department may extend the 24-hour limit on a case-by-case basis.
 - (ii) The supplier must continue to collect replacement total coliform samples until a valid sample result is obtained.

11.16(9) Sampling Requirements for *E. coli*

- (a) If any routine or repeat sample result is total coliform-positive, the supplier must have a laboratory analyze the total coliform-positive culture medium to determine if *E. coli* are present.

- (b) If any routine, repeat, or special purpose sample result is *E. coli*-positive, the supplier must notify the Department no later than the end of the day that the supplier is notified of the sample result.
- (i) If the supplier is notified of the sample result after the Department is closed, the supplier must contact the Department's after-hours phone line.
- (ii) The supplier must only notify the Department of *E. coli*-positive special purpose sample results if the result is representative of water throughout the distribution system.

11.16(10) Treatment Technique Requirements: Level 1 and Level 2 Assessment Requirements

If at the end of the monitoring period a treatment technique has been triggered as specified in 11.16(3), the supplier must comply with the treatment technique requirements specified in this section 11.16(10).

(a) General Requirements for Assessments

- (i) To identify and correct sanitary defects and identify inadequate or inappropriate distribution system coliform sampling practices, the supplier must ensure that a Level 1 or Level 2 assessment is conducted.
- (ii) The supplier must ensure that the assessor evaluates at least all of the following elements:
 - (A) Inadequacies in sample sites.
 - (B) Inadequacies in sampling protocol.
 - (C) Inadequacies in sample processing.
 - (D) Atypical events that could affect distributed water quality or indicate that distributed water quality was impaired.
 - (E) Changes in distribution system maintenance and operation, including water storage, that could affect distributed water quality.
 - (F) Source and treatment considerations that affect distributed water quality.
 - (G) Existing water quality monitoring data.
- (iii) The supplier or the Department may request a consultation with the other party at any time during the assessment or corrective action phase. The consultation may be used to determine appropriate actions to be taken or to discuss relevant information that may impact the supplier's ability to comply with the requirements specified in 11.16(10).
- (iv) If required by the Department, the supplier must ensure that the assessment is conducted consistent with any Department-specified modifications to assessment elements based on the size and type of the system and the size, type, and characteristics of the distribution system.
- (v) If required by the Department, the supplier must comply with any expedited schedules or additional actions that may include requiring the supplier to collect additional total coliform samples and chlorine residual disinfectant concentration samples.

(vi) The supplier must complete corrective action by correcting sanitary defects identified during Level 1 or Level 2 assessments.

(A) If the supplier has not completed corrective action for any sanitary defect before the submission of the assessment form, the supplier must complete the corrective action(s) on a Department-approved schedule.

(I) The supplier must notify the Department when each scheduled corrective action is completed.

(b) Level 1 Assessments

(i) If any treatment technique for a Level 1 assessment is triggered, the supplier must complete a Level 1 assessment as soon as practical.

(ii) No later than 30 days after learning of a treatment technique trigger for a Level 1 assessment, the supplier must submit for review a completed Level 1 assessment form.

(A) In the completed form, the supplier must state whether sanitary defects were identified and if so, describe all of the following:

(I) Sanitary defects identified.

(II) The possible cause(s) for the treatment technique trigger.

(III) If sanitary defects are identified, corrective actions completed.

(IV) If sanitary defects are identified, a proposed schedule for any corrective actions not already completed.

(iii) If the Department reviews the Level 1 assessment form and determines that the assessment was not sufficient or the assessment form is not complete, the Department shall consult with the supplier.

(A) If the Department requires revisions after consultation, the supplier must submit a revised assessment form to the Department on an agreed-upon date no later than 30 days from the date of the consultation.

(iv) Upon completion and submission of the assessment form by the supplier, the Department shall determine if the supplier identified the possible cause(s) for the treatment technique trigger.

(A) If the supplier identified the possible cause(s) for the treatment technique trigger, the Department shall determine if the supplier corrected the problem or included a Department-approved schedule for correcting the problem.

(v) For systems operating under a disinfection waiver, the supplier must distribute Tier 2 public notice as specified in 11.33 if a treatment technique for a Level 1 assessment is triggered.

(c) Level 2 Assessments

(i) If any treatment technique for a Level 2 assessment is triggered, the supplier must ensure that a Level 2 assessment is conducted as soon as practical.

- (A) The supplier must ensure that the Level 2 assessment is completed by the Department or Department-approved party.
- (ii) No later than 30 days after learning of a Level 2 treatment technique trigger exceedance, the supplier must submit for review a completed Level 2 assessment form.
 - (A) The supplier must state whether sanitary defects were identified and if so, describe all of the following:
 - (I) Sanitary defects identified.
 - (II) The possible cause(s) for the Level 2 treatment technique trigger.
 - (III) If sanitary defects are identified, corrective actions completed.
 - (IV) If sanitary defects are identified, a proposed schedule for any corrective actions not already completed.
- (iii) If the Department reviews the Level 2 assessment form and determines that the assessment was not sufficient or the assessment form is not complete, the Department shall consult with the supplier.
 - (A) If the Department requires revisions after consultation, the supplier must submit a revised assessment form to the Department on an agreed-upon schedule no later than 30 days from the date of the consultation.
- (iv) Upon completion and submission of the assessment form by the supplier, the Department shall determine if the supplier identified the possible cause(s) for the treatment technique trigger.
 - (A) If the supplier identified the possible cause(s) for the treatment technique trigger, the Department shall determine if the supplier corrected the problem or included a Department-approved schedule for correcting the problem.

11.16(11) Compliance Determination for the *E. coli* MCL

To determine if an *E. coli* MCL violation has occurred, the supplier must include the results of all routine and repeat samples collected in the monitoring period under 11.16(6) and 11.16(7).

11.16(12) Violations for the Revised Total Coliform Rule

- (a) The following constitute *E. coli* MCL violations:
 - (i) A repeat sample is *E. coli*-positive following a total coliform-positive routine sample.
 - (ii) A repeat sample is total coliform-positive following an *E. coli*-positive routine sample.
 - (iii) The supplier fails to collect all required repeat samples following an *E. coli*-positive routine sample.
 - (iv) The supplier fails to analyze a total coliform-positive repeat sample for *E. coli*.
- (b) The following constitute treatment technique violations:

- (i) A treatment technique was triggered and the supplier failed to conduct the required assessment or corrective action(s) as specified in 11.16(10).
- (ii) For seasonal systems, the supplier fails to complete Department-approved start-up procedures before supplying water to the public.

11.16(13) Response to Violations of the Revised Total Coliform Rule

- (a) In the event of an *E. coli* MCL violation, the supplier must:
 - (i) Notify the Department no later than the end of the day that the supplier learns of the violation.
 - (A) If the supplier learns of the violation after the Department is closed, the supplier must contact the Department's after-hours phone line.
 - (ii) Distribute Tier 1 public notice as specified in 11.33.
- (b) In the event of a treatment technique violation, the supplier must:
 - (i) Notify the Department no later than the end of the next business day after the supplier learns of the violation.
 - (ii) Distribute Tier 2 public notice as specified in 11.33.

11.17 TOTAL COLIFORM RULE

11.17(1) Applicability and Definitions

- (a) For all public water systems, the supplier must comply with the requirements specified in this rule until March 31, 2016.
 - (i) The supplier must complete all requirements specified in this rule that are initiated by a total coliform-positive sample collected before April 1, 2016.
- (b) "CONFLUENT GROWTH" means, in the context of bacterial testing, a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion thereof, in which bacterial colonies are not discrete.
- (c) "TOO NUMEROUS TO COUNT" means that the total number of bacterial colonies exceeds 200 on a 47-millimeter (mm) diameter membrane filter used for coliform detection.

11.17(2) MCLs for Microbial Contaminants

- (a) The microbial contaminant MCLs are as follows:

TABLE 11.17-I MCLs FOR MICROBIAL CONTAMINANTS		
Contaminant	Total number of samples collected	MCL
Total coliforms	The supplier collects less than (<) 40 samples per month	No more than one sample collected during a month is total coliform-positive
	The supplier collects greater than or	No more than 5.0 percent of all the

	equal to ($\geq$) 40 samples per month	samples collected during a month are total coliform-positive
Fecal coliform or <i>E. coli</i> repeat sample	.	Absent
Total coliform-positive repeat sample following a fecal coliform-positive or <i>E. coli</i> -positive routine sample	.	Absent

- (b) The BATs for achieving compliance with the MCLs for microbial contaminants are specified in 40 CFR 141.63(e) as amended ~~July 1, 2013~~ July 1, 2014.

11.17(3) Sampling Requirements for Total Coliform

(a) General Sampling Requirements for Total Coliform

- (i) To determine compliance with the MCL for microbial contaminants, the supplier must collect total coliform samples at locations that are representative of water throughout the distribution system and at regular time intervals throughout the month.
 - (A) For groundwater systems that supply less than or equal to ($\leq$) 4,900 people, the supplier may collect all required samples on a single day if the samples are collected from different locations.
- (ii) The supplier must maintain a written individual rule sampling plan identifying the total coliform sample locations as part of the monitoring plan as specified in 11.5.
 - (A) The Department may review the individual rule sampling plan and revise it as necessary.

(b) Routine Sampling Requirements for Total Coliform

- (i) The supplier must collect the number of routine total coliform samples specified in Table 11.17-II each month, except:
 - (A) For non-community water systems using only groundwater sources that supply less than or equal to ($\leq$) 1,000 people, the supplier must collect one total coliform sample during each quarter that water is supplied to the public.
 - (I) If the system is reclassified as a surface water system, the supplier must collect the number of total coliform samples specified in Table 11.17-II each month beginning with the month following written Department-determination of the reclassification.

TABLE 11.17-II NUMBER OF ROUTINE TOTAL COLIFORM SAMPLES REQUIRED PER MONITORING PERIOD			
<u>Population supplied</u>	<u>Minimum number of samples required</u>	<u>Population supplied</u>	<u>Minimum number of samples required</u>
25 to 1,000 ¹	1	59,001 to 70,000	70
1,001 to 2,500	2	70,001 to 83,000	80

2,501 to 3,300	3	83,001 to 96,000	90
3,301 to 4,100	4	96,001 to 130,000	100
4,101 to 4,900	5	130,001 to 220,000	120
4,901 to 5,800	6	220,001 to 320,000	150
5,801 to 6,700	7	320,001 to 450,000	180
6,701 to 7,600	8	450,001 to 600,000	210
7,601 to 8,500	9	600,001 to 780,000	240
8,501 to 12,900	10	780,001 to 970,000	270
12,901 to 17,200	15	970,001 to 1,230,000	300
17,201 to 21,500	20	1,230,001 to 1,520,000	330
21,501 to 25,000	25	1,520,001 to 1,850,000	360
25,001 to 33,000	30	1,850,001 to 2,270,000	390
33,001 to 41,000	40	2,270,001 to 3,020,000	420
41,001 to 50,000	50	3,020,001 to 3,960,000	450
50,001 to 59,000	60	3,960,001 or more	480

1 Includes systems that have greater than or equal to ($\geq$) 15 service connections, but supply less than ($<$) 25 people.

- (ii) For a non-community water system that is not open year round, the supplier must collect a total coliform sample at least 10 days before opening for the season.
- (iii) For hand-pumped wells, the supplier must collect a total coliform sample from the hand-pumped well each month that it supplies water to the public.
- (iv) For public water systems that haul water, the water hauler must collect at least one total coliform sample from the outlet port of each tank or container each month that the tank or container is used to supply water to the public.
- (iv) If the supplier collects special purpose samples (e.g., samples collected to determine whether disinfection practices are sufficient following pipe placement, replacement, or repair), the Department will not consider these as routine samples and will not use the sample results to determine compliance with the MCLs.

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11.18 **NITRATE AND NITRITE RULE**

11.18(1) **Applicability**

For all public water systems, the supplier must comply with the requirements specified in this rule.

11.18(2) **MCL Requirements for Nitrate and Nitrite**

- (a) The nitrate and nitrite MCLs are as follows:

TABLE 11.18-I NITRATE AND NITRITE CHEMICALS MCLs

<u>Chemical</u>	<u>MCL (mg/L)</u>
Nitrate	10 (as Nitrogen)
Nitrite	1 (as Nitrogen)
Total Nitrate and Nitrite	10 (as Nitrogen)

(b) The cited detection limits for nitrate and nitrite are specified in 40 CFR 141.23(a)(4)(i) as amended ~~July 1, 2013~~ July 1, 2014.

(c) The BATs for achieving compliance with the MCLs for nitrate and nitrite are specified in 40 CFR 141.62(c) as amended ~~July 1, 2013~~ July 1, 2014.

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11.19 INORGANIC CHEMICALS RULE

11.19(1) Applicability and Definitions

(a) For all community and non-transient, non-community water systems, the supplier must comply with the requirements specified in this rule.

(i) For non-transient, non-community water systems, the supplier is required to comply with the sampling requirements for fluoride but is not required to comply with the fluoride MCL unless the Department determines that complying with the MCL is necessary to protect public health.

(ii) For transient, non-community water systems, the supplier may be required to comply with the fluoride MCL if the Department determines that complying with the MCL is necessary to protect public health.

(b) For the purpose of this rule, "INORGANIC CHEMICALS" means all the chemicals listed in Table 11.19-I.

11.19(2) MCL Requirements for Inorganic Chemicals

(a) The inorganic chemical MCLs are as follows:

TABLE 11.19-I INORGANIC CHEMICAL MCLs	
<u>Chemical</u>	<u>MCL (mg/L)</u>
Antimony	0.006
Arsenic	0.010
Asbestos	7 Million Fibers/liter (Longer than 10 µm)
Barium	2
Beryllium	0.004
Cadmium	0.005
Chromium	0.1
Cyanide (as free Cyanide)	0.2
Fluoride	4.0 ¹

Mercury	0.002
Nickel	N/A ²
Selenium	0.05
Thallium	0.002

1 This is the primary MCL for fluoride. Fluoride also has a secondary MCL of 2.0 mg/L.

2 Nickel has no MCL. The supplier must sample for nickel as specified in 11.19(3)(b).

(b) The cited detection limits for inorganic chemical analysis are specified in 40 CFR 141.23(a)(4)(i) as amended ~~July 1, 2013~~ July 1, 2014.

(c) The BATs for achieving compliance with the MCLs for inorganic chemicals, with the exception of fluoride, are specified in 40 CFR 141.62(c) as amended ~~July 1, 2013~~ July 1, 2014.

(d) For systems supplying less than or equal to ($\leq$) 10,000 people, the SSCTs for achieving compliance with the MCL for arsenic are specified in 40 CFR 141.62(d) as amended ~~July 1, 2013~~ July 1, 2014.

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11.21 ORGANIC CHEMICALS RULE

11.21(1) Applicability and Definitions

- (a) For all community and non-transient, non-community water systems, the supplier must comply with the requirements specified in this rule.
- (b) "SYNTHETIC ORGANIC CHEMICALS" or "SOCs" mean all of the chemicals specified in Table 11.21-II.
- (c) "VOLATILE ORGANIC CHEMICALS" or "VOCs" mean all of the chemicals specified in Table 11.21-I.

11.21(2) MCL Requirements for Organic Chemicals

(a) MCL Requirements for VOCs

- (i) The VOC MCLs and cited detection limits are as follows:

TABLE 11.21-I VOC MCLs AND DETECTION LIMITS			
<u>CAS No.</u>	<u>Chemical</u>	<u>MCL (mg/L)</u>	<u>Cited detection limit (mg/L)</u>
75-01-4	Vinyl chloride	0.002	0.0005
71-43-2	Benzene	0.005	0.0005
56-23-5	Carbon tetrachloride	0.005	0.0005
107-06-2	1,2-Dichloroethane	0.005	0.0005
79-01-6	Trichloroethylene	0.005	0.0005
106-46-7	Para-Dichlorobenzene	0.075	0.0005

75-35-4	1,1-Dichloroethylene	0.007	0.0005
71-55-6	1,1,1-Trichloroethane	0.2	0.0005
156-59-2	cis-1,2 Dichloroethylene	0.07	0.0005
78-87-5	1,2-Dichloropropane	0.005	0.0005
100-41-4	Ethylbenzene	0.7	0.0005
108-90-7	Monochlorobenzene	0.1	0.0005
95-50-1	o-Dichlorobenzene	0.6	0.0005
100-42-5	Styrene	0.1	0.0005
127-18-4	Tetrachloroethylene	0.005	0.0005
108-88-3	Toluene	1	0.0005
156-60-5	Trans-1,2 Dichloroethylene	0.1	0.0005
1330-20-7	Xylenes (total)	10	0.0005
75-09-2	Dichloromethane (methylene chloride)	0.005	0.0005
120-82-1	1,2,4-Trichlorobenzene	0.07	0.0005
79-00-5	1,1,2-Trichloroethane	0.005	0.0005

- (ii) The BATs for achieving compliance with the MCLs for VOCs are specified in 40 CFR 141.61(b) as amended ~~July 1, 2013~~ July 1, 2014.

(b) MCL Requirements for SOCs

- (i) The SOC MCLs and cited detection limits are as follows:

TABLE 11.21-II SOC MCLs AND DETECTION LIMITS			
<u>CAS No.</u>	<u>Chemical</u>	<u>MCL (mg/L)</u>	<u>Cited detection limit (mg/L)</u>
15972-60-8	Alachlor	0.002	0.0002
116-06-3	Aldicarb ¹	0.003	0.0005
1646-87-3	Aldicarb sulfoxide ¹	0.004	0.0005
~~1646-87-4~~ 1646-88-4	Aldicarb sulfone ¹	0.002	0.0008
1912-24-9	Atrazine	0.003	0.0001
1563-66-2	Carbofuran	0.04	0.0009
57-74-9	Chlordane	0.002	0.0002
96-12-8	Dibromochloropropane	0.0002	0.00002
94-75-7	2,4-D	0.07	0.0001
106-93-4	Ethylene dibromide	0.00005	0.00001
76-44-8	Heptachlor	0.0004	0.00004
1024-57-3	Heptachlor epoxide	0.0002	0.00002

58-89-9	Lindane	0.0002	0.00002
72-43-5	Methoxychlor	0.04	0.0001
1336-36-3	Polychlorinated biphenyls	0.0005	0.0001
87-86-5	Pentachlorophenol	0.001	0.00004
8001-35-2	Toxaphene	0.003	0.001
93-72-1	2,4,5-TP (Silvex)	0.05	0.0002
50-32-8	Benzopyrene	0.0002	0.00002
75-99-0	Dalapon	0.2	0.001
103-23-1	Di(2-ethylhexyl)adipate	0.4	0.0006
117-81-7	Di(2-ethylhexyl)phthalate	0.006	0.0006
88-85-7	Dinoseb	0.007	0.0002
85-00-7	Diquat	0.02	0.0004
145-73-3	Endothall	0.1	0.009
72-20-8	Endrin	0.002	0.00001
1071-53-6	Glyphosate	0.7	0.006
118-74-1	Hexachlorobenzene	0.001	0.0001
77-47-4	Hexachlorocyclopentadiene	0.05	0.0001
23135-22-0	Oxamyl (Vydate)	0.2	0.002
1918-02-1	Picloram	0.5	0.0001
122-34-9	Simazine	0.004	0.00007
1746-01-6	2,3,7,8-TCDD (Dioxin)	3×10^{-8}	0.000000005

¹ Aldicarb, aldicarb sulfoxide, and aldicarb sulfone are currently under “administrative stay” as a result of litigation. They are therefore treated as unregulated contaminants. The supplier is not required to sample for them or comply with their MCLs.

- (ii) The BATs for achieving compliance with the MCLs for SOC's are specified in 40 CFR 141.61(b) as amended ~~July 1, 2013~~ July 1, 2014.

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11.22 RADIONUCLIDES RULE

11.22(1) Applicability and Definitions

- (a) For all community water systems, the supplier must comply with the requirements specified in this rule.
- (i) The supplier is not required to comply with the beta particle and photon radioactivity requirements, unless the Department determines the system is vulnerable to beta particle and photon radioactivity contamination or the system is using sources contaminated by effluents from nuclear facilities.
- (b) “BETA PARTICLE AND PHOTON RADIOACTIVITY” means the radiation from a group of 179 man-made radionuclides, including tritium, strontium-90, and iodine-131, that emit beta and

photon radiation. These man-made beta particle and photon emitters are listed in the *Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure*, NBS Handbook 69, except the daughter products of thorium-232, uranium-235 and uranium-238.

- (c) "GROSS ALPHA PARTICLE ACTIVITY" means the radiation from all radionuclides emitting alpha radiation, including radium-226, excluding radon and uranium.
- (d) "GROSS BETA PARTICLE ACTIVITY" means the radiation from all radionuclides that emit beta radiation. This measurement is used as part of the calculation to determine the beta particle and photon radioactivity.
- (e) "PICOCURIE" or "pCi" means the quantity of radioactive material producing 2.22 nuclear transformations per minute.
- (f) "REM" means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A "millirem (mrem)" is 1/1000 of a rem.

11.22(2) **MCL Requirements for Radionuclides**

- (a) The radionuclide MCLs are as follows:

TABLE 11.22-I RADIONUCLIDE MCLs	
<u>Contaminant</u>	<u>MCL</u>
Gross alpha particle activity (including radium-226, excluding radon ¹ and uranium)	15 pCi/L
Combined radium-226 and radium-228 ²	5 pCi/L
Uranium ³	30 µg/L
Beta particle and photon radioactivity ⁴	4 mrem/yr

1 Radon is not currently regulated in drinking water.

2 Radium-228 is an individual alpha particle activity emitter, however it is not included in the gross alpha particle activity and is measured separately. Radium-228 sample results are combined with radium-226 sample results for the purposes of determining compliance.

3 Uranium is an individual alpha particle activity emitter, however it is not included in the gross alpha particle activity and is measured separately. If uranium is determined by mass, a 0.67 pCi/µg of uranium conversion factor must be used. This conversion factor is based on the 1:1 activity ratio of U-234 and U-238 that is characteristic of naturally occurring uranium.

4 The average annual concentration of beta particle and photon radioactivity from man-made radionuclides in drinking water must not produce an annual dose equivalent to the total body or any internal organ greater than (>) 4 mrem/yr.

- (b) The cited detection limits for radionuclides are specified in 40 CFR 141.25(c) as amended ~~July 1, 2013~~ July 1, 2014.
- (c) The BATs for achieving compliance with the MCLs for radionuclides are specified in 40 CFR 141.66(g) as amended ~~July 1, 2013~~ July 1, 2014.
- (d) The SSCTs for systems supplying less than or equal to (≤) 10,000 people for achieving compliance with the MCL for radionuclides are specified in 40 CFR 141.66(h) as amended ~~July 1, 2013~~ July 1, 2014.

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11.23 **MAXIMUM RESIDUAL DISINFECTANT LEVELS RULE**

11.23(1) Chlorine and Chloramines MRDL

(a) Applicability for Chlorine and Chloramines MRDL

For all community and non-transient, non-community water systems that supply water treated with chlorine or chloramines, the supplier must comply with the requirements specified in this section, 11.23(1).

(b) MRDL Requirements for Chlorine and Chloramines

- (i) The chlorine and chloramines MRDLs are as follows:

TABLE 11.23-I MRDLs FOR CHLORINE AND CHLORAMINES	
Disinfectant	MRDL (mg/L as Cl ₂)
Chlorine	4.0
Chloramines	4.0

- (ii) The BATs for achieving compliance with the MRDLs for chlorine and chloramines are specified in 40 CFR 141.65(c) as amended ~~July 1, 2013~~ July 1, 2014.
- (iii) To protect public health, the supplier may increase residual disinfectant concentration in the distribution system to a level greater than (>) the MRDL for a time necessary to address specific microbiological contamination problems caused by circumstances including but not limited to:
- (A) Distribution system line breaks.
 - (B) Storm run-off events.
 - (C) Source water contamination events.
 - (D) ~~Cross-connection events~~ Backflow contamination events.

(c) Monitoring Requirements for Chlorine and Chloramines

- (i) To determine compliance with the MRDLs for chlorine and/or chloramines, the supplier must monitor the residual disinfectant concentration in the distribution system at the same time and at the same sampling locations that total coliform samples are collected under 11.17(3) as identified in the monitoring plan developed under 11.5(3)(a)(v) until March 31, 2016, and under 11.16(6-7) beginning April 1, 2016.
- (A) The supplier may use the results of samples collected under 11.8(3)(c)(i)(B) or 11.11(2)(c)(i)(B) to satisfy both the requirements specified in this section, 11.23(1), and 11.8(3)(c)(i)(B) or 11.11(2)(c)(i)(B).

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11.23(2) Chlorine Dioxide MRDL

(a) Applicability for Chlorine Dioxide MRDL

For all systems that use chlorine dioxide for disinfection or oxidation, the supplier must comply with the requirements specified in this section, 11.23(2), when using chlorine dioxide.

(b) MRDL Requirements for Chlorine Dioxide

(i) The chlorine dioxide MRDL is as follows:

TABLE 11.23-II MRDL FOR CHLORINE DIOXIDE	
Disinfectant	MRDL (mg/L as ClO ₂)
Chlorine dioxide	0.8

(ii) The BATs for achieving compliance with the MRDLs for chlorine dioxide are specified in 40 CFR 141.65(c) as amended ~~July 1, 2013~~ July 1, 2014.

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11.25 DISINFECTION BYPRODUCTS RULE

11.25(1) Total Trihalomethanes (TTHM) and Haloacetic Acids (HAA5)

(a) Applicability and Definitions for TTHM and HAA5

- (i) For all community water systems and non-transient, non-community water systems that supply water treated with a primary or residual disinfectant other than ultraviolet light, the supplier must comply with the requirements specified in this section, 11.25(1).
- (ii) "DUAL SAMPLE SET" means a set of two samples collected at the same time and same location for the purposes of determining compliance with the TTHM and HAA5 MCLs. One sample is analyzed for TTHM and the other is analyzed for HAA5.
- (iii) "INITIAL DISTRIBUTION SYSTEM EVALUATION REPORT" or "IDSE REPORT" means a report resulting from a historical requirement where the supplier identified sampling locations that represent high TTHM and HAA5 concentrations in the distribution system.
 - (A) IDSE Reports include:
 - (I) Historical TTHM and HAA5 individual sampling results and LRAAs;
 - (II) A schematic of the distribution system;
 - (III) The population supplied;
 - (IV) System type; and
 - (V) A recommendation and explanation of sampling timing and locations that will represent the highest TTHM and HAA5 concentrations.
 - (a) The supplier must include the peak historical month for TTHM and HAA5 concentrations in the recommendation, unless the Department approved another month to collect samples.
 - (B) For new systems or reclassified systems that now meet the applicability of this rule, the supplier is not required to complete an IDSE Report.
- (iv) "HALOACETIC ACIDS" or "HAA5" means the sum of the concentrations in mg/L of the five regulated haloacetic acid compounds (monochloroacetic acid, dichloroacetic acid,

trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid), rounded to two significant figures after addition.

- (v) “TOTAL TRIHALOMETHANES” or “TTHM” means the sum of the concentrations in mg/L of the four regulated trihalomethane compounds (trichloromethane [chloroform], dibromochloromethane, bromodichloromethane and tribromomethane [bromoform]), rounded to two significant figures after addition.

(b) MCL Requirements for TTHM and HAA5

- (i) The TTHM and HAA5 MCLs are as follows:

TABLE 11.25-I MCLs FOR TTHM AND HAA5	
Disinfection byproduct	MCL (mg/L)
Total trihalomethanes (TTHM)	0.080
Haloacetic acids (five) (HAA5)	0.060

- (ii) The BATs for achieving compliance with the MCLs for TTHM and HAA5 are specified in 40 CFR 141.64(b)(2)(ii) as amended ~~July 1, 2013~~ July 1, 2014.
- (iii) The BATs for achieving compliance with the MCLs for TTHM and HAA5 for consecutive systems which only apply to the disinfected water that the consecutive system buys or receives are specified in 40 CFR 141.64(b)(2)(iii) as amended ~~July 1, 2013~~ July 1, 2014.

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11.25(2) Chlorite

(a) Applicability and Definitions for Chlorite

- (i) For all community and non-transient, non-community water systems that use chlorine dioxide for disinfection or oxidation, the supplier must comply with the requirements specified in this section, 11.25(2), when using chlorine dioxide.
- (ii) “THREE-SAMPLE SET” means that one chlorite sample is collected at each of the following locations:
 - (A) As close to the first customer as possible;
 - (B) At a location representative of average residence time; and
 - (C) At a location representative of maximum residence time.

(b) MCL Requirement for Chlorite

- (i) The chlorite MCL is as follows:

TABLE 11.25-IV MCL FOR CHLORITE	
Disinfection byproduct	MCL (mg/L)
Chlorite	1.0

- (ii) The BATs for achieving compliance with the MCL for chlorite are specified in 40 CFR 141.64(b)(1)(ii) as amended ~~July 1, 2013~~ July 1, 2014.

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11.25(3) Bromate

(a) Applicability for Bromate

For all community and non-transient, non-community water systems that use ozone for disinfection or oxidation, the supplier must comply with the requirements specified in this section, 11.25(3), when using ozone.

(b) MCL Requirement for Bromate

- (i) The bromate MCL is as follows:

TABLE 11.25-V MCL FOR BROMATE	
Disinfection byproduct	MCL (mg/L)
Bromate	0.010

- (ii) The BATs for achieving compliance with the MCL for bromate are specified in 40 CFR 141.64(b)(1)(ii) as amended ~~July 1, 2013~~ July 1, 2014.

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11.26(4) Monitoring Requirements for Water Quality Parameters

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(I) Response to a Treatment Technique Violation for Water Quality Parameters

- (i) In the event of a treatment technique violation, the supplier must:
- (A) Notify the Department no later than 48 hours after the violation occurs.
 - (B) Distribute Tier 2 public notice as specified in 11.33.
 - (C) Begin lead and copper tap sampling every six months at the number of sites specified in Table 11.26-IV no later than the six-month compliance period beginning January 1 of the calendar year following the violation.
- (D) Monitor water quality parameters as specified in ~~26.4.6 or 26.4.7~~ 11.26(4)(f) or 11.26(4)(g).

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11.28 STORAGE TANK RULE

11.28(1) Applicability and Definitions

- (a) For all public water systems that use finished water storage tanks, the supplier must comply with the requirements specified in this rule beginning April 1, 2016.

- (b) “COMPREHENSIVE INSPECTION” means an internal and external storage tank inspection to identify sanitary defects that covers all aspects of the condition of the storage tank including but not limited to sanitary, structural, and coating systems conditions, as well as security and safety concerns.
- (c) “FINISHED WATER STORAGE TANK” means a tank or vessel owned by the supplier that is located downstream of the entry point and is not pressurized at the air water interface. Pressurized storage tanks are not included in the definition of finished water storage tanks.
- (d) “PERIODIC INSPECTION” means a visual external storage tank inspection that is typically performed by the supplier to identify evident sanitary defects (e.g., lack of screens on vents).

11.28(2) Written Plan for Finished Water Storage Tank Inspections Requirements

- (a) The supplier must develop and maintain a written plan for finished water storage tank inspections which must include all of the following:
 - (i) An inventory of finished water storage tank(s) including all of the following information for each finished water storage tank:
 - (A) Tank type and construction materials (e.g., elevated, buried, etc.).
 - (B) Volume in gallons.
 - (C) Approximate dimensions.
 - (D) Location.
 - (E) Number of inlets, outlets, overflows, hatches, and vents.
 - (F) Coating systems.
 - (G) Date put in service.
 - (H) Rehabilitation and major maintenance history.
 - (ii) The methods for performing and documenting periodic and comprehensive inspections for each finished water storage tank including identification of qualified personnel to perform periodic and comprehensive inspections.
 - (iii) The schedule for performing periodic and comprehensive inspections for each finished water storage tank.
 - (A) Periodic inspections of each finished water storage tank must be scheduled at least quarterly or on an alternative schedule.
 - (B) Comprehensive inspections of each finished water storage tank must be scheduled at least every five years or on an alternative schedule.
 - (C) If the supplier schedules periodic or comprehensive inspections on an alternative schedule, the supplier must provide justification for the alternative schedule in the written plan for finished water storage tank inspections.
 - (iv) The timelines for correcting typical storage tank sanitary defects that the supplier will use to develop corrective action schedules. The supplier must at least address timelines for

the following typical sanitary defects: improper screening or protection on vents and overflows, inadequate hatches, and unprotected openings.

- (b) The written plan for finished water storage tank inspections is subject to Department review and revision.

11.28(3) Treatment Technique Requirements for Storage Tanks

- (a) The supplier is prohibited from using uncovered finished water storage tanks.
- (i) "UNCOVERED FINISHED WATER STORAGE TANK" means a tank, reservoir, or other facility used to store water that will undergo no further treatment except residual disinfection and that is open to the atmosphere.
- (b) The supplier must operate and maintain finished water storage tanks so that they are free of sanitary defects.
- (c) The supplier must perform periodic and comprehensive inspections of each finished water storage tank.
- (d) The supplier must implement the written plan for finished water storage tank inspections.
- (e) If any sanitary defects are identified during a periodic or comprehensive inspection, the supplier must develop and implement a corrective action schedule for correcting each sanitary defect.
- (f) The supplier must develop an inspection summary no later than 60 days after each completed inspection that includes all of the following information:
- (i) The date and type of inspection performed.
- (ii) Inspection findings and tank conditions.
- (iii) Any sanitary defects identified during the inspection.
- (iv) If sanitary defects are identified, the corrective action schedule for correcting sanitary defects.
- (v) If sanitary defects are identified, the corrective actions completed and the associated completion dates.

11.28(4) Violations of the Storage Tank Rule

- (a) If the supplier fails to develop or maintain an acceptable written plan for finished water storage tank inspections, a storage tank rule violation occurs.
- (b) The following constitute treatment technique violations:
- (i) The supplier uses an uncovered finished water storage tank.
- (ii) The supplier fails to perform or document a periodic or comprehensive inspection.
- (iii) The supplier fails to implement the written plan for finished water storage tank inspections.

- (iv) The supplier fails to complete or document corrective action or follow a corrective action schedule for any sanitary defects identified during a periodic or comprehensive inspection.

11.28(5) Response to Violations of the Storage Tank Rule

- (a) In the event of a storage tank rule violation, the supplier must:
- (i) Notify the department no later than 48 hours after the violation occurs.
 - (ii) Distribute Tier 3 public notice as specified in 11.33.
- (b) In the event of a treatment technique violation, the supplier must:
- (i) Notify the Department no later than 48 hours after the violation occurs.
 - (ii) Distribute Tier 2 public notice as specified in 11.33.

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11.33 PUBLIC NOTIFICATION RULE

11.33(1) Applicability and Definitions

- (a) For all public water systems, the supplier must comply with the public notice requirements specified in this rule for the violations or situations specified in Table 11.33-I.

TABLE 11.33-I VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING A PUBLIC NOTICE	
CPDWR violations	Failure to comply with an MCL or MRDL
	Failure to comply with a treatment technique requirement
	Failure to perform required water quality monitoring
	Failure to comply with required testing procedures
Variance or exemption under 11.43	Operation under a variance or an exemption
	Failure to comply with the terms and schedule of any variance or exemption
Other situations requiring public notice	Occurrence of a waterborne disease outbreak or other waterborne emergency
	Exceedance of the elevated nitrate MCL by non-community water systems, when granted Department approval as specified in 11.18(2)(d)
	Exceedance of the secondary maximum contaminant level for fluoride
	Availability of unregulated contaminant monitoring data
	Repeated failure to sample the source water for <i>Cryptosporidium</i>
	Failure to determine bin classification
	Groundwater systems with a waiver from disinfection requirements under 11.13
	Significant deficiencies identified at non-community groundwater systems
	Other violations and situations determined by the Department to require a public notice

- (b) Public notice requirements are divided into three tiers based on the seriousness of the violation or situation and any potential public health effects. Each tier has different requirements. The tiers are as follows:
- (i) “TIER 1 PUBLIC NOTICE” means the public notice required for violations and situations with significant potential to have serious adverse effects on public health as a result of short-term exposure.
 - (ii) “TIER 2 PUBLIC NOTICE” means the public notice required for violations and situations with potential to have serious adverse effects on public health.
 - (iii) “TIER 3 PUBLIC NOTICE” means the public notice required for all other violations and situations not included in Tier 1 or Tier 2.

11.33(2) Tier 1 Public Notice Form, Manner, and Frequency of Notice

- (a) The supplier must distribute Tier 1 public notice for the following violations or situations specified in Table 11.33-II:

TABLE 11.33-II VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING TIER 1 PUBLIC NOTICE	
Violation or Situation Description	As specified in
Violation of the total coliform MCL where fecal coliforms or <i>E. coli</i> are present in the distribution system ¹	11.17(9)(a)
Failure to test for fecal coliforms or <i>E. coli</i> following a total coliform-positive repeat sample ¹	11.17(10)(a)
Violation of the <i>E. coli</i> MCL ²	11.16(12)(a)
Violation of the nitrate, nitrite, or total nitrate and nitrite MCL	11.18(5)(a)
Failure to collect a confirmation sample no later than 24 hours after a nitrate or nitrite sample result greater than (>) the MCL	11.18(3)(b)(vii) and 11.18(3)(c)(v)
Exceedance of the elevated nitrate MCL by non-community water systems, permitted to exceed the MCL by the Department	11.18(2)(d)
Acute violation of the chlorine dioxide MRDL	11.23(2)(e)(i)(A)
Failure to collect the required chlorine dioxide samples in the distribution system	11.23(2)(e)(i)(B)
Violation of the maximum turbidity limit treatment technique requirement, as required by the Department after consultation	11.8(2)(d)(i)(B)
Occurrence of a waterborne disease outbreak or other waterborne emergency (e.g. failure or significant interruption in key water treatment processes, a natural disaster that disrupts the water supply or distribution system, or a chemical spill or unexpected loading of possible pathogens into the source water that significantly increases the potential for drinking water contamination)	.
For groundwater systems, presence of <i>E. coli</i> , enterococci, or coliphage in a source water sample	11.11(4)(d)(i) and 11.11(5)(c)(i)
Other violations or situations with significant potential to have serious adverse effects on public health as a result of short-term exposure, as determined by the Department either in <i>Colorado Primary Drinking Water Regulations</i> or on a case-by-case basis	.

1 Effective until March 31, 2016.

2 Effective beginning April 1, 2016.

(b) For Tier 1 public notice the supplier must:

- (i) Distribute public notice as soon as possible, but no later than 24 hours after learning of the violation or situation.
- (ii) Begin consultation with the Department as soon as possible, but no later than 24 hours after learning of the violation or situation, to determine additional public notice requirements.
 - (A) The supplier must comply with any additional public notification requirements set up as a result of the consultation with the Department (e.g., the timing, form, manner, frequency, and content of repeat notices, if any, and other actions to reach all consumers).
- (iii) Distribute the public notice in a form and manner that fits the specific situation and is designed to reach residential, transient, and non-transient consumers. The supplier must use one or more of the following delivery methods:
 - (A) Appropriate broadcast media, including radio, television and a phone call to each consumer using a reverse 911 system, where available.
 - (B) Hand delivery of the notice to consumers.
 - (C) Another direct delivery method approved, in writing, by the Department.

(c) The Department may also require posting of the public notice in conspicuous locations throughout the area supplied by the system.

11.33(3) Tier 2 Public Notice Form, Manner, and Frequency of Notice

(a) The supplier must distribute Tier 2 public notice for the following violations or situations specified in Table 11.33-III:

TABLE 11.33-III VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING TIER 2 PUBLIC NOTICE	
<u>Violation or Situation Description</u>	<u>As specified in</u>
Violations of the MCL, MRDL, or treatment technique requirements, except where Tier 1 public notice is required or where the Department determines that Tier 1 public notice is required	.
Violations of the monitoring and testing procedure requirements, if the Department determines that Tier 2 public notice is required instead of Tier 3 public notice, considering potential public health impacts and the persistence of the violation	.
Failure to comply with the terms and schedule of any variance or exemption	11.43
For groundwater systems, failure to maintain at least 4-log treatment of viruses at the entry point	11.11(3)(e)(i)
Failure to complete corrective action	11.38(4)(a), 11.11(6)(c)(i)

- (b) For Tier 2 public notice the supplier must:
- (i) Distribute public notice as soon as possible, but no later than 30 days after learning of the violation or situation.
 - (A) If the supplier posts the public notice, the notice must remain in place for as long as the violation or situation persists or for seven days, whichever is longer.
 - (B) The Department may grant a written extension for the initial public notice of up to three months from the time the supplier learns of the violation.
 - (I) The Department shall not grant an extension to the 30-day deadline for any unresolved violation(s) or allow across-the-board extensions for violations or situations requiring Tier 2 public notice.
 - (ii) Repeat the distribution of the public notice every three months as long as the violation or situation persists.
 - (A) Based on the circumstances, the Department may require a different repeat notice frequency.
 - (I) In no case will the repeat public notice frequency be less than annual.
 - (II) The Department shall not allow a less frequent repeat public notice for any of the following situations:
 - (a) Until March 31, 2016, an MCL violation under 11.17.
 - (b) Beginning April 1, 2016, an MCL or treatment technique violation under 11.16.
 - (c) A treatment technique violation under 11.8.
 - (d) Across-the-board reductions for other ongoing violations requiring a Tier 2 repeat public notice.
 - ~~(II) The Department shall not allow a less frequent repeat public notice for an MCL violation under 11.17, or a treatment technique violation under 11.8, or across-the-board reductions in the repeat public notice frequency for other ongoing violations requiring a Tier 2 repeat public notice.~~
 - (III) If the Department allows repeat public notices to be distributed less frequently than once every three months, the decision must be documented in writing.
 - (iii) Distribute the public notice and any repeat public notices in a form and manner that fits the specific situation and is designed to reach residential, transient, and non-transient consumers. The supplier must meet all of the following distribution requirements:
 - (A) For community water systems, unless otherwise directed in writing by the Department, the supplier must distribute public notice by:
 - (I) Mail or other direct delivery method to each customer and to other service connections; and

- (II) Any other method designed to reach all other consumers regularly supplied by the system. Such consumers may include those who do not pay water bills or do not have service connection addresses (e.g., house renters, apartment dwellers, university students, nursing home patients, prison inmates, etc.). Other methods may include publication in a local newspaper, delivery of multiple copies for distribution by customers that provide their drinking water to others (e.g., apartment building owners or large private employers), posting in public places supplied by the system or on the Internet, or delivery to community organizations.
- (B) For non-community water systems, unless otherwise directed in writing by the Department, the supplier must distribute public notice by:
 - (I) Posting the notice in conspicuous locations throughout the distribution system frequented by consumers or by mail or direct delivery to each customer and service connection; and
 - (II) Any other method designed to reach all other consumers. Such consumers may include those supplied who may not see a posted notice because the posted notice is not in a location they routinely pass by. Other methods may include publication in a local newspaper or newsletter distributed to customers, use of E-mail to notify employees or students, or delivery of multiple copies in central locations (e.g., community centers).

11.33(4) Tier 3 Public Notice Form, Manner, and Frequency of Notice

- (a) The supplier must distribute Tier 3 public notice for the following violations or situations specified in Table 11.33-IV:

TABLE 11.33-IV VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING TIER 3 PUBLIC NOTICE	
<u>Violation or Situation Description</u>	<u>As specified in</u>
Monitoring <u>and reporting</u> violations, except where a Tier 1 or Tier 2 public notice is required	.
Failure to comply with a testing procedure, except where a Tier 1 or Tier 2 public notice is required	.
Operation under a variance or an exemption	11.43
Availability of unregulated contaminant monitoring results	11.47
Exceedance of the fluoride secondary maximum contaminant level	11.19(7)
<u>Revised Total Coliform Rule recordkeeping violations</u> ¹	<u>11.36(4)(d)</u>

¹ Beginning April 1, 2016.

- (b) For Tier 3 public notice the supplier must:
 - (i) Distribute public notice as soon as possible, but no later than one year after learning of the violation or situation or beginning operation under a variance or an exemption.
 - (A) If the supplier is required to distribute more than one Tier 3 public notice, the supplier may use an annual report detailing all violations and situations that

occurred during the previous 12 months instead of individual Tier 3 public notices, as long as the timing requirements specified in 11.33(4)(b)(i) are met.

- (B) For community water systems, the supplier may use the consumer confidence report (CCR) specified in 11.34 to comply with the Tier 3 public notice requirements if the CCR meets all of the following criteria:
 - (I) The CCR is distributed to customers no later than 12 months after the supplier learns of the violation or situation.
 - (II) The Tier 3 public notice in the CCR complies with the content requirements specified in 11.33(5).
 - (III) The CCR is distributed as specified in 11.33(3)(b)(iii).
- (C) If the supplier posts the public notice, the notice must remain in place for as long as the violation or situation persists or for seven days, whichever is longer.
- (ii) Repeat the distribution of the public notice annually as long as the violation, variance, exemption, or other situation persists.
 - (A) For community water systems, the supplier may use the CCR specified in 11.34 to comply with the repeat Tier 3 public notice requirement if the requirements specified in 11.33(4)(b)(i)(B)(I-III) are met.
- (iii) Distribute the public notice and any repeat public notices as specified in 11.33(3)(b)(iii).

....

TABLE 11.33-V TABLE OF CPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE ¹				
<u>Contaminant</u>	<u>MCL/MRDL/TT violations</u>		<u>Monitoring & testing procedure violations</u>	
	<u>Tier of public notice required</u>	<u>Citation</u>	<u>Tier of public notice required</u>	<u>Citation</u>
<u>Violations of Colorado Primary Drinking Water Regulations²</u>				
Microbiological Contaminants				
Total coliform ³	2	11.17(9)(b)	3	11.17(3)
Fecal coliform/ <i>E. coli</i> ³	1	11.17(9)(a)	1 ^{3d} , 3	11.17(6)
<u>Total coliform (TT violations resulting from failure to conduct assessments or corrective actions, and violations resulting from failure to monitor or report)⁵</u>	<u>2</u>	<u>11.16(12)(b)(i)</u>	<u>3</u>	<u>11.16(6)</u>
<u>Seasonal system failure to follow Department-approved start-up procedures before supplying water to the public or failure to submit certification of completed start-up procedures⁵</u>	<u>2</u>	<u>11.16(12)(b)(ii)</u>	<u>3</u>	<u>11.16(5)(a)</u>
<u><i>E. coli</i> (MCL violation, monitoring violations, and reporting violations)⁵</u>	<u>1</u>	<u>11.16(12)(a)</u>	<u>3</u>	<u>11.16(9)(a-b)</u> <u>11.16(10)(b)(ii)</u> <u>11.16(10)(c)(ii)</u>
<u><i>E. coli</i> (TT violations resulting from failure to conduct Level 2 assessments or corrective action)⁵</u>	<u>2</u>	<u>11.16(12)(b)(i)</u>	<u>N/A</u>	<u>N/A</u>
Turbidity MCL	2	11.8(2)(d)	3	11.8(2)(c)
Turbidity (for TT violations resulting from a single exceedance of maximum allowable turbidity level)	2, 1 ⁴⁶	11.8(2)(d)	3	11.8(2)(c), 11.8(2)(g), 11.46(7)
Surface Water Treatment Rule violations, other than violations resulting from single exceedance of maximum allowable turbidity level (TT)	2	11.8(2)(b)	3	11.8(2)(c), 11.46(7)

Surface Water Treatment Rule: Filter Backwash Recycle Rule	2	11.9(2)	3	11.9(3)
Surface Water Treatment Rule: Enhanced Treatment for <i>Cryptosporidium</i> Rule	2	11.10(3)(c), 11.10(4)(b)	2, 3 ⁶⁷	11.10(2)
Groundwater Rule	2	11.11(2)(d), 11.11(6)(c), 11.11(3)(e)(i), 11.38(4)	3	11.11(2)(c), 11.11(3), 11.11(4), 11.11(5), 11.11(6), 11.38(4)
<u>Disinfectant residual (TT in the distribution system)⁵</u>	<u>2</u>	<u>11.8(3)(d)(i), 11.11(2)(d)(i)</u>	<u>3</u>	<u>11.8(3)(c)(i), 11.11(2)(c)(i)</u>
<u>Disinfectant residual for public water systems that haul water⁵</u>	<u>N/A</u>	<u>N/A</u>	<u>3</u>	<u>11.8(3)(c)(i)(B), 11.11(2)(c)(i)(B), 11.41(2)(b)</u>
Inorganic Chemicals				
Antimony	2	11.19(5)	3	11.19(3)
Arsenic	2	11.19(5)	3	11.19(3)
Asbestos (fibers >10 µm)	2	11.19(5)	3	11.19(3)
Barium	2	11.19(5)	3	11.19(3)
Beryllium	2	11.19(5)	3	11.19(3)
Cadmium	2	11.19(5)	3	11.19(3)
Chromium (total)	2	11.19(5)	3	11.19(3)
Cyanide	2	11.19(5)	3	11.19(3)
Fluoride	2	11.19(5)	3	11.19(3)
Mercury (inorganic)	2	11.19(5)	3	11.19(3)
Nitrate	1	11.18(5)	1 ⁶⁸ , 3	11.18(3)
Nitrite	1	11.18(5)	1 ⁶⁸ , 3	11.18(3)
Total Nitrate and Nitrite	1	11.18(5)	3	11.18(3)
Selenium	2	11.19(5)	3	11.19(3)
Thallium	2	11.19(5)	3	11.19(3)

Lead and Copper Rule				
Lead and Copper Rule (TT)	2	11.26(3)(e), 11.26(4)(k), 11.26(5)(i), 11.26(6)(d), 11.26(7)(f)	3	11.26(2)(d), 11.26(4), 11.26(5)
Synthetic Organic Chemicals (SOCs)				
2,4-D	2	11.21(6)	3	11.21(3)(d)
2,4,5-TP (Silvex)	2	11.21(6)	3	11.21(3)(d)
Alachlor	2	11.21(6)	3	11.21(3)(d)
Atrazine	2	11.21(6)	3	11.21(3)(d)
Benzo(a)pyrene (PAHs)	2	11.21(6)	3	11.21(3)(d)
Carbofuran	2	11.21(6)	3	11.21(3)(d)
Chlordane	2	11.21(6)	3	11.21(3)(d)
Dalapon	2	11.21(6)	3	11.21(3)(d)
Di (2-ethylhexyl) adipate	2	11.21(6)	3	11.21(3)(d)
Di (2-ethylhexyl) phthalate	2	11.21(6)	3	11.21(3)(d)
Dibromochloropropane	2	11.21(6)	3	11.21(3)(d)
Dinoseb	2	11.21(6)	3	11.21(3)(d)
Dioxin (2,3,7,8-TCDD)	2	11.21(6)	3	11.21(3)(d)
Diquat	2	11.21(6)	3	11.21(3)(d)
Endothall	2	11.21(6)	3	11.21(3)(d)
Endrin	2	11.21(6)	3	11.21(3)(d)
Ethylene dibromide	2	11.21(6)	3	11.21(3)(d)
Glyphosate	2	11.21(6)	3	11.21(3)(d)
Heptachlor	2	11.21(6)	3	11.21(3)(d)
Heptachlor epoxide	2	11.21(6)	3	11.21(3)(d)
Hexachlorobenzene	2	11.21(6)	3	11.21(3)(d)

Hexachlorocyclo-pentadiene	2	11.21(6)	3	11.21(3)(d)
Lindane	2	11.21(6)	3	11.21(3)(d)
Methoxychlor	2	11.21(6)	3	11.21(3)(d)
Oxamyl (Vydate)	2	11.21(6)	3	11.21(3)(d)
Pentachlorophenol	2	11.21(6)	3	11.21(3)(d)
Picloram	2	11.21(6)	3	11.21(3)(d)
Polychlorinated biphenyls (PCBs)	2	11.21(6)	3	11.21(3)(d)
Simazine	2	11.21(6)	3	11.21(3)(d)
Toxaphene	2	11.21(6)	3	11.21(3)(d)
Volatile Organic Chemicals (VOCs)				
Benzene	2	11.21(6)	3	11.21(3)(b)
Carbon tetrachloride	2	11.21(6)	3	11.21(3)(b)
Chlorobenzene (monochlorobenzene)	2	11.21(6)	3	11.21(3)(b)
o-Dichlorobenzene	2	11.21(6)	3	11.21(3)(b)
p-Dichlorobenzene	2	11.21(6)	3	11.21(3)(b)
1,2-Dichloroethane	2	11.21(6)	3	11.21(3)(b)
1,1-Dichloroethylene	2	11.21(6)	3	11.21(3)(b)
cis-1,2-Dichloroethylene	2	11.21(6)	3	11.21(3)(b)
trans-1,2-Dichloroethylene	2	11.21(6)	3	11.21(3)(b)
Dichloromethane	2	11.21(6)	3	11.21(3)(b)
1,2-Dichloropropane	2	11.21(6)	3	11.21(3)(b)
Ethylbenzene	2	11.21(6)	3	11.21(3)(b)
Styrene	2	11.21(6)	3	11.21(3)(b)
Tetrachloroethylene	2	11.21(6)	3	11.21(3)(b)
Toluene	2	11.21(6)	3	11.21(3)(b)

1,2,4-Trichlorobenzene	2	11.21(6)	3	11.21(3)(b)
1,1,1-Trichloroethane	2	11.21(6)	3	11.21(3)(b)
1,1,2-Trichloroethane	2	11.21(6)	3	11.21(3)(b)
Trichloroethylene	2	11.21(6)	3	11.21(3)(b)
Vinyl chloride	2	11.21(6)	3	11.21(3)(b)
Xylenes (total)	2	11.21(6)	3	11.21(3)(b)
Radionuclides				
Beta/photon emitters	2	11.22(5)	3	11.22(3)(c)
Alpha emitters	2	11.22(5)	3	11.22(3)(b)
Combined radium (226 & 228)	2	11.22(5)	3	11.22(3)(b)
Uranium	2	11.22(5)	3	11.22(3)(b)
Disinfection Byproducts (DBPs), Disinfection Byproduct Precursors, Disinfectant Residuals				
Where disinfection is used in the treatment of drinking water, disinfectants combine with organic and inorganic matter present in water to form chemicals called disinfection byproducts (DBPs). The Department sets standards for controlling the levels of disinfectants and DBPs in drinking water, including trihalomethanes (THMs) and haloacetic acids (HAAs).				
Total trihalomethanes (TTHMs)	2	11.25(1)(g)	3	11.25(1)(c)
Haloacetic Acids (HAA5)	2	11.25(1)(g)	3	11.25(1)(c)
Bromate	2	11.25(3)(c)	3	11.25(3)(e)
Chlorite	2	11.25(2)(c)	3	11.25(2)(e)
Chlorine (MRDL)	2	11.23(1)(e)	3	11.23(1)(c)
Chloramine (MRDL)	2	11.23(1)(e)	3	11.23(1)(c)
Chlorine dioxide (MRDL), where any 2 consecutive daily samples at entrance to distribution system only are above MRDL	2	11.23(2)(e)(ii)	2 ⁷⁹ , 3	11.23(2)(c)
Chlorine dioxide (MRDL), where sample(s) in distribution system the next day are also above MRDL	1 ⁸¹⁰	11.23(2)(e)(i)	1	11.23(2)(c)
Control of DBP precursors—TOC (TT)	2	11.24(9)	3	11.24(3)

Disinfection profiling and benchmarking	2	11.8(4)(d), 11.8(5)(d)	3	11.8(4), 11.8(5)
Development of monitoring plan	N/A	N/A	3	11.25(1)(d)
Other Treatment Techniques				
Acrylamide (TT)	2	11.21(6)(b)	N/A	N/A
Epichlorohydrin (TT)	2	11.21(6)(b)	N/A	N/A
<u>Water hauler failure to operate in accordance with Department-approved operational plan</u>	<u>2</u>	<u>11.41(3)(a)</u>	<u>N/A</u>	<u>N/A</u>
<u>Storage Tanks (TT)⁵</u>	<u>2</u>	<u>11.28(4)(b)</u>	<u>N/A</u>	<u>N/A</u>
Unregulated Contaminant Monitoring⁹¹¹				
Unregulated contaminants	N/A	N/A	3	11.47
Nickel	N/A	N/A	3	11.19(3)(b)
Public Notification for Variances and Exemptions				
Operation under a variance or exemption	3	11.43(10)(f) ⁴⁰¹²	N/A	N/A
Violation of conditions of a variance or exemption	2	11.43(10)(f) ⁴⁴¹³	N/A	N/A
Other Situations Requiring Public Notification				
Fluoride secondary maximum contaminant level (SMCL) exceedance	3	11.19(7)	N/A	N/A
Exceedance of nitrate MCL for non-community water systems, as allowed by the Department	1	11.18(2)(d)	N/A	N/A
Availability of unregulated contaminant monitoring data	3	11.47	N/A	N/A
Waterborne disease outbreak	1	11.3(81)	N/A	N/A
Other waterborne emergency ⁴²¹⁴	1	N/A	N/A	N/A
Source Water Sample Positive for GWR Fecal indicators: <i>E. coli</i> , enterococci, or coliphage	1	11.11(4)(d)(i), 11.11(5)(c)(i)	N/A	N/A

Waiver of Disinfection	N/A	N/A	N/A	11.13(2)
<u>Backflow Prevention and Cross Connection Control Rule violations¹⁵</u>	<u>2</u>	<u>11.39(6)(a)</u>	<u>3</u>	<u>11.39(6)(b)</u>
Other situations as determined by the Department	1, 2, 3 ¹³¹⁶	N/A	N/A	N/A

¹ Violations and other situations not listed in this table (e.g., failure to prepare Consumer Confidence Reports) do not require notice, unless otherwise determined by the Department. The Department may, at its discretion, also require a more stringent public notice tier (e.g., Tier 1 instead of Tier 2 or Tier 2 instead of Tier 3) for specific violations and situations specified in Table 11.33-V, as authorized under 11.33(2)(a) and 11.33(3)(a).

² The term "Violations of *Colorado Primary Drinking Water Regulations*" is used here to include violations of MCL, MRDL, treatment technique, monitoring, and testing procedure requirements.

³ Effective until March 31, 2016.

³⁴ Failure to test for fecal coliform or *E. coli* requires Tier 1 public notice if testing is not done after any repeat sample is positive for coliform. All other total coliform monitoring and testing procedure violations require Tier 3 public notice.

⁵ Effective beginning April 1, 2016.

⁴⁶ Systems with treatment technique violations involving a single exceedance of a maximum turbidity limit under 11.8(2)(b) are required to consult with the Department no later than 24 hours after learning of the violation. Based on this consultation, the Department may elevate the violation to Tier 1. If the supplier is unable to make contact with the Department in the 24-hour period, the violation is automatically elevated to Tier 1.

⁵⁷ Failure to collect three or more samples for *Cryptosporidium* analysis requires a special Tier 2 public notice as specified in 11.10(2)(e). All other monitoring and testing procedure violations require Tier 3 public notice.

⁶⁸ Failure to collect a confirmation sample no later than 24 hours for nitrate or nitrite after an initial sample exceeds the MCL requires Tier 1 public notice. Other monitoring violations for nitrate require Tier 3 public notice.

⁷⁹ Failure to monitor for chlorine dioxide at the entry point the day after exceeding the MRDL at the entrance to the distribution system requires Tier 2 public notice.

⁸¹⁰ If any daily sample collected at the entry point exceeds the MRDL for chlorine dioxide and one or more samples collected in the distribution system the next day exceed the MRDL, Tier 1 public notice is required. Failure to collect the required samples in the distribution system after the MRDL is exceeded at the entry point also triggers Tier 1 public notice.

⁹¹¹ Some water systems must monitor for certain unregulated contaminants under 11.47.

⁴⁰¹² This citation refers to §§1415 and 1416 of the Safe Drinking Water Act. §§1415 and 1416 require that "a schedule prescribed . . . for a public water system granted a variance shall require compliance by the system . . ."

⁴⁴¹³ In addition to §§1415 and 1416 of the Safe Drinking Water Act, 11.43(3) of the *Colorado Primary Drinking Water Regulations* specifies the items and schedule milestones that must be included in a variance for small systems.

⁴²¹⁴ Other waterborne emergencies require a Tier 1 public notice under 33.2(a) for situations that do not meet the definition of a waterborne disease outbreak specified in 11.3, but that still have the potential to have serious adverse effects on health as a result of short-term exposure. These could include outbreaks not related to treatment deficiencies, as well as situations that have the potential to cause outbreaks, such as failures or significant interruption in water treatment processes, natural disasters that disrupt the water supply or distribution system, chemical spills, or unexpected loading of possible pathogens into the source water.

¹³¹⁵ Effective beginning January 1, 2016.

TABLE 11.33-VI TABLE OF STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION			
Contaminant	MCLG mg/L	MCL mg/L	Standard health effects language for public notification
<i>Colorado Primary Drinking Water Regulations</i>			
Microbiological Contaminants			
Total coliform ¹	Zero	See footnote 42	Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.
Fecal coliform/ <i>E. coli</i> ¹	Zero	Zero	Fecal coliforms and <i>E. coli</i> are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.
Fecal indicators (GWR)	Zero	TT	Fecal indicators are microbes whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.
<i>E. coli</i> (GWR)	None	TT	Fecal indicators are microbes whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.
Enterococci (GWR)	None	TT	Fecal indicators are microbes whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.

Coliphage (GWR)	.	.	Fecal indicators are microbes whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.
Groundwater Rule (GWR) TT violations	None	TT	Inadequately treated or inadequately protected water may contain disease-causing organisms. These organisms can cause symptoms such as diarrhea, nausea, cramps, and associated headaches.
<u>A violation that occurred for failure to conduct an assessment not triggered by the presence of <i>E. coli</i> and/or violations for corrective action³</u>	.	TT	<u>Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful, waterborne pathogens may be present or that a potential pathway exists through which contamination may enter the drinking water distribution system. We found coliforms indicating the need to look for potential problems in water treatment or distribution. When this occurs, we are required to conduct assessments to identify problems and to correct any problems that are found.</u> <u>[THE SUPPLIER MUST ALSO INCLUDE THE FOLLOWING APPLICABLE SENTENCES.]</u> <u>We failed to conduct the required assessment.</u> <u>We failed to correct all identified sanitary defects that were found during the assessment(s).</u>
<u>A violation that occurred for failure to conduct an assessment triggered by the presence of <i>E. coli</i> and/or violations for corrective action³</u>	.	TT	<u><i>E. coli</i> are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Human pathogens in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a greater health risk for infants, young children, the elderly, and people with severely compromised immune systems. We violated the standard for <i>E. coli</i>, indicating the need to look for potential problems in water treatment or distribution. When this occurs, we are required to conduct a detailed assessment to identify problems and to correct any problems that are found.</u> <u>[THE SUPPLIER MUST ALSO INCLUDE THE FOLLOWING APPLICABLE SENTENCES.]</u> <u>We failed to conduct the required assessment.</u> <u>We failed to correct all identified sanitary defects that were found during the assessment that we conducted.</u>
<u><i>E. coli</i> MCL violations³</u>	Zero	See footnote 4	<u><i>E. coli</i> are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Human pathogens in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a greater health risk for infants, young children, the elderly, and people with severely compromised immune systems.</u>

Turbidity	None	TT	Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea and associated headaches.
<u>Disinfectant residual³</u>	<u>N/A</u>	<u>TT (in the distribution system)</u>	<u>Disinfectant residual serves as one of the final barriers to protect public health. Lack of an adequate disinfectant residual may increase the likelihood that disease-causing organisms are present.</u>
Surface Water Treatment Rule, Surface Water Treatment Rule: Filter Backwash Recycle Rule, and Surface Water Treatment Rule: Enhanced Treatment for Cryptosporidium Rule violations			
<i>Giardia lamblia</i>	Zero	TT ²⁵	Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites, which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.
Viruses	.	.	.
Heterotrophic plate count (HPC) bacteria ³⁶	.	.	.
<i>Legionella</i>	.	.	.
<i>Cryptosporidium</i>	.	.	.
Inorganic Chemicals			
Antimony	0.006	0.006	Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.
Arsenic	0	0.010	Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.
Asbestos (10 µm)	7 MFL	7 MFL	Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.
Barium	2	2	Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.
Beryllium	0.004	0.004	Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.
Cadmium	0.005	0.005	Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.

Chromium (total)	0.1	0.1	Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.
Cyanide	0.2	0.2	Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.
Fluoride	4.0	4.0	Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Fluoride in drinking water at half the MCL or more may cause mottling of children's teeth, usually in children less than nine years old. Mottling, also known as dental fluorosis, may include brown staining and/or pitting of the teeth, and occurs only in developing teeth before they erupt from the gums.
Mercury (inorganic)	0.002	0.002	Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.
Nitrate	10	10	Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
Nitrite	1	1	Infants below the age of six months who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
Total Nitrate and Nitrite	10	10	Infants below the age of six months who drink water containing nitrate and nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
Selenium	0.05	0.05	Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.
Thallium	0.0005	0.002	Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.
Lead and Copper			
Lead	Zero	TT ^{4Z}	Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.

Copper	1.3	TT ⁵⁸	Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.
Synthetic Organic Chemicals (SOCs)			
2,4-D	0.07	0.07	Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.
2,4,5-TP (Silvex)	0.05	0.05	Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems.
Alachlor	Zero	0.002	Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.
Atrazine	0.003	0.003	Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.
Benzo(a)pyrene (PAHs)	Zero	0.0002	Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.
Carbofuran	0.04	0.04	Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems.
Chlordane	Zero	0.002	Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.
Dalapon	0.2	0.2	Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.
Di (2-ethylhexyl) adipate	0.4	0.4	Some people who drink water containing di (2-ethylhexyl) adipate well in excess of the MCL over many years could experience general toxic effects such as weight loss, liver enlargement or possible reproductive difficulties.
Di (2-ethylhexyl) phthalate	Zero	0.006	Some people who drink water containing di (2-ethylhexyl) phthalate well in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.

Dibromochloro-propane (DBCP)	Zero	0.0002	Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
Dinoseb	0.007	0.007	Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.
Dioxin (2,3,7,8-TCDD)	Zero	3×10^{-8}	Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
Diquat	0.02	0.02	Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.
Endothall	0.1	0.1	Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.
Endrin	0.002	0.002	Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.
Ethylene dibromide	Zero	0.00005	Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.
Glyphosate	0.7	0.7	Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.
Heptachlor	Zero	0.0004	Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.
Heptachlor epoxide	Zero	0.0002	Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage, and may have an increased risk of getting cancer.
Hexachlorobenzene	Zero	0.001	Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys, or adverse reproductive effects, and may have an increased risk of getting cancer.
Hexachlorocyclopentadiene	0.05	0.05	Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach.
Lindane	0.0002	0.0002	Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.

Methoxychlor	0.04	0.04	Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.
Oxamyl (Vydate)	0.2	0.2	Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.
Pentachlorophenol	Zero	0.001	Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.
Picloram	0.5	0.5	Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.
Polychlorinated biphenyls (PCBs)	Zero	0.0005	Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.
Simazine	0.004	0.004	Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.
Toxaphene	Zero	0.003	Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid, and may have an increased risk of getting cancer.
Volatile Organic Chemicals (VOCs)			
Benzene	Zero	0.005	Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.
Carbon tetrachloride	Zero	0.005	Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
Chlorobenzene (monochloro- benzene)	0.1	0.1	Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.
o-Dichlorobenzene	0.6	0.6	Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.

p-Dichlorobenzene	0.075	0.075	Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.
1,2-Dichloroethane	Zero	0.005	Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.
1,1-Dichloroethylene	0.007	0.007	Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
cis-1,2-Dichloroethylene	0.07	0.07	Some people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
trans-1,2-Dichloroethylene	0.1	0.1	Some people who drink water containing trans-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver.
Dichloromethane	Zero	0.005	Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.
1,2-Dichloropropane	Zero	0.005	Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.
Ethylbenzene	0.7	0.7	Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.
Styrene	0.1	0.1	Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.
Tetrachloroethylene	Zero	0.005	Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer.
Toluene	1	1	Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.
1,2,4-Trichlorobenzene	0.07	0.07	Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.
1,1,1-Trichloroethane	0.2	0.2	Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.
1,1,2-Trichloroethane	0.003	0.005	Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems.

Trichloroethylene	Zero	0.005	Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
Vinyl chloride	Zero	0.002	Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.
Xylenes (total)	10	10	Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.
Radionuclides			
Beta/photon emitters	Zero	4 mrem/yr	Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.
Alpha emitters	Zero	15 pCi/L	Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.
Combined radium (226 & 228)	Zero	5 pCi/L	Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.
Uranium	Zero	30µg/L	Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting cancer and kidney toxicity.
Disinfection Byproducts (DBPs), Disinfection Byproduct Precursors, Disinfectant Residuals			
Where disinfection is used in the treatment of drinking water, disinfectants combine with organic and inorganic matter present in water to form chemicals called disinfection byproducts (DBPs). The Department sets standards for controlling the levels of disinfectants and DBPs in drinking water, including trihalomethanes (THMs) and haloacetic acids (HAAs). ¹⁸			
Total trihalomethanes (TTHMs)	N/A	0.080 ⁶⁹	Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous system, and may have an increased risk of getting cancer.
Haloacetic Acids (HAA)	N/A	0.060 ⁷¹⁰	Some people who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer.
Bromate	Zero	0.010	Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of getting cancer.

Chlorite	0.08	1.0	Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorite in excess of the MCL. Some people may experience anemia.
Chlorine	4 (MRDLG)	4.0 (MRDL)	Some people who use water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.
Chloramines	4 (MRDLG)	4.0 (MRDL)	Some people who use water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.
Chlorine dioxide, where any 2 consecutive daily samples collected at the entrance to the distribution system are above the MRDL.	0.8 (MRDLG)	0.8 (MRDL)	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia. Add for public notification only: The chlorine dioxide violations reported today are the result of exceedances at the treatment facility only, not within the distribution system, which delivers water to consumers. Continued compliance with chlorine dioxide levels within the distribution system minimizes the potential risk of these violations to consumers.
Chlorine dioxide, where one or more distribution system samples are above the MRDL.	0.8 (MRDLG)	0.8 (MRDL)	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia. Add for public notification only: The chlorine dioxide violations reported today include exceedances of the State standard within the distribution system, which delivers water to consumers. Violations of the chlorine dioxide standard within the distribution system may harm human health based on short-term exposures. Certain groups, including fetuses, infants, and young children, may be especially susceptible to nervous system effects from excessive chlorine dioxide exposure.

Control of DBP precursors (TOC)	None	TT	Total organic carbon (TOC) has no health effects. However, total organic carbon provides a medium for the formation of disinfection byproducts. These byproducts include trihalomethanes (THMs) and haloacetic acids (HAAs). Drinking water containing these by-products in excess of the MCL may lead to adverse health effects, liver or kidney problems, or nervous system effects, and may lead to an increased risk of getting cancer.
Other Treatment Techniques			
Acrylamide	Zero	TT	Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer.
Epichlorohydrin	Zero	TT	Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.
<u>Backflow Prevention and Cross-Connection Control Rule¹¹</u>	<u>None</u>	<u>TT</u>	<u>We have an inadequate backflow prevention and cross-connection control program. Uncontrolled cross connections can lead to inadvertent contamination of the drinking water.</u> <u>[THE SUPPLIER MUST ALSO INCLUDE THE FOLLOWING APPLICABLE SENTENCES.]</u> <u>We have installed or permitted an uncontrolled cross connection.</u> <u>We experienced a backflow contamination event.</u>

1 Effective until March 31, 2016.

42 If the supplier is collecting at least 40 samples per month, no more than 5.0 percent of the monthly samples may be positive for total coliforms. If the supplier is collecting fewer than 40 samples per month, no more than one sample per month may be positive for total coliforms.

3 Effective beginning April 1, 2016.

4 *E. coli*-positive repeat sample following a total coliform-positive routine sample, total coliform-positive repeat sample following an *E. coli*-positive routine sample, failure to collect all required repeat samples following an *E. coli*-positive routine sample, or failure to analyze a total-coliform positive repeat sample for *E. coli*.

25 11.8 treatment technique violations that involve turbidity exceedances may use the health effects language for turbidity instead.

36 The bacteria detected by heterotrophic plate count (HPC) are not necessarily harmful. HPC is simply an alternative method of determining disinfectant residual levels. The number of such bacteria is an indicator of whether there is enough disinfection in the distribution system.

47 Action Level = 0.015 mg/L

58 Action Level = 1.3 mg/L

69 The MCL for total trihalomethanes is the sum of the concentrations of the individual trihalomethanes.

710 The MCL for haloacetic acids is the sum of the concentrations of the individual haloacetic acids.

11 Effective beginning January 1, 2016.

11.34 CONSUMER CONFIDENCE REPORT (CCR) RULE

11.34(1) Applicability and Definitions

- (a) For community water systems, the supplier must distribute an annual consumer confidence report that complies with the requirements specified in this rule.
 - (i) For a wholesale system that supplies water to a consecutive community water system(s), the wholesaler must provide the applicable information to the supplier(s) responsible for the consecutive system(s) necessary to complete the CCR.
- (b) “CONSUMER CONFIDENCE REPORT” or “CCR” means an annual report that includes information on the quality of the water supplied by a public water system and characterizes the risks, if any, from exposure to contaminants detected in the drinking water in an accurate and understandable manner.
- (c) “DETECTED” means a sample result was greater than or equal to ($\geq$) the detection limits specified in 11.46 for disinfection byproducts and individual rules for inorganic chemical contaminants, volatile organic chemical contaminants, synthetic organic chemical contaminants, disinfection byproducts, and radioactive contaminants.
- (d) “REGULATED CONTAMINANT” means a contaminant subject to a MCL, action level, MRDL, or treatment technique under the *Colorado Primary Drinking Water Regulations*.

11.34(2) Content Requirements for the CCR

- (a) General Content Requirements for the CCR
 - (i) The supplier must include data collected for compliance purposes during the previous calendar year in the CCR.
 - (A) If the supplier sampled for a contaminant less frequently than annually, the supplier must include the date and result(s) of the most recent sampling for that contaminant.
 - (I) The supplier must include a brief statement that explains that the data presented are from the most recent sampling conducted.
 - (II) The supplier is not required to include data older than five years.
 - (ii) The supplier must include all of the following definitions in the CCR:
 - (A) *Maximum Contaminant Level Goal* (MCLG) means the level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.
 - (B) *Maximum Contaminant Level* (MCL) means the highest level of a contaminant that is allowed in drinking water. MCLs are set as close to the MCLGs as feasible using the best available treatment technology.
 - (iii) If the CCR includes any of the following terms, the supplier must include the applicable definition(s) in the CCR:

- (A) *Treatment Technique* means a required process intended to reduce the level of a contaminant in drinking water.
- (B) *Action Level* means the concentration of a contaminant, which if exceeded, triggers treatment or other requirements that a water system must comply with.
- (C) *Maximum residual disinfectant level goal* (MRDLG) means the level of a drinking water disinfectant below which, there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contaminants.
- (D) *Maximum residual disinfectant level* (MRDL) means the highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.
- (E) *Variances and Exemptions* mean that the supplier has Department permission to not meet an MCL or a treatment technique requirement under certain conditions.
- (F) Level 1 assessment means a study of the water system to identify possible problems and determine, if possible, why total coliform bacteria have been found in our water system.
- (G) Level 2 assessment means a very detailed study of the water system to identify possible problems and determine, if possible, why an *E. coli* MCL violation has occurred and/or why total coliform bacteria have been found in our water system on multiple occasions.
- (iv) The supplier must include in the CCR the telephone number for the system that the consumer may call for additional information about the CCR.
- (v) The supplier must include in the CCR information about opportunities for public participation in decisions that may affect the quality of the water (e.g., time and place of regularly scheduled board meetings).
- (vi) For systems supplying a large proportion of non-English speaking consumers, as determined by the Department, the supplier must include either of the following in the CCR:
 - (A) Information in the appropriate language(s) regarding the importance of the CCR.
 - (B) A telephone number or address where the consumer may contact the supplier to obtain a translated copy of the CCR or request assistance in the appropriate language.
- (vii) For each violation that occurs during the year covered by the CCR specified in 11.34(2)(d)(vi), the supplier must include a clear and readily understandable explanation of each violation, any potential adverse health effects, and the steps the supplier has taken to correct the violation.

....

(d) Detected Contaminant Content Requirements for the CCR

- (i) The supplier must include in the CCR information on all of the following detected contaminants, except *Cryptosporidium*:

- (A) Regulated contaminants.
 - (B) Unregulated contaminants that the supplier must sample for under 11.47.
- (ii) The information for detected contaminants must be displayed in a table or several adjacent tables.
- (A) If the supplier chooses to include information related to any additional sample results not required by 11.34(2)(d)(i), the supplier must display this information separately from the table(s) of detected contaminants.
- (iii) For each regulated contaminant, the table(s) of detected contaminants must include all of the following:
- (A) The MCL expressed as a whole number as specified in Table 11.34-I.
 - (I) If there is no MCL for a detected contaminant, the supplier must show in the table(s) that there is a treatment technique, or specify the action level, applicable to that contaminant.
 - (B) The MCLG expressed in the same units as the MCL.
 - (C) For contaminants subject to an MCL, except total coliforms and E. coli, the highest contaminant level used to determine compliance and the range of detected levels as follows:
 - (I) If compliance with the MCL is determined annually or less frequently, the highest detected level and the range of all detected levels expressed in the same units as the MCL.
 - (II) If compliance with the MCL is determined based on a RAA, the RAA and range of all detected sample results expressed in the same units as the MCL.
 - (III) If compliance with the MCL is determined based on an LRAA, the highest LRAA and the range of all LRAAs expressed in the same units as the MCL.
 - (a) For the TTHM and HAA5 MCLs, the supplier must also include the range of all individual sample results expressed in the same units as the MCL.
 - (b) For the TTHM and HAA5 MCLs, if more than one LRAA exceeds the MCL, the supplier must include the LRAAs for all sampling locations that exceeded the MCL.
 - (D) For turbidity reported under 11.8, the highest single turbidity measurement and the lowest monthly percentage of samples meeting the turbidity limit specified in 11.8 for the filtration technology being used.
 - (I) The supplier should include an explanation of the reasons for measuring turbidity.
 - (E) For lead and copper, the 90th percentile value(s) and the number of sampling sites that exceeded the action levels.

- (F) For total coliform until March 31, 2016:
 - (I) If the supplier collects less than (<) 40 total coliform samples per month, the highest number of total coliform-positive samples in a month.
 - (II) If the supplier collects greater than or equal to ($\geq$) 40 samples per month, the highest monthly percentage of total coliform-positive samples.
- (G) For fecal coliform until March 31, 2016, the total number of fecal coliform-positive samples.
- (H) For *E. coli*, the total number of *E. coli*-positive samples that are not special purpose samples.
- (iv) For each unregulated contaminant for which the supplier must monitor, the table(s) of detected contaminants must include the average of the sample results and the range of all detected levels.
 - (A) The supplier may include a brief explanation of the reasons for monitoring for unregulated contaminants.
- (v) The table(s) of detected contaminants must also include the likely source(s) of the contaminants to the best of the supplier's knowledge.
 - (A) If the supplier lacks specific information on the likely source, the supplier must include one or more of the typical sources for that contaminant listed in Table 11.34-I that is most applicable to the system.
- (vi) The table(s) of detected contaminants must clearly identify any data that show a violation of any of the requirements listed below that occurred during the year covered by the CCR:
 - (A) MCLs.
 - (B) MRDLs.
 - (C) Treatment techniques.
 - (D) Monitoring and reporting of compliance data.
 - (E) Filtration and disinfection as specified in 11.8.
 - (F) Recordkeeping of compliance data.
 - (G) Special monitoring requirements as specified in 11.47 and 11.20.
 - (H) If applicable, the terms of a variance, an exemption, or an administrative or judicial order.
- (vii) If a system supplies water through multiple hydraulically independent distribution systems that use different sources, the supplier should identify each separate distribution system in the CCR and should include a separate column for each independent distribution system in the table(s) of detected contaminants.

- (A) Alternatively, the supplier may produce separate CCRs that only include data for each independent distribution system.

(e) Additional Content Requirements for the CCR

- (i) If the supplier is required to comply with 11.11:

- (A) The supplier must include all of the following information in the CCR about any significant deficiency that has not been corrected at the time of delivery of the CCR:
 - (I) The nature of the significant deficiency(s).
 - (II) The date(s) the significant deficiency(s) was identified by the Department.
 - (III) For each significant deficiency that was required to be addressed under 11.38(3) that has not been addressed, the Department-approved plan and schedule for correction, including interim measures, progress to date, and any interim measures completed.
- (B) The supplier must continue to include the information under 11.34(2)(e)(i)(A) each year until the Department determines that the significant deficiency was corrected under 11.38(3).
- (C) If directed by the Department, the supplier must include all of the following information for any significant deficiency that was corrected before the CCR is issued:
 - (I) Inform the customers of the significant deficiency.
 - (II) How the deficiency was corrected.
 - (III) The date of correction.
- (D) The supplier must include all of the following information in the CCR about any fecal indicator-positive groundwater source sample:
 - (I) The source of the fecal contamination, if the source is known.
 - (II) The date(s) of the fecal indicator-positive groundwater source sample(s).
 - (III) For each fecal indicator-positive contamination event in the groundwater source that was required to be addressed under 11.11(6)(b) that has not been addressed, the Department-approved plan and schedule for correction, including interim measures, progress to date, and any interim measures completed.
 - (IV) If the fecal contamination in the groundwater source was addressed under 11.11(6), the date of such action.
 - (V) The applicable potential health effects language specified in Table 11.34-I for a fecal indicator-positive groundwater source sample(s) that was not invalidated by the Department.

- (E) The supplier must continue to include the information specified in 11.34(2)(e)(i)(D) each year until the Department determines that the fecal contamination in the groundwater source was addressed under 11.11(6)(b).
- (ii) If the supplier has nitrate sample result(s) greater than (>) 5 mg/L but less than (<) the MCL, the supplier must include a short informational statement about nitrate's effect on children.
 - (A) The supplier may use the following language or other Department-approved language written by the supplier:
 - (I) "Nitrate in drinking water at levels above 10 ppm is a health risk for infants of less than six months of age. High nitrate levels in drinking water can cause blue baby syndrome. Nitrate levels may rise quickly for short periods of time because of rainfall or agricultural activity. If you are caring for an infant you should ask advice from your health care provider."
- (iii) If the supplier has arsenic sample result(s) greater than (>) 0.005 mg/L but less than or equal to ($\leq$) 0.010 mg/L, the supplier must include a short informational statement about arsenic.
 - (A) The supplier may use the following language or other Department-approved language written by the supplier:
 - (I) "While your drinking water meets the EPA's standard for arsenic, it does contain low levels of arsenic. The EPA's standard balances the current understanding of arsenic's possible health effects against the costs of removing arsenic from drinking water. The EPA continues to research the health effects of low levels of arsenic, which is a mineral known to cause cancer in humans at high concentrations and is linked to other health effects such as skin damage and circulatory problems."
- (iv) If the supplier sampled for *Cryptosporidium* and the sample results show that *Cryptosporidium* may be present in the source water or the finished water, the supplier must include all of the following:
 - (A) A summary of the sample results.
 - (B) An explanation of the significance of the sample results.
- (v) If the supplier sampled for radon and the sample results show that radon may be present in the finished water, the supplier must include all of the following:
 - (A) The sample results.
 - (B) An explanation of the significance of the sample results.
- (vi) If a supplier is operating under a variance or an exemption as specified in 11.43, the supplier must include all of the following:
 - (A) An explanation of the reasons for the variance or exemption.
 - (B) The date on which the variance or exemption was issued.

- (C) A brief status report on the steps the supplier is taking to install treatment, find alternative sources of water, or otherwise comply with the terms and schedules of the variance or exemption.
- (D) A notice of any opportunity for public input in the review or renewal, of the variance or exemption.
- (vii) For surface water systems, if the supplier failed to install adequate filtration or disinfection equipment or processes, or has had a failure of such equipment or processes which are a violation as specified in 11.8, the supplier must include the following language exactly as written as part of the explanation of potential adverse health effects:
 - (A) "Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites, which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches."
- (viii) If the supplier failed to take one or more actions for lead and copper control as specified in 11.26, the supplier must include the applicable language from Table 11.34-I.
- (ix) If the supplier failed to comply with the acrylamide and epichlorohydrin certification requirements as specified in 11.21(5), the supplier must include the applicable language from Table 11.34-I.
- (x) The supplier must include a clear and readily understandable explanation of any violation specified in 11.34(2)(d)(vi), including the length of the violation, any potential adverse health effects, and the actions the supplier has taken to correct the violation.
 - (A) To describe the potential adverse health effects, the supplier must include the applicable language from Table 11.34-I.
- (xi) If the supplier has collected additional voluntary samples and the sample results show the presence of other contaminants in the finished water, the Department strongly encourages the supplier to report any sample results which may show a health concern.
 - (A) To determine if results may show a health concern, the Department recommends that the supplier find out if EPA has proposed a National Primary Drinking Water Regulation or has issued a health advisory for that contaminant by calling the Safe Drinking Water Hotline (800-426-4791).
 - (B) Detects above a proposed MCL or health advisory level show possible health concerns. For such contaminants, the Department recommends that the supplier include all of the following:
 - (I) The sample results.
 - (II) An explanation of the significance of the sample results noting the existence of a health advisory or a proposed regulation.
- ~~(xii) The supplier may include additional information necessary for public education consistent with, and not detracting from, the purpose of the CCR.~~
- (xii) Beginning January 1, 2016, if a backflow prevention and cross-connection control violation occurs under 11.39(6), the supplier must include the following:
 - (A) The following language exactly as written:

- (I) "We have an inadequate backflow prevention and cross-connection control program. Uncontrolled cross connections can lead to inadvertent contamination of the drinking water."
- (B) If applicable, one or both of the following statements:
- (I) We have installed or permitted an uncontrolled cross connection.
- (II) We experienced a backflow contamination event.
- (xiii) Beginning April 1, 2016, if the supplier is required to conduct a Level 1 assessment and/or a Level 2 assessment that is not triggered by an *E. coli* MCL violation, the supplier must include the following:
- (A) The following language exactly as written:
- (I) "Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful, waterborne pathogens may be present or that a potential pathway exists through which contamination may enter the drinking water distribution system. We found coliforms indicating the need to look for potential problems in water treatment or distribution. When this occurs, we are required to conduct assessment(s) to identify problems and to correct any problems that were found during these assessments."
- (B) The following applicable language for a Level 1 assessment and/or a Level 2 assessment exactly as written, providing the specific information for the text in brackets:
- (I) During the past year we were required to conduct [INSERT NUMBER OF LEVEL 1 ASSESSMENTS] Level 1 assessment(s). [INSERT NUMBER OF LEVEL 1 ASSESSMENTS] Level 1 assessment(s) were completed. In addition, we were required to take [INSERT NUMBER OF CORRECTIVE ACTIONS] corrective actions and we completed [INSERT NUMBER OF CORRECTIVE ACTIONS] of these actions.
- (II) During the past year [INSERT NUMBER OF LEVEL 2 ASSESSMENTS] Level 2 assessments were required to be completed for our water system. [INSERT NUMBER OF LEVEL 2 ASSESSMENTS] Level 2 assessments were completed. In addition, we were required to take [INSERT NUMBER OF CORRECTIVE ACTIONS] corrective actions and we completed [INSERT NUMBER OF CORRECTIVE ACTIONS] of these actions.
- (xiv) Beginning April 1, 2016, if the supplier is required to conduct a Level 2 assessment that is triggered by an *E. coli* MCL violation, the supplier must include the following language exactly as written, providing the specific information for the text in brackets:
- (A) "*E. coli* are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Human pathogens in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a greater health risk for infants, young children, the elderly, and people with severely compromised immune systems. We found *E. coli* bacteria, indicating the need to look for potential problems in water treatment or distribution. When this occurs, we are required to conduct

assessment(s) to identify problems and to correct any problems that were found during these assessments.”

(B) We were required to complete a Level 2 assessment because we found *E. coli* in our water system. In addition, we were required to take [INSERT NUMBER OF CORRECTIVE ACTIONS] corrective actions and we completed [INSERT NUMBER OF CORRECTIVE ACTIONS] of these actions.

(xv) Beginning April 1, 2016, if a treatment technique violation occurs under 11.16(12)(b)(i), the supplier must include one or both of the following statements, as applicable:

(A) During the past year we failed to conduct the required assessment.

(B) During the past year we failed to correct all identified sanitary defects that were found during the assessment.

(xvi) Beginning April 1, 2016, if an *E. coli*-positive sample has not violated the *E. coli* MCL, the supplier must include a statement that explains that although they have detected *E. coli*, they are not in violation of the *E. coli* MCL.

(xvii) Beginning April 1, 2016, if an *E. coli* MCL violation occurs, the supplier must include one or more of the following statements, as applicable:

(A) We had an *E. coli*-positive repeat sample following a total coliform-positive routine sample.

(B) We had a total coliform-positive repeat sample following an *E. coli*-positive routine sample.

(C) We failed to take all required repeat samples following an *E. coli*-positive routine sample.

(D) We failed to test for *E. coli* when any repeat sample tests positive for total coliform.

(xviii) The supplier may include additional information necessary for public education consistent with, and not detracting from, the purpose of the CCR.

....

11.34(3) Distribution of the CCR

(a) For a wholesale system that supplies water to a consecutive community water system(s), the wholesaler must:

(i) Distribute all the applicable information specified in 11.34(2)(a), 11.34(2)(b)(i)(A), 11.34(2)(b)(ii), 11.34(2)(c), 11.34(2)(d), 11.34(2)(e)(i), and 11.34(2)(e)(iv-xii) to the supplier responsible for the consecutive system(s) no later than either:

(A) April 1 each year.

(B) A date mutually agreed on that is included in the written contract between the suppliers.

(b) The supplier must distribute the CCR to customers no later than July 1 each year.

- (i) For new systems or reclassified systems that now meet the applicability of this rule, the supplier must distribute the first CCR no later than July 1 of the year after the first full calendar year in operation.
- (c) The supplier must mail or otherwise directly deliver one copy of the CCR to each customer.
 - (i) For systems supplying less than (<) 10,000 people, this requirement may be waived if the supplier complies with all of the following:
 - (A) Publishes the CCR in one or more local newspapers serving the area in which the system is located.
 - (B) Informs the customers that the CCR will not be mailed, either in the newspapers in which the reports are published or by other Department-approved means.
 - (C) The supplier makes the CCR available to the public upon request.
 - (ii) For systems supplying less than or equal to ($\leq$) 500 people, the requirements specified in ~~11.34(4)(a) and 11.34(4)(a)(i)~~ 11.34(3)(c)(i)(A) and 11.34(3)(c)(i)(B) may be waived if the supplier provides notice to customers at least annually that the CCR is available upon request. This notice may be distributed either by mail, door-to-door delivery, or by posting in an appropriate location.

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TABLE 11.34-I TABLE OF REGULATED CONTAMINANTS

<u>Contaminant (units)</u>	<u>MCL (in mg/L unless otherwise noted)</u>	<u>To convert for CCR, multiply by</u>	<u>MCL in CCR units</u>	<u>MCLG</u>	<u>Major sources in drinking water</u>	<u>Health effects language</u>
Microbiological Contaminants						
Total coliform bacteria ¹	(Systems that collect greater than or equal to (>) 40 samples/month) 5% of monthly samples are positive	N/A	(Systems that collect greater than or equal to (>) 40 samples/month) 5% of monthly samples are positive	0	Naturally present in the environment.	Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.
	(Systems that collect less than (<) 40 samples/month) 1 positive monthly sample.		(Systems that collect less than (<) 40 samples/month) 1 positive monthly sample.			
<u>Total coliform bacteria²</u>	<u>TT</u>	<u>N/A</u>	<u>TT</u>	<u>N/A</u>	<u>Naturally present in the environment</u>	<u>Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful, waterborne pathogens may be present or that a potential pathway exists through which contamination may enter the drinking water distribution system. We found coliforms indicating the need to look for potential problems in water treatment or distribution.</u>

Fecal Indicators including <i>E. coli</i> , enterococci or coliphage	TT	N/A	TT	N/A	Human and animal fecal waste	Fecal indicators are microbes whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short- term health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.
Fecal coliform and <i>E. coli</i> ¹	0	N/A	0	0	Human and animal fecal waste.	Fecal coliforms and <i>E. coli</i> are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short- term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.

<u><i>E. coli</i></u> ²	<u><i>E. coli</i>-positive repeat sample following a total coliform-positive routine sample, total coliform-positive repeat sample following an <i>E. coli</i>-positive routine sample, failure to collect all required repeat samples following an <i>E. coli</i>-positive routine sample, or failure to analyze a total-coliform positive repeat sample for <i>E. coli</i>.</u>	N/A	<u><i>E. coli</i>-positive repeat sample following a total coliform-positive routine sample, total coliform-positive repeat sample following an <i>E. coli</i>-positive routine sample, failure to collect all required repeat samples following an <i>E. coli</i>-positive routine sample, or failure to analyze a total-coliform positive repeat sample for <i>E. coli</i>.</u>	0	Human and animal fecal waste	<u><i>E. coli</i> are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Human pathogens in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a greater health risk for infants, young children, the elderly, and people with severely-compromised immune systems.</u>
Total organic carbon (ppm)	TT	N/A	TT	N/A	Naturally present in the environment.	Total organic carbon (TOC) has no health effects. However, total organic carbon provides a medium for the formation of disinfection by products. These byproducts include trihalomethanes (TTHMs) and haloacetic acids (HAA5s). Drinking water containing these byproducts in excess of the MCL may lead to adverse health effects, liver or kidney problems, or nervous system effects, and may lead to an increased risk of getting cancer.

Turbidity (NTU)	TT	N/A	TT	N/A	Soil runoff.	Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.
Disinfectant residual ²	<u>TT (in the distribution system)</u>	<u>N/A</u>	<u>TT (in the distribution system)</u>	<u>N/A</u>	<u>Water additive used to control microbes.</u>	<u>Disinfectant residual serves as one of the final barriers to protect public health. Lack of an adequate disinfectant residual may increase the likelihood that disease-causing organisms are present.</u>
Radionuclides						
Beta/photon emitters (mrem/yr)	4 mrem/yr	N/A	4	0	Decay of natural and man-made deposits.	Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta particle and photon radioactivity in excess of the MCL over many years may have an increased risk of getting cancer.
Alpha emitters (pCi/L)	15 pCi/L	N/A	15	0	Erosion of natural deposits.	Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.
Combined radium (pCi/L)	5 pCi/L	N/A	5	0	Erosion of natural deposits.	Some people who drink water containing radium -226 or -228 in excess of the MCL over many years may have an increased risk of getting cancer.

Uranium (µg/L)	30 µg/L	N/A	30	0	Erosion of natural deposits.	Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting cancer and kidney toxicity.
Inorganic Chemicals						
Antimony (ppb)	0.006	1000	6	6	Discharge from petroleum refineries; fire retardants; ceramics; electronics; solder.	Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.
Arsenic (ppb)	0.010	1000	10 ⁴	0 ⁴	Erosion of natural deposits; Runoff from orchards; Runoff from glass and electronics production wastes.	Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.
Asbestos (MFL)	7 MFL	N/A	7	7	Decay of asbestos cement water mains; Erosion of natural deposits.	Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.
Barium (ppm)	2	N/A	2	2	Discharge of drilling wastes; Discharge from metal refineries; Erosion of natural deposits.	Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.
Beryllium (ppb)	0.004	1000	4	4	Discharge from metal refineries and coal burning factories; Discharge from electrical, aerospace, and defense industries.	Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.

Bromate (ppb)	0.010	1000	10	0	By-product of drinking water disinfection.	Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of getting cancer.
Cadmium (ppb)	0.005	1000	5	5	Corrosion of galvanized pipes; Erosion of natural deposits; Discharge from metal refineries; Runoff from waste batteries and paints.	Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.
Chloramines (ppm)	MRDL = 4	N/A	MRDL = 4	MRDLG = 4	Water additive used to control microbes.	Some people who use water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.
Chlorine (ppm)	MRDL = 4	N/A	MRDL = 4	MRDLG = 4	Water additive used to control microbes.	Some people who use water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.
Chlorine dioxide (ppb)	MRDL = 0.8	1000	MRDL = 800	MRDLG = 800	Water additive used to control microbes.	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia.

Chlorite (ppm)	1	N/A	1	0.8	By-product of drinking water disinfection.	Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorite in excess of the MCL. Some people may experience anemia.
Chromium (ppb)	0.1	1000	100	100	Discharge from steel and pulp mills; Erosion of natural deposits.	Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.
Copper (ppm)	AL=1.3	N/A	AL=1.3	1.3	Corrosion of household plumbing systems; Erosion of natural deposits.	Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.
Cyanide (ppb)	0.2	1000	200	200	Discharge from steel/metal factories; Discharge from plastic and fertilizer factories.	Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.

Fluoride (ppm)	4.0	N/A	4.0	4.0	Erosion of natural deposits; Water additive that promotes strong teeth; Discharge from fertilizer and aluminum factories.	Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Fluoride in drinking water at half the MCL or more may cause mottling of children's teeth, usually in children less than nine years old. Mottling, also known as dental fluorosis, may include brown staining and/or pitting of the teeth, and occurs only in developing teeth before they erupt from the gums.
Lead (ppb)	AL=0.015	1000	AL=15	0	Corrosion of household plumbing systems; Erosion of natural deposits.	Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.
Mercury (inorganic) (ppb)	0.002	1000	2	2	Erosion of natural deposits; Discharge from refineries and factories; Runoff from landfills; Runoff from cropland.	Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.
Nitrate (ppm)	10	N/A	10	10	Runoff from fertilizer use; Leaching from septic tanks, sewage; Erosion of natural deposits.	Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.

Nitrite (ppm)	1	N/A	1	1	Runoff from fertilizer use; Leaching from septic tanks, sewage; Erosion of natural deposits.	Infants below the age of six months who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
Selenium (ppb)	0.05	1000	50	50	Discharge from petroleum and metal refineries; Erosion of natural deposits; Discharge from mines.	Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.
Thallium (ppb)	0.002	1000	2	0.5	Leaching from ore-processing sites; Discharge from electronics, glass, and drug factories.	Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.
Synthetic Organic Chemicals (SOCs)						
2,4-D (ppb)	0.07	1000	70	70	Runoff from herbicide used on row crops.	Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.
2,4,5-TP (Silvex)(ppb)	0.05	1000	50	50	Residue of banned herbicide.	Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems.
Acrylamide	N/A	N/A	TT	0	Added to water during sewage/wastewater treatment.	Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer.

Alachlor (ppb)	0.002	1000	2	0	Runoff from herbicide used on row crops.	Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.
Atrazine (ppb)	0.003	1000	3	3	Runoff from herbicide used on row crops.	Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.
Benzo(a)pyrene (PAH) (nanograms/L)	0.0002	1,000,000	200	0	Leaching from linings of water storage tanks and distribution lines.	Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.
Carbofuran (ppb)	0.04	1000	40	40	Leaching of soil fumigant used on rice and alfalfa.	Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems.
Chlordane (ppb)	0.002	1000	2	0	Residue of banned termiticide.	Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.
Dalapon (ppb)	0.2	1000	200	200	Runoff from herbicide used on rights of way.	Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.

Di(2-ethylhexyl) adipate (ppb)	0.4	1000	400	400	Discharge from chemical factories.	Some people who drink water containing di(2-ethylhexyl) adipate well in excess of the MCL over many years could experience toxic effects, such as weight loss, liver enlargement or possible reproductive difficulties.
Di(2-ethylhexyl) phthalate (ppb)	0.006	1000	6	0	Discharge from rubber and chemical factories.	Some people who drink water containing di(2-ethylhexyl) phthalate well in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.
Dibromochloro-propane (ppt)	0.0002	1,000,000	200	0	Runoff/leaching from soil fumigant used on soybeans, cotton, pineapples, and orchards.	Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive problems and may have an increased risk of getting cancer.
Dinoseb (ppb)	0.007	1000	7	7	Runoff from herbicide used on soybeans and vegetables.	Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.
Diquat (ppb)	0.02	1000	20	20	Runoff from herbicide use.	Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.
Dioxin (2,3,7,8-TCDD) (ppq)	0.00000003	1,000,000,000	30	0	Emissions from waste incineration and other combustion; discharge from chemical factories.	Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.

Endothall (ppb)	0.1	1000	100	100	Runoff from herbicide use	Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.
Endrin (ppb)	0.002	1000	2	2	Residue of banned insecticide	Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.
Epichlorohydrin	TT	N/A	TT	0	Discharge from industrial chemical factories; an impurity of some water treatment chemicals.	Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.
Ethylene dibromide (ppt)	0.00005	1,000,000	50	0	Discharge from petroleum refineries.	Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.
Glyphosate (ppb)	0.7	1000	700	700	Runoff from herbicide use.	Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.
Heptachlor (ppt)	0.0004	1,000,000	400	0	Residue of banned pesticide.	Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.

Heptachlor epoxide (ppt)	0.0002	1,000,000	200	0	Breakdown of heptachlor.	Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage, and may have an increased risk of getting cancer.
Hexachlorobenzene (ppb)	0.001	1000	1	0	Discharge from metal refineries and agricultural chemical factories.	Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys, or adverse reproductive effects, and may have an increased risk of getting cancer.
Hexachloro-cyclopentadiene (ppb)	0.05	1000	50	50	Discharge from chemical factories.	Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach.
Lindane (ppt)	0.0002	1,000,000	200	200	Runoff/leaching from insecticide used on cattle, lumber, gardens.	Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.
Methoxychlor (ppb)	0.04	1000	40	40	Runoff/leaching from insecticide used on fruits, vegetables, alfalfa, livestock.	Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.
Oxamyl (Vydate) (ppb)	0.2	1000	200	200	Runoff/leaching from insecticide used on apples, potatoes and tomatoes.	Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.

PCBs (Polychlorinated biphenyls) (ppt)	0.0005	1,000,000	500	0	Runoff from landfills; discharge of waste chemicals.	Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.
Pentachloro-phenol (ppb)	0.001	1000	1	0	Discharge from wood preserving factories.	Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.
Picloram (ppb)	0.5	1000	500	500	Herbicide runoff.	Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.
Simazine (ppb)	0.004	1000	4	4	Herbicide runoff.	Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.
Toxaphene (ppb)	0.003	1000	3	0	Runoff/leaching from insecticide used on cotton and cattle.	Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid, and may have an increased risk of getting cancer.
Volatile Organic Chemicals (VOCs)						
Benzene (ppb)	0.005	1000	5	0	Discharge from factories; leaching from gas storage tanks and landfills.	Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.

Carbon tetrachloride (ppb)	0.005	1000	5	0	Discharge from chemical plants and other industrial activities.	Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
Chlorobenzene (ppb)	0.1	1000	100	100	Discharge from chemical and agricultural chemical factories.	Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.
o-Dichlorobenzene (ppb)	0.6	1000	600	600	Discharge from industrial chemical factories.	Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.
p-Dichlorobenzene (ppb)	0.075	1000	75	75	Discharge from industrial chemical factories.	Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.
1,2-Dichloroethane (ppb)	0.005	1000	5	0	Discharge from Industrial chemical factories.	Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.
1,1-Dichloroethylene (ppb)	0.007	1000	7	7	Discharge from industrial chemical factories.	Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.

cis-1,2-Dichloroethylene (ppb)	0.07	1000	70	70	Discharge from industrial chemical factories.	Some people who drink water containing cis-1,2- dichloroethylene in excess of the MCL over many years could experience problems with their liver.
trans-1,2-Dichloroethylene (ppb)	0.1	1000	100	100	Discharge from industrial chemical factories.	Some people who drink water containing trans-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver.
Dichloromethane (ppb)	0.005	1000	5	0	Discharge from pharmaceutical and chemical factories.	Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.
1,2-Dichloropropane (ppb)	0.005	1000	5	0	Discharge from industrial chemical factories.	Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.
Ethylbenzene (ppb)	0.7	1000	700	700	Discharge from petroleum refineries.	Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.
Haloacetic Acids (HAA) (ppb)	0.060	1000	60	N/A	By-product of drinking water disinfection.	Some people who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer.
Styrene (ppb)	0.1	1000	100	100	Discharge from rubber and plastic factories; leaching from landfills.	Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.

Tetrachloro-ethylene (ppb)	0.005	1000	5	0	Discharge from factories and dry cleaners.	Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer.
1,2,4-Trichloro-benzene (ppb)	0.07	1000	70	70	Discharge from textile-finishing factories.	Some people who drink water containing 1,2,4- trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.
1,1,1-Trichloroethane (ppb)	0.2	1000	200	200	Discharge from metal degreasing sites and other factories.	Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.
1,1,2-Trichloroethane (ppb)	0.005	1000	5	3	Discharge from industrial chemical factories.	Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems.
Trichloro-ethylene (ppb)	0.005	1000	5	0	Discharge from metal degreasing sites and other factories.	Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
TTHMs (Total trihalomethanes) (ppb)	0.080	1000	80	N/A	Byproduct of drinking water disinfection.	Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous systems, and may have an increased risk of getting cancer.

Toluene (ppm)	1	N/A	1	1	Discharge from petroleum factories.	Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.
Vinyl Chloride (ppb)	0.002	1000	2	0	Leaching from PVC piping; discharge from plastics factories.	Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.
Xylenes (ppm)	10	N/A	10	10	Discharge from petroleum factories; discharge from chemical factories.	Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.

1 Effective until March 31, 2016.

2 Effective beginning April 1, 2016.

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11.36 RECORDKEEPING REQUIREMENTS RULE

11.36(1) Applicability

For all public water systems, the supplier must comply with the recordkeeping requirements specified in this rule.

11.36(2) Records Availability

- (a) All records pertaining to the operation and water quality of a public water system are public information and the Department shall make them available to the public upon request, during normal working hours.
- (b) Upon request by the Department, the supplier must submit copies of any records required to be maintained or any documents in existence, which the Department is entitled to inspect pursuant to the *Colorado Primary Drinking Water Regulations*.

11.36(3) General Recordkeeping Requirements

- (a) The supplier must maintain all records required to be maintained under the *Colorado Primary Drinking Water Regulations* on the system's premises or at a convenient location near the premises.
- (b) For each sample result, the supplier must either maintain the actual laboratory reports or transfer the data to tabular summaries.
 - (i) If the supplier maintains tabular summaries, the supplier must include all of the following information in the summaries:
 - (A) The date, place, and time of sample collection, and the name of the person who collected the sample.
 - (B) Identification of the sample type (i.e., routine distribution system sample, routine entry point sample, confirmation sample, source water or finished water sample, or a special purpose sample).
 - (C) Date of laboratory analysis.
 - (D) The name of the laboratory and the person responsible for performing the analysis.
 - (E) The analytical method used.
 - (F) The results of the analyses.
- (c) Unless otherwise specified, the supplier must maintain the records of the action(s) taken to correct each violation for at least three years from the date on which the last action was taken to correct the violation.
- (d) The supplier must maintain records of microbiological sample results for at least five years.

- (e) The supplier must maintain records of chemical sample results for at least ten years, unless otherwise specified.

11.36(4) Additional Recordkeeping Requirements by Rule

(a) Recordkeeping Requirements for Monitoring Plans

For each sample result, the supplier must maintain the monitoring plan specified in 11.5 under which the sample was collected for the same time period that the sample result is required to be maintained.

(b) ~~Additional~~ Recordkeeping Requirements for the Surface Water Treatment Rules

- (i) The supplier must maintain all of the following information for at least three years:
 - (A) The results of individual filter monitoring collected under 11.8(2)(g).
 - (B) Any notification to the Department that the supplier will not conduct source water monitoring due to meeting the criteria specified in 11.10(2)(a)(v).
 - (C) The results of treatment monitoring associated with microbial toolbox options collected under 11.10(5)(b) through 11.10(5)(o), as applicable.
- (ii) The supplier must maintain all of the following information for at least three years after bin classification under 11.10(3)(b):
 - (A) The initial round of source water monitoring results collected under 11.10(2).
 - (B) The second round of source water monitoring results collected under 11.10(2).
- (iii) The supplier must maintain the records of turbidity sample results collected under 11.8 for at least five years.
- (iv) The supplier must maintain the following recycle flow information:
 - (A) A copy of the recycle notification and information submitted to the Department under 11.9(4).
 - (B) A list of all recycle flows and the frequency with which they are returned.
 - (C) The average and maximum backwash flow rate through the filters and the average and maximum duration of the filter backwash process in minutes.
 - (D) The typical filter run length and a written summary of how filter run length is determined.
 - (E) The type of treatment provided for the recycle flow.
 - (F) Data on the physical dimensions of the equalization and/or treatment units, typical and maximum hydraulic loading rates, type of treatment chemicals used and average dose and frequency of use, and frequency at which solids are removed, if applicable.
- (v) The supplier must maintain all of the following information indefinitely:

- (A) The results of the disinfection profile, including raw data and analysis, specified in 11.8(4).
- (B) The results of the disinfection benchmark, including raw data and analysis, specified in 11.8(5).

(c) Additional Recordkeeping Requirements for the Groundwater Rules

- (i) The supplier must maintain all of the following information for at least five years:
 - (A) For each minimum residual disinfection concentration treatment technique requirement sample collected under 11.11(2)(c):
 - (I) The date, place, and time of sample collection, and the name of the person(s) who collected and analyzed the sample;
 - (II) The analytical technique/method used; and
 - (III) The results of the analyses.
 - (B) Documentation specified in 11.11(2)(e)(i)(C) relating to any entry point minimum disinfection treatment technique violation.
 - (C) For systems operating under a disinfection waiver under 11.13, all records of all chlorination activities including:
 - (I) The date, duration, locations and purpose of each chlorination event; and
 - (II) The maximum and minimum chlorine dose in mg/L the supplier applied during each chlorination event and the results of any and all residual disinfectant concentration results collected during each chlorination event.
 - (D) Records of decisions that a total coliform-positive sample result meets Department criteria for distribution system conditions that cause total coliform-positive sample results under 11.11(4)(a)(ii)(B).
 - (E) Records of invalidation of fecal indicator-positive groundwater source samples under 11.11(4)(e)(i).
 - (F) For consecutive systems, documentation of notification to wholesalers of total-coliform positive samples specified in 11.11(4)(c)(i) that are not invalidated under 11.17(5) until March 31, 2016, or under 11.16(8) beginning April 1, 2016.
 - (G) For systems that provide 4-log treatment of viruses using chemical disinfection and are required to comply with the requirements specified in 11.11(3):
 - (I) Records of the lowest daily residual disinfectant concentration; and
 - (II) Records of the date and duration of any failure to maintain the Department-specified minimum residual disinfectant concentration for a period of more than four hours.
 - (H) For systems that provide 4-log treatment of viruses using ~~membrane filtration or~~ alternative treatment methods and are required to comply with 11.11(3):

- (I) Records of ~~Department-determined compliance requirements for membrane filtration and of Department-specified parameters for approved alternative treatment; and~~
 - (II) Records of the date and duration of any failure to meet the ~~membrane operating, membrane integrity, or alternative treatment operating requirements for a period of more than four hours.~~
- (ii) The supplier must maintain all of the following information for at least 10 years:
 - (A) For all systems that provide 4-log treatment of viruses that are required comply with 11.11(3), records of the Department-approved minimum residual disinfectant concentration.
 - (B) Documentation of corrective actions required in response to fecal indicator positive triggered source water monitoring sample results under 11.11(6).
- (iii) For a system operating under a disinfection waiver, the supplier must maintain records of all correspondence and documentation relating to the requirements specified in 11.13 for as long as the system is operating under the disinfection waiver and for at least five years after waiver withdrawal.

(d) Recordkeeping Requirements for the Revised Total Coliform Rule

- (i) Beginning April 1, 2016, the supplier must maintain all of the following information for at least five years after completion of the assessment or corrective action:
 - (A) Completed assessment forms, regardless of who conducts the assessment.
 - (B) Documentation of corrective actions completed as a result of those assessments.
 - (C) Available summary documentation of the sanitary defects and corrective actions as specified in 11.16(10).
- (ii) Beginning April 1, 2016, if the supplier collects special purpose samples, the supplier must keep *E. coli*-positive sample results that are representative of water throughout the distribution system and a summary of any related follow-up activities on file for Department review for at least five years.

(de) Recordkeeping Requirements for the Disinfection Byproducts Rule

- (i) If the supplier was required to complete an IDSE report, the supplier must maintain a complete copy of the IDSE report for at least 10 years after the date that the report was submitted.
 - (A) If the Department modified the supplier's sampling requirements that were in the system's IDSE report or if the Department approved alternative sampling locations, the supplier must keep a copy of the Department's notification on file for 10 years after the date of the Department's notification.
 - (B) The supplier must make the IDSE report and any Department notification available for review by the Department or the public.

- (ii) If the supplier submitted a 40/30 certification, the supplier must maintain a complete copy of the 40/30 certification for at least 10 years after the date that the certification was submitted.

- (A) "40/30 CERTIFICATION" means a historical requirement where the supplier certified to the Department that every individual sample result collected during eight consecutive quarters was less than or equal to ($\leq$) 0.040 mg/L for TTHM and less than or equal to ($\leq$) 0.030 mg/L for HAA5 and no TTHM or HAA5 violations occurred during that time.

- (B) The supplier must make the 40/30 certification and any Department notification available for review by the Department or the public.

(f) Recordkeeping Requirements for the Lead and Copper Rule

The supplier must maintain the original records of all sample results and analyses, reports, surveys, letters, evaluations, schedules, Department determinations, and any other information required by 11.26 for at least 12 years.

(g) Recordkeeping Requirements for the Storage Tank Rule

For each completed inspection, the supplier must maintain the inspection summary required by 11.28(3)(f) for at least ten years.

(~~h~~) Recordkeeping Requirements for the ~~Public Notice~~ Notification Rule

The supplier must maintain copies of each public notice and certification made to the Department under 11.33 for at least three years after issuance.

(~~g~~) Recordkeeping Requirements for the Consumer Confidence Report (CCR) Rule

The supplier must retain copies of each CCR required by 11.34 for at least three years after issuance.

(~~h~~) Recordkeeping Requirements for the Cross-Connection Control Rule

The supplier must maintain all control device maintenance records under 11.37 for at least three years.

(~~k~~) Recordkeeping Requirements for the Sanitary Survey Rule

- (i) The supplier must maintain all of the following information regarding sanitary surveys conducted under 11.38 for at least 10 years:

- (A) Copies of any written reports, summaries or communications relating to sanitary surveys of the system conducted by the system itself, a private consultant, or a local, state or federal agency.

- (B) Documentation of corrective actions required in response to significant deficiencies and/or violations identified on a sanitary survey under 11.38(3).

(l) Recordkeeping Requirements for the Backflow Prevention and Cross-Connection Control Rule

- (i) The supplier must maintain all backflow prevention assembly and backflow prevention method testing, inspection, and maintenance records:

- (A) For community water systems, for at least three years.

(B) For non-community water systems, for at least five years.

(ii) The supplier must maintain each annual backflow prevention and cross-connection control program report developed:

(A) For community water systems, for at least three years.

(B) For non-community water systems, for at least five years.

(m) Recordkeeping Requirements for the Water Hauler Rule

(i) The supplier must maintain all of the following information for at least five years for each tank or container:

(A) The date, time, and location of each water loading station used.

(B) The date, time, and location of each water delivery.

(C) The date, time, and result of each residual disinfectant concentration sample collected under 11.41(2)(b).

(D) The date, time, type and quantity of any chemical added to the tank or container containing water intended for delivery.

(E) A maintenance record for all hose materials, hose containers, pumps, fittings and tank and/or container including the date, time and method of cleaning and/or disinfection.

(jn) Recordkeeping Requirements for the Variances and Exemptions Rule

The supplier must maintain records concerning a variance or exemption granted under 11.43 for at least five years after the expiration of the variance or exemption.

11.37 CROSS-CONNECTION CONTROL RULE

11.37(1) Applicability and Definitions

- (a) For all public water systems, the supplier must comply with the requirements specified in this rule until December 31, 2015.
- (b) “CERTIFIED CROSS-CONNECTION CONTROL TECHNICIAN” means a person who has responsibility for the testing, operation and maintenance of cross-connection control devices and is certified as specified in 11.37(4).
- (c) “CONTROL DEVICE” means any Department-approved cross connection control device or method installed on service connections to a premises or auxiliary system consistent with the degree of hazard posed by the uncontrolled cross-connection.
- (d) “SERVICE CROSS CONNECTION” means a type of cross-connection which could allow any used water, industrial fluid, gas, or water of a quality below the drinking water standards of these regulations to flow from a consumer’s water system into a public water system’s distribution system.”

- (e) “UNCONTROLLED” means not having an accepted cross-connection control device properly installed and maintained. The control device must continuously provide cross-connection protection consistent with the degree of hazard posed by the cross-connection.

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11.39 BACKFLOW PREVENTION AND CROSS-CONNECTION CONTROL RULE

11.39(1) Applicability and Definitions

- (a) For all public water systems, the supplier must comply with the requirements specified in this rule beginning January 1, 2016.
- (b) “ACTIVE DATE” means the first day that a backflow prevention assembly or backflow prevention method is used to control a cross connection in each calendar year.
- (c) “BACKFLOW” means the reverse flow of water, fluid, or gas caused by back pressure or back siphonage.
- (d) “BACKFLOW PREVENTION ASSEMBLY” means any mechanical assembly installed at a water service line or at a plumbing fixture to prevent a backflow contamination event, provided that the mechanical assembly is appropriate for the identified contaminant at the cross connection and is an in-line field-testable assembly.
- (e) “BACKFLOW PREVENTION ASSEMBLY ANNUAL TESTING COMPLIANCE RATIO” means the number of backflow prevention assemblies tested during the calendar year divided by the number of backflow prevention assemblies installed at a cross connection that were used during the calendar year.
- (f) “BACKFLOW PREVENTION METHOD” means any method and/or non-testable device installed at a water service line or at a plumbing fixture to prevent a backflow contamination event, provided that the method or non-testable device is appropriate for the identified contaminant at the cross connection.
- (g) “BACKFLOW PREVENTION METHOD ANNUAL INSPECTION COMPLIANCE RATIO” means the number of backflow prevention methods inspected during the calendar year divided by the number of backflow prevention methods installed at a cross connection that were used during the calendar year.
- (h) “CERTIFIED CROSS-CONNECTION CONTROL TECHNICIAN” means a person who possesses a valid Backflow Prevention Assembly Tester certification from one of the following approved organizations: American Society of Sanitary Engineering (ASSE) or the American Backflow Prevention Association (ABPA). If a certification has expired, the certification is invalid.
- (i) “CONTROLLED” means having a properly installed, maintained, and tested or inspected backflow prevention assembly or backflow prevention method that prevents backflow through a cross connection.
- (j) “SURVEY COMPLIANCE RATIO” means the total number of connections surveyed divided by the total number of non-single-family-residential connections to the public water system and connections within the supplier’s waterworks and domestic wastewater treatment works.
- (i) The supplier is not required to include any non-single-family-residential connections identified in the last 60 days of the calendar year in the total number of non-single-family-residential connections to the public water system until the following calendar year.

- (k) “UNCONTROLLED” means not having a properly installed and maintained and tested or inspected backflow prevention assembly or backflow prevention method, or the backflow prevention assembly or backflow prevention method does not prevent backflow through a cross connection.

11.39(2) Backflow Prevention and Cross-Connection Control Program Requirements

- (a) The supplier must develop a written backflow prevention and cross-connection control program. The written backflow prevention and cross-connection control program must include all of the following:
- (i) The supplier’s process for conducting surveys.
 - (ii) The supplier’s authority to perform a survey of a customer’s property to determine whether a cross connection is present unless the supplier controls all non-single-family-residential connections to the public water system with the most protective backflow prevention assembly or backflow prevention method.
 - (iii) The process the supplier will use to select a backflow prevention assembly or backflow prevention method to control a cross connection.
 - (iv) The supplier’s authority to install, maintain, test, and inspect backflow prevention assemblies and/or backflow prevention methods and/or require customers to install, maintain, test, and inspect backflow prevention assemblies and/or backflow prevention methods.
 - (v) The process the supplier will use to track the installation, maintenance, testing, and inspection of all backflow prevention assemblies and backflow prevention methods used to control cross connections.
 - (vi) The process the supplier will use to ensure backflow prevention assemblies are tested by a Certified Cross-Connection Control Technician.
- (b) The Department may review and revise the written backflow prevention and cross-connection control program.

11.39(3) Treatment Technique Requirements for the Control of Cross Connections

- (a) If the supplier learns of a suspected or confirmed backflow contamination event, the supplier must notify and consult with the Department on any appropriate corrective measures no later than 24 hours after learning of the backflow contamination event.
- (b) The supplier is prohibited from installing or permitting any uncontrolled cross connection to the distribution system or within the supplier’s waterworks and domestic wastewater treatment works.
- (c) The supplier must survey all non-single-family-residential connections to the public water system to determine if the connection is a cross connection unless the supplier controls all non-single-family-residential connections to the public water system with the most protective backflow prevention assembly or backflow prevention method. The supplier must survey all connections within the supplier’s waterworks and domestic wastewater treatment works to determine if the connection is a cross connection.
- (i) If the supplier identifies a cross connection during a survey, the supplier must determine the type of backflow prevention assembly or backflow prevention method to control the cross connection.

- (ii) If the supplier becomes aware of a single-family-residential connection to the public water system that is a cross connection, the supplier must determine the type of backflow prevention assembly or backflow prevention method to control the cross connection.
- (iii) The supplier must achieve the survey compliance ratios as specified in Table 11.39-I.

<u>TABLE 11.39-I Survey Compliance Ratio</u>	
<u>Compliance Date</u>	<u>Compliance Ratio</u>
<u>By December 31, 2016</u>	<u>Greater than 0.60</u>
<u>By December 31, 2017</u>	<u>Greater than 0.70</u>
<u>By December 31, 2018</u>	<u>Greater than 0.80</u>
<u>By December 31, 2019</u>	<u>Greater than 0.90</u>
<u>By December 31, 2020 and each year after</u>	<u>1.0</u>

- (iv) The supplier may apply to the Department for alternative survey compliance ratios for the compliance dates from December 31, 2016 through December 31, 2019 specified in Table 11.39-I.
 - (A) In the application, the supplier must include all of the following information:
 - (I) An explanation of why the supplier is unable to comply with the survey compliance ratios specified in Table 11.39-I.
 - (II) The proposed alternative survey compliance ratios for the compliance dates from December 31, 2016 through December 31, 2019 specified in Table 11.39-I.
 - (a) The proposed alternative survey compliance ratios must meet the survey compliance ratio of 1.0 by December 31, 2020.
 - (III) A discussion of the supplier's strategy to achieve the proposed alternative survey compliance ratios and the survey compliance ratio of 1.0 by December 31, 2020.
 - (B) The Department will only grant alternative compliance ratios for the compliance dates from December 31, 2016 through December 31, 2019.
 - (C) If the supplier receives written Department-approval for alternative survey compliance ratios, the supplier must comply with any Department-specified requirements in the approval.
- (d) If the supplier discovers an uncontrolled cross connection and a suspected or confirmed backflow contamination event has not occurred, the supplier must:
 - (i) No later than 120 days after its discovery, install and maintain or require the customer to install and maintain a backflow prevention assembly or backflow prevention method at the uncontrolled cross connection, suspend service to the customer, or remove the cross connection.
 - (A) If the supplier is unable to meet the 120-day deadline, the supplier must consult with the Department and the Department may approve an alternative schedule.

- (B) The supplier can either control cross connections discovered within a customer's water system by containment or containment by isolation.
- (I) "CONTAINMENT" means the installation of a backflow prevention assembly or a backflow prevention method at any connection to the public water system that supplies an auxiliary water system, location, facility, or area such that backflow from a cross connection into the public water system is prevented.
- (II) "CONTAINMENT BY ISOLATION" means the installation of backflow prevention assemblies or backflow prevention methods at all cross connections identified within a customer's water system such that backflow from a cross connection into the public water system is prevented.
- (C) The supplier must ensure that all installed backflow prevention assemblies used to control cross connections are tested by a Certified Cross-Connection Control Technician upon installation.
- (D) The supplier must ensure that all installed backflow prevention methods used to control cross connections are inspected by the supplier or a Certified Cross-Connection Control Technician upon installation.
- (e) The supplier must ensure that backflow prevention assemblies used to control cross connections are tested annually by a Certified Cross-Connection Control Technician and maintained. The supplier must achieve the backflow prevention assembly annual testing compliance ratios as specified in Table 11.39-II.

<u>TABLE 11.39-II Backflow Prevention Assembly Annual Testing Compliance Ratio</u>	
<u>Compliance Date</u>	<u>Annual Compliance Ratio</u>
<u>By December 31, 2016</u>	<u>Greater than 0.50</u>
<u>By December 31, 2017</u>	<u>Greater than 0.60</u>
<u>By December 31, 2018</u>	<u>Greater than 0.70</u>
<u>By December 31, 2019</u>	<u>Greater than 0.80</u>
<u>By December 31, 2020 and each year after</u>	<u>Greater than 0.90</u>

- (i) No later than 60 days after the supplier is notified of a failed test, the supplier must ensure that the backflow prevention assembly that produced the failed test is repaired or replaced and tested, service is suspended to the customer, or the cross connection is removed.
- (A) If the supplier is unable to meet the 60-day deadline, the supplier must consult with the Department and the Department may approve an alternative schedule.
- (ii) Beginning January 1, 2021, for each backflow prevention assembly not tested during the previous calendar year, the supplier must ensure the backflow prevention assembly is tested no later than 90 days after the active date of the backflow prevention assembly in the following calendar year.
- (f) The supplier must ensure that backflow prevention methods used to control cross connections are inspected annually by the supplier or a Certified Cross-Connection Control Technician and

maintained. The supplier must achieve a backflow prevention method annual inspection compliance ratio of greater than (>) 0.90.

(i) No later than 60 days after the supplier is notified of an inadequate backflow prevention method, the supplier must ensure that the inadequate backflow prevention method is repaired or replaced, service is suspended to the customer, or the cross connection is removed.

(A) If the supplier is unable to meet the 60-day deadline, the supplier must consult with the Department and the Department may approve an alternative schedule.

(ii) Beginning January 1, 2017, for each backflow prevention method not inspected during the previous calendar year, the supplier must ensure the backflow prevention method is inspected no later than 90 days after the active date of the backflow prevention method in the following calendar year.

(g) The supplier must control or remove any uncontrolled cross connection or ensure that any cross connection is controlled no later than 10 days after being ordered in writing by the Department.

11.39(4) Backflow Prevention and Cross-Connection Control Program Annual Written Report

(a) Beginning in 2017, the supplier must develop a written backflow prevention and cross-connection control program report for the previous calendar year that includes all of the following information:

(i) Total number of non-single-family-residential connections to the public water system and connections within the supplier's waterworks and domestic wastewater treatment works.

(A) The supplier is not required to include any non-single-family-residential connections identified in the last 60 days of the calendar year in the total number of non-single-family-residential connections to the public water system until the following calendar year.

(ii) Total number of connections surveyed to determine if cross connections are present.

(iii) Survey compliance ratio.

(iv) Total number of identified cross connections.

(v) Number of uncontrolled cross connections identified during the calendar year.

(A) Number of identified uncontrolled cross connections that were controlled within 120 days of discovery.

(B) Number of identified uncontrolled cross connections that were not controlled within 120 days of discovery.

(vi) Number of backflow prevention assemblies installed at cross connections that were used during the calendar year.

(vii) Number of backflow prevention methods installed at cross connections that were used during the calendar year.

(viii) Number of connections where service was suspended as specified in 11.39(3) during the calendar year.

- (ix) Number of backflow prevention assemblies used to control cross connections that were tested by a Certified Cross Connection Control Technician during the calendar year.
- (x) Backflow prevention assembly annual testing compliance ratio.
- (xi) Beginning January 1, 2021, the number of backflow prevention assemblies not tested during the calendar year covered by the report but tested no later than 90 days after the active date of the backflow prevention assembly in the following calendar year.
- (xii) Number backflow prevention methods used to control cross connections that were inspected during the calendar year.
- (xiii) Backflow prevention method annual inspection compliance ratio.
- (xiv) Beginning January 1, 2017, the number of backflow prevention methods not inspected during the calendar year covered by the report but inspected no later than 90 days after the active date of the backflow prevention method in the following calendar year.
- (b) For each calendar year, the supplier must complete the annual backflow prevention and cross-connection control program report no later than May 1 of the following calendar year.

11.39(5) Compliance Determinations for Backflow Prevention and Cross-Connection Control

- (a) Compliance with the survey treatment technique requirement is based on the survey compliance ratio.
 - (i) The supplier is not required to include any non-single-family-residential connections identified in the last 60 days of the calendar year in the total number of non-single-family-residential connections to the public water system until the following calendar year.
- (b) Compliance with the backflow prevention assembly testing treatment technique requirement is based on the backflow prevention assembly annual testing compliance ratio.
- (c) Compliance with the backflow prevention method inspection treatment technique requirement is based on the backflow prevention method annual inspection compliance ratio.

11.39(6) Violations for Backflow Prevention and Cross-Connection Control

- (a) The following constitute backflow prevention and cross-connection control treatment technique violations:
 - (i) The supplier fails to notify the Department of any suspected or confirmed backflow contamination event as specified in 11.39(3)(a).
 - (ii) The supplier installs or permits an uncontrolled cross connection.
 - (iii) The supplier fails to achieve the survey compliance ratio specified in 11.39(3)(c) or the Department-approved alternative survey compliance ratios.
 - (iv) The supplier discovers an uncontrolled cross connection and fails to comply with the requirements specified in 11.39(3)(d).
 - (v) The supplier fails to achieve the annual backflow prevention assembly testing compliance ratio specified in 11.39(3)(e).

- (vi) The supplier fails to comply with the backflow prevention assembly failed test requirements specified in 11.39(3)(e)(i).
- (vii) The supplier fails to comply with the backflow prevention assembly testing requirements specified in 11.39(3)(e)(ii).
- (viii) The supplier fails to achieve the backflow prevention method inspection compliance ratio specified in 11.39(3)(f).
- (ix) The supplier fails to comply with the backflow prevention method inadequate method requirements specified in 11.39(3)(f)(i).
- (x) The supplier fails to comply with the backflow prevention method inspection requirements specified in 11.39(3)(f)(ii).
- (xi) The supplier fails to comply with a written order from the Department specified in 11.39(3)(g).
- (b) The following constitute backflow prevention and cross-connection control violations:
 - (i) The supplier fails to develop or implement a written backflow prevention and cross-connection control program as specified in 11.39(2).
 - (ii) The supplier fails to complete an annual backflow prevention and cross-connection control program report as specified in 11.39(4).

11.39(7) Response to Violations for Backflow Prevention and Cross-Connection Control

- (a) In the event of a backflow prevention and cross-connection control treatment technique violation, the supplier must:
 - (i) Notify the department no later than 48 hours after the violation occurs.
 - (ii) Distribute Tier 2 public notice as specified in 11.33.
- (b) In the event of a backflow prevention and cross-connection control violation, the supplier must:
 - (i) Notify the department no later than 48 hours after the violation occurs.
 - (ii) Distribute Tier 3 public notice as specified in 11.33.

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11.41 WATER HAULER RULE

11.41(1) Applicability and Definitions

- (a) For a public water system that hauls water, the water hauler must comply with the requirements specified in this rule in addition to other applicable requirements of the *Colorado Primary Drinking Water Regulations*.
- (b) The water hauler is a supplier and means any person that owns or operates a public water system that hauls water.

11.41(2) Treatment Technique and Monitoring Requirements for Public Water Systems That Haul Water

- (a) The water hauler must operate in accordance with a Department-approved operational plan.
 - (i) The water hauler must either submit an operational plan for Department approval or use the pre-approved operational plan in the Department's *Operational Handbook for a Colorado Public Water System That Hauls Water*.
- (b) In addition to the applicable residual disinfectant concentration monitoring requirements specified in 11.8, 11.11 and 11.23, on each day a tank or container is used to deliver water, the water hauler must monitor the residual disinfectant concentration of the water dispensed from each tank or container at least once.
 - (i) If the water hauler uses more than one water loading station per day, the water hauler must also monitor the residual disinfectant concentration of the water dispensed from the tank or container at least once for each water loading station used.

11.41(3) Treatment Technique Violation and Response for the Water Hauler Rule

- (a) If the water hauler fails to operate in accordance with a Department-approved operational plan, a treatment technique violation occurs.
- (b) In the event of a treatment technique violation, the water hauler must:
 - (i) Notify the Department no later than 48 hours after the violation occurs.
 - (ii) Distribute Tier 2 public notice as specified in 11.33.

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11.43 VARIANCES AND EXEMPTIONS RULE

11.43(1) Applicability and Definitions

- (a) For all public water systems, the supplier may apply for a variance or exemption as specified in this rule.
- (b) "EXEMPTION" means the supplier is temporarily not required to comply with an MCL or treatment technique. The Department may grant an exemption if the supplier meets the requirements specified in 11.43(4).
- (c) "SMALL SYSTEM VARIANCE" means a variance from an MCL or treatment technique for systems that supply less than (<) 10,000 people and meet the requirements specified in 11.43(3).
- (d) "SMALL SYSTEM VARIANCE TECHNOLOGY" means a specific treatment or treatment technology that the EPA has identified for use by small systems that are otherwise unable to afford to comply with the *National Primary Drinking Water Regulations*.
- (e) "VARIANCE" means the supplier is temporarily not required to comply with an MCL. The Department may grant a variance to a supplier if characteristics of the source(s) that are reasonably available to the system prevent compliance with the MCL, despite implementation of BATs or treatment techniques, and the system meets the requirements specified in 11.43(2).

11.43(2) Variance Qualifications

- (a) The Department may grant a variance from an MCL if all of the following criteria are met:
 - (i) The supplier is unable to comply with the MCL.
 - (ii) The supplier has applied the BATs, treatment techniques, or other means identified by the EPA Administrator.
 - (iii) Based on a Department-approved evaluation, an alternative source is not reasonably available to the system after taking costs into consideration.
 - (iv) The variance will not result in an unreasonable risk to public health.
- (b) If the supplier can demonstrate to the satisfaction of the Department that a specific treatment technique for a contaminant is not necessary to protect public health because of the nature of the system's source, the supplier may receive one or more variances from any requirement that requires the use of that treatment technique.
 - (i) If the supplier is granted a variance under 11.43(2)(b), the supplier must comply with any Department-specified monitoring or other requirements.
- (c) The Department will not grant a variance from:
 - (i) The total coliform MCLs.
 - (A) The effective date relating to the total coliform MCL has been stayed for a supplier that demonstrates to the Department that the violation of the total coliform MCL is due to a persistent growth of total coliforms in the distribution system rather than fecal or pathogenic contamination, a treatment lapse or deficiency, or a problem in the operation or maintenance of the distribution system. This is stayed until March 31, 2016.
 - (ii) The E. coli MCLs.
 - (iii) Any treatment technique requirement of 11.8 or 11.9.]

11.43(3) Small System Variance Qualifications

- (a) The Department may grant a small system variance from an MCL or treatment technique if all of the following criteria apply:
 - (i) The system supplies:
 - (A) Less than or equal to ($\leq$) 3,300 people; or
 - (B) With EPA Administrator approval, greater than ($>$) 3,300 people and less than ($<$) 10,000 people.
 - (ii) The Department determines that the supplier cannot financially afford to comply with an MCL or treatment technique based on the Department-specified affordability criteria. This includes compliance through one or more of the following:
 - (A) Treatment.
 - (B) An alternative source.

- (C) Restructuring or consolidation, unless the Department makes a written determination that restructuring or consolidation is not practical.
 - (iii) The EPA Administrator has identified a small system variance technology that is applicable to the system's size and source water quality.
 - (A) The supplier must be financially and technically capable of installing, operating, and maintaining the applicable small system variance technology, as specified in guidance or regulations issued by the EPA Administrator.
 - (iv) The Department determines that the small system variance technology provides adequate protection of public health, considering the system's source water quality and the removal efficiencies and expected useful life of the small system variance technology.
- (b) The Department will not grant a small system variance from:
- (i) Treatment technique requirements or MCLs for a contaminant which was regulated in the *National Primary Drinking Water Regulations* on or before January 1, 1986.
 - (ii) A microbial contaminant (e.g., a bacterium, virus or other organism), an indicator for a microbial contaminant, or treatment technique requirement for a microbial contaminant.
 - (iii) A treatment technique for filtration of surface water sources specified in 11.8.

11.43(4) Exemption Qualifications

- (a) The Department may grant an exemption from an MCL or treatment technique if all of the following criteria apply:
 - (i) Due to compelling factors, the supplier is unable to comply with an MCL or treatment technique requirement, or implement measures to develop an alternative source.
 - (A) Compelling factors may include economic factors (e.g., qualifying as a system that supplies a disadvantaged community).
 - (ii) The exemption will not result in an unreasonable risk to public health.
 - (iii) The supplier cannot reasonably make management and/or restructuring changes that result in compliance or, if compliance cannot be achieved, improve the drinking water quality.
 - (iv) The public water system was in operation on the effective date of the MCL or treatment technique requirement.
 - (A) The Department may grant an exemption to systems not in operation on the effective date of the MCL or treatment technique requirement if a reasonable alternative source is not available.
- (b) If the supplier was granted a variance or small system variance, the supplier will not be granted an exemption.
- (c) The supplier will not be granted an exemption from:
 - (i) The total coliform MCL.

- (A) The effective date relating to the total coliform MCL has been stayed for a supplier that demonstrates to the Department that the violation of the total coliform MCL is due to a persistent growth of total coliforms in the distribution system rather than fecal or pathogenic contamination, a treatment lapse or deficiency, or a problem in the operation or maintenance of the distribution system. This is stayed until March 31, 2016.

(ii) The E. coli MCLs.

- (iii) The entry point residual disinfectant concentration requirement for surface water systems.
- (d) To be granted an exemption, the supplier must establish that all practical steps are being taken to meet the MCL or treatment technique requirement and that at least one of the following apply:
- (i) The system cannot meet the MCL or treatment technique requirement without capital improvements and the capital improvements cannot be completed before the effective date of the MCL or treatment technique requirement.
- (ii) The supplier has entered into an enforceable agreement to become a part of a regional public water system.
- (iii) If the supplier needs financial assistance for necessary improvements, either:
- (A) The supplier has entered into an agreement to obtain financial assistance; or
- (B) Within the period of the exemption, a federal or state program will likely be available.

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11.45 MCLs, MCLGs, SMCLs, MRDLs, MRDLGs, AND ACTION LEVELS

11.45(1) MCLs and MCLGs for Microbiological Contaminants

The following MCLs and MCLGs apply to all public water systems regardless of size or type.

TABLE 11.45-I MCLs AND MCLGs FOR MICROBIOLOGICAL CONTAMINANTS			
Contaminant	Number of samples	MCL	MCLG
<i>Cryptosporidium</i>	.	N/A	Zero
<i>Giardia lamblia</i>	.	N/A	Zero
Viruses	.	N/A	Zero
<i>Legionella</i>	.	N/A	Zero
Coliforms (including fecal coliforms and <i>Escherichia coli</i>) ¹			Zero
Total Coliforms ¹	System collects 40 or more samples per month	No more than 5.0 percent of the samples collected during a month are total coliform-positive	.

	System collects less than 40 samples per month	No more than one sample collected during a month is total coliform-positive	.
Fecal coliform or <i>E. coli</i> repeat sample (following routine total coliform-positive sample) or any total coliform-positive repeat sample following a fecal coliform-positive or <i>E. coli</i> -positive routine sample. ¹	.	Absent	.
<i>Escherichia coli</i> ²	.	<u><i>E. coli</i>-positive repeat sample following a total coliform-positive routine sample, total coliform-positive repeat sample following an <i>E. coli</i>-positive routine sample, failure to collect all required repeat samples following an <i>E. coli</i>-positive routine sample, or failure to analyze a total-coliform positive repeat sample for <i>E. coli</i>.</u>	Zero

1 These MCLs and MCLGs are effective until March 31, 2016.

2 These MCLs and MCLGs are effective beginning April 1, 2016.

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11.46 ANALYTICAL REQUIREMENTS AND LABORATORY CERTIFICATION RULE

11.46(1) Applicability

For all public water systems, the supplier must ensure that all samples meet the testing requirements and analytical methods of this rule.

11.46(2) Bacteriological Analytical Requirements

(a) Total Coliform Analytical Requirements

(i) Until March 31, 2016, the testing requirements and analytical methods for total coliform analysis are specified in 40 CFR 141.21(f)(3) as amended March 1, 2014, July 1, 2014.

(ii) Beginning April 1, 2016, the testing requirements and analytical methods for total coliform analysis are specified in 40 CFR 141.852(a-c) as amended July 1, 2014.

(b) Fecal Coliform Analytical Requirements

Until March 31, 2016, the testing requirements and analytical methods for fecal coliform analysis are specified in 40 CFR 141.21(f)(5) as amended March 1, 2014, July 1, 2014.

(c) Escherichia coli Analytical Requirements

- (i) Until March 31, 2016, the testing requirements and analytical methods for Escherichia coli analysis are specified in 40 CFR 141.21(f)(6-7) and 40 CFR 141.704(b) as amended March 1, 2014 July 1, 2014.
- (ii) Beginning April 1, 2016, the testing requirements and analytical methods for Escherichia coli analysis are specified in 40 CFR 141.704(b) and 40 CFR 141.852(a-c) as amended July 1, 2014.

(d) Cryptosporidium Analytical Requirements

The testing requirements and analytical methods for *Cryptosporidium* analysis are specified in 40 CFR 141.704(a) and 40 CFR 141.707(c)(2) as amended March 1, 2014 July 1, 2014.

(e) Groundwater Source Analytical Requirements

The testing requirements and analytical methods for groundwater source water sample analysis are specified in 40 CFR 141.402(c) as amended March 1, 2014 July 1, 2014.

11.46(3) Inorganic Chemical Analytical Requirements

The testing requirements and analytical methods for inorganic chemical analysis are specified in 40 CFR 141.23(a)(4)(i) and 40 CFR 141.23(k)(1-2) as amended March 1, 2014 July 1, 2014.

11.46(4) SOC and VOC Analytical Requirements

The testing requirements and analytical methods for SOC and VOCs are specified in 40 CFR 141.24(e) as amended March 1, 2014 July 1, 2014.

11.46(5) PCB Analytical Requirements

The testing requirements and analytical methods for PCBs are specified in 40 CFR 141.24(h)(13) as amended March 1, 2014 July 1, 2014.

11.46(6) Radionuclide Analytical Requirements

The testing requirements and analytical methods for radionuclides are specified in 40 CFR 141.25(a-c) as amended March 1, 2014 July 1, 2014.

11.46(7) Turbidity and Heterotrophic Plate Count Analytical Requirements

The testing requirements and analytical methods for turbidity and HPC are specified in 40 CFR 141.74(a) as amended March 1, 2014 July 1, 2014.

11.46(8) Disinfection, Disinfection Byproducts, and Disinfection Byproduct Precursors Analytical Requirements

(a) Disinfection Byproduct Precursors Rule Analytical Requirements

The testing requirements and analytical methods for the disinfection byproduct precursor rule are specified in 40 CFR 141.131(a)(1-2) and 40 CFR 141.131(d)(1-6) as amended March 1, 2014 July 1, 2014.

(b) Disinfection Residual Analytical Requirements

The testing requirements and analytical methods for free chlorine, chloramines, chlorine dioxide, and ozone are specified in 40 CFR 141.74(a), 40 CFR 141.131(a), and 40 CFR 141.131(c) as amended ~~March 1, 2014~~July 1, 2014.

(c) Disinfection Byproducts Rule Analytical Requirements

The testing requirements and analytical methods for disinfection byproducts rule are specified in 40 CFR 141.131(b) and 40 CFR 141.131(a) as amended ~~March 1, 2014~~July 1, 2014.

11.46(9) Lead and Copper Rule Analytical Requirements

The testing requirements and analytical methods for lead, copper, pH, conductivity, calcium, alkalinity, orthophosphate, silica, and temperature are specified in 40 CFR 141.89(a)(1-4) as amended ~~March 1, 2014~~July 1, 2014.

11.46(10) Secondary Contaminants Analytical Requirements

The testing requirements and analytical methods for secondary contaminants are specified in 40 CFR 143.4(b) as amended ~~March 1, 2014~~July 1, 2014.

11.46(11) Alternative Analytical Techniques

The use of alternative testing requirements and analytical methods are specified in 40 CFR 141.27(a) and Appendix A to Subpart C of 40 CFR 141 as amended ~~March 1, 2014~~July 1, 2014.

11.46(12) Certified Laboratories and Laboratory Certification

(a) Certified Laboratories

The requirements for a certified laboratory are specified in 40 CFR 141.28(a) as amended ~~March 1, 2014~~July 1, 2014.

(b) Laboratory Certification for Inorganic Chemicals

The laboratory certification requirements for inorganic chemicals are specified in 40 CFR 141.23(k)(3) as amended ~~March 1, 2014~~July 1, 2014.

(c) Laboratory Certification for VOCs

The laboratory certification requirements for VOCs are specified in 40 CFR 141.24(f)(17) and 40 CFR 141.24(f)(20) as amended ~~March 1, 2014~~July 1, 2014.

(d) Laboratory Certification for SOCs

The laboratory certification requirements for SOCs are specified in 40 CFR 141.24(h)(19) as amended ~~March 1, 2014~~July 1, 2014.

(e) Laboratory Certification for *Cryptosporidium*, *E. coli*, and Turbidity

The laboratory certification requirements for *Cryptosporidium*, *E. coli*, and turbidity are specified in 40 CFR 141.705(a-c) as amended ~~March 1, 2014~~July 1, 2014.

11.46(13) Laboratory Compositing

The requirements for compositing of samples by a laboratory are specified in 40 CFR 141.24(f)(14) as amended ~~March 1, 2014~~July 1, 2014.

11.46(14) Calculating Contact Time Values

- (a) The requirements for calculating contact time values are specified in 40 CFR 141.74(b)(3-4) as amended ~~March 1, 2014~~July 1, 2014.
- (b) Disinfectant contact time in pipelines must be calculated based on the consideration of the liquid level in the pipeline and dividing that volume by the maximum hourly flow rate through that pipe. Disinfectant contact time within mixing basins and storage reservoirs must be determined by tracer studies, or an equivalent demonstration, or by baffling factor estimates considering the minimum operating level.

11.47 UNREGULATED CONTAMINANT MONITORING RULE

11.47(1) Applicability and Requirements for Unregulated Contaminant Monitoring

All public water systems must monitor for unregulated contaminants as specified in 40 CFR 141.40 as amended ~~July 1, 2013~~July 1, 2014 and comply with the requirements specified in this rule.

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WATER QUALITY CONTROL DIVISION PROPOSED

11.57 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE: January 12, 2015 rulemaking; Final Action March 10, 2015; Effective Date May 1, 2015

The following sections were affected by this rulemaking hearing: Adoption of 11.16 – Revised Total Coliform Rule, 11.28 – Storage Tank Rule, 11.39 – Backflow Prevention and Cross Connection Control Rule, and 11.41 – Water Hauler Rule, with amendments to Sections 11.3(38), 11.4(2), 11.5(3)(a)(iv)(A)(V), 11.8(3)(f)(iii), 11.11(3)(c)(i)(B), 11.11(3)(c)(iii), and 11.11(3)(d)(iii). The provisions of the Colorado Revised Statutes (CRS), section 25-1.5-202, provide specific statutory authority for adoption of these regulatory amendments. The Commission also adopted, in compliance with section 24-4-103(4), CRS, the following statement of basis and purpose.

BASIS AND PURPOSE

Background

All suppliers of drinking water in Colorado are subject to regulations adopted by the U.S. Environmental Protection Agency (EPA) under the Safe Drinking Water Act, (42 U.S.C. 300f et seq.) as well as regulations adopted by the Water Quality Control Commission. Colorado, with the Colorado Department of Public Health and Environment (the Department) as the administering agency, has been granted primary enforcement responsibility (primacy) for the public water system supervision program under the federal Safe Drinking Water Act. The Water Quality Control Division (Division) is part of the Department and is responsible for implementing and enforcing the drinking water regulations that are adopted by the Commission and applicable regulations adopted by the Board of Health. In order to maintain primacy from the EPA, states must also promulgate new regulations that are no less stringent than those adopted by the federal government. In this rulemaking the Commission is adopting the Revised Total Coliform Rule which is no less stringent than the federally-mandated Revised Total Coliform Rule. By retaining primacy, the Department is able to protect the public health by ensuring that public water systems provide safe drinking water to Colorado citizens and visitors.

In addition to adopting the federally-mandated Revised Total Coliform Rule to maintain primacy, this rulemaking also included Colorado-specific requirements for storage tanks, backflow prevention and cross connection control, water haulers, minimum chlorine residual disinfectant concentration in the distribution system, and various other editorial revisions and clarifications. The Commission adopted these revisions to address outstanding waterborne disease outbreak reduction strategies that were developed as a result of the Salmonella outbreak in Alamosa in 2008. As published in the November 2009 report "Waterborne Salmonella Outbreak in Alamosa, Colorado March and April 2008" the following strategies were identified and were addressed with these amendments:

- Revise regulations associated with controlling hazardous cross connections at water systems;
- Enhance oversight of total coliform sampling, water storage, and distribution systems during inspections, and collect inventory information on these facilities;
- Ensure compliance with the requirement for water systems to maintain residual chlorine levels in water distribution systems.

Additionally, with this rulemaking, the Commission adopted the federal revisions to the definition of "lead free" as specified in the Federal Reduction of Lead in Drinking Water Act.

Policies, Handbooks and Guidance and Regulation 11

The Division originally adopted WQCD Policy Number 1, *Implementation Policy Framework* (Policy 1) in November 2010 and the associated *Procedure 1* in August 2012; both were prepared in accordance with the Colorado Administrative Procedures Act, Article 4, Title 24 of the CRS.

The Commission adopts regulations that create binding norms or legal obligations of the Department or regulated entities. The Department may develop implementation policies and guidance/handbooks where implementation of Regulation 11 may require interpretation, decision-making flexibility, or a stream-lined approach for meeting compliance requirements.

These amendments to Regulation 11 include references to guidance/handbooks that the Department intends to develop as part of ongoing implementation of Regulation 11.

Policy 1 specifically states that implementation policies and associated procedures are not binding regulations and are not to be applied as such. The referenced guidance/handbooks in these amendments are not requirements. Violations or other notices of non-compliance cannot be issued against a policy or guidance/handbook. Violations or other notices of non-compliance can, and will, only be issued for a failure to comply with Regulation 11 or an applicable statute (law) included in the CRS. Implementation policies and guidance/handbooks have no compliance expectation.

Revised Total Coliform Rule

The Commission replaced the Total Coliform Rule in section 11.17 with the Revised Total Coliform Rule in section 11.16. The Revised Total Coliform Rule increases public health protection by requiring a more proactive approach to identifying and fixing issues that make the distribution system vulnerable to microbial contamination, and therefore provide incentives for improved water system operation. The Revised Total Coliform Rule includes the following provisions of the federal regulations as published in the Federal Register, Volume 78, Number 30, February 13, 2013, pages 10270 through 10365, National Primary Drinking Water Regulations:

- Additional definitions and recordkeeping and reporting requirements.
- Treatment technique triggers for Level 1 and Level 2 assessments.
- Additions to the written sampling plan as part of the monitoring plan requirements in section 11.5.
- Start-up procedures for seasonal systems.
- Reporting requirements for *E. coli*-positive special purpose samples.
- Increased routine sampling requirements for non-community groundwater systems supplying less than or equal to ($\leq$) 1,000 people.
- Level 1 and Level 2 assessments.
- Treatment technique violations.
- Additional public notification requirements.

The amendments adopted by the Commission remain as stringent as the federal requirements for the Revised Total Coliform Rule while also establishing requirements that are more protective of public health. Examples of these requirements include the following:

- No allowance for reduced monitoring. Colorado did not adopt the allowance for reduced monitoring in the federal Total Coliform Rule and therefore not allowing reduced monitoring has

historically been the Department's practice. Reducing the number of samples collected reduces the likelihood of detecting total coliforms and *E. coli*.

- No waivers will be granted from collecting three routine samples in the month following a total coliform-positive sample result. Collecting these additional routine samples helps identify whether the contamination is still present or if the previous month's activities fixed the problem. Granting a waiver from collecting these samples reduces the likelihood of detecting a persistent issue.
- No allowance for the supplier to forgo *E. coli* testing on a total coliform-positive sample in exchange for assuming that the sample is *E. coli*-positive. Certified laboratories automatically test total coliform-positive samples for *E. coli*. Also, having these data allow the Department to direct the appropriate follow-up activities in response to an *E. coli*-positive sample result.
- Adding a requirement that any special purpose sample that is *E. coli*-positive and is representative of water in the distribution system must be submitted to the Department but will not be used for compliance. This information will alert the Department to the potential of an acute contamination event and allow the Department to respond if necessary.

Minimum Distribution System Residual Disinfectant Concentration

The Centers for Disease Control and Prevention has called providing safe drinking water one of the greatest public health achievements of the 20th century. Colorado has long recognized the use of mandatory disinfection and the maintenance of a chlorine residual throughout distribution systems as necessary for the protection of public health from waterborne diseases. The Commission and the Department agree that the intent of the regulations has always been to actually have a chlorine residual present throughout all distribution systems.

Recently, two disease outbreaks occurred in Colorado - the 2008 salmonella outbreak in Alamosa and the Skyline Ranch norovirus outbreak in 2007. The Alamosa outbreak was particularly serious due to the large number of people who were sickened and one death associated with this particular disease outbreak. Alamosa had a disinfection waiver at the time of the outbreak (which has since been withdrawn) and, as a result, the city's drinking water was not being disinfected and the distribution system maintained no disinfectant residual. An extensive report was developed in the wake of the Alamosa outbreak. This report outlined a combined failure of physical, regulatory and human infrastructure all of which contributed to the outbreak. A key recommendation of this report was that all distribution systems should maintain appropriate disinfectant residual to maintain the final barrier to protect public health.

The Department presented evidence of the occurrence of *E. coli* within drinking water samples and found that there exists over a 300 percent rise in probability of a bacteria sample having *E. coli* when the chlorine residual is less than 0.2 mg/L. Furthermore, between eight and ten percent of samples taken in Colorado are at or below the proposed disinfectant residual limit.

Given the history and statewide practices of distribution system residual maintenance, the threat of waterborne illness, and to protect public health the Commission adopted a minimum allowable residual disinfectant concentration in the distribution system of 0.2 mg/L. The value of 0.2 mg/L includes only one significant digit and therefore any measurement of 0.15 mg/L or greater is compliant with this requirement.

These amendments replace the federal requirements for surface water systems and the Colorado-specific requirements for groundwater systems to maintain a detectable residual disinfectant concentration in the distribution system. The adopted minimum requirement for residual disinfectant concentration in the distribution system of 0.2 mg/L remains no less stringent than the federal standard of a detectable residual disinfectant concentration. The overall goal of these amendments is to further protect the public from microbial contamination and to correct the practice of maintaining less than a

reasonable amount of chlorine in distribution systems. Amendments were made to sections 11.8, 11.11, 11.33 and 11.34.

The amendments included the following provisions:

- Replacement of the requirement that the disinfectant residual 'not be undetectable' with the requirement that public water systems maintain a minimum of 0.2 mg/L in the distribution system sampled at the same time as total coliform samples for all public water systems that are required to disinfect in sections 11.8 and 11.11.
- Establishment of a treatment technique violation for failure to comply with the minimum residual disinfectant concentration for only one monitoring period and maintenance of federal violation for failure to comply with the minimum residual disinfectant concentration for two consecutive monitoring periods in sections 11.8 and 11.11.
- Specific language requirements for public notification and consumer confidence reports in sections 11.33 and 11.34 when violations occur.

Backflow Prevention and Cross-connection Control Rule

The Commission amended Regulation 11 to include regulatory requirements for backflow prevention and cross-connection control in section 11.39 that replaces the Cross-connection Control Rule in section 11.37. The Cross-connection Control Rule in section 11.37 was written approximately 30 years ago and provided compliance challenges for public water systems, and for Department staff to determine and assure compliance. The Cross-connection Control Rule in section 11.37 required 100 percent compliance with annual cross connection control device testing requirements. Very few public water systems were able to comply with this unrealistic requirement. These amendments address many outstanding issues with the 30 year old rule including issues brought up by stakeholders during the November 2013 rulemaking; the amendments included the following provisions in sections 11.39, 11.33, and 11.36:

- Development of a written backflow prevention and cross-connection control program.
- Required notification to the Department of any suspected or confirmed backflow contamination event.
- System survey requirements to determine if cross connections are present including a five year compliance schedule for public water systems to build toward full compliance.
- Installation of backflow prevention assemblies or methods on uncontrolled cross connections.
- Annual backflow prevention assembly testing requirements to determine if assemblies are properly functioning including a five year compliance schedule for public water systems to build towards full compliance.
- Annual backflow prevention method inspection requirements to determine if methods are properly functioning.
- Development of an annual backflow prevention and cross-connection control program report.
- Specific language requirements for public notification in section 11.33 when violations occur.
- Recordkeeping requirements.

In considering the above revisions to the Backflow Prevention and Cross-connection Control Rule, the Department took into consideration many of the stakeholder comments. Specifically, stakeholders felt that

they should have latitude to develop alternative compliance schedules for controlling cross connections or for surveying their system. The adopted revisions reflect these stakeholder recommendations. In addition, the stakeholder community agreed that the cross connection rule is difficult to implement in either form, and so they concurred with the five year timeline to move into full compliance with the regulation with increasingly stringent performance each year. Stakeholders agreed with lessening the 100 percent compliance requirement to 90 percent compliance after the five year ramp-up period.

Storage Tank Rule

The Commission amended Regulation 11 to include regulatory requirements for the inspection of finished water storage tanks in the Storage Tank Rule in section 11.28. Storage tanks are infrastructure assets that require inspections and maintenance throughout their useful life. While EPA discussed including storage tank requirements when developing the Revised Total Coliform Rule, it ultimately did not directly address storage tank inspection and maintenance in the final Revised Total Coliform Rule. The Commission believes that the Storage Tank Rule provides increased public health protection, since storage tanks that lack inspection and maintenance can present a pathway for microbial contamination.

One person died and 1,300 people got sick during the Alamosa outbreak including about 40 percent of the infants in the city. The outbreak cost millions of dollars and storage tank defects were the likely cause of that outbreak.

The rule is in response to the 2008 Alamosa outbreak as well as hundreds of preventable significant deficiencies that have been identified at storage tanks during sanitary surveys since 2008. The Storage Tank Rule makes it clear that uncorrected sanitary defects in storage tanks are violations and suppliers are required to develop and implement a plan to properly inspect and maintain their storage tanks. This rule is a measured, flexible and appropriate response that was developed with stakeholders and represents best practices that are already in place at many Colorado public water systems.

The adopted revisions, in response to stakeholder concerns, only apply to finished water storage tanks. The Commission believes that raw groundwater tanks and finished water clearwells may still need to be regulated; however the Department will evaluate the need for this as it implements the Storage Tank Rule.

The amendments included the following provisions in sections 11.28, 11.33, and 11.36:

- Development of a written plan for storage tank inspections.
- Requirements to conduct periodic and comprehensive inspections of all finished water storage tanks.
- Requirements to correct sanitary defects identified during periodic and comprehensive inspections.
- Specific language requirements for public notification in section 11.33 when violations occur.
- Recordkeeping requirements.

Water Hauler Rule

The Commission amended Regulation 11 to include regulatory requirements for water haulers which are defined as public water systems that transport drinking water using a vehicle, in section 11.41. On November 26, 1976 EPA published EPA Water System Guidance 6A: "Applicability of the Safe Drinking Water Act to Water Haulers" that clarified that water haulers are public water systems under the Safe Drinking Water Act and therefore are subject to the National Primary Drinking Water Regulations. In May, 1986 the Water Quality Control Division adopted policy DWT-8: "Monitoring Requirements for Water

Haulers” to establish specific requirements for water haulers which address their unique drinking water operations. In addition to the policy, the Department has historically applied Regulation 11 to these types of public water systems. The amendments adopted in this rulemaking add regulatory requirements to address the unique operations of water haulers. It is not intended that water haulers not previously regulated will be regulated as a result of these amendments but the Commission does believe that the addition of these requirements to the regulations, instead of in policy, will make the water hauler industry more aware of the applicability of Regulation 11 to their industry.

The amendments adopted include many aspects of policy DWT-8 as well as provisions to comply with Department-approved operational standards.

The amendments included the following provisions in sections 11.16, 11.17, 11.36, and 11.41:

- Total Coliform Rule monitoring.
- Residual disinfectant concentration monitoring.
- Compliance with an Operational Plan.
- Recordkeeping requirements.

During the stakeholder process, water haulers were generally in agreement with the proposed rule. Based on stakeholder input, the adopted revisions include terminology that is consistent with and understood by the water hauler community.

Additional Amendments

The Commission made the following amendments to be consistent with Department practices, to add clarity, or update outdated requirements:

- 11.3(38) - Revisions to the lead free definition to be consistent with the new Federal Reduction of Lead in Drinking Water Act.
- 11.4(2) – Revisions to the siting requirements for waterworks.
- 11.5(3)(a)(iv)(A)(V) - Revisions to the requirements for master meters to be included in the monitoring plan.
- 11.8(3)(f)(iii) – Removal of the allowance for the supplier of a surface water system to not submit entry point chlorine residual measurements.
- 11.11(3)(c)(i)(B), 11.11(3)(c)(iii), and 11.11(3)(d)(iii) – Removal of the allowance for the supplier of a groundwater system to use membrane filters for virus treatment credit.
- All requirements incorporated by reference from 40 CFR 141 were updated to reference 40 CFR 141 as amended on July 1, 2014.
- Typographical errors, renumbering, and updated cross references were revised as necessary throughout Regulation 11.

Notice of Rulemaking Hearing

Tracking number

2014-01051

Department

1100 - Department of Labor and Employment

Agency

1101 - Division of Workers' Compensation

CCR number

7 CCR 1101-3 _R17,Ex 03

Rule title

Rule 17: Exhibit 3 - THORACIC OUTLET SYNDROME MEDICAL TREATMENT GUIDELINES

Rulemaking Hearing**Date**

11/12/2014

Time

09:00 AM

Location

633 17th St, Denver CO 80214

Subjects and issues involved

Medical treatment guidelines exhibits 3 and 4

Statutory authority

8-47-107

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RULE 17, EXHIBIT 3

**Thoracic Outlet Syndrome
Medical Treatment Guidelines**

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**Department of Labor and Employment
DIVISION OF WORKERS' COMPENSATION**



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Department of Labor and Employment

Division of Workers' Compensation

CCR 1101-3

Rule 17, EXHIBIT 3

THORACIC OUTLET SYNDROME MEDICAL TREATMENT GUIDELINES

INTRODUCTION

This document has been prepared by the Colorado Department of Labor and Employment, Division of Workers' Compensation (Division) and should be interpreted within the context of guidelines for physicians/providers treating individuals qualifying under Colorado's Workers' Compensation Act as injured workers with upper extremity involvement.

Although the primary purpose of this document is advisory and educational, these guidelines are enforceable under the Workers' Compensation Rules of Procedure, 7 CCR 1101-3. The Division recognizes that acceptable medical practice may include deviations from these guidelines, as individual cases dictate. Therefore, these guidelines are not relevant as evidence of a provider's legal standard of professional care.

To properly utilize this document, the reader should not skip or overlook any sections.

GENERAL GUIDELINES PRINCIPLES

The principles summarized in this section are key to the intended implementation of all Division of Workers' Compensation guidelines and critical to the reader's application of the guidelines in this document.

- 1. APPLICATION OF GUIDELINES:** The Division provides procedures to implement medical treatment guidelines and to foster communication to resolve disputes among the provider, payer, and patient through the Workers' Compensation Rules of Procedure. In lieu of more costly litigation, parties may wish to seek administrative dispute resolution services through the Division or the office of administrative courts.
- 2. EDUCATION:** Education of the patient and family, as well as the employer, insurer, policy makers and the community should be the primary emphasis in the treatment of chronic pain and disability. Currently, practitioners often think of education last, after medications, manual therapy, and surgery. Practitioners must implement strategies, to educate patients, employers, insurance systems, policy makers, and the community as a whole. An education-based paradigm should always start with inexpensive communication providing reassuring and evidence-based information to the patient. More in-depth patient education is currently a component of treatment regimens which employ functional restorative, preventive, and rehabilitative programs. No treatment plan is complete without addressing issues of individual and/or group patient education as a means of facilitating self-management of symptoms and prevention.
- 3. INFORMED DECISION MAKING:** Providers should implement informed decision making as a crucial element of a successful treatment plan. Patients, with the assistance of their health care practitioner, should identify their personal and professional functional goals of treatment at the first visit. Progress towards the individual's identified functional goals should be addressed by all members of the health care team at subsequent visits and throughout the established treatment plan. Nurse case managers, physical therapists, and other members of the health care team play an integral role in informed decision making and achievement of functional goals. Patient education and informed decision making should facilitate self-management of symptoms and prevention of further injury.
- 4. TREATMENT PARAMETER DURATION:** Time frames for specific interventions commence once treatments have been initiated, not on the date of injury. Obviously, duration will be impacted by patient compliance, as well as availability of services. Clinical judgment may substantiate the need to accelerate or decelerate the time frames discussed in this document.
- 5. ACTIVE INTERVENTIONS:** emphasizing patient responsibility, such as therapeutic exercise and/or functional treatment, are generally emphasized over passive modalities, especially as treatment progresses. Generally, passive and palliative interventions are viewed as a means to facilitate progress in an active rehabilitation program with concomitant attainment of objective functional gains.

6. **ACTIVE THERAPEUTIC EXERCISE PROGRAM:** goals should incorporate patient strength, endurance, flexibility, coordination, and education. This includes functional application in vocational or community settings.
7. **POSITIVE PATIENT RESPONSE:** results are defined primarily as functional gains that can be objectively measured. Objective functional gains include, but are not limited to, positional tolerances, range of motion (ROM), strength, endurance, activities of daily living, cognition, psychological behavior, and efficiency/velocity measures that can be quantified. Subjective reports of pain and function should be considered and given relative weight when the pain has anatomic and physiologic correlation. Anatomic correlation must be based on objective findings.
8. **RE-EVALUATE TREATMENT EVERY 3 TO 4 WEEKS:** If a given treatment or modality is not producing positive results within three to four weeks, the treatment should be either modified or discontinued. Before discontinuing the treatment, the provider should have a detailed discussion with the patient to determine the reason for failure to produce positive results. Reconsideration of diagnosis should also occur in the event of poor response to a seemingly rational intervention.
9. **SURGICAL INTERVENTIONS:** should be contemplated within the context of expected functional outcome and not purely for the purpose of pain relief. The concept of “cure” with respect to surgical treatment by itself is generally a misnomer. All operative interventions must be based upon positive correlation of clinical findings, clinical course, and diagnostic tests. A comprehensive assimilation of these factors must lead to a specific diagnosis with positive identification of pathologic conditions.
10. **SIX-MONTH TIME FRAME:** The prognosis drops precipitously for returning an injured worker to work once he/she has been temporarily totally disabled for more than six months. The emphasis within these guidelines is to move patients along a continuum of care and return to work within a six-month time frame, whenever possible. It is important to note that time frames may not be pertinent to injuries that do not involve work time loss or are not occupationally related.
11. **RETURN-TO-WORK:** is therapeutic, assuming the work is not likely to aggravate the basic problem or increase long-term pain. The practitioner must provide specific physical limitations and the patient should never be released to “sedentary” or “light duty.” The following physical limitations should be considered and modified as recommended: lifting, pushing, pulling, crouching, walking, using stairs, bending at the waist, awkward and/or sustained postures, tolerance for sitting or standing, hot and cold environments, data entry and other repetitive motion tasks, sustained grip, tool usage and vibration factors. Even if there is residual chronic pain, return-to-work is not necessarily contraindicated.

The practitioner should understand all of the physical demands of the patient's job position before returning the patient to full duty and should request clarification of the patient's job duties. Clarification should be obtained from the employer or if necessary, including, but not limited to, an occupational health nurse, occupational therapist, vocational rehabilitation specialist, or an industrial hygienist.

12. DELAYED RECOVERY: Strongly consider a psychological evaluation, if not previously provided, as well as initiating inter-disciplinary rehabilitation treatment and vocational goal setting, for those patients who are failing to make expected progress 6 to 12 weeks after an injury. The Division recognizes that 3 to 10% of all industrially injured patients will not recover within the timelines outlined in this document despite optimal care. Such individuals may require treatments beyond the limits discussed within this document, but such treatment will require clear documentation by the authorized treating practitioner focusing on objective functional gains afforded by further treatment and impact upon prognosis.

13. GUIDELINE RECOMMENDATIONS AND INCLUSION OF MEDICAL EVIDENCE: *All recommendations are based on available evidence and/or consensus judgment.* When possible, guideline recommendations will note the level of evidence supporting the treatment recommendation. It is generally recognized that early reports of a positive treatment effect are frequently weakened or overturned by subsequent research. When interpreting medical evidence statements in the guideline, the following apply:

- Consensus means the judgment of experienced professionals based on general medical principles. Consensus recommendations are designated in the guideline as “generally well-accepted,” “generally accepted,” “acceptable/accepted,” or “well-established.”
- “Some” means the recommendation considered at least one adequate scientific study, which reported that a treatment was effective. The Division recognizes that further research is likely to have an impact on the intervention’s effect.
- “Good” means the recommendation considered the availability of multiple adequate scientific studies or at least one relevant high-quality scientific study, which reported that a treatment was effective. The Division recognizes that further research may have an impact on the intervention’s effect.
- “Strong” means the recommendation considered the availability of multiple relevant and high-quality scientific studies, which arrived at similar conclusions about the effectiveness of a treatment. The Division recognizes that further research is unlikely to have an important impact on the intervention’s effect.

All recommendations in the guideline are considered to represent reasonable care in appropriately selected cases, irrespective of the level of evidence or consensus statement attached to them. Those procedures considered inappropriate, unreasonable, or unnecessary are designated in the guideline as “***not recommended***.”

14. CARE BEYOND MAXIMUM MEDICAL IMPROVEMENT (MMI): should be declared when a patient’s condition has plateaued to the point where the authorized treating physician no longer believes further medical intervention is likely to result in improved function. However, some patients may require treatment after MMI has been declared in order to maintain their functional state. The recommendations in this guideline are for pre-MMI care and are not intended to limit post-MMI treatment.

The remainder of this document should be interpreted within the parameters of these guideline principles that may lead to more optimal medical and functional outcomes for injured workers.

DEFINITION OF THORACIC OUTLET SYNDROME

Thoracic Outlet Syndrome (TOS) may be described as a neurovascular disorder affecting the upper extremity which, on rare occasions, is caused by workplace factors, such as jobs that require repetitive activities of the upper extremities with forward head and shoulder postures. It should be emphasized that occupational TOS is a relatively uncommon disorder and other disorders with similar symptomatology need to be ruled out. (These syndromes can be associated with motor vehicle accident trauma, especially while wearing a shoulder strap).

There are three types of thoracic outlet syndrome. The two vascular types, comprised of subclavian vein or artery pathology, are diagnosed with imaging. Neurogenic TOS (described by some literature as true or classic TOS) consists of a chronic lower trunk brachial plexopathy diagnosed by positive electrodiagnostic testing. It is usually unilateral, predominantly affects women, and results in classic electrophysiologic and physical exam findings such as hand atrophy.

Venous TOS (VTOS) is obstruction of the subclavian vein causing arm swelling. It can be with thrombosis or non-thrombotic. In the workplace, VTOS is usually caused by repetitive activities with the arms above shoulder level. Most workers with this present with thrombosis of the subclavian vein. Venous TOS is seldom caused by work-related conditions.

Arterial TOS is usually associated with a cervical rib or anomalous first rib. This is regarded primarily as a predisposing factor. Most people with these ribs never develop symptoms. Precipitating factors in patients with cervical or anomalous ribs are trauma such as motor vehicle accidents or other events causing hyperextension neck injuries. Arterial TOS is rarely a work-related condition.

The majority of patients who present with some physical exam findings of TOS do not have vascular or neurogenic TOS. Their symptoms are caused by myofascial dysfunction. The usual physiologic cause includes abnormal posture, scapular dyskinesis, and pectoralis minor shortening. Myofascial dysfunction with TOS symptoms does not qualify as an operative condition (some literature classifies these cases under the older term of non-specific or disputed TOS). A more general, commonly used diagnostic term for myofascial dysfunction with TOS symptoms is thoracic sprain. Treatment should follow recommendations in the active therapy section. Refer to Section F.11. Therapy-Active.

INITIAL DIAGNOSTIC PROCEDURES

The Division recommends the following diagnostic procedures be considered, at least initially, the responsibility of the workers' compensation carrier to ensure that an accurate diagnosis and treatment plan can be established. Standard procedures that should be utilized when initially diagnosing a work-related TOS complaint are listed below.

- 1. HISTORY TAKING AND PHYSICAL EXAMINATION (HX & PE):** are generally accepted, well-established and widely used procedures which establish the basis for diagnosis, and dictate all other diagnostic and therapeutic procedures. When findings of clinical evaluations and those of other diagnostic procedures are not complementing each other, the objective clinical findings should have preference. Neurogenic TOS will be described separately from vascular TOS, although some general symptoms may occasionally overlap. Vascular TOS usually requires urgent or emergent treatment as described in the surgical section. Over 90% of all TOS cases are neurogenic, 1% arterial and 3-5% venous. Although the cervical rib has been implicated in TOS, less than 1% of the population has a supernumerary rib from the 7th cervical vertebra, and only 10% of this population has symptoms. Treatment for patients with TOS symptoms begins with jobsite alteration and therapy as described in Section F does not require surgical intervention. Neurogenic TOS may require early surgical intervention if there is significant weakness with corresponding EMG/NCV changes. The medical records should reasonably document the following:

- a. History Taking:**

A careful history documenting exacerbating activities and positions which relieve symptoms is essential. Timing of the onset of symptoms is important. TOS has been associated with trauma and motor vehicle accidents. Clavicular fractures can be related. Baseball pitchers may present with TOS symptoms. Avocational pursuits should also be specifically documented. A cervical rib is congenital, and considerations regarding work relatedness should take this into account.

- i. Symptoms common to neurogenic TOS:**

Neurological symptoms are usually consistent. Other neurologic diagnoses should be considered such as other brachial plexus injuries. Neck pain is often the first symptom with complaints within the first few days of injury. Occipital headaches may also occur early. Some patients experience coldness or color changes in the hands. Neurogenic symptoms include the following:

- A) Forearm (frequently medial), or proximal upper extremity pain including: neck, trapezius, chest, axillar, shoulder and/or arm. Examiner should ask specifically about each area.
- B) Numbness and paresthesia in arm, hand, and fingers:

The most common patterns are 4th and 5th digits or all 5 fingers.

Symptoms may occur in the 1st, 2nd and 3rd digits, but one must rule out carpal tunnel syndrome.

- C) The most common complaints are upper extremity weakness in the arm and/or hand. Frequently dropping things is a common complaint.
- D) Arm elevation is an exacerbating factor. Common complaints are disturbed sleep, trouble combing hair, putting on clothing, driving a car, or carrying objects with shoulder straps such as back packs.

ii. Symptoms in Venous TOS:

- A) Arm swelling.
- B) Color change – dark red, purple.
- C) Pain is mild. Arm feels tight.
 - Sudden onset of swelling suggest venous blood clot. This is urgent, but not emergent. Requires treatment within 24 hours. Arm viability is NOT threatened.

iii. Symptoms of Arterial TOS – are due to arterial embolus to arm or hand

- A) Never swollen.
- B) Color change – white, looks ischemic.
- C) Claudication – pain in forearm when using it for any activity.
- D) Pain at rest – suggests ischemia, pregangrene.
- E) Numbness – suggests ischemia, pregangrene.
 - This condition is urgent to emergent. Needs attention within 6-12 hours.

iv. Functional assessment: Functional ability should be assessed and documented at the beginning of treatment. Periodic assessment should be recorded throughout the course of care to follow the trajectory of recovery. In addition to being more relevant to recovery from TOS, functional measures are likely to be more reliable over time than pain measures.

Patient-reported outcomes, whether of pain or function, are susceptible to a phenomenon called response shift. This refers to changes in self-evaluation which may accompany changes in health status. Patient self-reports may not coincide with objective measures of outcome, due to reconceptualization of the impact of pain on daily function and internal recalibration of pain scales. Response shift has potential to obscure treatment effects in clinical trials and clinical practice, and may lead to apparent discrepancies in patient-reported outcomes following treatment interventions. While methods of measuring and accounting for response

shift are not yet fully developed, understanding that the phenomenon exists can help clinicians understand what is happening when some measures of patient progress appear inconsistent with other measures of progress.

Questionnaires may also be helpful to describe and follow symptoms and to identify coexisting conditions. Examples include Disability of the Arm, Shoulder and Hand (DASH), the Cervical Brachial Symptom Questionnaire, and depression screening such as the Beck depression scale.

b. Occupational Relationship for Neurogenic and Vascular TOS:

In many cases, trauma is the cause of venous and arterial or neurogenic TOS. Clavicular fractures, cervical strain (including whiplash), and other causes of cervical trauma injuries have been associated with TOS. Continual overhead lifting or motion may contribute as can static postures in which the shoulders droop and the head is inclined forward. Activities which cause overdeveloped scalene muscles such as weight-lifting, baseball, rowing and swimming may contribute. The causes of TOS can be placed into 3 general categories: trauma, posture, and repetitive activities.

The Paget-Schroetter syndrome, or effort thrombosis of the subclavian vein, may occur in athletes or workers with repetitive overhead forceful motion and neck extension. It may be caused by microtraumas and by venous stasis induced by mechanical stress on the vein.

Arterial thrombosis or symptoms from subclavian aneurysms or stenosis are usually not related to work or trauma, but are associated with a cervical rib or an anomalous first rib.

Both classic neurogenic TOS (usually due to a cervical or anomalous first rib) and TOS due to arterial compromise from stenosis or aneurysm are rarely work-related conditions.

None of the following anatomical findings are pathognomonic for TOS as they occur frequently in the asymptomatic population also:

- congenital bands and ligaments around the scalene muscles
- a complete or incomplete cervical rib
- interdigitating muscle fibers between the anterior and middle scalene muscles.

c. Physical Findings:

Physical examination signs are used to diagnose neurogenic TOS. Both extremities should be examined to compare symptomatic and asymptomatic sides.

i. Provocative maneuvers (listed below) must reproduce the symptoms of TOS to be considered positive.

- A) Tenderness over scalene muscles in supraclavicular area.
- B) Pressure in supraclavicular area elicits symptoms in arm/hand, or Tinel's sign over the brachial plexus is positive. The supraclavicular pressure test is positive for paresthesia in approximately 15% of asymptomatic individuals.
- C) Elevated arm stress test (EAST) is performed with the arms abducted and shoulders externally rotated to 90 degrees with elbows bent to 90 degrees for 1 minute. The patient may also be asked to repetitively open and close fists (Roos Test), however, this is not required. A positive test reproduces upper extremity symptoms or dropping of arms to alleviate symptoms within 60 seconds, often within 30 seconds.

Some literature has suggested another provocative elevated arm stress test, Wright's test. The patient holds his arms over head for one minute with elbows extended, wrists in a neutral position, and forearm midway between supination and pronation. If symptoms are reproduced, the test is positive.

- D) Upper Limb Tension Test (ULTT). This test is comparable to straight leg raising in the lower extremity. It is a modification of Elvey's test first described about 1990. There are 3 steps, or positions:
 - 1) Arm is extended 90° with elbow straight out.
 - 2) Wrist is dorsi-flexed.
 - 3) Head is tilted to opposite side, putting ear to shoulder (contralateral side).

A positive response is onset of paresthesia in the hand or pain down the arm. This test is not specific for neurogenic TOS and may be positive in other upper extremity neurogenic conditions.

ii. Posture related brachial tests (listed below) must reproduce the symptoms of TOS to be considered positive.

- A) Head tilting: lateral flexion of the neck (ear to shoulder) causes radiating pain and paresthesia in the contralateral arm consistent with TOS.
- B) Neck Rotation or Adson's: Turn the chin all the way to the side and move opposite arm into extension, abduction and then external rotation. A positive response is the onset of pain and/or paresthesia on the opposite (contralateral) side.

iii. Neurological examination:

- A) Sensory exam: may show decreased sensation to light touch, pain, vibration, and/or temperature in lower brachial plexus distribution. The entire ring finger is frequently involved. The entire little finger and lateral side of the ring finger may show sensory changes and occasionally the long finger showed sensory changes. This contrasts with ulnar neuropathy, which usually involves only the ulnar side of the ring finger.
- B) Motor exam: weakness and/or muscle atrophy in either upper or lower trunk distributions including, but not limited to, valid dynamometer readings indicative of relative weakness in the affected limb compared to the unaffected limb. In lower plexus injuries, the abductor pollicis brevis often demonstrates more involvement and atrophy than the intrinsic interosseous muscles. Atrophy of the thenar eminence as compared to the asymptomatic hand can occasionally be observed.

iv. Physical exam findings for venous and arterial TOS cases:

Suspicion of vascular compromise should lead to confirmation using appropriate imaging procedures.

- A) Arterial cases usually demonstrate an absent radial pulse at rest, a pale hand, and often ischemic fingers.
- B) Venous obstruction presents with visible or distended superficial veins on the affected side involving the anterior axillary fold and chest wall. The arm is usually swollen and cyanotic. Measurement of the circumference of wrist and upper arm/biceps may objectively demonstrate asymmetry.

v. Physical Exam - other tests which are recommended and may indicate additional diagnostic considerations.

- A) Neck rotation may be restricted and can indicate the presence of additional pathology.
- B) Rotator cuff/acromioclavicular (AC) joint tenderness suggests rotator cuff, or biceps tendonitis or AC joint disease.
- C) Trapezius muscle, shoulder girdle muscles or paraspinal muscle tenderness suggests a myofascial component or protective spasm. Trapezius tenderness is common in both neurogenic TOS and pectoralis minor syndrome.
- D) Drooping shoulders secondary to nerve injuries can be present with TOS symptoms. If a spinal accessory, long thoracic or other nerve injury is identified, treatment should focus on therapy for the nerve injury in addition to conservative measures for TOS.

Refer to the Shoulder Injury Medical Treatment Guidelines, Section E.4. Brachial Plexus and Shoulder Nerve Injuries.

- E) The following tests suggest carpal tunnel syndrome: carpal tunnel compression test, flicking the wrist secondary to paresthesia, Tinel's sign and/or Phalen's sign.
- F) Positive Tinel's sign at elbow (over ulnar groove) suggests ulnar nerve entrapment.
- G) Positive Tinel's sign over the pronator teres muscle suggests median nerve involvement. Positive Tinel's sign over the radial tunnel suggests radial nerve compression.

d. Cervical Spine X-ray: is a generally accepted, well-established procedure indicated to rule out cervical spine disease, fracture, cervical rib or rudimentary first rib when clinical findings suggest these diagnoses. Cervical spine x-rays should also be considered when there is an asymmetric diminished pulse in an arm that is symptomatic. X-rays are most useful when arterial TOS is suspected. The presence of a cervical rib does not confirm the diagnosis unless other clinical signs and symptoms are present, as many cervical ribs are asymptomatic. Therefore, routine roentgenographic evaluation of the cervical spine is frequently unnecessary early in the course of treatment for patients with thoracic outlet symptoms due to myofascial dysfunction.

e. Vascular Studies: Vascular laboratory studies, including duplex scanning, Doppler studies, standard and MR arteriography and venography are required for patients presenting with arterial or venous occlusion, as these patients may require immediate thrombolytic intervention. These studies are not indicated for neurogenic TOS.

FOLLOW-UP DIAGNOSTIC IMAGING AND TESTING PROCEDURES

One diagnostic imaging procedure may provide the same or distinctive information as does another procedure. Therefore, the prudent choice of a single diagnostic procedure, a complement of procedures or a sequence of procedures will optimize diagnostic accuracy; maximize cost effectiveness (by avoiding redundancy), and minimize potential adverse effects to patients.

All diagnostic imaging procedures have a significant percentage of specificity and sensitivity for various diagnoses. None is specifically characteristic of a certain diagnosis. Clinical information obtained by history taking and physical examination should form the basis for selecting an imaging procedure and interpreting its results.

Practitioners should be aware of the radiation doses associated with various procedures and provide appropriate warnings to patients. Coloradans have a background exposure to radiation, and unnecessary CT scans or X-rays increase the lifetime risk of cancer death.

When a diagnostic procedure, in conjunction with clinical information, can provide sufficient information to establish an accurate diagnosis, the second diagnostic procedure will become a redundant procedure. At the same time, a subsequent diagnostic procedure can be a complementary diagnostic procedure if the first or preceding procedures, in conjunction with clinical information, cannot provide an accurate diagnosis. Usually, preference of a procedure over others depends upon availability, a patient's tolerance, and/or the treating practitioner's familiarity with the procedure.

1. CERVICAL COMPUTED AXIAL TOMOGRAPHY OR MAGNETIC RESONANCE

IMAGING (CT/MRI): are generally accepted, well-established procedures indicated to rule out cervical disc or other cervical spine disorders when clinical findings suggest these diagnoses. It should not be routinely performed for TOS. MRI is the preferred test over a CT unless a fracture is suspected, and then CT may be superior to MRI. CT/MRI is not indicated early unless there is a neurological deficit and/or the need to rule out a space-occupying lesion, such as a tumor. A number of anatomic variants which may be identified are not necessarily pathognomonic for TOS. Refer to Section D.1.b. Occupational Relationship for Neurogenic and Venous and Arterial TOS. Repeat cervical MRI is not indicated for TOS. If cervical spine injury is confirmed, refer to Division's Cervical Spine Injury Medical Treatment Guidelines. If a cervical spine disorder is not suspected, conservative therapy as indicated in Section F. Non-operative Procedures should be done for at least 8 to 12 weeks, prior to ordering an MRI for persistent symptoms.

2. ELECTRODIAGNOSTIC STUDIES:

a. Electromyography/Nerve Conduction Velocities (EMG/NCV): are generally accepted, well-established procedure. EMG/NCV is primarily indicated to rule out other nerve entrapment syndromes such as cervical nerve roots, ulnar neuropathy, carpal tunnel or cubital tunnel syndrome when indicated by clinical examination, or to establish neurogenic TOS. Most cases of myofascial dysfunction with thoracic outlet symptoms have normal electrodiagnostic studies, but EMG/NCV should be considered when symptoms have been present for approximately 3 months or if the patient has failed 8 weeks of conservative therapy. EMG/NCV may also be performed to rule out other disorders. F wave measurements have no utility in the work up for TOS. Nerve conduction studies

across the thoracic outlet are considered controversial for diagnostic purposes by some authors.

The diagnosis should be made by comparison to the normal extremity. For bilateral disease, each EMG lab must establish its own absolute limits of latency and amplitude from volunteer controls, so that measurements exceeding these limits can be noted. The EMG and NCV study is an extension of the physical exam. Thus an electrical diagnosis cannot be made without clinical correlation.

Criteria for Neurogenic TOS:

- i. Reduction of the ulnar sensory nerve action potential to digits (usually less than 60% of unaffected side); or
- ii. Medial antebrachial cutaneous nerve sensory action potential which is low or absent compared to the unaffected side; or
- iii. Reduction of the median M-wave amplitude (usually less than 50% of unaffected side); or
- iv. Needle EMG examination reveals neurogenic changes in intrinsic hand muscles and the abductor pollicis brevis muscle; or
- v. Abnormal nerve conduction of one of the following: medial antebrachial cutaneous (MAC) nerve amplitude retro between sides of 2 or more, amplitude under 10 mV, latency difference of between sides of 0.3 or more, or latency more than 2.4 msec; or
- vi. A C8 stimulation study may be done when there are equivocal findings from the above tests, i through v. A positive test would demonstrate slowed velocity.

Related Studies:

There is some evidence that a latency in the MAC nerve greater than or equal to 2.4 ms and an amplitude less than 10 microvolts may confirm a clinical diagnosis of neurogenic TOS, but need not be a required part of the diagnostic evaluation. There is inadequate evidence that it is a robust diagnostic test for neurogenic TOS, since in this study the clinical examination was used to select patients for surgery even if electrodiagnostic testing is optional.

One study concluded that comparison of the amplitude of sensory nerve action potential of MAC on the injured or non-injured side was comparatively helpful for the diagnosis of TOS; however, the latency difference between the medial antebrachial cutaneous nerve and the ulnar nerve did not differ significantly between the TOS side and the asymptomatic side.

- b. Portable Automated Electrodiagnostic Device:** (also known as SurfaceEMG) is not a substitute for conventional EMG/NCS testing in clinical decision making, and therefore, is ***not recommended***.

c. **Quantitative Sensory Testing (QST):** Research is not currently available on the use of QST in the evaluation of TOS. QST tests the entire spectrum of the neurological system including the brain. It is not able to reliably distinguish between organic and psychogenic pathology and therefore, is **not recommended**.

3. **VASCULAR STUDIES:** Noninvasive vascular testing, such as pulse-volume recording in different positions, is not indicated in cases of neurogenic TOS. Since the presence or absence of a pulse cutoff on physical examination is not helpful in establishing a diagnosis of TOS, the recording of finer degrees of positional pulse alteration will not add to the diagnosis. Vascular laboratory studies, including duplex scanning, Doppler studies, standard and MR arteriography and venography, are not cost-effective in cases of neurogenic TOS. These studies are only indicated in patients who have arterial or venous occlusive signs. Dynamic venography with the arm in 180 degrees of abduction may be used in cases with continued swelling and/or periodic cyanosis who have not improved with conservative therapy. Approximately 20% of asymptomatic individuals will have an abnormal dynamic venogram. Some individuals may have a pectoralis minor syndrome which occludes the axillary vein rather than the subclavian vein. In these cases, less invasive surgery than the TOS operative procedures may be indicated.

4. **THERMOGRAPHY:** is not generally accepted or widely used for TOS. It may be used if the differential diagnosis includes CRPS; in such cases refer to the Division's Complex Regional Pain Syndrome/Reflex Sympathetic Dystrophy Medical Treatment Guidelines.

5. **ANTERIOR SCALENE OR PECTORALIS MUSCLE BLOCKS:** may be performed to provide additional information prior to expected surgical intervention. It is recommended that EMG or sonography guidance be used to assure localization. Patients who have work-related cumulative trauma are likely to have less pain relief than those with specific injuries. A recent review of multiple TOS surgical articles found that comorbidities were better predictors of long-term improvement in quality of life than pre-operative positive scalene blocks.

6. **BOTULINUM INJECTIONS:** There is some evidence that botulinum toxin type A in a dose of 75U injected into the scalene muscles does not differ appreciably from an injection of placebo in patients with TOS of several years' duration. Complications include dysphagia and dysphonia. Thus, it is **not recommended** for diagnosis.

7. **PERSONALITY/PSYCHOLOGICAL/PSYCHOSOCIAL EVALUATIONS:** are generally accepted and well-established diagnostic procedures with selective use in the acute TOS population and more widespread use in the sub-acute and chronic TOS population.

Diagnostic testing procedures may be useful for patients with symptoms of depression, delayed recovery, chronic pain, recurrent painful conditions, disability problems, and for pre-operative evaluation as well as a possible predictive value for post-operative response. Psychological testing should provide differentiation between pre-existing depression versus injury caused depression, as well as post-traumatic stress disorder.

Formal psychological or psychosocial evaluation should be performed on patients not making expected progress within 6 to 12 weeks following injury and whose subjective symptoms do not correlate with objective signs and tests. In addition to the customary initial exam, the evaluation of the injured worker should specifically address the following areas:

- a. Employment history;
- b. Interpersonal relationships — both social and work;
- c. Leisure activities;
- d. Current perception of the medical system;
- e. Results of current treatment;
- f. Perceived locus of control; and
- g. Childhood history, including abuse and family history of disability.

This information should provide clinicians with a better understanding of the patient, and enable a more effective rehabilitation.

The evaluation will determine the need for further psychosocial interventions, and in those cases, a Diagnostic Statistical Manual (DSM) of mental disorders diagnosis should be determined and documented. An individual with a PhD, PsyD, or Psychiatric MD/DO credentials should perform initial evaluations, which are generally completed within one to two hours. A professional fluent in the primary language of the patient is strongly preferred. When such a provider is not available, services of a professional language interpreter must be provided. When issues of chronic pain are identified, the evaluation should be more extensive and follow testing procedures as outlined in the Division's Chronic Pain Disorder Medical Treatment Guidelines.

- ❖ Frequency: One time visit for evaluation. If psychometric testing is indicated as a portion of the initial evaluation, time for such testing should not exceed an additional two hours of professional time.

8. SPECIAL TESTS: are generally well-accepted tests and are performed as part of a skilled assessment of the patients' capacity to return to work, his/her strength capacities, and physical work demand classifications and tolerance. The procedures in this subsection are listed in alphabetical order, not by importance.

a. Computer-Enhanced Evaluations: These may include isotonic, isometric, isokinetic and/or isoinertial measurement of movement; range of motion (ROM); endurance; or strength. Values obtained can include degrees of motion, torque forces, pressures, or resistance. Indications include determining validity of effort, effectiveness of treatment, and demonstrated motivation. These evaluations should not be used alone to determine return-to-work restrictions.

- ❖ Frequency: One time for evaluation, one for mid-treatment assessment, and one at final evaluation.

b. Functional Capacity Evaluation (FCE): This is a comprehensive or modified evaluation of the various aspects of function as they relate to the worker's ability to return to work. Areas such as endurance, lifting (dynamic and static), postural tolerance, specific range of motion (ROM), coordination and strength, worker habits, employability, as well as psychosocial aspects of competitive employment may be evaluated. Reliability of patient reports and

overall effort during testing is also reported. Components of this evaluation may include: (a) musculoskeletal screen; (b) cardiovascular profile/aerobic capacity; (c) coordination; (d) lift/carrying analysis; (e) job-specific activity tolerance; (f) maximum voluntary effort; (g) pain assessment/psychological screening; and (h) non-material and material handling activities. Standardized national guidelines (such as National Institute for Occupational Safety and Health (NIOSH)) should be used as the basis for FCE recommendations.

There is some evidence that an FCE fails to predict which injured workers with chronic low back pain will have sustained return to work. Another cohort study concluded that there was a significant relation between FCE information and return to work, but the predictive efficiency was poor. There is some evidence that time off work and gender are important predictors for return to work, and floor-to-waist lifting may also help predict return to work, however, the strength of that relationship has not been determined.

A full review of the literature reveals that there is no evidence to support the use of FCEs to prevent future injuries. There is some evidence in chronic low back pain patients that (1) FCE task performance is weakly related to time on disability and time for claim closure and (2) even claimants who fail on numerous physical performance FCE tasks may be able to return to work.

Full FCEs are rarely necessary. In many cases, a work tolerance screening or return to work performance will identify the ability to perform the necessary job tasks. There is some evidence that a short form FCE reduced to a few tests produces a similar predictive quality compared to the longer 2-day version of the FCE regarding length of disability and recurrence of a claim after return to work.

When an FCE is being used to determine return to a specific jobsite, the provider is responsible for fully understanding the physical demands and the duties of the job the worker is attempting to perform. A jobsite evaluation is usually necessary. A job description should be reviewed by the provider and FCE evaluator prior to having this evaluation performed. FCEs cannot be used in isolation to determine work restrictions. It is expected that the FCE may differ from both self-report of abilities and pure clinical exam findings in chronic pain patients. The length of a return to work evaluation should be based on the judgment of the referring physician and the provider performing the evaluation. Since return to work is a complicated multidimensional issue, multiple factors beyond functional ability and work demands should be considered and measured when attempting determination of readiness or fitness to return to work. FCEs should not be used as the sole criteria to diagnose malingering.

- ❖ Frequency: Can be used: (1) initially to determine baseline status; and (2) for case closure when patient is unable to return to the pre-injury position and further information is desired to determine permanent work restrictions. Prior authorization is required for FCEs performed during treatment.

c. Jobsite Evaluation: is a comprehensive analysis of the physical, mental and sensory components of a specific job. These components may include, but are not limited to: (a) postural tolerance (static and dynamic); (b) aerobic requirements; (c) range of motion; (d) torque/force; (e) lifting/carrying; (f)

cognitive demands; (g) social interactions; (h) visual perceptual; (i) sensation; (j) coordination; (k) environmental requirements; (l) repetitiveness; and (m) essential job functions. Job descriptions provided by the employer are helpful but should not be used as a substitute for direct observation.

A jobsite evaluation may include observation and instruction of how work is done, what material changes (desk, chair) should be made, and determination of readiness to return to work. Postural risk factors should be identified and awkward postures of overhead reach, hyperextension or rotation of the neck, shoulder drooped or forward-flexed and head-chin forward postures should be eliminated. Unless combined with one of the above postures, repetitiveness is not by itself a risk factor. Refer to Cumulative Trauma Disorder and Shoulder Guidelines for further suggestions.

Requests for a jobsite evaluation should describe the expected goals for the evaluation. Goals may include, but are not limited to the following:

- i. To determine if there are potential contributing factors to the person's condition and/or for the physician to assess causality;
 - ii. To make recommendations for, and to assess the potential for ergonomic changes;
 - iii. To provide a detailed description of the physical and cognitive job requirements;
 - iv. To assist the patient in their return to work by educating them on how they may be able to do their job more safely in a bio-mechanically appropriate manner;
 - v. To give detailed work/activity restrictions.
- ❖ Frequency: One time with additional visits as needed for follow-up per jobsite.

- d. **Vocational Assessment:** If the injury is such that the practitioner can easily determine that the worker will be unable to return to his/her previous occupation, then vocational rehabilitation assistance at that time may aid in the overall medical management and rehabilitation of the patient. The physician may decide that the patient is unable to return to the previous occupation prior to declaration of maximum medical improvement (MMI).

The vocational assessment should provide valuable guidance in the determination of future rehabilitation program goals. It should clarify rehabilitation goals, which optimize both patient motivation and utilization of rehabilitation resources. The physician should have identified the expected permanent limitation(s) prior to the assessment. Declaration of MMI should not be delayed solely due to lack of attainment of a vocational assessment.

- ❖ Frequency: One time with additional visits as needed for follow-up.

e. Work Tolerance Screening: is a determination of an individual's tolerance for performing a specific job based on a job activity or task and may be used when a full Functional Capacity Evaluation is not indicated. The screening is monitored by a therapist and may include a test or procedure to specifically identify and quantify work relevant cardiovascular, physical fitness and postural tolerance. It may also address ergonomic issues affecting the patient's return-to-work potential.

❖ Frequency: One time for initial screen. May monitor improvements in strength every 3 to 4 weeks up to a total of 6 visits.

THERAPEUTIC PROCEDURES – NON-OPERATIVE

Before initiation of any therapeutic procedure, the authorized treating provider, employer, and insurer must consider these four important issues in the care of the injured worker.

First, patients undergoing therapeutic procedure(s) should be released or returned to modified or restricted duty during their rehabilitation at the earliest appropriate time. Refer to Section F.10. Return to Work for detailed information.

Second, cessation and/or review of treatment modalities should be undertaken when no further significant subjective or objective improvement in the patient's condition is noted. If patients are not responding within the recommended duration periods, alternative treatment interventions, further diagnostic studies, or consultations should be pursued.

Third, providers should provide and document patient education. Before diagnostic tests or referrals for invasive treatment take place, the patient should be able to clearly articulate the goals of the intervention, the general side effects and associated risks, and the patient's agreement with the expected treatment plan. Sleep positions should be addressed to avoid abduction, overhead posture or pressure.

Last, formal psychological or psychosocial evaluation should be performed on patients not making expected progress within 6 to 12 weeks following injury and whose subjective symptoms do not correlate with objective signs and tests.

Home therapy is an important component of therapy and may include active and passive therapeutic procedures as well as other modalities to assist in alleviating pain, swelling, and abnormal muscle tone.

The following procedures are listed in alphabetical order.

1. ACUPUNCTURE: When acupuncture has been studied in randomized clinical trials, it is often compared with sham acupuncture and/or no acupuncture (usual care). The differences between true acupuncture and usual care have been moderate, but clinically important. These differences can be partitioned into two components: non-specific effects and specific effects. Non-specific effects include patient beliefs and expectations, attention from the acupuncturist, administration of acupuncture in a relaxing setting, and other components of what is often called the placebo effect. Specific effects refer to any additional effects which occur in the same setting of expectations and attention, but they are attributable to the penetration of the skin in the specific, classic acupuncture points on the surface of the body by the needles themselves.

A sham procedure is a non-therapeutic procedure that appears similar to the patient as the purported therapeutic procedure being tested. In most controlled studies, sham and classic acupuncture have produced similar effects. However, the sham controlled studies have shown consistent advantages of both true and sham acupuncture over no acupuncture when the studies have included a third comparison group that was randomized to usual medical care. Having this third comparison group has been advantageous in the interpretation of the non-specific effects of acupuncture, since the third comparison group controls for some influences on study outcome. These influences include more frequent contact with providers, the natural history of the condition, regression to the mean, the effect of being observed in a clinical trial, and, if the follow-up observations are done consistently in all three treatment groups, for biased reporting of

outcomes. Controlling for these factors enables researchers to more closely estimate the contextual and personal interactive effects of acupuncture as it is generally practiced.

Because the sham acupuncture interventions in the clinical trials are generally done by trained acupuncturists, and not by totally untrained personnel, the sham acupuncture interventions may include some of the effects of true acupuncture, much as a partial agonist of a drug may produce some of the effects of the actual drug. For example, a sham procedure involving toothpicks rather than acupuncture needles may stimulate cutaneous afferents in spite of not penetrating the skin, much as a neurological sensory examination may test nociceptor function without skin penetration. To the extent that afferent stimulation is part of the mechanism of action of acupuncture, interpreting the sham results as purely a control group would lead to an underestimation of the analgesic effects of acupuncture. Thus we consider in our analysis that “sham” or non-classic acupuncture may have a positive clinical effect when compared to usual care.

Clinical trials of acupuncture typically enroll participants who are interested in acupuncture, and who may respond to some of the non-specific aspects of the intervention more than would be expected of patients who have no interest in or desire for acupuncture. The non-specific effects of acupuncture may not be produced in patients who have no wish to be referred for it.

Another study provides good evidence that true acupuncture at traditional medians is marginally better than sham acupuncture with blunt needles in reducing pain, but effects on disability are unclear. In these studies 5–15 treatments were provided. Comparisons of acupuncture and sham acupuncture have been inconsistent, and the advantage of true over sham acupuncture has been small in relation to the advantage of sham over no acupuncture.

Acupuncture is recommended for subacute or chronic pain patients who are trying to increase function and/or decrease medication usage and have an expressed interest in this modality. It is also recommended for subacute or acute pain for patients who cannot tolerate nonsteroidal anti-inflammatory drugs (NSAIDs) or other medications. Acupuncture is not the same procedure as dry needling for coding purposes; however, some acupuncturists may use acupuncture treatment for myofascial trigger points. Dry needling is performed specifically on myofascial trigger points. Refer to Section F.3.c. Trigger Point Injections and Dry Needling Treatment.

Credentialed practitioners with experience in evaluation and treatment of chronic pain patients must perform acupuncture evaluations prior to acupuncture treatments. The exact mode of action is only partially understood. Western medicine studies suggest that acupuncture stimulates the nervous system at the level of the brain, promotes deep relaxation, and affects the release of neurotransmitters. Acupuncture is commonly used as an alternative or in addition to traditional Western pharmaceuticals. It may be used when pain medication is reduced or not tolerated; as an adjunct to physical rehabilitation and surgical intervention; and/or as part of multidisciplinary treatment to hasten the return of functional activity. Acupuncture must be performed by practitioners with the appropriate credentials in accordance with state and other applicable regulations. Therefore, if not otherwise within their professional scope of practice and licensure, those performing acupuncture must have the appropriate credentials, such as L.A.c., R.A.c, or Dipl. Ac.

a. Acupuncture: is the insertion and removal of filiform needles to stimulate acupoints (acupuncture points). Needles may be inserted, manipulated and

retained for a period of time. Acupuncture can be used to reduce pain, reduce inflammation, increase blood flow, increase range of motion, decrease the side effect of medication induced nausea, promote relaxation in an anxious patient, and reduce muscle spasm.

Indications include joint pain, joint stiffness, soft tissue pain and inflammation, paresthesia, post-surgical pain relief, muscle spasm, and scar tissue pain.

- b. Acupuncture with Electrical Stimulation:** is the use of electrical current (micro-amperage or milli-amperage) on the needles at the acupuncture site. It is used to increase effectiveness of the needles by continuous stimulation of the acupoint. Physiological effects (depending on location and settings) can include endorphin release for pain relief, reduction of inflammation, increased blood circulation, analgesia through interruption of pain stimulus, and muscle relaxation.

It is indicated to treat chronic pain conditions, radiating pain along a nerve pathway, muscle spasm, inflammation, scar tissue pain, and pain located in multiple sites.

- c. Total Time Frames for Acupuncture and Acupuncture with Electrical Stimulation:** Time frames are not meant to be applied to each of the above sections separately. The time frames are to be applied to all acupuncture treatments regardless of the type or combination of therapies being provided.

- ❖ Time to Produce Effect: 3 to 6 treatments.
- ❖ Frequency: 1 to 3 times per week.
- ❖ Optimum Duration: 1 to 2 months.
- ❖ Maximum Duration: 15 treatments.

Any of the above acupuncture treatments may extend longer if objective functional gains can be documented and when symptomatic benefits facilitate progression in the patient's treatment program. Treatment beyond 14 treatments must be documented with respect to need and ability to facilitate positive symptomatic and functional gains. Such care should be re-evaluated and documented with each series of treatments.

- d. Other Acupuncture Modalities:** Acupuncture treatment is based on individual patient needs and therefore treatment may include a combination of procedures to enhance treatment effect. Other procedures may include the use of heat, soft tissue manipulation/massage, and exercise. Refer to Sections F.11. Therapy-Active (Therapeutic Exercise) and F.12. Therapy- Passive (Massage and Superficial Heat and Cold Therapy) for a description of these adjunctive acupuncture modalities and time frames.

- 2. BIOFEEDBACK:** Biofeedback is a form of behavioral medicine that helps patients learn self-awareness and self-regulation skills for the purpose of gaining greater control of their physiology, such as muscle activity, brain waves, and measures of autonomic nervous

system activity. Stress-related psycho-physiological reactions may arise as a reaction to organic pain and in some cases may cause pain. Electronic instrumentation is used to monitor the targeted physiology and then displayed or fed back to the patient visually, auditorily, or tactilely, with coaching by a biofeedback specialist. There is good evidence that biofeedback or relaxation therapy is equal in effect to cognitive behavioral therapy for chronic low back pain.

Indications for biofeedback include cases of musculoskeletal injury, in which muscle dysfunction or other physiological indicators of excessive or prolonged stress response affects and/or delays recovery. Other applications include training to improve self-management of pain, anxiety, panic, anger or emotional distress, opioid withdrawal, insomnia/sleep disturbance, and other central and autonomic nervous system imbalances. Biofeedback is often utilized for relaxation training. Mental health professionals may also utilize it as a component of psychotherapy, where biofeedback and other behavioral techniques are integrated with psychotherapeutic interventions. Biofeedback is often used in conjunction with physical therapy or medical treatment.

Recognized types of biofeedback include the following:

- a. **Electromyogram (EMG):** Used for self-management of pain and stress reactions involving muscle tension.
- b. **Skin Temperature:** Used for self-management of pain and stress reactions, especially vascular headaches.
- c. **Respiration Feedback (RFB):** Used for self-management of pain and stress reactions via breathing control.
- d. **Respiratory Sinus Arrhythmia (RSA):** Used for self-management of pain and stress reactions via synchronous control of heart rate and respiration. Respiratory sinus arrhythmia is a benign phenomenon that consists of a small rise in heart rate during inhalation, and a corresponding decrease during exhalation. This phenomenon has been observed in meditators and athletes, and is thought to be a psycho-physiological indicator of health.
- e. **Heart Rate Variability (HRV):** Used for self-management of stress via managing cardiac reactivity.
- f. **Electrodermal Response (EDR):** Used for self-management of stress involving palmar sweating or galvanic skin response.
- g. **Electroencephalograph (EEG, QEEG):** Used for self-management of various psychological states by controlling brainwaves.

The goal in biofeedback treatment is normalizing the physiology to the pre-injury status to the extent possible and involves transfer of learned skills to the workplace and daily life. Candidates for biofeedback therapy or training should be motivated to learn and practice biofeedback and self-regulation techniques. In the course of biofeedback treatment, patient stressors are discussed and self-management strategies are devised. If the patient has not been previously evaluated, a psychological evaluation should be performed prior to beginning biofeedback treatment for chronic pain. The psychological evaluation may reveal cognitive difficulties, belief system conflicts, somatic delusions,

secondary gain issues, hypochondriasis, and possible biases in patient self-reports, which can affect biofeedback. Home practice of skills is often helpful for mastery and may be facilitated by the use of home training tapes.

Psychologists or psychiatrists who provide psycho-physiological therapy, which integrates biofeedback with psychotherapy, should be either Biofeedback Certification International Alliance (BCIA) certified or practicing within the scope of their training. All non-licensed health care providers of biofeedback for chronic pain patients must be BCIA certified and shall have their biofeedback treatment plan approved by the authorized treating psychologist or psychiatrist. Biofeedback treatment must be done in conjunction with the patient's psychosocial intervention. Biofeedback may also be provided by health care providers who follow a set treatment and educational protocol. Such treatment may utilize standardized material or relaxation tapes.

- ❖ Time to Produce Effect: 3 to 4 sessions.
- ❖ Frequency: 1 to 2 times per week.
- ❖ Optimum Duration: 6 to 8 sessions.
- ❖ Maximum Duration: 10 to 12 sessions. Treatment beyond 12 sessions must be documented with respect to need, expectation, and ability to facilitate positive symptomatic and functional gains.

3. INJECTIONS - THERAPEUTIC:

a. Scalene Blocks: have no therapeutic role in the treatment of TOS.

b. Botulinum Toxin: Used to temporarily weaken or paralyze muscles. May reduce muscle pain in conditions associated with spasticity, dystonia, or other types of painful muscle spasm. Neutralizing antibodies develop in at least 4% of patients treated with botulinum toxin type A, rendering it ineffective. Several antigenic types of botulinum toxin have been described. Botulinum toxin type B, first approved by the Food and Drug Administration (FDA) in 2001, is similar pharmacologically to botulinum toxin type A. It appears to be effective in patients who have become resistant to the type A toxin. The immune responses to botulinum toxins type A and B are not cross-reactive, allowing type B toxin to be used when type A action is blocked by antibody. Experimental work with healthy human volunteers suggests that muscle paralysis from type B toxin is not as complete or as long lasting as that resulting from type A. The duration of treatment effect of botulinum toxin type B for cervical dystonia has been estimated to be 12 to 16 weeks. EMG needle guidance may permit more precise delivery of botulinum toxin to the target area.

There is some evidence that botulinum toxin type A in a dose of 75U injected into the scalene muscles does not differ appreciably from an injection of placebo in patients with TOS of several years' duration. Therefore, it is ***not recommended***. In addition, because muscle paralysis from the injection can lead to muscle atrophy and other unexpected pathology over time, botulinum toxin is ***not recommended***.

c. Trigger Point Injections and Dry Needling Treatment:

- i. Description – Trigger point injections are a generally accepted treatment. Trigger point treatment can consist of dry needling or injection of local anesthetic, with or without corticosteroid, into highly localized, extremely sensitive bands of skeletal muscle fibers that produce local and referred pain when activated. Medication is injected in a four-quadrant manner in the area of maximum tenderness. Injection efficacy can be enhanced if injections are immediately followed by myofascial therapeutic interventions, such as vapo-coolant spray and stretch, ischemic pressure massage (myotherapy), specific soft tissue mobilization and physical modalities. There is conflicting evidence regarding the benefit of trigger point injections. A truly blinded study comparing dry needle treatment of trigger points is not feasible. There is no evidence that injection of medications improves the results of trigger-point injections. Needling alone may account for some of the therapeutic response. Needling must be performed by practitioners with the appropriate credentials in accordance with state and other applicable regulations.

There is no indication for conscious sedation for patients receiving trigger point injections. The patient must be alert to help identify the site of the injection.

- ii. Indications – Trigger point injections may be used to relieve myofascial pain and facilitate active therapy and stretching of the affected areas. They are to be used as an adjunctive treatment in combination with other treatment modalities such as active therapy programs. Trigger point injections should be utilized primarily for the purpose of facilitating functional progress. Patients should continue in an aggressive aerobic and stretching therapeutic exercise program as tolerated throughout the time period they are undergoing intensive myofascial interventions. Myofascial pain is often associated with other underlying structural problems and any abnormalities need to be ruled out prior to injection.

Trigger point injections are indicated in those patients where well circumscribed trigger points have been consistently observed, demonstrating a local twitch response, characteristic radiation of pain pattern and local autonomic reaction, such as persistent hyperemia following palpation. Generally, these injections are not necessary unless consistently observed trigger points are not responding to specific, noninvasive, myofascial interventions within approximately a 6-week time frame. However, trigger point injections may be occasionally effective when utilized in the patient with immediate, acute onset of pain.

- i. Complications – Potential but rare complications of trigger point injections include infection, pneumothorax, anaphylaxis, penetration of viscera, neurapraxia, and neuropathy. If corticosteroids are injected in addition to local anesthetic, there is a risk of local myopathy. Severe pain on injection suggests the possibility of an intraneural injection, and the needle should be immediately repositioned.

❖ Time to produce effect: Local anesthetic 30 minutes; 24 to 48 hours for no anesthesia.

- ❖ Frequency: Weekly. Suggest no more than 4 injection sites per session per week to avoid significant post-injection soreness.
- ❖ Optimum duration: 4 Weeks total for all injection sites.
- ❖ Maximum duration: 8 weeks total for all injection sites. Occasionally, patients may require 2 to 4 repetitions of trigger point injection series over a 1 to 2 year period.

4. INTERDISCIPLINARY REHABILITATION PROGRAMS: This is the gold standard of treatment for individuals who have not responded to less intensive modes of treatment. There is good evidence that interdisciplinary programs which include screening for psychological issues, identification of fear-avoidance beliefs and treatment barriers, and establishment of individual functional and work goals will improve function and decrease disability. These programs should assess the impact of pain and suffering on the patient's medical, physical, psychological, social, and/or vocational functioning. In general, interdisciplinary programs evaluate and treat multiple and sometimes irreversible conditions, including, but not limited to: painful musculoskeletal, neurological, and other chronic pain conditions and psychological issues; drug dependence, abuse, or addiction; high levels of stress and anxiety; failed surgery; and pre-existing or latent psychopathology. The number of professions involved on the team in a chronic pain program may vary due to the complexity of the needs of the person served. The Division recommends consideration of referral to an interdisciplinary program within six months post-injury in patients with delayed recovery, unless successful surgical interventions or other medical and/or psychological treatment complications intervene.

Chronic pain patients need to be treated as outpatients within a continuum of treatment intensity. Outpatient chronic pain programs are available with services provided by a coordinated interdisciplinary team within the same facility (formal) or as coordinated among practices by the authorized treating physician (informal). Formal programs are able to provide a coordinated, high-intensity level of services and are recommended for most chronic pain patients who have received multiple therapies during acute management.

Patients with addiction problems, high-dose opioid use, or use of other drugs of abuse may require inpatient and/or outpatient chemical dependency treatment programs before or in conjunction with other interdisciplinary rehabilitation. Guidelines from the American Society of Addiction Medicine are available and may be consulted relating to the intensity of services required for different classes of patients in order to achieve successful treatment.

Informal interdisciplinary pain programs may be considered for patients who are currently employed, those who cannot attend all-day programs, those with language barriers, or those living in areas not offering formal programs. Before treatment has been initiated, the patient, physician, and insurer should agree on treatment approach, methods, and goals. Generally, the type of outpatient program needed will depend on the degree of impact the pain has had on the patient's medical, physical, psychological, social, and/or vocational functioning.

When referring a patient for formal outpatient interdisciplinary pain rehabilitation, an occupational rehabilitation program, or an opioid treatment program, the Division recommends the program meets the criteria of the Commission on Accreditation of Rehabilitation Facilities (CARF).

Inpatient pain rehabilitation programs are rarely needed but may be necessary for patients with any of the following conditions: (a) high risk for medical instability; (b) moderate-to-severe impairment of physical/functional status; (c) moderate-to-severe pain behaviors; (d) moderate impairment of cognitive and/or emotional status; (e) dependence on medications from which he/she needs to be withdrawn; and (f) the need for 24-hour supervised nursing.

Whether formal or informal programs, they should be comprised of the following dimensions:

- **Communication:** To ensure positive functional outcomes, communication between the patient, insurer, and all professionals involved must be coordinated and consistent. Any exchange of information must be provided to all professionals, including the patient. Care decisions should be communicated to all and should include the family and/or support system.
- **Documentation:** Through documentation by all professionals involved and/or discussions with the patient, it should be clear that functional goals are being actively pursued and measured on a regular basis to determine their achievement or need for modification.
- **Treatment Modalities:** Use of modalities may be necessary early in the process to facilitate compliance with and tolerance to therapeutic exercise, physical conditioning, and increasing functional activities. Active treatments should be emphasized over passive treatments. Active and self-monitored passive treatments should encourage self-coping skills and management of pain, which can be continued independently at home or at work. Treatments that can foster a sense of dependency by the patient on the caregiver should be avoided. Treatment length should be decided based upon observed functional improvement. For a complete list of active and passive therapies, refer to [Section F.11. Therapy – Active](#) and [F.12. Therapy – Passive](#). All treatment timeframes may be extended based on the patient's positive functional improvement.
- **Therapeutic Exercise Programs:** A therapeutic exercise program should be initiated at the start of any treatment rehabilitation. Such programs should emphasize education, independence, and the importance of an on-going exercise regimen. There is good evidence that exercise alone or part of a multi-disciplinary program results in decreased disability for workers with non-acute low back pain. There is not sufficient evidence to support the recommendation of any particular exercise regimen over any other exercise regimen.
- **Return to Work:** The authorized treating physician should continually evaluate the patient for their potential to return to work. For patients currently employed, efforts should be aimed at keeping them employed. Formal rehabilitation programs should provide assistance in creating work profiles. For more specific information regarding return to work, refer to [Section F.10. Return to Work](#).
- **Patient Education:** Patients with pain need to re-establish a healthy balance in lifestyle. All providers should educate patients on how to overcome barriers to resuming daily activity, including pain management, decreased energy levels, financial constraints, decreased physical ability, and change in family dynamics.

- **Psychosocial Evaluation and Treatment:** Psychosocial evaluation should be initiated, if not previously done. Providers of care should have a thorough understanding of the patient's personality profile, especially if dependency issues are involved. Psychosocial treatment may enhance the patient's ability to participate in pain treatment rehabilitation, manage stress, and increase their problem-solving and self-management skills.
- **Vocational Assistance:** Vocational assistance can define future employment opportunities or assist patients in obtaining future employment. Refer to Section F.10. Return to Work for detailed information.

Interdisciplinary programs are characterized by a variety of disciplines that participate in the assessment, planning, and/or implementation of the treatment program. These programs are for patients with greater levels of perceived disability, dysfunction, de-conditioning, and psychological involvement. Programs should have sufficient personnel to work with the individual in the following areas: behavioral, functional, medical, cognitive, pain management, psychological, social, and vocational.

a. Formal Interdisciplinary Rehabilitation Programs:

- i. Interdisciplinary Pain Rehabilitation: An Interdisciplinary Pain Rehabilitation Program provides outcome-focused, coordinated, goal-oriented interdisciplinary team services to measure and improve the functioning of persons with pain and encourage their appropriate use of health care system and services. The program can benefit persons who have limitations that interfere with their physical, psychological, social, and/or vocational functioning. The program shares information about the scope of the services and the outcomes achieved with patients, authorized providers, and insurers.

The interdisciplinary team maintains consistent integration and communication to ensure that all interdisciplinary team members are aware of the plan of care for the patient, are exchanging information, and implement the plan of care. The team members make interdisciplinary team decisions with the patient and then ensure that decisions are communicated to the entire care team.

The Medical Director of the pain program should ideally be board certified in pain management; or he/she should be board certified in his/her specialty area and have completed a one-year fellowship in interdisciplinary pain medicine or palliative care recognized by a national board or have two years of experience in an interdisciplinary pain rehabilitation program. Teams that assist in the accomplishment of functional, physical, psychological, social, and vocational goals must include: a medical director, pain team physician(s), and a pain team psychologist. Professionals from other disciplines on the team may include, but are not limited to: a biofeedback therapist, an occupational therapist, a physical therapist, a registered nurse (RN), a case manager, an exercise physiologist, a psychologist, a psychiatrist, and/or a nutritionist.

❖ Time to Produce Effect: 3 to 4 weeks.

- ❖ Frequency: Full time programs – No less than 5 hours per day, 5 days per week; part-time programs – 4 hours per day, 2–3 days per week.
- ❖ Optimum Duration: 3 to 12 weeks at least 2–3 times a week. Follow-up visits weekly or every other week during the first 1 to 2 months after the initial program is completed.
- ❖ Maximum Duration: 4 months for full-time programs and up to 6 months for part-time programs. Periodic review and monitoring thereafter for 1 year, AND additional follow-up based on the documented maintenance of functional gains.

ii. Occupational Rehabilitation: This is a formal interdisciplinary program addressing a patient's employability and return to work. It includes a progressive increase in the number of hours per day that a patient completes work simulation tasks until the patient can tolerate a full work day. A full work day is case specific and is defined by the previous employment of the patient. Safe workplace practices and education of the employer and family and/or social support system regarding the person's status should be included. This is accomplished by addressing the medical, psychological, behavioral, physical, functional, and vocational components of employability and return to work.

There is some evidence that an integrated care program, consisting of workplace interventions and graded activity teaching that pain need not limit activity, is effective in returning patients with chronic low back pain to work, even with minimal reported reduction of pain.

The occupational medicine rehabilitation interdisciplinary team should, at a minimum, be comprised of a qualified medical director who is board certified with documented training in occupational rehabilitation; team physicians having experience in occupational rehabilitation; an occupational therapist; and a physical therapist.

As appropriate, the team may also include any of the following: chiropractor, an RN, a case manager, a psychologist, a vocational specialist, or a certified biofeedback therapist.

- ❖ Time to Produce Effect: 2 weeks.
- ❖ Frequency: 2 to 5 visits per week, up to 8 hours per day.
- ❖ Optimum Duration: 2 to 4 weeks.
- ❖ Maximum Duration: 6 weeks. Participation in a program beyond 6 weeks must be documented with respect to need and the ability to facilitate positive symptomatic and functional gains.

iii. Opioid/Chemical Treatment Programs: Refer to the Division's Chronic Pain Disorder Medical Treatment Guidelines.

b. Informal Interdisciplinary Rehabilitation Program: A coordinated interdisciplinary pain rehabilitation program is one in which the authorized treating physician coordinates all aspects of care. This type of program is similar to the formal programs in that it is goal-oriented and provides interdisciplinary rehabilitation services to manage the needs of the patient in the following areas: (a) functional, (b) medical, (c) physical, (d) psychological, (e) social, and (f) vocational.

This program is different from a formal program in that it involves lower frequency and intensity of services/treatment. Informal rehabilitation is geared toward those patients who do not need the intensity of service offered in a formal program or who cannot attend an all-day program due to employment, daycare, language, or other barriers.

Patients should be referred to professionals experienced in outpatient treatment of chronic pain. The Division recommends the authorized treating physician consult with physicians experienced in the treatment of chronic pain to develop the plan of care. Communication among care providers regarding clear objective goals and progress toward the goals is essential. Employers should be involved in return to work and work restrictions, and the family and/or social support system should be included in the treatment plan. Professionals from other disciplines likely to be involved include: a biofeedback therapist, an occupational therapist, a physical therapist, an RN, a psychologist, a case manager, an exercise physiologist, a psychiatrist, and/or a nutritionist.

- ❖ Time to Produce Effect: 3 to 4 weeks.
- ❖ Frequency: Full-time programs – No less than 5 hours per day, 5 days per week; Part-time programs – 4 hours per day for 2–3 days per week.
- ❖ Optimum Duration: 3 to 12 weeks at least 2–3 times a week. Follow-up visits weekly or every other week during the first 1 to 2 months after the initial program is completed.
- ❖ Maximum Duration: 4 months for full-time programs and up to 6 months for part-time programs. Periodic review and monitoring thereafter for 1 year, and additional follow-up based upon the documented maintenance of functional gains.

5. MEDICATIONS:

Thrombolytic agents will be required for some vascular TOS conditions.

Medication use is appropriate for pain control in TOS. A thorough medication history, including use of alternative and over the counter medications, should be performed at the time of the initial visit and updated periodically.

Acetaminophen is an effective and safe initial analgesic. Nonsteroidal anti-inflammatory drugs (NSAIDs) are useful in the treatment of inflammation, and for pain control. Pain is subjective in nature and should be evaluated using a scale to rate effectiveness of the analgesic in terms of functional gain. Other medications, including antidepressants and anti-convulsants, may be useful in selected patients with neuropathic and/or chronic pain

(Refer to the Division's Chronic Pain Medical Treatment Guidelines). Opioids are rarely indicated for treatment of TOS, and they should be primarily reserved for the treatment of acute severe pain for a limited time on a case-by-case basis. Topical agents may be beneficial in the management of localized upper extremity pain.

The use of a patient completed pain drawing, visual analog scale (VAS), is highly recommended to help providers track progress. Functional objective goals should be monitored regularly to determine the effectiveness of treatment. The patient should be advised regarding the interaction with prescription and over-the-counter herbal products.

The following medications are listed in alphabetical order:

a. Acetaminophen: An effective analgesic with anti-pyretic but not anti-inflammatory activity. Acetaminophen is generally well-tolerated, causes little or no gastrointestinal (GI) irritation, and is not associated with ulcer formation. Acetaminophen has been associated with liver toxicity in overdose situations or in chronic alcohol use. Patients may not realize that many over-the-counter preparations contain acetaminophen. The total daily dose of acetaminophen is recommended not to exceed three grams per 24-hour period, from all sources, including narcotic-acetaminophen combination preparations.

❖ Optimum Duration: 7 to 10 days.

❖ Maximum Duration: Chronic use as indicated on a case-by-case basis. Use of this substance long-term (for 3 days per week or greater) may be associated with rebound pain upon cessation.

b. Anticonvulsants: Although the mechanism of action of anticonvulsant drugs in neuropathic pain states remains to be fully defined, some appear to act as nonselective sodium channel blocking agents. A large variety of sodium channels are present in nervous tissue, and some of these are important mediators of nociception, as they are found primarily in unmyelinated fibers and their density increases following nerve injury. While the pharmacodynamic effects of the various anticonvulsant drugs are similar, the pharmacokinetic effects differ significantly. Gabapentin and pre-gabapentin, by contrast, is a relatively non-significant enzyme inducer, creating fewer drug interactions. Because anticonvulsant drugs may have more problematic side-effect profiles, their use should usually be deferred until tricyclic-related medications have failed to relieve pain. All patients on these medications should be monitored for suicidal ideation.

Carbamazepine has important effects as an inducer of hepatic enzymes and may influence the metabolism of other drugs enough to present problems in patients taking interacting drugs. There is some evidence that oxcarbazepine (Trileptal) may be effective for neuropathic pain, but dose escalation must be done carefully, since there is good evidence that rapid dose titration produces side-effects greater than the analgesic benefits. Carbamazepine is **generally not recommended**.

There is an association between older anticonvulsants including gabapentin and non-traumatic fractures for patients older than 50; this should be taken into account when prescribing these medications.

i. Gabapentin

- A) Description – Structurally related to gamma-aminobutyric acid (GABA) but does not interact with GABA receptors.
- B) Indications – As of the time of this guideline writing, formulations of gabapentin have been FDA approved for post-herpetic neuralgia and partial seizures.

There is some evidence that gabapentin may benefit some patients with post-traumatic neuropathic pain. There is good evidence that gabapentin is not superior to amitriptyline. There is some evidence that nortriptyline and gabapentin are equally effective for pain relief of post herpetic neuralgia. There is some evidence that gabapentin given with morphine may result in lower side effects from morphine and produces greater analgesia at lower doses than those usually required for either medication alone. There is strong evidence that gabapentin is more effective than placebo for neuropathic pain, even though it provides complete pain relief to a minority of patients. There is some evidence that a combination of gabapentin and nortriptyline provides more effective pain relief than monotherapy with either drug. Given the cost of gabapentin, it is recommended that patients who are medically appropriate receive a trial of tricyclics before use of gabapentin.

- C) Relative Contraindications – Renal insufficiency. Dosage may be adjusted to accommodate renal dysfunction.
- D) Dosing and Time to Therapeutic Effect – Dosage should be initiated at a low dose in order to avoid somnolence and may require 4 to 8 weeks for titration. Dosage should be adjusted individually.
- E) Major Side Effects – Sedation, confusion, dizziness, peripheral edema. Patients should also be monitored for suicidal ideation and drug abuse.
- F) Drug Interactions – antacids.
- G) Laboratory Monitoring – Renal function.

ii. Pregabalin

- A) Description – Structurally related to gamma-aminobutyric acid (GABA) but does not interact with GABA receptors.
- B) Indications –As of the time of this guideline writing, formulations of pregabalin have been FDA approved for neuropathic pain associated with diabetic peripheral neuropathy, post-herpetic neuralgia, and fibromyalgia. It may also be an adjunctive therapy for partial-onset seizures.

There is strong evidence that pregabalin has a substantive benefit for a minority, about 25%, of neuropathic pain patients, most of whom report between 30 and 50% relief of symptoms. Given the cost of pregabalin and its response for a minority of patients, it is recommended that patients who are medically appropriate receive a trial of amitriptyline or another first-line agent before use of pregabalin.

- C) Contraindications – allergy to medication, prior history of angioedema. Renal insufficiency is a relative contraindication, requiring a modified dose.
- D) Dosing and Time to Therapeutic Effect – Dosage may be increased over several days and doses above 150 mg are usually required. The full benefit may not be achieved for 6 to 8 weeks.
- E) Major Side Effects – Dizziness, confusion, sedation, dry mouth, weight gain, and visual changes have been reported. Patients should also be monitored for suicidal ideation and drug abuse. Congestive heart failure may be exacerbated in some patients. Decreased platelets have been reported.
- F) Drug Interactions – Opioids, benzodiazepines, and alcohol.
- G) Laboratory Monitoring – Renal function, and platelets, and creatinine kinase as appropriate for individual cases.

iii. Topiramate

- A) Description – Sulfamate substitute monosacchride.
- B) Indications – FDA approved for partial seizures or prophylaxis for migraines. There is good evidence that topiramate demonstrates minimal effect on chronic lumbar radiculopathy or other neuropathic pain. Therefore it is **generally not recommended** for chronic pain with the exception of chronic, functionally impairing headache. If it is utilized, this would be done as a third or fourth line medication in appropriate patients.:-

iv. Lamotrigine – This anti-convulsant drug is not FDA approved for use with neuropathic pain. Due to reported deaths from toxic epidermal necrolysis and Stevens-Johnson syndrome, increased suicide risk, and incidents of aseptic meningitis, it is used with caution for patients with seizure or mood disorders. There is good evidence that lamotrigine is not effective for neuropathic pain and that the potential harms are likely to outweigh the benefits, therefore it is **not recommended** for most patients.

c. **Antidepressants:** are classified into a number of categories based on their chemical structure and their effects on neurotransmitter systems. Their effects on

depression are attributed to their actions on disposition of norepinephrine and serotonin at the level of the synapse; although these synaptic actions are immediate, the symptomatic response in depression is delayed by several weeks. When used for chronic pain, the effects may in part arise from treatment of underlying depression, but may also involve additional neuromodulatory effects on endogenous opioid systems, raising pain thresholds at the level of the spinal cord.

Pain responses may occur at lower drug doses with shorter times to symptomatic response than are observed when the same compounds are used in the treatment of mood disorders. Neuropathic pain, diabetic neuropathy, post-herpetic neuralgia, and cancer-related pain may respond to antidepressant doses low enough to avoid adverse effects that often complicate the treatment of depression. First line drugs for neuropathic pain are the tricyclics with the newer formulations having better side effect profiles. SNRIs are considered second line drugs due to their costs and the number needed to treat for a response. SSRIs are used generally for depression rather than neuropathic pain and should not be combined with moderate to high-dose tricyclics.

All patients being considered for anti-depressant therapy should be evaluated and continually monitored for suicidal ideation and mood swings.

i. Tricyclics and older agents.

(e.g., amitriptyline, nortriptyline, doxepin.-

- A) Description – Serotonergics, typically tricyclic antidepressants (TCAs), are utilized for their serotonergic properties as increasing CNS serotonergic tone can help decrease pain perception in non-antidepressant dosages. Amitriptyline is known for its ability to repair Stage 4 sleep architecture, a frequent problem found in chronic pain patients and to treat depression, frequently associated with chronic pain. However, higher doses may produce more cholinergic side effects than newer tricyclics such as nortriptyline and desipramine. Doxepin and trimipramine also have sedative effects.
- B) Indications – Some formulations are FDA approved for depression and anxiety. For the purposes of this guideline, they are recommended for neuropathic pain and insomnia. They are **not recommended** as a drug treatment for depression. There is good evidence that gabapentin is not superior to amitriptyline. Given the cost of gabapentin, it is recommended that patients who are medically appropriate to undergo a trial of lower cost tricyclic before use of gabapentin.
- C) Major Contraindications – Cardiac disease or dysrhythmia, glaucoma, prostatic hypertrophy, seizures, high suicide risk, uncontrolled hypertension and orthostatic hypotension. A screening cardiogram may be done for those 40 or older, especially if higher doses are used.

- D) Dosing and Time to Therapeutic Effect – Varies by specific tricyclic. Low dosages, less than 100 mg are commonly used for chronic pain and/or insomnia. Lower doses decrease side effects and cardiovascular risks.
- E) Major Side Effects – Side effects vary according to the medication used; however, the side effect profile for all of these medications is generally higher in all areas except GI distress, which is more common among the SSRIs and SNRIs. Anticholinergic side effects include, but not limited to, dry mouth, sedation, orthostatic hypotension, cardiac arrhythmia, urinary retention, and weight gain. Patients should also be monitored for suicidal ideation and drug abuse.
- F) Drug Interactions – Tramadol (may cause seizures, both also increase serotonin/norepinephrine, so serotonin syndrome is a concern), clonidine, cimetidine, sympathomimetics, valproic acid, warfarin, carbamazepine, bupropion, anticholinergics, quinolones.
- G) Recommended Laboratory Monitoring – Renal and hepatic function. EKG for those on high dosages, or with cardiac risk.

ii. Selective serotonin reuptake inhibitors (SSRIs) (e.g., citalopram, fluoxetine, paroxetine, sertraline) are **not recommended** for neuropathic pain. They may be used for depression.

iii. Selective Serotonin Nor-epinephrine Reuptake Inhibitor (SSNRI)/Serotonin Nor-epinephrine Reuptake Inhibitors (SNRI).

- A) Description – Venlafaxine, duloxetine, and milnacipran.
- B) Indications – At the time of this guideline writing, duloxetine has been FDA approved for treatment of diabetic neuropathic pain and chronic musculoskeletal pain. There is good evidence that it is superior to placebo for neuropathic pain at doses of 60mg or 120mg. There is some evidence that it is comparable to pregabalin and gabapentin.

As of the time of this guideline writing, formulations of venlafaxine hydrochloride have been FDA approved for generalized anxiety disorder. There is some evidence it is modestly effective in diabetic neuropathic pain at doses of 150 to 225 mg. There is no evidence of superiority over tricyclics.

As of the time of this guideline writing, formulations of milnacipran have been FDA approved for treatment of fibromyalgia and has a success rate similar to imipramine. It is **not recommended** in patients as a first or second line treatment and is reserved for patients who fail other regimes due to side effects.

- C) Relative Contraindications – Seizures, eating disorders.

- D) Major Side Effects - Depends on the drug, but commonly includes dry mouth, nausea, fatigue, constipation, and abnormal bleeding. Serotonin syndrome is also a risk. GI distress, drowsiness, sexual dysfunction less than other classes. Hypertension and glaucoma. Cardiac issues with venlafaxine and withdrawal symptoms unless tapered. Studies show increased suicidal ideation and attempts in adolescents and young adults. Patients should also be monitored for suicidal ideation and drug abuse.
- E) Drug Interactions – Drug specific.
- F) Laboratory Monitoring – Drug specific. Hepatic and renal monitoring, venlafaxine may cause cholesterol or triglyceride increases.

iv. Atypical Antidepressants/Other Agents. May be used for depression; however, are not appropriate for neuropathic pain.

d. **Muscle Relaxants:** Appropriate for objective findings of muscle spasm with pain. When prescribing these agents, physicians must seriously consider all central nervous system (CNS) side effects including drowsiness or dizziness and the fact that benzodiazepines may be habit-forming. Carisoprodol should not be used as its active metabolite, meprobamate is commonly abused. Chronic use of benzodiazepines or any muscle relaxant is **not recommended** due to their habit-forming potential, seizure risk following abrupt withdrawal, and documented contribution to deaths of patients on opioids due to respiratory depression. A number of muscle relaxants interact with other medications.

❖ Optimum Duration: 1 week.

❖ Maximum Duration: 2 weeks (or longer if used only at night).

e. **Nonsteroidal Anti-Inflammatory Drugs (NSAIDs):** Useful for pain and inflammation. In mild cases, they may be the only drugs required for analgesia. There are several classes of NSAIDs, and the response of the individual injured worker to a specific medication is unpredictable. For this reason, a range of NSAIDs may be tried in each case, with the most effective preparation being continued. Patients should be closely monitored for adverse reactions. The FDA advises that many NSAIDs may cause an increased risk of serious cardiovascular thrombotic events, myocardial infarction, and stroke, which can be fatal. There is good evidence that naproxen has the least risk for cardiovascular events when compared to other NSAIDs. Administration of proton pump inhibitors, Histamine 2 Blockers or prostaglandin analog misoprostol along with these NSAIDs may reduce the risk of duodenal and gastric ulceration, in those at higher risk for this adverse event (e.g. age > 60, concurrent antiplatelet or corticosteroid therapy). They do not impact possible cardiovascular complications. Due to the cross-reactivity between aspirin and NSAIDs, NSAIDs should not be used in aspirin-sensitive patients, and it should be used with caution in all asthma patients. NSAIDs are associated with abnormal renal function, including renal failure, as well as, abnormal liver function. Patients with renal or hepatic disease may need increased dosing intervals with chronic

acetaminophen use. Chronic use of NSAIDs is ***generally not recommended*** due to increased risk of cardiovascular events and GI bleeding.

Certain NSAIDs may have interactions with various other medications. Individuals may have adverse events not listed above. Intervals for metabolic screening are dependent on the patient's age and general health status and should be within parameters listed for each specific medication. Complete Blood Count (CBC) and liver and renal function should be monitored at least every six months in patients on chronic NSAIDs and initially when indicated.

ii. Non-Selective Non-Steroidal Anti-Inflammatory Drugs:

Includes NSAIDs and acetylsalicylic acid (aspirin). Serious GI toxicity, such as bleeding, perforation, and ulceration can occur at any time, with or without warning symptoms, in patients treated with traditional NSAIDs. Physicians should inform patients about the signs and/or symptoms of serious GI toxicity and what steps to take if they occur. Anaphylactoid reactions may occur in patients taking NSAIDs. NSAIDs may interfere with platelet function. Fluid retention and edema have been observed in some patients taking NSAIDs.

- ❖ Optimal Duration: 1 week.
- ❖ Maximum duration: 1 year. Use of these substances long-term (3 days per week or greater) is associated with rebound pain upon cessation.

iii. Selective Cyclo-oxygenase-2 (COX-2) Inhibitors:

COX-2 inhibitors differ from the traditional NSAIDs in adverse side effect profiles. The major advantages of selective COX-2 inhibitors over traditional NSAIDs are that they have less GI toxicity and no platelet effects. COX-2 inhibitors can worsen renal function in patients with renal insufficiency; thus, renal function may need monitoring.

COX-2 inhibitors should not be first-line for low risk patients who will be using an NSAID short-term but are indicated in select patients for whom traditional NSAIDs are not tolerated. Serious upper GI adverse events can occur even in asymptomatic patients. Patients at high risk for GI bleed include those who use alcohol, smoke, are older than 65, take corticosteroids or anti-coagulants, or have a longer duration of therapy. Celecoxib is contraindicated in sulfonamide allergic patients.

- ❖ Optimal Duration: 7 to 10 days.
- ❖ Maximum Duration: Chronic use is appropriate in individual cases. Use of these substances long-term (3 days per week or greater) is associated with rebound pain upon cessation.

f. **Opioids:** Should be primarily reserved for the treatment of severe upper extremity pain. There are circumstances where prolonged use of opioids is justified based upon specific diagnosis and in pre- and post-operative patients.

In these and other cases, it should be documented and justified. In mild-to-moderate cases of upper extremity pain, opioid medication should be used cautiously on a case-by-case basis. Adverse effects include respiratory depression, the development of physical and psychological dependence, and impaired alertness.

Opioids medications should be prescribed with strict time, quantity, and duration guidelines, and with definitive cessation parameters. Pain is subjective in nature and should be evaluated using a pain scale and assessment of function to rate effectiveness of the opioid prescribed. Any use beyond the maximum should be documented and justified based on the diagnosis and/or invasive procedures. Adverse effects include respiratory depression, impaired alertness, and the development of physical and psychological dependence.

- ❖ Optimum Duration: Up to 7 days.
- ❖ Maximum Duration: 2 weeks. Use beyond 2 weeks is acceptable in appropriate cases when functional improvement is documented. Refer to the Division's Chronic Pain Disorder Medical Treatment Guidelines, which give a detailed discussion regarding medication use in chronic pain management. Use beyond 30 days after non-traumatic injuries, or 6 weeks post-surgery after the original injury or post-operatively is **not recommended**. If necessary the physician should access the Colorado Prescription Drug Monitoring Program (PDMP) and follow recommendations in Chronic Pain Guideline. This system allows the prescribing physician to see most of the controlled substances prescribed by other physicians for an individual patient.

6. EDUCATION/INFORMED DECISION MAKING of the patient and family, as well as the employer, insurer, policy makers and the community should be the primary emphasis in the treatment of TOS pain and disability. Unfortunately, practitioners often think of education and informed decision making last, after medications, manual therapy, and surgery.

Informed decision making is the hallmark of a successful treatment plan. In most cases the continuum of treatment from the least invasive to the most invasive (e.g. surgery) should be discussed. The intention is to find the treatment along this continuum which most completely addresses the condition. Patients should identify their personal functional goals of treatment at the first visit. It is recommended that specific individual goals are articulated at the beginning of treatment as this is likely to lead to increased patient satisfaction above that achieved from improvement in pain or other physical function. Progress toward the individual functional goals identified should be addressed at follow up visits and throughout treatment by other members of the health care team as well as the authorized physicians.

Documentation of this process should occur whenever diagnostic tests or referrals from the authorized treating physician are contemplated. The informed decision making process asks the patient to set their personal functional goals of treatment, describe their current health status and any concerns they have regarding adhering to the diagnostic or treatment plan proposed. The provider should clearly describe the following:

- The expected functional outcomes from the proposed treatment, or expected results and plan of action if diagnostic tests are involved.
- Any side effects and risks to the patient.
- Required post treatment rehabilitation time and impact on work, if any.
- Alternative therapies or diagnostic testing.

Before diagnostic tests or referrals for invasive treatment take place the patient should be able to clearly articulate the goals of the intervention, the general side effects and risks associated with it and their decision regarding compliance with the suggested plan. There is some evidence that information provided only by video is not sufficient education.

Practitioners must develop and implement an effective strategy and skills to educate patients, employers, insurance systems, policy makers, and the community as a whole. An education-based paradigm should always start with providing reassuring information to the patient and informed decision making. More in-depth education currently exists within a treatment regimen employing functional restoration, prevention, and cognitive behavioral techniques. Patient education and informed decision making should facilitate self-management of symptoms and prevention.

- ❖ Time to produce effect: Varies with individual patient
- ❖ Frequency: Should occur at every visit.

7. PERSONALITY/PSYCHOSOCIAL/PSYCHOLOGICAL INTERVENTION: Psychosocial treatment is a well-established therapeutic and diagnostic intervention with selected use in acute pain problems and more widespread use in sub-acute and chronic pain populations. Psychosocial treatment is recommended as an important component in the total management of a patient with chronic pain and should be implemented as soon as the problem is identified.

If a diagnosis consistent with the standards of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM) has been determined, the patient should be evaluated for the potential need for psychiatric medications. Use of any medication to treat a diagnosed condition may be ordered by the authorized treating physician or by the consulting psychiatrist. Visits for management of psychiatric medications are medical in nature and are not a component of psychosocial treatment. Therefore, separate visits for medication management may be necessary, depending on the patient and medications selected.

Psychosocial interventions include psychotherapeutic treatments for mental health conditions, as well as behavioral medicine treatments. These interventions may similarly be beneficial for patients without psychiatric conditions, but who may need to make major life changes in order to cope with pain or adjust to disability. Examples of these treatments include cognitive behavioral therapy (CBT), relaxation training, mindfulness training, and sleep hygiene training.

The screening or diagnostic workup should clarify and distinguish between pre-existing, aggravated, and/or purely causative psychological conditions. Therapeutic and diagnostic modalities include, but are not limited to, individual counseling and group therapy.

Treatment can occur within an individualized model, a multi-disciplinary model, or a structured pain management program.

A psychologist with a PhD, PsyD, EdD credentials, or a psychiatric MD/DO may perform psychosocial treatments. Other licensed mental health providers or licensed health care providers with training in CBT, or certified as CBT therapists who have experience in treating chronic pain disorders in injured workers, may also perform treatment in consultation with a PhD, PsyD, EdD, or psychiatric MD/DO.

CBT refers to a group of psychological therapies that are sometimes referred to by more specific names, such as Rational Emotive Behavior Therapy, Rational Behavior Therapy, Rational Living Therapy, Cognitive Therapy, and Dialectic Behavior Therapy. Variations of CBT methods can be used to treat a variety of conditions, including chronic pain, depression, anxiety, phobias, and post-traumatic stress disorder (PTSD). For patients with multiple diagnoses, more than one type of CBT might be needed. The CBT used in research studies is often "manualized CBT," meaning that the treatment follows a specific protocol in a manual. In clinical settings, CBT may involve the use of standardized materials, but it is also commonly adapted by a psychologist or psychiatrist to the patient's unique circumstances. If the CBT is being performed by a non-mental health professional, a manual approach would be strongly recommended. CBT must be distinguished from neuropsychological therapies used to teach compensatory strategies to brain injured patients, which are also called "cognitive therapy."

It should be noted that most clinical trials on CBT exclude subjects who have significant psychiatric diagnoses. Consequently, the selection of patients for CBT should include the following considerations. CBT is instructive and structured, using an educational model with homework to teach inductive rational thinking. Because of this educational model, a certain level of literacy is assumed for most CBT protocols. Patients who lack the cognitive and educational abilities required by a CBT protocol are unlikely to be successful. Further, given the highly structured nature of CBT, it is more effective when a patient's circumstances are relatively stable. For example, if a patient is about to be evicted, is actively suicidal, or is coming to sessions intoxicated, these matters will generally preempt CBT treatment for pain, and require other types of psychotherapeutic response. Conversely, literate patients whose circumstances are relatively stable, but who catastrophize or cope poorly with pain or disability are often good candidates for CBT for pain. Similarly, literate patients whose circumstances are relatively stable, but who exhibit unfounded medical phobias, are often good candidates for CBT for anxiety.

There is good evidence that cognitive intervention reduces low back disability in the short term and in the long term. In one of the studies the therapy consisted of 6, 2-hour sessions given weekly to workers who had been sick-listed for 8-12 weeks. Comparison groups included those who received routine care. There is good evidence that psychological interventions, especially CBT, are superior to no psychological intervention for chronic low back pain, and that self-regulatory interventions, such as biofeedback and relaxation training, may be equally effective. There is good evidence that six group therapy sessions lasting one and a half hours each focused on CBT skills improved function and alleviated pain in uncomplicated sub-acute and chronic low back pain patients. There is some evidence that CBT provided in seven two-hour small group sessions can reduce the severity of insomnia in chronic pain patients. A Cochrane meta-analysis grouped very heterogeneous behavioral interventions and concluded that there was good evidence that CBT may reduce pain and disability but the effect size was uncertain. In total, the evidence clearly supports CBT, and it should be offered to all chronic pain patients who do not have other serious issues, as discussed above.

CBT is often combined with active therapy in an interdisciplinary program, whether formal or informal. It must be coordinated with a psychologist or psychiatrist. CBT can be done in a small group or individually, and the usual number of treatments varies between 8 and 16 sessions.

Before CBT is done, the patient must have a full psychological evaluation. The CBT program must be done under the supervision of a PhD, PsyD, EdD, or psychiatric MD/DO.

Psychological Diagnostic and Statistical Manual of Mental Disorders (DSM) Axis I disorders are common in chronic pain. One study demonstrated that the majority of patients who had failed other therapy and participated in an active therapy program also suffered from major depression. However, in a program that included CBT and other psychological counseling, the success rate for return to work was similar for those with and without a DSM IV diagnosis. This study further strengthens the argument for having some psychological intervention included in all chronic pain treatment plans.

For all psychological/psychiatric interventions, an assessment and treatment plan with measurable behavioral goals, time frames, and specific interventions planned, must be provided to the treating physician prior to initiating treatment. A status report must be provided to the authorized treating physician every two weeks during initial more frequent treatment and monthly thereafter. The report should provide documentation of progress toward functional recovery and a discussion of the psychosocial issues affecting the patient's ability to participate in treatment. The report should also address pertinent issues such as pre-existing, aggravated, and/or causative issues, as well as realistic functional prognosis.

a. Cognitive Behavioral Therapy (CBT) or Similar Treatment:

- ❖ Time to Produce Effect: 6 to 8 1–2 hour session, group or individual (1-hour individual or 2-hour group).
- ❖ Maximum Duration: 16 sessions.

NOTE: Before CBT is done, the patient must have a full psychological evaluation. The CBT program must be done under the supervision of a PhD, PsyD, EdD, or Psychiatric MD/DO.

b. Other Psychological/Psychiatric Interventions:

- ❖ Time to Produce Effect: 6 to 8 weeks.
- ❖ Frequency: 1 to 2 times weekly for the first 2 weeks (excluding hospitalization, if required), decreasing to 1 time per week for the second month. Thereafter, 2 to 4 times monthly with the exception of exacerbations, which may require increased frequency of visits. Not to include visits for medication management
- ❖ Optimum Duration: 2 to 6 months.
- ❖ Maximum Duration: 6 months. Not to include visits for

medication management. For select patients, longer supervised psychological/psychiatric treatment may be required, especially if there are ongoing medical procedures or complications. If counseling beyond 6 months is indicated, the management of psychosocial risks or functional progress must be documented. Treatment plan/progress must show severity.

- 8. RESTRICTION OF ACTIVITIES:** Continuation of normal daily activities is the recommendation for most patients since immobility will negatively affect rehabilitation. Prolonged immobility results in a wide range of deleterious effects, such as a reduction in aerobic capacity and conditioning, loss of muscle strength and flexibility, increased segmental stiffness, promotion of bone demineralization, impaired disc nutrition, and the facilitation of the illness role. Mobility is generally therapeutic and should be encouraged. Activity should be increased based on the improvement of core strengthening.

Patients should be educated regarding the detrimental effects of immobility versus the efficacious use of limited rest periods. Adequate rest allows the patient to comply with active treatment and benefit from the rehabilitation program. In addition, complete work cessation should be avoided, if possible, since it often further aggravates the pain presentation and promotes disability. Modified return to work is almost always more efficacious and rarely contraindicated in the vast majority of injured workers.

- 9. RETURN-TO-WORK:** Return to work and/or work-related activities whenever possible is one of the major components in treatment and rehabilitation. Return to work is a subject that should be addressed by each workers' compensation provider at the first meeting with the injured employee and updated at each additional visit. A return-to-work format should be part of a company's health plan, knowing that return to work can decrease anxiety, reduce the possibility of depression, and reconnect the worker with society.

Because a prolonged period of time off work will decrease the likelihood of return to work, the first weeks of treatment are crucial in preventing and/or reversing chronicity and disability mindset. In complex cases, experienced nurse case managers may be required to assist in return to work. Other services, including psychological evaluation and/or treatment, jobsite analysis, and vocational assistance, may be employed.

Two counseling sessions with an occupational physician, and work site visit if necessary, may be helpful for workers who are concerned about returning to work.

At least one study suggest that health status is worse for those who do not return to work than those who do. Self-employment and injury severity predict return to work. Difficulty with pain control, ADLs, and anxiety and depression were common.

The following should be considered when attempting to return an injured worker with chronic pain to work.

- a. Job History Interview:** The authorized treating physician should perform a job history interview at the time of the initial evaluation and before any plan of treatment is established. Documentation should include the workers' job demands, stressors, duties of current job, and duties of job at the time of the initial injury. In addition, cognitive and social issues should be identified, and treatment of these issues should be incorporated into the plan of care.

- b. Coordination of Care:** Management of the case is a significant part of return to work and may be the responsibility of the authorized treating physician, occupational health nurse, risk manager, or others. Case management is a method of communication between the primary provider, referral providers, insurer, employer, and employee. Because case management may be coordinated by a variety of professionals, the case manager should be identified in the medical record.
- c. Communication:** This is essential between the patient, authorized treating physician, employer, and insurer. Employers should be contacted to verify employment status, job duties and demands, and policies regarding injured workers. In addition, the availability and duration of temporary and permanent restrictions, as well as other placement options, should be discussed and documented. All communications in the absence of the patient are required to be documented and made available to the patient.
- d. Establishment of Return-to-Work Status:** Return to work for persons with chronic pain should be considered therapeutic, assuming that work is not likely to aggravate the basic problem or increase the discomfort. In most cases of chronic pain, the worker may not be currently working or even employed. The goal of return to work would be to implement a plan of care to return the worker to any level of employment with the current employer or to return him/her to any type of new employment. Temporary restrictions may be needed while recommended ergonomic or adaptive equipment is obtained; employers should obtain recommended equipment in a timely manner.
- e. Establishment of Activity Level Restrictions:** A formal job description for the injured worker is necessary to identify physical demands at work and assist in the creation of modified duty. A jobsite evaluation may be utilized to identify applicable tasks such as pushing, pulling, lifting, reaching, grasping, pinching, sitting, standing, posture, ambulatory distance and terrain, and if applicable, environment for temperature, air flow, noise, and the number of hours that may be worked per day. Due to the lack of predictability regarding exacerbation of symptoms affecting function, an extended, occupationally focused functional capacity evaluation may be necessary to determine the patient's tolerance for job type tasks over a continued period of time. Job requirements should be reviewed for the entire 8 hours or more of the working day. Between one and three days after the evaluation, there should be a follow-up evaluation by the treating therapist and/or the authorized treating physician to assess the patient's status. When prescribing the FCE, the physician must assess the probability of return to work against the potential for exacerbation of the work related condition. Work restrictions assigned by the authorized treating physician may be temporary or permanent. The case manager should continue to seek out modified work until restrictions become less cumbersome or as the worker's condition improves or deteriorates.
- f. Rehabilitation and Return to Work:** As part of rehabilitation, every attempt should be made to simulate work activities so that the authorized treating physician may promote adequate job performance. The use of ergonomic or adaptive equipment, therapeutic breaks, and interventional modalities at work may be necessary to maintain employment.

g. Vocational Assistance: Formal vocational rehabilitation is a generally accepted intervention and can assist disabled persons to return to viable employment. Assisting patients to identify vocational goals will facilitate medical recovery and aid in the achievement of MMI by (1) increasing motivation towards treatment and (2) alleviating the patient's emotional distress. Physically limited patients will benefit most if vocational assistance is provided during the interdisciplinary rehabilitation phase of treatment. To assess the patient's vocational capacity, a vocational assessment utilizing the information from occupational and physical therapy assessments may be utilized to identify rehabilitation program goals, as well as optimize both patient motivation and utilization of rehabilitation resources. This may be extremely helpful in decreasing the patient's fear regarding an inability to earn a living, which can add to his/her anxiety and depression.

Recommendations to Employers and Employees of Small Businesses: employees of small businesses who are diagnosed with chronic pain may not be able to perform any jobs for which openings exist. Temporary employees may fill those slots while the employee functionally improves. Some small businesses hire other workers, and if the injured employee returns to the job, the supervisor/owner may have an extra employee. To avoid this, it is suggested that case managers be accessed through their payer or third-party administrator. Case managers may assist with resolution of these problems, as well as assist in finding modified job tasks, or find jobs with reduced hours, etc., depending on company philosophy and employee needs.

Recommendations to Employers and Employees of Mid-sized and Large Businesses: Employers are encouraged by the Division to identify modified work within the company that may be available to injured workers with chronic pain who are returning to work with temporary or permanent restrictions. To assist with temporary or permanent placement of the injured worker, it is suggested that a program be implemented that allows the case manager to access descriptions of all jobs within the organization.

10. THERAPY-ACTIVE: The following active therapies are widely used and accepted methods of care for a variety of work-related injuries. They are based on the philosophy that therapeutic exercise and/or activity are beneficial for restoring flexibility, strength, endurance, function, range of motion, and can alleviate discomfort. Active therapy requires physical effort by the individual to complete a specific exercise or task. This form of therapy requires supervision from a therapist or medical provider such as verbal, visual, and/or tactile instruction(s). At times, the provider may help stabilize the patient or guide the movement pattern but the energy required to complete the task is predominately executed by the patient.

The use and integration of active and passive therapies should be directed at addressing impairments found in the clinical examination which may include abnormal posture, head tilting forward, scapula dyskinesia and joint/tissue hypomobility/hypermobility. These clinical findings are frequently contributors to the thoracic outlet symptoms and many times result in scapula anterior tipping and altered motor control of the scapula/thoracic and glenohumeral joints. In this classification of scapula dysfunction, the primary external visual feature is the anterior tilting of the scapula in the sagittal plane which produces the prominent inferior angle of the scapula. Many times the anterior tilting is associated with shortening of the pectoralis minor and poor function of the scapula muscles controlling the inferior angle. This myofascial and scapula dysfunction places the acromion in a

position closer to the rotator cuff and humeral head and can thereby compromise the subacromial space. Additionally, this resultant scapula dyskinesia disrupts the length tension relationships of the shoulder complex's static and dynamic constraints and subsequently facilitates poor humeral head positioning on the glenoid. (The static constraints are the glenohumeral ligaments and the dynamic constraints are the deltoid and cuff musculature.) Therefore the treatment of this scapula dyskinesia and myofascial dysfunction is important for restoration of the normal upper quarter function.

The healthy function of the upper body is inextricably dependent on the proper function and balanced relationships with its neighboring structures: cervical, thoracic, costal, when one acknowledges the role of fascia, particularly the thoracodorsal fascia. Therefore, effective and expedient rehabilitation requires providers to have an excellent understanding of the functional anatomy of these structures and their dynamic inter-relatedness. Shoulder injuries are complex. Successful treatment of these injuries requires the providers have expert skills. Collaboration is essential in achieving optimal outcomes.

Abnormal posture, head tilting forward and scapular dyskinesia are frequently contributors to thoracic outlet symptoms. These tip the scapula anteriorly, altering motor control of the scapulothoracic and glenohumeral articulations. The most noticeable feature is prominence of the inferior angle of the scapula. Dysfunction of the pectoralis minor and other scapular muscles places the acromion closer to the rotator cuff and humeral head, compromising the subacromial space. The altered relations of length and tension of the deltoid and cuff muscles results in poor motor control of the humerus on the glenoid fossa.

Patients should be instructed to continue active therapies at home as an extension of the treatment process in order to maintain improvement levels. Follow-up visits to reinforce and monitor progress and proper technique are recommended. Home exercise can include exercise with or without mechanical assistance or resistance and functional activities with assistive devices.

The use of a patient completed pain drawing, visual analog scale (VAS), and functional outcome tools is highly recommended to help providers track progress. Functional objective goals including minimum clinically important difference (MCID) of the functional tools should be monitored and documented regularly to determine the effectiveness of treatment.

On occasion, specific diagnoses and post-surgical conditions may warrant durations of treatment beyond those listed as "maximum." Factors such as exacerbation of symptoms, re-injury, interrupted continuity of care and comorbidities may also extend durations of care. Specific goals with objectively measured functional improvement during treatment must be cited to justify extended durations of care. It is recommended that, if no functional gain is observed after the number of treatments under "time to produce effect" have been completed, then alternative treatment interventions, further diagnostic studies, or further consultations should be pursued.

The following active therapies are listed in alphabetical order:

- a. Activities of Daily Living (ADL):** are well-established interventions which involve instruction, active-assisted training, and/or adaptation of activities or equipment to improve a person's capacity in normal daily activities such as self-care, work re-integration training, homemaking, and driving.

- ❖ Time to Produce Effect: 4 to 5 treatments.
- ❖ Frequency: 3 to 5 times per week.
- ❖ Optimum Duration: 4 to 6 weeks.
- ❖ Maximum Duration: 6 weeks.

b. Aquatic Therapy: is a well-accepted treatment which consists of the therapeutic use of aquatic immersion for therapeutic exercise to promote range-of-motion, core stabilization, endurance, flexibility, strengthening, body mechanics, and pain management. Aquatic therapy includes the implementation of active therapeutic procedures in a swimming or therapeutic pool. The water provides a buoyancy force that lessens the amount of force gravity applies to the body. The decreased gravity effect allows the patient to have a mechanical advantage and more likely have a successful trial of therapeutic exercise. Literature has shown that the muscle recruitment for aquatic therapy versus similar non-aquatic motions is significantly less. Because there is always a risk of recurrent or additional damage to the muscle tendon unit after a surgical repair, aquatic therapy may be preferred by surgeons to gain early return of range of motion. In some cases the patient will be able to do the exercises unsupervised after the initial supervised session. Parks and recreation contacts may be used to develop less expensive facilities for patients. Indications include:

- Postoperative therapy as ordered by the surgeon; or
- Intolerance for active land-based or full-weight bearing therapeutic procedures; or
- Symptoms that are exacerbated in a dry environment; and
- Willingness to follow through with the therapy on a regular basis.

The pool should be large enough to allow full extremity range of motion and fully erect posture. Aquatic vests, belts, snorkels, and other devices may be used to provide stability, balance, buoyancy, and resistance.

- ❖ Time to Produce Effect: 4 to 5 treatments.
- ❖ Frequency: 3 to 5 times per week.
- ❖ Optimum Duration: 4 to 6 weeks.
- ❖ Maximum Duration: 8 weeks.

A self-directed program is recommended after the supervised aquatics program has been established, or, alternatively a transition to a self-directed dry environment exercise program.

c. Functional Activities: are well-established interventions which involve the use of therapeutic activity to enhance mobility, body mechanics, employability, coordination, balance, and sensory motor integration.

- ❖ Time to Produce Effect: 4 to 5 treatments.
- ❖ Frequency: 3 to 5 times per week.
- ❖ Optimum Duration: 4 to 6 weeks.
- ❖ Maximum Duration: 6 weeks.

d. Nerve Gliding: is an accepted therapy for TOS. Nerve gliding exercises consist of a series of gentle movements of the neck, shoulder and arm that produce longitudinal movement along the length of the nerves of the upper extremity. These exercises are based on the principle that the tissues of the peripheral nervous system are designed for movement, and glide (excursion) of nerves may have an effect on neurophysiology through alterations in vascular and axoplasmic flow. Biomechanical principles have been more thoroughly studied than clinical outcomes. The exercises should be done by the patient after proper instruction and monitoring by the therapist.

- ❖ Time to Produce Effect: 2 to 4 weeks.
- ❖ Frequency: Up to 5 times per day by patient (patient-initiated).
- ❖ Optimum Duration: 4 to 6 sessions.
- ❖ Maximum Duration: 6 to 8 sessions.

e. Neuromuscular Re-education: is a generally accepted treatment. Neuromuscular re-education is the skilled application of exercise with manual, mechanical, or electrical facilitation to enhance strength; movement patterns; neuromuscular response; proprioception, kinesthetic sense, coordination; education of movement, balance and posture. Changes in posture and scapula movements are important to restore normal upper quarter movements and minimize thoracic outlet symptoms. Indications include the need to promote neuromuscular responses through carefully timed proprioceptive stimuli to elicit and improve motor activity in patterns similar to normal neurologically developed sequences and improve neuromotor response with independent control. Muscles that should be targeted for correct timing and recruitment include the serratus anterior, upper trapezius, lower trapezius and middle trapezius. Accessory stabilizers including the rhomboids, latissimus dorsi and levator scapula should also be addressed to assist with scapula setting. Normal scapula positioning and movements should be the goal of the neuromuscular re-education. Furthermore, the limitations in flexibility and motor control of the Pectoralis minor are a common incriminator with this type of dysfunction.

- ❖ Time to Produce Effect: 2 to 6 treatments.
- ❖ Frequency: 3 times per week.

- ❖ Optimum Duration: 4 to 8 weeks.
- ❖ Maximum Duration: 8 weeks. Additional visits may be necessary in cases of re-injury, interrupted continuity of care, exacerbation of symptoms, and in those patients with comorbidities. Functional gains including increased range of motion must be demonstrated to justify continuing treatment.

f. Therapeutic Exercise: is a generally well-accepted treatment. Therapeutic exercise with or without mechanical assistance or resistance, may include manual facilitation, isoinertial, isotonic, isometric and isokinetic types of exercises. The exact type of program and length of therapy should be determined by the treating physician with the physical or occupational therapist. In most cases the therapist instructs the patient in a supervised clinic and home program to increase motion with tissue elasticity and subsequently increase strength and endurance. Usually, manual therapy is performed initially to assure correct muscle activation followed by isometrics and progressing to isotonic exercises as tolerated.

- ❖ Time to Produce Effect: 2 to 6 treatments.
- ❖ Frequency: 2 to 3 times per week.
- ❖ Optimum Duration: 16 to 24 sessions.
- ❖ Maximum Duration: 36 sessions. Additional visits may be necessary in cases of re-injury, interrupted continuity of care, exacerbation of symptoms, and in those patients with comorbidities. Functional gains including increased range of motion must be demonstrated to justify continuing treatment.

11. THERAPY – PASSIVE:

The following passive therapies and modalities are generally accepted methods of care for a variety of work-related injuries. Passive therapy includes those treatment modalities that do not require energy expenditure on the part of the patient. They are principally effective during the early phases of treatment and are directed at controlling symptoms such as pain, inflammation and swelling and to improve the rate of healing soft tissue injuries. They should be used adjunctively with active therapies such as postural stabilization and exercise programs to help control swelling, pain and inflammation during the rehabilitation process. Please refer to Section B.4, General Guidelines Principles, Active Interventions. Passive therapies may be used intermittently as a therapist deems appropriate or regularly if there are specific goals with objectively measured functional improvements during treatment.

On occasion, specific diagnoses and post-surgical conditions may warrant durations of treatment beyond those listed as "maximum." Factors such as exacerbation of symptoms, re-injury, interrupted continuity of care and comorbidities may also extend durations of care. Specific goals with objectively measured functional improvement during treatment must be cited to justify extended durations of care. It is recommended that, if no functional gain is observed after the number of treatments under "time to produce effect" has been completed; alternative treatment interventions, further diagnostic studies, or further consultations should be pursued.

The following passive therapies and modalities are listed in alphabetical order.

a. Electrical Stimulation (Unattended): is an accepted treatment. Once applied, electrical stimulation (unattended) requires minimal on-site supervision by the physical therapists, occupational therapist or other provider. Indications include pain, inflammation, muscle spasm, atrophy, decreased circulation, and the need for osteogenic stimulation. A home unit should be purchased if treatment is effective and frequent use is recommended.

- ❖ Time to Produce Effect: 2 to 4 treatments.
- ❖ Frequency: Varies, depending upon indication, between 2 to 3 times/day to 1 time/week.
- ❖ Optimum Duration: 1 month.
- ❖ Maximum Duration: Use beyond 6 weeks requires a home unit.

b. Iontophoresis: is an accepted treatment which consists of the transfer of medication, including, but not limited to, steroidal anti-inflammatories and anesthetics, through the use of electrical stimulation. Indications include pain (Lidocaine), inflammation (hydrocortisone, salicylate, dexamethasone), edema (mecholy, hyaluronidase, and salicylate), ischemia (magnesium, mecholy, and iodine), muscle spasm (magnesium, calcium), calcifying deposits (acetate), scars, and keloids (sodium chloride, iodine, acetate). An experimental study with healthy human volunteers that an iontophoretic preparation of dexamethasone phosphate penetrated up to a depth of 12 mm, but even after 400 minutes following iontophoresis, half of the dexamethasone had penetrated no deeper than 2 mm. Iontophoresis appears to be effective only in superficial tissues. Per the Colorado Physical Therapy Practice Act, referring physician must write a prescription for medication, and the individual must bring the medication (not the prescription for medication) to the treating therapist for use in iontophoresis.

- ❖ Time to Produce Effect: 1 to 4 treatments.
- ❖ Frequency: 3 times per week with at least 48 hours between treatments.
- ❖ Optimum Duration: 8 to 10 treatments.
- ❖ Maximum Duration: 10 treatments.

c. Manipulation: is a generally accepted treatment. Manipulative treatment (not therapy) is defined as the therapeutic application of manually guided forces by an operator to improve physiologic function and/or support homeostasis that has been altered by the injury or occupational disease, and has associated clinical significance.

High velocity, low amplitude (HVLA) technique, chiropractic manipulation, osteopathic manipulation, muscle energy techniques, counter strain, and non-force techniques are all types of manipulative treatment. This may be applied by

osteopathic physicians (D.O.), chiropractors (D.C.), properly trained physical therapists (P.T.), properly trained occupational therapists (O.T.), or properly trained medical physicians. Under these different types of manipulation exist many subsets of different techniques that can be described as a) direct- a forceful engagement of a restrictive/pathologic barrier, b) indirect- a gentle/non-forceful disengagement of a restrictive/pathologic barrier, c) the patient actively assisting in the treatment and d) the patient relaxing, allowing the practitioner to move the body tissues. When the proper diagnosis is made and coupled with the appropriate technique, manipulation has no contraindications and can be applied to all tissues of the body. Pre-treatment assessment should be performed as part of each manipulative treatment visit to ensure that the correct diagnosis and correct treatment is employed. Mobilization may be directed at the first rib and the scapula.

- ❖ Time to produce effect for all types of manipulative treatment: 1 to 6 treatments.
- ❖ Frequency: Up to 3 times per week for the first 3 weeks as indicated by the severity of involvement and the desired effect.
- ❖ Optimum Duration: 10 treatments.
- ❖ Maximum Duration: 12 treatments. Additional visits may be necessary in cases of re-injury, interrupted continuity of care, exacerbation of symptoms, and in those patients with comorbidities. Functional gains including increased range of motion must be demonstrated to justify continuing treatment.

d. Massage-Manual or Mechanical: is a generally well-accepted treatment. Massage is manipulation of soft tissue with broad ranging relaxation and circulatory benefits. This may include stimulation of acupuncture points and acupuncture channels (acupressure), application of suction cups and techniques that include pressing, lifting, rubbing, pinching of soft tissues by, or with the practitioner's hands. Indications include edema (peripheral or hard and non-pliable edema), muscle spasm, adhesions, the need to improve peripheral circulation and range of motion, or to increase muscle relaxation and flexibility prior to exercise. In cases with edema, deep vein thrombosis should be ruled out prior to treatment.

- ❖ Time to Produce Effect: Immediate.
- ❖ Frequency: 1 to 2 times per week.
- ❖ Optimum Duration: 6 weeks.
- ❖ Maximum Duration: 2 months.

e. Mobilization (Joint): is a generally well-accepted treatment. Mobilization is passive movement, which may include passive range of motion performed in such a manner (particularly in relation to the speed of the movement) that it is, at all times, within the ability of the patient to prevent the movement if they so choose. It may include skilled manual joint tissue stretching. Indications include

the need to improve joint play, improve intracapsular arthrokinematics, or reduce pain associated with tissue impingement. Mobilization may be directed at the first rib and the scapula.

- ❖ Time to Produce Effect: 6 to 9 treatments.
- ❖ Frequency: 3 times per week.
- ❖ Optimum Duration: 6 weeks.
- ❖ Maximum Duration: 2 months.

f. Mobilization (Soft Tissue): is a generally well-accepted treatment. Mobilization of soft tissue is the skilled application of muscle energy, strain/counter strain, myofascial release, manual trigger point release and manual therapy techniques designed to improve or normalize movement patterns through the reduction of soft tissue pain and restrictions. These can be interactive with the patient participating or can be with the patient relaxing and letting the practitioner move the body tissues. Indications include muscle spasm around a joint, trigger points, adhesions, and neural compression. Mobilization should be accompanied by active therapy.

- ❖ Time to Produce Effect: 2 to 3 weeks.
- ❖ Frequency: 2 to 3 times per week.
- ❖ Optimum Duration: 4 to 6 weeks.
- ❖ Maximum Duration: 6 weeks.

g. Superficial Heat and Cold Therapy: is a generally accepted treatment. Superficial heat and cold therapies are thermal agents applied in various manners that lower or raise the body tissue temperature for the reduction of pain, inflammation, and/or effusion resulting from injury or induced by exercise. It may be used acutely with compression and elevation. Indications include acute pain, edema and hemorrhage, need to increase pain threshold, reduce muscle spasm and promote stretching/flexibility. Includes portable cryotherapy units and application of heat just above the surface of the skin at acupuncture points.

- ❖ Time to Produce Effect: Immediate.
- ❖ Frequency: 2 to 5 times per week.
- ❖ Optimum Duration: 3 weeks as primary, or up to 2 months if used intermittently as an adjunct to other therapeutic procedures.
- ❖ Maximum Duration: 2 months.

h. Transcutaneous Electrical Nerve Stimulation (TENS): is a generally accepted treatment and should include at least one instructional session for proper application and use. Indications include muscle spasm, atrophy, and

decreased circulation and pain control. Minimal TENS unit parameters should include pulse rate, pulse width and amplitude modulation. Consistent, measurable functional improvement must be documented prior to the purchase of a home unit.

- ❖ Time to Produce Effect: Immediate.
- ❖ Frequency: Variable.
- ❖ Optimum Duration: 3 sessions.
- ❖ Maximum Duration: 3 sessions. If beneficial, provide with home unit or purchase if effective.

i. Ultrasound (including Phonophoresis): is an accepted treatment and includes ultrasound with electrical stimulation and phonophoresis. Ultrasound uses sonic generators to deliver acoustic energy for therapeutic thermal and/or non-thermal soft tissue effects. Indications include scar tissue, adhesions, and muscle spasm, and the need to extend muscle tissue or accelerate the soft tissue healing.

Ultrasound with electrical stimulation is concurrent delivery of electrical energy that involves a dispersive electrode placement. Indications include muscle spasm, scar tissue, pain modulation, and muscle facilitation.

Phonophoresis is the transfer of medication to the target tissue to control inflammation and pain through the use of sonic generators. These topical medications include, but are not limited to, steroidal anti-inflammatory and anesthetics.

- ❖ Time to Produce Effect: 6 to 15 treatments.
- ❖ Frequency: 3 times per week.
- ❖ Optimum Duration: 4 to 8 weeks.
- ❖ Maximum Duration: 2 months.

12. VOCATIONAL REHABILITATION: is a generally accepted intervention, but Colorado limits its use as a result of Senate Bill 87-79. Initiation of vocational rehabilitation requires adequate evaluation of patients for quantification highest functional level, motivation and achievement of maximum medical improvement. Vocational rehabilitation may be as simple as returning to the original job or as complicated as being retrained for a new occupation.

It may also be beneficial for full vocational rehabilitation to be started before MMI if it is evident that the injured worker will be unable to return to his/her previous occupation. A positive goal and direction may aid the patient in decreasing stress and depression, and promote optimum rehabilitation.

G. THERAPEUTIC PROCEDURES - OPERATIVE

All operative interventions must be based upon positive correlation of clinical findings, clinical course and diagnostic tests. A comprehensive assimilation of these factors must lead to a specific diagnosis with positive identification of pathologic condition(s). It is imperative to rule out non-physiologic modifiers of pain presentation or non-operative conditions mimicking operative conditions (e.g., peripheral neuropathy, myofascial pain, scleratogenous or sympathetically mediated pain syndromes, psychological), prior to consideration of elective surgical intervention. Operative procedures are only appropriate for Neurogenic or Vascular TOS as defined below. Patients with thoracic outlet symptoms due to myofascial issues are not surgical candidates.

In addition, operative treatment is indicated when the natural history of surgically treated lesions is better than the natural history for non-operatively treated lesions. All patients being considered for surgical intervention should first undergo a comprehensive neuro-musculoskeletal examination to identify mechanical pain generators that may respond to non-surgical techniques or may be refractory to surgical intervention.

Structured rehabilitation interventions should be strongly considered post-operative in any patient not making expected functional progress within three weeks post-operative.

Post-operative therapy will frequently require a repeat of the therapy provided pre-operatively. Refer to Section F. Therapeutic Procedures, Non-operative, and consider the first post-operative visit as visit number one, for the time frame parameters provided.

Return-to-work restrictions should be specific according to the recommendation in Section F.10, Therapeutic Procedures – Non-operative.

The patient and treating physician have identified functional operative goals and the likelihood of achieving improved ability to perform activities of daily living or work activities. The patient should agree to comply with the pre- and post-operative treatment plan including home exercise. The provider should be especially careful to make sure the patient understands the amount of post-operative treatment required and the length of partial- and full-disability expected post-operatively. The patient should have committed to the recommended post-operative treatment plan and fully completed the recommended active, manual and pre-operative treatment plans.

Informed decision making should be documented for all invasive procedures. This must include a thorough discussion of the pros and cons of the procedure and the possible complications as well as the natural history of the identified diagnosis. Since most patients with the most common conditions will improve significantly over time, without invasive interventions, patients must be able to make well-informed decisions regarding their treatment.

1. NON-VASCULAR (DIAGNOSTIC CRITERIA FOR SURGICAL PROCEDURES):

a. Neurogenic TOS:

- i.** Clinical: at least two consistent clinical signs plus symptoms consistent with TOS (Refer to Section D. Initial Diagnostic Procedures).
- ii.** Neurophysiologic: meets criteria for neurogenic TOS (Refer to Section E.2.a Electromyography/Nerve Conduction Velocities (EMG/NCV)).

- iii. The following diagnoses may present similarly to TOS and should be investigated and eliminated to establish the diagnosis: Cervical herniated disc or spondylosis, complex regional pain syndrome, other peripheral nerve disorders or brachial plexus neuritis, tumors or space occupying lesions, cervical dystonia, opioid hyperalgesia, and shoulder conditions.

b. Pectoralis Minor Syndrome without TOS:

Compression of the neurovascular bundle by the pectoralis muscle. This syndrome, described by a few authors, is usually caused by neck or shoulder trauma and generally resolves with physical therapy.

- i. Clinical: Patients do not meet criteria for neurogenic TOS. They generally have pain over the anterior chest wall near the pectoralis minor and into the axilla, arm, and forearm. They may complain of paresthesia or weakness, and have fewer complaints of headache, neck or shoulder pain. On physical exam there is tenderness with palpation over the pectoralis minor and in the axilla which reproduces the patient's symptoms in the arm. Disabling symptoms have been present for more than 3 months despite active participation in an appropriate therapy program and alternative diagnoses have been explored and tests are negative.
- ii. Neurophysiologic and other diagnostic tests: EMG/NCV studies may show medial antebrachial cutaneous nerve changes compared to the normal side. The axillary vein may show some occlusion. Pectoralis minor block should be positive.

2. SURGICAL INDICATIONS:

- a.** Early surgical intervention should be performed if there is:

- i. Documented EMG/NCV evidence of nerve compression with sensory loss, and weakness (with or without muscle atrophy) **or**
- ii. Acute subclavian vein thrombosis or arterial thrombosis; or
- iii. Subclavian artery aneurysm or stenosis secondary to a cervical or anomalous rib (Note: this condition is almost never work related.)

- b.** If early surgery is not indicated, surgery may be performed after failed conservative therapy. The following criteria must be fulfilled.
Note: Workers compensation status has been found to predict a poor outcome in several studies, thus all criteria should be met for operative procedures.

- i. Neurogenic: see criteria in the preceding subsection; and
- ii. Failed 3 months of active participation in non-operative therapy including worksite changes; and
- iii. Disabling symptoms interfering with work, recreation, normal daily activities, sleep; and

- iv. Pre-surgical psychiatric or psychological evaluation and clearance has been obtained, demonstrating motivation and long-term commitment without major issues of secondary gain or other psychological contraindications for surgery, and with an expectation that surgical relief of pain probably would improve the patient's functioning.

A long-term followup study of patients having surgery for neurogenic TOS reported that disability at 4 years postoperatively was strongly related to the presence of major depression, as evaluated by the Beck Depression Inventory taken preoperatively. The adjusted odds ratio for depression and disability was 15.7. Even though the response rate for the four-year survey was only 58% of the eligible population, the association between preoperative depression and long-term disability was strong enough to be considered robust and not likely to be vulnerable to nonresponse bias. Refer to Section E.7 Personality/Psychological/Psychosocial Evaluations.

- c. Even if return to their prior job is unlikely, an individual may need surgical intervention to both increase activities-of-daily living and/or return-to-work in a different job.
- d. It is critically important that all other pathology be treated prior to surgical intervention for TOS. Other pathologies were commonly diagnosed in this population. Comorbid conditions of the shoulder, cervical spine, and carpal tunnel should be treated or ruled out before surgery is considered.
- e. Smoking may affect soft tissue healing through tissue hypoxia. Patients should be strongly encouraged to stop smoking and provided with appropriate counseling.
- f. Prior to surgical intervention, the patient and treating physician should identify functional operative goals and the likelihood of achieving improved ability to perform activities of daily living or work activities. The patient should agree to comply with the pre- and post-operative treatment plan including home exercise requirements. The patient should understand the amount of post-operative therapy required and the length of partial and full disability expected post operatively. Certain comorbidities predict less favorable outcomes: chronic pain syndrome, use of opioids, smoking, and age over forty.

3. SURGICAL PROCEDURES:

Since the success rates for the various surgical procedures are similar, the Division suggests that the surgeon performing the procedure use the technique with which the surgeon has the most experience and is most appropriate for the patient.

Vascular TOS procedures include resection of the abnormal rib and repair of the involved vessel. Anticoagulation is required for thrombotic cases.

- a. First rib resection.
- b. Anterior and middle scalenectomy.
- c. Anterior scalenectomy.

- d.** Combined first rib resection and scalenectomy.
- e.** Pectoralis minor tenotomy. This procedure is done under local anesthesia, normally in an out-patient setting for patients meeting the criteria for pectoralis minor syndrome. Return to activity and work occurs early, with full range of motion at 3 days and 85% return to continuing work. Complication rate is lower than for other procedures.

4. COMPLICATIONS: Complications and/or unsatisfactory outcomes are reportedly in the range of 10 to 20%. Acknowledged complications depend on the procedure and include complex regional pain syndrome; Horner's syndrome; lymphocele; permanent brachial plexus damage; phrenic, intercostal brachial cutaneous or long thoracic nerve damage; and pneumothorax.

5. POST-OPERATIVE TREATMENT:

Individualized rehabilitation programs based upon communication between the surgeon and the therapist.

- a.** Overhead activities and lifting are usually avoided for 2 to 4 weeks. Therapy programs should address any identified neuromuscular or posture abnormalities. Generally, progressive resistive exercises no earlier than 2 months post-operatively with gradual return to full activity at 4 months.
- b.** Return-to-work and restrictions after surgery may be made by an experienced primary occupational medicine physician in consultation with the surgeon or by the surgeon. Depending upon the patient's functional response and their job requirements, return-to-work with job modifications may be considered as early as one week post operatively. The employer must be able to fully accommodate restrictions of overhead activities or heavy lifting. Work restrictions should be evaluated every 4 to 6 weeks during post-operative recovery and rehabilitation, with appropriate written communications to both the patient and the employer.
- c.** Should progress plateau, the provider should re-evaluate the patient's condition and make appropriate adjustments to the treatment plan.
- d.** Post-operative therapy will frequently require a repeat of the therapy provided pre-operatively. Refer to Section F. Therapeutic Procedures, Non-operative, and consider the first post-operative visit as visit number one for the time frame parameters provided.
- e.** Refer to the following areas in the non-operative therapeutic section for post-operative time parameters.
 - Activities of daily living.
 - Functional activities.
 - Nerve gliding.
 - Neuromuscular re-education.

- Therapeutic exercise.
- Proper work techniques: Refer to Section E.8.c. Jobsite Evaluation, and Section F.10. Return-to-Work of these guidelines.
- Limited passive therapies may be appropriate in some cases.

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1100 - Department of Labor and Employment

Agency

1101 - Division of Workers' Compensation

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RULE 17, EXHIBIT 4

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Medical Treatment Guidelines**

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DIVISION OF WORKERS' COMPENSATION**



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DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Workers' Compensation

CCR 1101-3 Rule 17, EXHIBIT 4

SHOULDER INJURY MEDICAL TREATMENT GUIDELINES

INTRODUCTION

This document has been prepared by the Colorado Department of Labor and Employment, Division of Workers' Compensation (Division) and should be interpreted within the context of guidelines for physicians/providers treating individuals qualifying under Colorado's Workers' Compensation Act as injured workers with upper extremity involvement.

Although the primary purpose of this document is advisory and educational, these guidelines are enforceable under the Workers' Compensation Rules of Procedure, 7 CCR 1101-3. The Division recognizes that acceptable medical practice may include deviations from these guidelines, as individual cases dictate. Therefore, these guidelines are not relevant as evidence of a provider's legal standard of professional care.

To properly utilize this document, the reader should not skip nor overlook any sections.

B. GENERAL GUIDELINES PRINCIPLES

The principles summarized in this section are key to the intended implementation of all Division of Workers' Compensation guidelines and critical to the reader's application of the guidelines in this document.

- 1. APPLICATION OF GUIDELINES** The Division provides procedures to implement medical treatment guidelines and to foster communication to resolve disputes among the provider, payer, and patient through the Workers' Compensation Rules of Procedure. In lieu of more costly litigation, parties may wish to seek administrative dispute resolution services through the Division or the Office of Administrative Courts.
- 2. EDUCATION:** Education of the patient and family, as well as the employer, insurer, policy makers and the community should be the primary emphasis in the treatment of chronic pain and disability. Currently, practitioners often think of education last, after medications, manual therapy, and surgery. Practitioners must implement strategies, to educate patients, employers, insurance systems, policy makers, and the community as a whole. An education-based paradigm should always start with inexpensive communication providing reassuring and evidence-based information to the patient. More in-depth patient education is currently a component of treatment regimens which employ functional restorative, preventive, and rehabilitative programs. No treatment plan is complete without addressing issues of individual and/or group patient education as a means of facilitating self-management of symptoms and prevention.
- 3. INFORMED DECISION MAKING:** Providers should implement informed decision making as a crucial element of a successful treatment plan. Patients, with the assistance of their health care practitioner, should identify their personal and professional functional goals of treatment at the first visit. Progress towards the individual's identified functional goals should be addressed by all members of the health care team at subsequent visits and throughout the established treatment plan. Nurse case managers, physical therapists, and other members of the health care team play an integral role in informed decision making and achievement of functional goals. Patient education and informed decision making should facilitate self-management of symptoms and prevention of further injury.
- 4. TREATMENT PARAMETER DURATION** Time frames for specific interventions commence once treatments have been initiated, not on the date of injury. Obviously, duration will be impacted by patient compliance, as well as availability of services. Clinical judgment may substantiate the need to accelerate or decelerate the time frames discussed in this document.
- 5. ACTIVE INTERVENTIONS** emphasizing patient responsibility, such as therapeutic exercise and/or functional treatment, are generally emphasized over passive modalities, especially as treatment progresses. Generally, passive and palliative interventions are viewed as a means to facilitate progress in an active rehabilitation program with concomitant attainment of objective functional gains.

6. **ACTIVE THERAPEUTIC EXERCISE PROGRAM** goals should incorporate patient strength, endurance, flexibility, coordination, and education. This includes functional application in vocational or community settings.
7. **POSITIVE PATIENT RESPONSE** results are defined primarily as functional gains that can be objectively measured. Objective functional gains include, but are not limited to, positional tolerances, range-of-motion (ROM), strength, endurance, activities of daily living, cognition, psychological behavior, and efficiency/velocity measures which can be quantified. Subjective reports of pain and function should be considered and given relative weight when the pain has anatomic and physiologic correlation. Anatomic correlation must be based on objective findings.
8. **RE-EVALUATE TREATMENT EVERY 3 TO 4 WEEKS** If a given treatment or modality is not producing positive results within three to four weeks, the treatment should be either modified or discontinued. Before discontinuing the treatment, the provider should have a detailed discussion with the patient to determine the reason for failure to produce positive results. Reconsideration of diagnosis should also occur in the event of poor response to a seemingly rational intervention.
9. **SURGICAL INTERVENTIONS** should be contemplated within the context of expected functional outcome and not purely for the purpose of pain relief. The concept of "cure" with respect to surgical treatment by itself is generally a misnomer. All operative interventions must be based upon positive correlation of clinical findings, clinical course, and diagnostic tests. A comprehensive assimilation of these factors must lead to a specific diagnosis with positive identification of pathologic conditions.
10. **SIX-MONTH TIME FRAME** The prognosis drops precipitously for returning an injured worker to work once he/she has been temporarily totally disabled for more than six months. The emphasis within these guidelines is to move patients along a continuum of care and return to work within a six-month time frame, whenever possible. It is important to note that time frames may not be pertinent to injuries that do not involve work-time loss or are not occupationally related.
11. **RETURN-TO-WORK** is therapeutic, assuming the work is not likely to aggravate the basic problem or increase long-term pain. The practitioner must provide specific physical limitations and the patient should never be released to non-specific and vague descriptions such as, "sedentary" or "light duty." The following physical limitations should be considered and modified as recommended: lifting, pushing, pulling, crouching, walking, using stairs, bending at the waist, awkward and/or sustained postures, tolerance for sitting or standing, hot and cold environments, data entry and other repetitive motion tasks, sustained grip, tool usage and vibration factors. Even if there is residual chronic pain, return-to-work is not necessarily contraindicated.

The practitioner should understand all of the physical demands of the patient's job position before returning the patient to full duty and should request clarification of the patient's job duties. Clarification should be obtained from the employer or, if necessary, including, but not limited to, an occupational health nurse, occupational therapist, vocational rehabilitation specialist, or an industrial hygienist.

12. DELAYED RECOVERY Strongly consider a psychological evaluation, if not previously provided, as well as initiating interdisciplinary rehabilitation treatment and vocational goal setting, for those patients who are failing to make expected progress 6 to 12 weeks after an injury. The Division recognizes that 3 to 10% of all industrially injured patients will not recover within the timelines outlined in this document despite optimal care. Such individuals may require treatments beyond the limits discussed within this document, but such treatment will require clear documentation by the authorized treating practitioner focusing on objective functional gains afforded by further treatment and impact upon prognosis.

13. GUIDELINE RECOMMENDATIONS AND INCLUSION OF MEDICAL EVIDENCE *All recommendations are based on available evidence and/or consensus judgment.* When possible, guideline recommendations will note the level of evidence supporting the treatment recommendation. It is generally recognized that early reports of a positive treatment effect are frequently weakened or overturned by subsequent research. When interpreting medical evidence statements in the guideline, the following apply:

- Consensus means the judgment of experienced professionals based on general medical principles. Consensus recommendations are designated in the guideline as “generally well-accepted,” “generally accepted,” “acceptable/accepted,” or “well-established.”
- “Some evidence” means the recommendation considered at least one adequate scientific study, which reported that a treatment was effective. The Division recognizes that further research is likely to have an impact on the intervention’s effect.
- “Good evidence” means the recommendation considered the availability of multiple adequate scientific studies or at least one relevant high-quality scientific study, which reported that a treatment was effective. The Division recognizes that further research may have an impact on the intervention’s effect.
- “Strong evidence” means the recommendation considered the availability of multiple relevant and high-quality scientific studies, which arrived at similar conclusions about the effectiveness of a treatment. The Division recognizes that further research is unlikely to have an important impact on the intervention’s effect. All recommendations in the guideline are considered to represent reasonable care in appropriately selected cases, irrespective of the level of evidence or consensus statement attached to them. Those procedures considered inappropriate, unreasonable, or unnecessary are designated in the guideline as “**not recommended**.”

14. CARE BEYOND MAXIMUM MEDICAL IMPROVEMENT (MMI) should be declared when a patient’s condition has plateaued to the point where the authorized treating physician no longer believes further medical intervention is likely to result in improved function. However, some patients may require treatment after MMI has been declared in order to maintain their functional state. The recommendations in this guideline are for pre-MMI care and are not intended to limit post-MMI treatment.

The remainder of this document should be interpreted within the parameters of these guideline principles that may lead to more optimal medical and functional outcomes for injured workers.

C. INITIAL DIAGNOSTIC PROCEDURES

The Division recommends the following diagnostic procedures be considered, at least initially, the responsibility of the workers' compensation carrier to ensure that an accurate diagnosis and treatment plan can be established. Standard procedures that should be utilized when initially diagnosing a work-related shoulder complaint are listed below.

Shoulder pain can be difficult to diagnose for many reasons, such as: 1) there may more than one lesion present; 2) neurological pathology may appear similar to musculoskeletal pathology; and 3) the variety of shoulder movements within a confined joint space complicates diagnosis.

1. HISTORY TAKING AND PHYSICAL EXAMINATION (HX & PE) are generally accepted, well-established and widely used procedures that establish the foundation/basis for and dictates subsequent stages of diagnostic and therapeutic procedures. When findings of clinical evaluations and those of other diagnostic procedures are not complementing each other, the objective clinical findings should have preference. The medical records should reasonably document the following:

a. History of Present Injury:

- i. Nature of pain – type, level, and timing – The following describe different types of pain:
 - Bone: constant, localized
 - Nerve: hot, burning, radiating
 - Capsular/ligamentous: achy
 - Muscular: pain aggravated by movement
 - Vascular: throbbing
 - Cartilaginous: clicking and/or pain with range of motion.
- ii. Chief complaints: pain instability, weakness, or loss of motion;
- ii. Mechanism of injury. This includes details of symptom onset and progression, and documentation of right or left dominance. For traumatic injuries, clearly document the position of the arm and the direction of the force;
- iii. Functional Assessment: Functional ability should be assessed and documented at the beginning of treatment. Periodic assessment should be recorded throughout the course of care to follow the trajectory of

recovery. In addition to being more relevant to recovery from shoulder pain, functional measures are likely to be more reliable over time than pain measures.

Patient-reported outcomes, whether of pain or function, are susceptible to a phenomenon called response shift. This refers to changes in self-evaluation which may accompany changes in health status. Patient self-reports may not coincide with objective measures of outcome, such as Disability of Arm, Shoulder and Hand (DASH), due to reconceptualization of the impact of pain on daily function and internal recalibration of pain scales. Response shift may obscure treatment effects in clinical trials and clinical practice, and may lead to apparent discrepancies in patient-reported outcomes following treatment interventions. While methods of measuring and accounting for response shift are not yet fully developed, understanding that the phenomenon exists can help clinicians understand what is happening when some measures of patient progress appear inconsistent with other measures of progress.

- iv. Relationship to work. This includes a statement of the probability that the illness or injury is work-related;
- v. History of locking, clicking, weakness, acute or chronic swelling, crepitation, pain while lifting or performing overhead work, dislocation or popping. Pain or catching with overhead motion is common with a labral tear. Pain radiating below the elbow, may indicate cervical radiculopathy or proximal entrapment neuropathy. In some cases of cervical disc pathology, shoulder pain may not radiate below the elbow;
- vi. Age may affect the likely diagnosis;
- vii. Ability to perform job duties and activities of daily living; and
- viii. Exacerbating and alleviating factors of the reported symptoms. The physician should explore and report on non-work related as well as, work related activities.

b. Past History:

- i. Past medical history includes previous shoulder conditions, neoplasm, gout, arthritis, diabetes and previous shoulder symptoms;
- ii. Review of systems includes symptoms of rheumatologic, neurologic, endocrine, neoplastic, and other systemic diseases;
- iii. Smoking history;
- iv. Vocational pursuits recreational pursuits, including military service, and other avocational activities; and

- v. Prior occupational and non-occupational injuries to the same area including specific prior treatment;

c. Physical Examination: Examination should include the elbow and neck. Both shoulders should be examined to compare asymptomatic and symptomatic sides and identify individuals with non-pathological joint laxity or degenerative rotator cuff pathology. Physical examinations should consist of accepted tests and exam techniques applicable to the joint or area being examined, including:

- i. Visual inspection; findings such as scapular winging, presence and distribution of atrophy, posture and other asymmetry of upper extremities;
- ii. Palpation, including the acromio-clavicular (AC) joint, sternoclavicular joint, biceps tendons, and the subacromial bursa in the region of the acromiohumeral sulcus;
- iii. Range-of-motion/quality of motion; all ranges of motion should be compared to the opposite side;
- iv. Strength, shoulder girdle weakness may indicate musculoskeletal or neurogenic pathology;
- v. Joint stability;
- vi. Integrity of distal circulation and limited neurologic exam;
- vii. Cervical spine evaluation; and
- viii. If applicable, full neurological exam such as: dermatomes, myotomes, reflexes, muscle atrophy, gait abnormality, and signs of myelopathy.

ix. **Specific Shoulder Tests**

This section contains a description of common clinical shoulder tests. Generally, more than one test is needed to make a diagnosis. Clinical judgment should be applied when considering which tests to perform, as it is not necessary to perform all of the listed tests on every patient. The physical examination may be non-specific secondary to multi-faceted pathology in many patients, and because some tests may be positive for more than one condition. Given the multitude of tests available, the physician is encouraged to document the specific patient response, rather than report that a test is "positive." The tests are listed for informational purposes, and are also referenced in Section E of this document, Specific Diagnostic, Testing and Treatment Procedures.

A) Acromioclavicular Joint Tests

- 1) Crossed Arm Adduction – Examiner adducts arm across the body as far as possible toward the opposite shoulder. If patient reports pain in the AC joint, this suggests AC joint pathology. May also be positive for impingement.
- 2) Cross-body adduction may be limited when the posterior capsule is tight. To test for this, the examiner stands behind the seated patient and brings the arm across the chest as far as is comfortable for the patient. The distance between the antecubital fossa of the adducted arm and the acromion of the opposite shoulder is measured and recorded. The test is repeated with the other arm and shoulder. Posterior capsule tightness, which limits cross-body adduction, will increase the distance between the adducted antecubital fossa and the opposite acromion.
- 3) Paxino's - The examiner's thumb is placed under the posterolateral aspect of the acromion, with the index and long fingers on the superior aspect of middle part of the clavicle. Examiner applies anterior superior pressure to acromion with thumb, and pushes inferiorly on the middle of the clavicle with index and long fingers pressing the clavicle and the acromion together. If the patient reports increased pain in the AC joint, the test suggests AC joint pathology. The examiner must use the pads of the fingers rather than the bony part of the hand to perform the test.
- 4) Tenderness with palpation directly over the A-C joint is an essential finding for identifying A-C joint pathology.

B) Bicipital Tendon Disorders

- 1) Biceps Load Test II - The patient is supine with the arm elevated to 120 degrees, externally rotated to maximum point, with elbow in 90 degrees of flexion and the forearm supinated. The examiner sits adjacent to the patient on the same side, and grasps the patient's wrist and elbow. The patient flexes the elbow, while the examiner resists. If the patient complains of pain with resistance to elbow flexion, or if the pain is increased with resisted elbow flexion, this may suggest a biceps related SLAP lesion in young patients.
- 2) Ludington's - The patient's hands are placed behind the head, with the shoulders in abduction and external

rotation. If biceps contraction recreates pain, the test suggests biceps tendon pathology.

- 3) Speed Test - The patient's shoulder is flexed to 90 degrees. The examiner provides resistance to forward flexion. If pain is produced with resistance, the test suggests biceps tendon instability or tendinitis.
- 4) Yergason's Test -The patient has the elbow flexed to 90 degrees. The examiner faces the patient, grasps the patient's hand with one hand and palpates the bicipital groove with the other. The patient supinates the forearm against resistance. If the patient complains of pain in the biceps tendon with resistance, it suggests a positive finding.

C) Glenohumeral Instability/Labral Tears

Many of the following tests are also used to test for associated labral tears. The majority of the tests/signs should be performed on both shoulders for comparison. Some individuals have increased laxity in all joints, and therefore, tests/signs which might indicate instability in one individual may not be pathologic in individuals whose asymptomatic joint is equally lax.

- 1) Apprehension – Patient's shoulder is in 90 degrees of abduction and in external rotation. Examiner continues to externally rotate and apply axial force to the humerus. If there is pain, or if patient asks to stop, the test suggests anterior instability.
- 2) Inferior Instability – With patient's arm abducted to 90 degrees, examiner pushes down directly on mid-humerus. Patient may try to drop the arm to the side to avoid dislocation.
- 3) Load and Shift or Anterior and Posterior Drawer – Patient is supine or seated with arm abducted from shoulder from 20 to 90 degrees and elbow flexed. Humerus is loaded by examiner, then examiner attempts to shift the humeral head anterior, posterior, or inferior. Both shoulders should be tested. Results are graded using:
 - Grade 0, little or no movement;
 - Grade 1, humeral head glides beyond the glenoid labrum; and

- Grades 2 & 3 actual dislocation of the humeral head off the glenoid.

- 4) Posterior Instability – The patient's arm is flexed to 90 degrees anteriorly and examiner applies posterior force to the humerus. The examiner then checks for instability.
- 5) Relocation – Examiner applies posterior force on humerus while externally rotating. This is performed in conjunction with the Apprehension Test. If symptoms are reduced, the test suggests anterior instability. This test may also cause pain with impingement syndrome.
- 6) Sulcus Sign – With the patient's arm at the side, the examiner pulls inferiorly on the arm and checks for deepening of the sulcus, a large dimple on the lateral side of the shoulder. Deepening of the sulcus suggests instability.

D) Impingement and other rotator cuff pathology tests:

- 1) Arc Of Pain – Pain with 60 to 120 degrees of abduction. Positive for subacromial or rotator cuff disorders: may be positive for Supraspinatus tear or impingement.
- 2) Hawkins - arm is abducted to 90 degrees, forward flexed by 90 degrees with elbow flexed. Examiner internally rotates the humerus. Pain suggests impingement. May also be performed followed by internal rotation and elevation. Reproduction of their pain constitutes a positive test.
- 3) Impingement Sign – Patient extends shoulder, then abducts and reports any pain.
- 4) Neer Impingement Sign – Examiner passively flexes internally rotated arm anteriorly with elbow fully extended to reproduce impingement. Positive if pain is reproduced.
- 5) Neer Impingement Test – When the Neer Impingement Sign is positive, the subacromial bursa is injected with local anesthetic. If, after 40 minutes, the patient has sufficient pain relief so that the examiner can perform the Neer Impingement Sign without recreating the initial pain, the test suggests impingement.

E) Labral Tears

Labral tears which may require treatment usually occur with concurrent bicipital tendon disorders pathology and/or glenohumeral instability. Therefore, tests for labral pathology are included in these sections. Additional tests for SLAP (superior labral tear from anterior to posterior are found under SLAP Lesions).

F) Rotator cuff tear

Most published clinical examination studies assess rotator cuff pathology. Tests may be reliable for ruling out diagnoses, but not necessarily defining the pathology accurately.

- 1) Arc Of Pain – Pain with 60 to 120 degrees of abduction. Positive for subacromial or rotator cuff disorders: may be positive for Supraspinatus tear or impingement.

Belly Lift off test - The arm is passively flexed to 90 degrees with elbow flexed to 90 degrees and the elbow supported by the examiner. The palm of the hand is placed on the abdomen. The patient must then maintain the hand on the abdomen after the examiner releases the patient's hand but continues to support the elbow. If the patient cannot maintain the hand in position against the abdomen the test is positive. This test indicates possible tear to the subscapularis.

Drop Arm - Patient slowly lowers arm from full abduction. If the arm drops, or if the patient is unable to maintain slow progress from approximately 90 degrees, the test suggests rotator cuff tear. However, it is positive with pain inhibition also.

Empty Can Test - Patient's arm abducted to 60 to 90 degrees with 30 degrees forward flexion and with forearm pronated. Thumbs are pointing toward the floor. Patient resists examiner's downward pressure on the elbow. Weakness of the affected side, compared to the opposite side, or pain in subacromial area suggests supraspinatus tear, tendinitis or tendonosis.

External Rotation Lag Test - the patient's arm is passively abducted to 20 degrees with elbow flexed at 90 degrees, and almost fully externally rotated. If the patient cannot actively maintain the arm in external rotation, this suggests a supraspinatus and/or infraspinatus tear.

External Rotation Weakness – Elbows are flexed with arms at side, and patient attempts to externally rotate against

resistance. Weakness suggests infraspinatus and teres minor weakness and possible pathology.

Lift Off Test - the dorsal aspect of the patient's hand is placed against back of waist with 90 degrees flexion of elbow. The patient is asked to lift the hand off of his back at waist level. If the hand drops to the initial position against the back, this suggests subscapularis tear or weakness. Some patients may not be able to perform the initial hand placement due to pain or limited range-of-motion.

Subscapularis Strength Test - Patient places hand on mid-abdomen, and then applies pressure. If the elbow moves posteriorly or the wrist flexes, the test suggests subscapularis weakness or tear.

Weakness with abduction.

G) Superior-Labral from Anterior to Posterior (SLAP) Lesions

- 1) Active Compression (O'Brien) Test – The patient has the shoulder in 90 degrees flexion and 10 to 15 degrees adduction. The arm is internally rotated so the thumb is pointing downward. The patient elevates the arm while the examiner resists. If the patient experiences deep anterior shoulder pain that is relieved when the same process is repeated with external rotation of the arm, the test suggests labral and internal impingement or biceps instability.
- 2) Crank Test – The patient is standing and has arm elevated to 160 degrees in the scapular plane. The examiner loads the glenohumeral joint while the arm is passively rotated internally and externally. The test is repeated in the supine position. Pain, clicking, popping, or other mechanical grinding suggests labral tear and possible instability.

x. Functional Assessment. The provider should assess the patient's functional skills initially and periodically during treatment. The initial exam will form the baseline for the patient's functional abilities post- injury. This assessment will help the physician and patient determine when progress is being made and whether specific therapies are having a beneficial effect. A number of functional scales are available that have been validated in clinical research settings, such as DASH. Many of these scales were developed to evaluate specific diagnoses and will not be useful for all patients with shoulder pain. The following areas are examples of functional activities the provider may assess:

- Interference with sleep;
- Difficulty getting dressed or combing or washing hair;
- Perform personal hygiene such as ability to wipe perineal area with the affected arm;
- Ability to do the household shopping alone;
- Ability to shower or bathe and dry oneself using both hands;
- Ability to carry a tray of food across a room with both hands;
- Ability to hang up clothes in the closet;
- Ability to reach high shelves with the affected shoulder;
- Ability to enter/exit automobile including operation of steering mechanism, seat belt, and gear selector.
- Difficulty with any other activities including sports and work duties;
- Concerns about putting on overhead clothing;
- Fear of dislocation, or concerns that a specific activity might cause the shoulder to “go out”;

A detailed description of ability to perform job duties. A positive historical information should be validated by the provider’s physical exam.

Valid functional shoulder tests are valuable for case management. It is suggested that providers follow patients’ functional status throughout the claim with tools such as the Constant- Murley, DASH, Simple Shoulder Test, Patient Specific Functional Scale, Shoulder Pain and Disability Index (SPADI).

2. RELATIONSHIP TO WORK AND OTHER ACTIVITY: This includes a statement of the probability that the illness or injury is medically work-related. If further information is necessary to determine work relatedness, the physician should clearly state what additional diagnostic studies or job information is required.

Principles of Causation of Occupational Shoulder Diagnoses

Causation is a medical/legal analysis in the workers compensation system. The information in the Medical Treatment Guidelines pertaining to causation addresses only the evidence related to the medical analysis of causation. Actual cases may vary from the

evidence presented based on specific circumstances of the claim. Work-related conditions may occur from the following:

- a specific incident or injury,
- aggravation of a previous symptomatic condition, **or**
- a work-related exposure that renders a previously asymptomatic condition symptomatic and subsequently requires treatment.

All of these conditions must be determined based on the specifics of the work related injury or exposure. The clinician determines the need for treatment due to the work related event. Most occupational shoulder cases result from injuries. However there are some studies looking at shoulder diagnoses from a cumulative occupational exposure viewpoint.

The studies reviewed were chosen because they identified shoulder conditions as chronic or causing disability. The complaint of pain alone is generally not compensable in this system. To apply the below standards, the clinician must first make a specific shoulder diagnosis which is substantiated by consistent physical exam findings. The following information was reviewed using evidence based standards to address the effects on workers of cumulative exposures and should only be considered in that context. The clinician should use this information judiciously.

Cumulative work-related causation for shoulder disorders is difficult to quantify given 1) the variable techniques used to measure work exposures and the paucity of studies which have measured exposures, 2) the lack of verified clinical exams and 3) the lack of prospective studies. Given this difficulty this section of the guidelines will summarize not only those studies which qualify for at least some evidence given our study criteria but also studies of lower levels which have similar findings in order to assure that the final recommendations are the best reflection of current literature.

Several studies reported on shoulder pain alone based on self report of both pain and work related activities. They do not meet our criteria for evidence but are interesting to consider in relationship to the evidence studies. One prospective study of 598 workers in repetitive jobs found that men who reported shoulder pain 3 years after the initial questionnaire were more statistically likely to report repetitive use of a tool, while women were statically more likely to report use of a vibrating tool and frequent bending forward and/or arm above shoulder activities. A separate two year prospective study of new onset shoulder pain in newly hired employees found the following related factors in a multi-variate analysis: working with hands above the head >15minutes/day; pushing and pulling >= 70 lbs; and lifting with one or two hands >22 lbs.

These studies could considerably distort the actual work related task limits for the shoulder diagnoses as discussed in this guideline as no physical exams were performed and all work estimates were self-reported. Another study matching self-reported work activities with actual observed activities found that trunk flexion, neck flexion and hand above shoulder activities were significantly overestimated by workers.

A prospective population based Finnish study followed a sample of 1286 workers 20 years after an initial study. 883 who had no shoulder disorder at baseline completed a standard clinical exam by physicians blinded to their work status. Work factors were obtained through self-report of current or longest occupational exposure. Four work factors increased the risk for physical exam findings: lifting heavy loads, vibration, repetition, and awkward postures. The actual length of time with exposure to these tasks is unknown but thought to reflect the workers most common occupation exposures. Multiple exposures appeared to increase the risk. When risk factors were separated by gender, heavy lifting was not a significant risk for males 30-45 years, however it was a significant risk factor for all women. It was not possible to verify the actual exposures of workers in a manner that would allow translation to clear causative definition.

Several studies using better criteria for diagnosis and work related exposures qualified for a level of "some evidence".

A study related blinded MRI findings of rotator cuff tears, partial and full thickness, to work-related activities that had been created based on actual observed activity among three occupations, house painters, car mechanics and machinists. Car mechanics reported the highest torque associated with their job while force was not an important issue for house painters. Housepainters performed work above 90 degrees for 0.9% of the time and car mechanics for 0.6% of the time or approximately 1 hour per day and ½ hour per day respectively (this was based on the cumulative seconds a task required the arm to remain at or above 90 degrees). In this study approximately 18.5 years above shoulder duties as a painter and 33 years with similar duties as a car mechanic would predict MRI evidence of rotator cuff tears. Because imaging over estimates actual symptomatic disease these may be overestimates of the actual limits for disease process to occur cumulatively. There is some evidence that jobs like that of a house painter, with arm elevation above 90 degrees for more than 30 minutes per day for five or more years, increased the odds of supraspinatus tendinopathy by 27% for each five years of exposure.

A cross-sectional study in Denmark of the same three occupations as the MRI study above reported on 732 men who had physical exams performed by blinded examiners was also studied for physical exam findings of supraspinatus pathology. The study provides some evidence that upper arm elevation above 90° increases the odds of shoulder pain with disability, shoulder pain without disability, and supraspinatus tendinitis, with a greater than fourfold increase when the upper arm is elevated at that level for more than 6% of working time (about 30 minutes per day).

A final case control study comparing those with shoulder pain and MRI positive for supraspinatus tendon tears found a significantly increased incidence in employment such as plumbers, mechanics, welders and other metal workers. The time above shoulder needed to qualify for this was 3195 lifetime hours or 13.3 years of one hour per week for 48 weeks.

There is some evidence that jobs requiring heavy lifting, heavy carrying, above-shoulder work, and handheld vibration, are likely to be associated with an increased risk of symptomatic supraspinatus tendon lesions, either partial or full thickness tears.

Given all of this information it is reasonable to consider that there is some evidence for the following causative risk factors for shoulder tendon related pathology:

1. Overhead work consisting of additive time per day of at least 30 minutes/day for a minimum of 5 years
2. Work that requires shoulder movement at the rate of 15-36 repetitions per minute and no 2 second pauses for 80% of the work cycle.
3. Work that requires shoulder movement with force 10% or greater of the maximum voluntary force and has no 2 second pauses for 80% of the work cycle.

It is also likely that jobs requiring daily heavy lifting at least 10 times per day over years may contribute to shoulder disorders. In the study relying on self-report, men over 45 and women of any age were more likely to report heavy lifting (probably 20kg or greater) which was significantly related to shoulder findings. Vibration can also be considered an additional risk factor.

Given the lack of multiple high quality studies it is necessary to consider each case individually when dealing with the likelihood of cumulative trauma contributing to or causing shoulder pathology.

3. RADIOGRAPHIC IMAGING of the shoulder is a generally accepted, well-established and widely used diagnostic procedure when specific indications based on history and/or physical examination are present. It should not be routinely performed for most non-traumatic diagnoses. The mechanism of injury and specific indications for the radiograph should be listed on the request form to aid the radiologist and x-ray technician. For additional specific clinical indications, refer to Section E. Specific Diagnosis, Testing and Treatment Procedures. Indications include:

- Inability to actively move arm through range-of-motion;
- History of significant trauma, especially blunt trauma or fall from a height;
- History of dislocation;
- Unexplained or persistent shoulder pain over two weeks. (Occult fractures may not be visible on initial x-ray. A follow-up radiograph and/or bone scan may be required to make the diagnosis);
- History or exam suggestive of intravenous drug abuse or osteomyelitis; and
- Pain with swelling and/or range-of-motion (ROM) limitation localizing to an area of prior fracture, internal fixation, or joint prosthesis.

4. LABORATORY TESTING Laboratory tests are generally accepted, well-established and widely used procedures. They are, however, rarely indicated at the time of initial evaluation, unless there is suspicion of systemic illness, infection, neoplasia, connective

tissue disorder, or underlying arthritis or rheumatologic disorder based on history and/or physical examination. Laboratory tests can provide useful diagnostic information. The Division recommends that lab diagnostic procedures be initially considered the responsibility of the workers' compensation carrier to ensure that an accurate diagnosis and treatment plan can be established.

Tests include, but are not limited to:

- Complete Blood Count (CBC) with differential can detect infection, blood dyscrasias, and medication side effects;
- Erythrocyte sedimentation rate (ESR), rheumatoid factor, antinuclear antigen (ANA), human leukocyte antigen (HLA), and C-reactive protein can be used to detect evidence of a rheumatologic, infection, or connective tissue disorder;
- Serum calcium, phosphorous, uric acid, alkaline phosphatase, and acid phosphatase can detect metabolic bone disease;
- Liver and kidney function may be performed for prolonged use of anti-inflammatory use or other medications requiring monitoring; and
- Analysis of joint aspiration for bacteria, white cell count, red cell count, fat globules, crystalline birefringence and chemistry to evaluate joint effusion.

5. OTHER PROCEDURES

- a. Joint Aspiration:** is a generally accepted, well-established and widely used procedure when specifically indicated and performed by individuals properly trained in these techniques. Especially, when history and/or physical examination are of concern for a septic joint or bursitis. Aspiration of a large effusion can help to decrease pain and speed functional recovery. Persistent or unexplained effusions may be examined for evidence of infection, rheumatologic, or inflammatory processes. The presence of fat globules in the effusion strongly suggests occult fracture.

FOLLOW-UP DIAGNOSTIC IMAGING AND TESTING PROCEDURES

One diagnostic imaging procedure may provide the same or distinctive information as does another procedure. Therefore, the prudent choice of a single diagnostic procedure, a complement of procedures or a sequence of procedures will optimize diagnostic accuracy; maximize cost effectiveness (by avoiding redundancy), and minimize potential adverse effects to patients.

All diagnostic imaging procedures have a significant percentage of specificity and sensitivity for various diagnoses. None is specifically characteristic of a certain diagnosis. Clinical information obtained by history taking and physical examination should form the basis for selecting an imaging procedure and interpreting its results.

Practitioners should be aware of the radiation doses associated with various procedures and provide appropriate warnings to patients. Coloradans have a background exposure to radiation, and unnecessary CT scans or X-rays increase the lifetime risk of cancer death.

When a diagnostic procedure, in conjunction with clinical information, can provide sufficient information to establish an accurate diagnosis, the second diagnostic procedure will become a redundant procedure. At the same time, a subsequent diagnostic procedure can be a complementary diagnostic procedure if the first or preceding procedures, in conjunction with clinical information, cannot provide an accurate diagnosis. Usually, preference of a procedure over others depends upon availability, a patient's tolerance, and/or the treating practitioner's familiarity with the procedure.

1. IMAGING STUDIES are generally accepted, well-established and widely used diagnostic procedures. When indicated, the following additional imaging studies can be utilized for further evaluation of the shoulder, based upon the mechanism of injury, symptoms, and patient history. For specific clinical indications, refer to Section E. Specific Diagnosis, Testing and Treatment Procedures. The studies below are listed by frequency of use, not importance.

Diagnostic imaging may be useful in resolving the diagnostic uncertainties that remain after the clinical examination. Even a thorough history and physical examination may not define the shoulder pathology that produces the patient's symptoms. Therefore, additional investigations should be considered as an accepted part of the patient evaluation when surgery is being considered or clarification of diagnosis is necessary to formulate a treatment plan.

a. X-ray: is widely accepted and frequently the first imaging study performed. Three radiographically distinguishable acromion types have been described: Type I (flat), Type II (curved), and Type III (hooked). Historically, acromion type was correlated with incidence of rotator cuff pathologies and with outcome of nonsurgical treatment of shoulder pain. However, there is considerable variation between observers regarding the acromial types, both in interpreting plain x-rays and in classifying anatomical specimens. Acromial morphology should not be used to assess the likelihood of rotator cuff pathology. Acromial morphology alone should not be considered an indication for acromioplasty, as up to 40% of

asymptomatic adults may have a Type II acromion. Appropriate soft tissue imaging techniques such as sonography and MRI should be used to assess rotator cuff or bursa status.

b. Diagnostic Sonography: There is good evidence that MRI, MRA, and US are all accurate at identifying full thickness rotator cuff tears in patients whose history and physical examination makes them candidates for possible surgery, and that there is no evidence to suggest that any of the three is superior for this purpose. There is inadequate evidence about the comparative accuracy in partial thickness tears (due to the way that clinically very different categories were combined in the analysis, leading to equivocal interpretation of the findings). A positive sonogram has a high specificity of 96% and provides convincing confirmation of the diagnosis. Sensitivity is high, 87%; however, negative sonography does not rule out a full-thickness tear. For partial thickness tears, a positive sonogram has high specificity, 94%, but is only moderately sensitive, 67%. A negative sonogram does not exclude the diagnosis of a partial thickness tear (Dinnes, 2003 [Health Technology Assessment]). The performance of sonography is operator-dependent, and is best when done by a specialist in musculoskeletal radiology. It is preferable to MRI when the patient is claustrophobic or has inserted medical devices. It may occasionally be used by highly experienced physicians as initial testing when a tear is suspected.

c. Magnetic Resonance Imaging (MRI): is generally accepted and widely used to provide a more definitive visualization of soft tissue structures, including ligaments, tendons, joint capsule, and joint cartilage structures, than x-ray or Computed Axial Tomography (CT) in the evaluation of traumatic or degenerative injuries. The addition of intra-articular contrast magnetic resonance arthrography (MRA) can enhance definition of selected pathologies, (such as a labral tear).

In general, the high field, conventional, MRI provides better resolution than a low field scan. A lower field scan may be indicated when a patient cannot fit into a high field scanner or is too claustrophobic despite sedation. Inadequate resolution on the first scan may require a second MRI using a different technique. All questions in this regard should be discussed with the MRI center and/or radiologist.

MRI provides excellent soft tissue detail, but interpretation of the image is problematic and depends on operator skill. There is good evidence that MRI, MRA, and US are all accurate at identifying full thickness rotator cuff tears in patients whose history and physical examination makes them candidates for possible surgery, and that there is no evidence to suggest that any of the three is superior for this purpose. There is inadequate evidence about the comparative accuracy in partial thickness tears (due to the way that clinically very different categories were combined in the analysis, leading to equivocal interpretation of the findings).

d. Computed Axial Tomography (CT): is generally accepted and provides excellent visualization of bone and is used to further evaluate bony masses and suspected fractures not clearly identified on radiographic window evaluation.

Instrument scatter-reduction software provides better resolution when metallic artifact is of concern. A CT scan is more accurate for bony tissue, whereas an MRI is preferred for visualization of soft tissue.

e. MR Arthrography (MRA): This accepted investigation uses the paramagnetic properties of gadolinium to shorten T1 relaxation times and provide a more intense MRI signal. It can accurately demonstrate and rule out full-thickness tears as well as non-contrast MRI, but it is invasive and its place in the evaluation of rotator cuff pathology has not been determined. In select populations of highly active athletes, it may uncover unsuspected labral pathology such as SLAP lesions, but the arthroscopically normal labrum may produce an abnormal signal in half of MRA studies. There is good evidence that MRA is marginally more sensitive and specific for the detection of many glenohumeral labral lesions, including SLAP lesions. An MRA is not necessary if the patient has already met indications for arthroscopy or surgery as outlined in Section E. However, an MRA may be ordered when the surgeon desires further information prior to surgery. When utilizing a 1.5 Tesla machine, the addition of contrast allows for more definition of labral and biceps pathology. The recent appearance of 3.0 Tesla machines in some Colorado locations, may over time eliminate the need for contrast studies.

f. Venogram/Arteriogram: a generally accepted test is useful for investigation of vascular injuries or disease, including deep venous thrombosis (DVT). Potential complications may include pain, allergic reaction, and deep-vein thrombosis.

g. Bone Scan (Radioisotope Bone Scanning): is generally accepted, well-established and widely used. Bone scanning is more sensitive but less specific than MRI. ^{99m}Tc diphosphonate uptake reflects osteoblastic activity and may be useful in metastatic/primary bone tumors, stress fractures, osteomyelitis, and inflammatory lesions, but cannot distinguish between these entities.

Bone scanning is more sensitive but less specific than MRI. It is useful for the investigation of trauma, infection, stress fracture, occult fracture, Complex Regional Pain Syndrome, and suspected neoplastic conditions of the upper extremity.

h. Other Radioisotope Scanning: Indium and gallium scans are generally accepted procedures usually to help diagnose lesions seen on other diagnostic imaging studies. ⁶⁷Gallium citrate scans are used to localize tumor, infection, and abscesses. ¹¹¹Indium-labeled leukocyte scanning is utilized for localization of infection or inflammation.

i. Arthrograms: are accepted; however, rarely used except for evaluation of patients with metal implants and previous shoulder surgery.

2. OTHER TESTS The following diagnostic procedures in this subsection are listed in alphabetical order.

- a. Diagnostic Subacromial Injection:** There is some evidence that ultrasound-guided injection of corticosteroid into the shoulder provides a more anatomically accurate injection and is likely to have a small to moderate advantage over landmark-guided injection for pain relief at 6 weeks after the injection.

If there is a concern regarding needle placement, sonography or fluoroscopy may be used. The subacromial injection may also be repeated by a specialist skilled in this procedure to confirm the diagnosis. Please refer to Section F.4.f. Subacromial Injections, for more information.

- b. Compartment Pressure Testing and Measurement Devices:** such as pressure manometer, are generally accepted and useful in the evaluation of patients who present uncommon but reported symptoms consistent with a compartment syndrome.

- c. Doppler Ultrasonography/Plethysmography:** is useful in establishing the diagnosis of arterial and venous disease in the upper extremity and should be considered prior to the more invasive venogram or arteriogram study.

- d. Electrodiagnostic Testing:** Electrodiagnostic tests include, but are not limited to, Electromyography (EMG), and Nerve Conduction Studies (NCS). These are generally accepted, well-established and widely used diagnostic procedures. Electrodiagnostic studies may be useful in the evaluation of patients with suspected involvement of the neuromuscular system, including radiculopathies, brachial plexopathies, peripheral nerve entrapments, peripheral neuropathies, disorders of the neuromuscular junction and primary muscle disease. EMGs should not be routinely performed for shoulder injuries unless there are findings to suggest new diagnostic pathology (Refer to Section E.4. Brachial Plexus).

In general, these diagnostic procedures are complementary to imaging procedures such as CT, MRI, and/or myelography or diagnostic injection procedures. Electrodiagnostic studies may provide useful, correlative neuropathophysiological information that would not be obtainable from standard radiologic studies.

Portable Automated Electrodiagnostic Device (also known as Surface EMG) is not a substitute for conventional EMG/NCS testing in clinical decision-making, and therefore, is **not recommended**.

- e. Personality/Psychological/Psychosocial Evaluations:** are generally accepted and well-established diagnostic procedures with selective use in the upper extremity population, but have more widespread use in sub-acute and chronic upper extremity populations.

Diagnostic testing procedures may be useful for patients with symptoms of depression, delayed recovery, chronic pain, recurrent painful conditions, disability problems, and for pre-operative evaluation as well as a possible predictive value for post-operative response. Psychological testing should provide differentiation between pre-existing depression versus injury-caused depression, as well as

post-traumatic stress disorder.

Formal psychological or psychosocial evaluation should be performed on patients not making expected progress within 6 to 12 weeks following injury and whose subjective symptoms do not correlate with objective signs and tests. In addition to the customary initial exam, the evaluation of the injured worker should specifically address the following areas:

- i. Employment history;
- ii. Interpersonal relationships — both social and work;
- iii. Leisure activities;
- iv. Current perception of the medical system;
- v. Results of current treatment;
- vi. Perceived locus of control; and
- vii. Childhood history, including abuse and family history of disability.

This information should provide clinicians with a better understanding of the patient, thus, allowing for more effective rehabilitation.

The evaluation will determine the need for further psychosocial interventions, and in those cases, a Diagnostic Statistical Manual (DSM) of Mental Disorders diagnosis should be determined and documented. An individual with a PhD, PsyD, or Psychiatric MD/DO credentials should perform initial evaluations, which are generally completed within one to two hours. A professional fluent in the primary language of the patient is strongly preferred. When such a provider is not available, services of a professional language interpreter must be provided. When issues of chronic pain are identified, the evaluation should be more extensive and follow testing procedures as outlined in the Division's Chronic Pain Disorder Medical Treatment Guidelines.

- ❖ Frequency: One time visit for evaluation. If psychometric testing is indicated as a portion of the initial evaluation, time for such testing should not exceed an additional two hours of professional time.

3. SPECIAL TESTS are generally well-accepted tests and are performed as part of a skilled assessment of the patient's capacity to return-to-work, his/her strength capacities, and physical work demand classifications and tolerances. The procedures in this subsection are listed in alphabetical order.

- a. Computer Enhanced Evaluations:** These may include isotonic, isometric, isokinetic and/or isoinertial measurement of movement; range of motion (ROM); endurance; or strength. Values obtained can include degrees of motion, torque forces, pressures, or resistance. Indications include determining validity of effort,

effectiveness of treatment, and demonstrated motivation. These evaluations should not be used alone to determine return-to-work restrictions.

- ❖ Frequency: One time for evaluation, one for mid-treatment assessment, and one at final evaluation.

b. Functional Capacity Evaluation (FCE): This is a comprehensive or modified evaluation of the various aspects of function as they relate to the worker's ability to return to work. Areas such as endurance, lifting (dynamic and static), postural tolerance, specific range of motion (ROM), coordination and strength, worker habits, employability, as well as psychosocial aspects of competitive employment may be evaluated. Reliability of patient reports and overall effort during testing is also reported. Components of this evaluation may include: (a) musculoskeletal screen; (b) cardiovascular profile/aerobic capacity; (c) coordination; (d) lift/carrying analysis; (e) job-specific activity tolerance; (f) maximum voluntary effort; (g) pain assessment/psychological screening; and (h) non-material and material handling activities. Standardized national guidelines (such as National Institute for Occupational Safety and Health (NIOSH)) should be used as the basis for FCE recommendations.

There is some evidence that an FCE fails to predict which injured workers with chronic low back pain will have sustained return to work. Another cohort study concluded that there was a significant relation between FCE information and return to work, but the predictive efficiency was poor. There is some evidence that time off work and gender are important predictors for return to work, and floor-to-waist lifting may also help predict return to work, however, the strength of that relationship has not been determined.

A full review of the literature reveals that there is no evidence to support the use of FCEs to prevent future injuries. There is some evidence in chronic low back pain patients that (1) FCE task performance is weakly related to time on disability and time for claim closure and (2) even claimants who fail on numerous physical performance FCE tasks may be able to return to work.

Full FCEs are rarely necessary. In many cases, a work tolerance screening or return to work performance will identify the ability to perform the necessary job tasks. There is some evidence that a short form FCE reduced to a few tests produces a similar predictive quality compared to the longer 2-day version of the FCE regarding length of disability and recurrence of a claim after return to work.

When an FCE is being used to determine return to a specific jobsite, the provider is responsible for fully understanding the physical demands and the duties of the job the worker is attempting to perform. A jobsite evaluation is usually necessary. A job description should be reviewed by the provider and FCE evaluator prior to having this evaluation performed. FCEs cannot be used in isolation to determine work restrictions. It is expected that the FCE may differ from both self-report of abilities and pure clinical exam findings in chronic pain patients. The length of a return to work evaluation should be based on the judgment of the referring physician and the provider performing the evaluation. Since return to work is a

complicated multidimensional issue, multiple factors beyond functional ability and work demands should be considered and measured when attempting determination of readiness or fitness to return to work. FCEs should not be used as the sole criteria to diagnose malingering.

- ❖ Frequency: Can be used: (1) initially to determine baseline status; and (2) for case closure when patient is unable to return to the pre-injury position and further information is desired to determine permanent work restrictions. Prior authorization is required for FCEs performed during treatment.

c. Jobsite Evaluation: is a comprehensive analysis of the physical, mental, and sensory components of a specific job. These components may include, but are not limited to: (a) postural tolerance (static and dynamic); (b) aerobic requirements; (c) range of motion; (d) torque/force; (e) lifting/carrying; (f) cognitive demands; (g) social interactions; (h) visual perceptual; (i) sensation; (j) coordination; (k) environmental requirements of a job; (l) repetitiveness; and (m) essential job functions. Job descriptions provided by the employer are helpful but should not be used as a substitute for direct observation.

A jobsite evaluation may include observation and instruction of how work is done, what material changes (desk, chair) should be made, and determination of readiness to return to work.

Requests for a jobsite evaluation should describe the expected goals for the evaluation. Goals may include, but are not limited to the following:

- i. To determine if there are potential contributing factors to the person's condition and/or for the physician to assess causality;
- ii. To make recommendations for, and to assess the potential for ergonomic changes;
- iii. To provide a detailed description of the physical and cognitive job requirements;
- iv. To assist the patient in their return to work by educating them on how they may be able to do their job more safely in a bio-mechanically appropriate manner; and/or
- v. To give detailed work/activity restrictions.

- ❖ Frequency: One time with additional visits as needed for follow-up visits per jobsite.

d. Vocational Assessment: If the injury is such that the practitioner can easily determine that the worker will be unable to return to his/her previous occupation, then vocational rehabilitation assistance at that time may aid in the overall medical management and rehabilitation of the patient. The physician may decide

that the patient is unable to return to the previous occupation prior to declaration of Maximum Medical Improvement (MMI).

The vocational assessment should provide valuable guidance in the determination of future rehabilitation program goals. It should clarify rehabilitation goals, which optimize both patient motivation and utilization of rehabilitation resources. The physician should have identified the expected permanent limitation(s) prior to the assessment. Declaration of MMI should not be delayed solely due to lack of attainment of a vocational assessment.

- ❖ Frequency: One time with additional visits as needed for follow-up.

e. Work Tolerance Screening: is a determination of an individual's tolerance for performing a specific job based on a job activity or task and may be used when a full Functional Capacity Evaluation is not indicated. The screening is monitored by a therapist and may include a test or procedure to specifically identify and quantify work-relevant cardiovascular, physical fitness and postural tolerance. It may also address ergonomic issues affecting the patient's return-to-work potential.

- ❖ Frequency: One time for initial screen. May monitor improvements in strength every 3 to 4 weeks up to a total of 6 visits.

SPECIFIC DIAGNOSIS, TESTING AND TREATMENT PROCEDURES

1. ACROMIOCLAVICULAR JOINT SPRAINS/DISLOCATIONS

An acute acromioclavicular (AC) joint injury is frequently referred to as a “shoulder separation.” There are six classifications of AC joint separation, which are based upon the extent of ligament damage and bony displacement:

a. Description/Definition:

Type I	Sprain of the AC ligament and capsule; x-ray usually normal.
Type II	Sprains consisting of a ruptured AC ligament and capsule with incomplete injury to the coracoclavicular (CC) ligament, resulting in mild AC joint subluxation. X-ray shows clavicle slightly elevated.
Type III	Dislocation of the clavicle above the acromion with complete tear of the AC ligament and/or CC ligaments; abnormal stress x-rays.
Type IV	Dislocation consisting of a displaced clavicle that penetrates posteriorly through or into the trapezius muscle. The sternoclavicular joint may also be dislocated.
Type V	Dislocation consisting of complete separation of the AC and CC ligaments and dislocation of the acromioclavicular joint with a large coracoclavicular interval.
Type VI	Dislocation consisting of a displaced clavicle that penetrates inferior to the coracoid.

Type I-III are common, while Types IV-VI are not, and when found require surgical consultation. For AC joint degeneration from repetitive motion that is found to be work-related, refer to Section E.9. Impingement Syndrome.

b. Occupational Relationship:

Generally, workers sustain an AC joint injury when they fall landing on the point of the shoulder, driving the acromion downward; or fall on an outstretched hand or elbow with an adducted arm, creating a backward and outward force on the shoulder. It is important to rule out other sources of shoulder pain from the acute injury, including rotator cuff tear, fracture, and nerve injury.

c. Specific Physical Exam Findings may include the following:

- i. At times, tenderness at the AC joint with contusions and/or abrasions at the joint area; and/or prominence/asymmetry of the shoulder can be seen;
- ii. The patient usually demonstrates decreased shoulder motion and the distal end of the clavicle is painful with palpation. There may be increased clavicular translation. Cross-body adduction commonly causes exquisite pain at the AC joint. Cross-body adduction with the arm elevated to 90 degrees can also cause posterior pain with a tight posterior capsule, or lateral pain with impingement. A diagnostic injection of local anesthetic in the AC joint should temporarily relieve pain when performing this maneuver.

d. Diagnostic Testing Procedures:

Plain x-rays may include:

- i. Anterior/Posterior (AP) view;
- ii. AP radiograph of the shoulder with the beam angled 10 degrees cephalad (Zanca view);
- iii. Axillary lateral views; and
- iv. Stress view; side-to-side comparison with 10 to 15 lb. of weight in each hand.

e. Non-operative Treatment Procedures may include:

- i. Procedures outlined in Section F.9. Orthotics and Prosthetics, in some cases (up to 6 weeks for Type I-III AC joint separations). Treatments for Type III injuries are controversial and may range from a sling to surgery.
- ii. Medication, such as non-steroidal anti-inflammatories and analgesics would be indicated. Opioids are not normally indicated. Lidocaine patches may be used for pain relief. In chronic acromioclavicular joint pain, injections with or without steroids may be performed up to 3 times in one year.
- iii. Benefits may be achieved through therapeutic rehabilitation. It should emphasize a progressive increase in range-of-motion (ROM) without exacerbation of the AC joint injury. Full recovery of AC joint dislocation may require up to twelve weeks. With increasing motion and pain control, a strengthening program should be instituted. Maladaptive compensatory strain patterns should always be addressed. Refer to Section F. Therapeutic Procedures - Non-operative.
- iv. Return to work with appropriate restrictions should begin within the first week. Refer to Section F.13. Return to Work. With restoration of full-

motion, return to full-duty should be anticipated within 3 months. The injured worker should adhere to the written return to work restrictions not only in the workplace, but at home and for 24 hours a day.

- v. Other therapies in Section F. Therapeutic Procedures - Non-operative, may be employed in individual cases.

f. Surgical Indications:

Patients who have Type III AC joint dislocations are frequently treated surgically in order achieve better cosmetic and radiologic results; however, they will usually recover well with non-surgical treatment. Surgical intervention may be considered when functional deficits interfere with activities of daily living and/or job duties after three to four months of active patient participation in non-operative therapy. For patients with particularly high physical demands on their shoulder, immediate orthopedic consultation with surgical intervention as early as two weeks from the date of injury may be considered.

Prior to surgical intervention, the patient and treating physician should identify functional operative goals and the likelihood of achieving improved ability to perform activities of daily living or work activities. The patient should also agree to comply with the pre- and post-operative treatment plan and home exercise requirements and understand the length of partial and full-disability expected post-operatively.

Informed decision making should be documented for all invasive procedures. This must include a thorough discussion of the pros and cons of the procedure and the possible complications as well as the natural history of the identified diagnosis. Since most patients with the most common conditions will improve significantly over time, without invasive interventions, patients must be able to make well-informed decisions regarding their treatment.

With a Type IV-VI AC joint injury, an orthopedic surgical consultation is recommended.

Smoking may affect soft tissue healing through tissue hypoxia. Patients should be strongly encouraged to stop smoking and be provided with appropriate counseling by the physician. If a treating physician recommends a specific smoking cessation program peri-operatively, this should be covered by the insurer. Physicians may monitor smoking cessation with laboratory tests such as cotinine levels. The surgeon will make the final determination as to whether smoking cessation is required prior to surgery.

g. Operative Procedures:

AC joint stabilization and ligament reconstruction. When hooks or pins are used, removal may be required at 6-12 weeks.

Continuous interscalene blocks (ISB) are ***not recommended***. For more information, please refer to Section G.7. Interscalene Anesthesia.

h. Post-operative Treatment:

An individualized rehabilitation program will be based upon communication between the surgeon and the therapist using the treatments found in Section F. Therapeutic Procedures - Non-operative.

Early therapeutic rehabilitation interventions are recommended to maintain ROM with progressive strengthening.

- ❖ Frequency: Suggested frequency pattern is 3 to 5 times per week for the first 2 weeks, 2 - 3 times per week for the following 2 weeks, then 1 to 2 times per week. The exact frequency per week will depend on the severity and the recommendation of the surgeon.
- ❖ Optimum Duration: 6 to 8 weeks with progression to home exercise and/or aquatic therapy.
- ❖ Maximum Duration: 12 weeks. Occasional follow-up visits may be justified to reinforce exercise patterns or to reach final functional goals if the therapy to date has demonstrated objective functional gains.

Return to work and restrictions after surgery may be made by an experienced primary occupational medicine physician in consultation with the surgeon or by the surgeon. The injured worker should adhere to the written return to work restrictions not only in the workplace, but at home and for 24 hours a day.

2. ADHESIVE CAPSULITIS/FROZEN SHOULDER DISORDER:

Idiopathic adhesive capsulitis usually occurs spontaneously without any specific inciting injury. This is not normally a work related condition. The following is limited to a description of the condition, therefore there are no recommendations for treatment. It occurs most frequently in diabetic, middle aged patients. This type of adhesive capsulitis is likely to remit over time. Other risk factors may include thyroid problems, cervical dysfunctions, and other shoulder injuries. It may be useful to order laboratory tests to screen for diabetes.

Adhesive capsulitis of the shoulder, also known as frozen shoulder disorder, is a soft tissue lesion of the glenohumeral joint resulting in global restrictions of passive and active ROM. Lack of passive ROM can persist even with therapy, for an average of 30 months. The disorder progresses through stages, specifically:

Stage 1-Freezing - Consists of acute pain with some limitation in range-of-motion; generally lasting 2 to 9 months.

Stage 2-Frozen - Characterized by progressive stiffness, loss of passive range-of-motion, muscular atrophy, and decreased pain; generally lasting an additional 4 to 9 months beyond Stage 1.

Stage 3-Thawing - Characterized by partial or complete resolution of symptoms and restoration of ROM and strength; it usually takes an additional 5 to 26 months beyond Stage 2.

Patients will usually complain of pain in the sub-deltoid region, but occasionally over the long head of the biceps or radiating down the lateral aspect of the arm to the forearm or at the acromioclavicular joint. Pain is often worse at night, with difficulty sleeping on the involved side particularly in stage 1. Motion is restricted and painful including passive external rotation. The common capsular pattern of shoulder range of motion limitation ranges from: external rotation with the highest limitation, followed by abduction, then flexion, internal rotation, with extension presenting with the lowest level of limitation.

In all stages patients may also experience peri-scapular and neck pain from compensatory scapular thoracic motion. It is estimated that 7-15% may have permanent loss of motion, which is usually not functionally disabling.

3. BICIPITAL TENDON DISORDERS:

a. Description/Definition:

Disorders may include: 1) primary bicipital tendinopathy, which is exceedingly rare; 2) secondary bicipital tendinopathy, which is generally associated with rotator cuff tendinitis or impingement syndrome (see appropriate diagnosis subsections); 3) subluxation of the biceps tendon, which occurs with dysfunction of the transverse inter-tubercular ligament and rotator cuff tears; and 4) acute disruption of the tendon, which can result from an acute distractive force or transection of the tendon from direct trauma.

Symptoms may include aching, burning and/or stabbing pain in the shoulder, usually involving the anterior medial portion of the shoulder girdle. The symptoms are exacerbated with above-the-shoulder activities and those specifically engaging the biceps (flexion at the shoulder, flexion at the elbow and supination of the forearm). Relief occurs with rest. Patients may report nocturnal symptoms which interfere with sleep during the acute stages of inflammation; pain and weakness in the shoulder during activities; repeated snapping phenomenon with a subluxing tendon; immediate sharp pain and tenderness along the course of the long head of the biceps following a sudden trauma which would raise suspicions of acute disruption of the tendon; and/or with predominant pain at the shoulder accompanied by referral patterns which may extend pain into the cervical or distal structures, including the arm, elbow, forearm, and wrist. Distal tendon rupture may decrease strength of supination.

b. Occupational Relationship:

Onset of symptoms, date, mechanism of onset, occupational history and current

job requirements should be correlated with the intensity, character, duration and frequency of associated pain and discomfort. Occupational disorders of the biceps tendon may accompany scapulothoracic dyskinesia, rotator cuff injury, AC joint separation, subdeltoid bursitis, shoulder instability or other shoulder pathology. Symptoms should be exacerbated or provoked by work that activates the biceps muscle. Symptoms may be exacerbated by other activities that are not necessarily work related and the physician should explore and report these areas.

Acute trauma to the long head of the biceps tendon of the shoulder girdle may also give rise to occupational injury of the biceps tendon. Those with distal biceps rupture may report an acute event related to an unexpected extension force applied to a flexed elbow. The injury is more common in those who smoke and in the dominant arm.

c. Specific Physical Exam Findings may include the following:

- i. If continuity of the tendon has been lost (biceps tendon rupture), inspection of the shoulder would reveal deformity (biceps bunching/Popeye deformity). It is important to differentiate between distal and proximal tendon rupture, as distal biceps ruptures often require urgent intervention.
- ii. Palpation demonstrates tenderness along the course of the bicipital tendon.
- iii. Pain at end range of flexion and abduction as well as with biceps tendon activation.
- iv. Provocative testing may include the following (a detailed description of the signs and tests is located in initial diagnostic procedures):
 - Yergason's sign.
 - Speed's test.
 - Ludington's test.
- v. Proximal biceps tendon rupture results in a positive hook sign (loss of attachment when the lateral edge of the distal biceps tendon is hooked with the examiner's finger) or positive biceps squeeze test (biceps squeeze does not result in elbow supination).

d. Diagnostic Testing Procedures:

- i. Plain x-rays include:
 - A) Anterior/Posterior (AP) view. Elevation of the humeral head is indicative of a rotator cuff tear;

- B) Axillary view identifies dislocations and humeral head deficits (Hill-Sachs lesion) and is useful to demonstrate arthritis and spurs on the anterior inferior acromion;
- C) Outlet view determines if there is a downwardly tipped acromion.
- ii. Adjunctive testing, such as sonography, MRI, or MRI arthrography should be considered when shoulder pain is refractory to 4 to 6 weeks of an appropriate shoulder rehabilitation program and the diagnosis is not readily identified by standard radiographic and clinical techniques. For distal tendon ruptures, an MRI is done acutely and commonly performed with the elbow flexed, abducted and supinated.

e. Non-operative Treatment Procedures:

- i. Benefit may be achieved through procedures outlined in Section F. Therapeutic Procedures - Non-operative, such as appropriate modalities, limited acute immobilization, exercise and evaluation of occupational workstation. Therapy should emphasize progressive increase in ROM. With increasing motion and pain control, a strengthening program should be instituted.
 - ❖ Time to Produce Effect: 4 sessions.
 - ❖ Frequency: 2 times per week for the first 2 weeks and 1 time per week or less thereafter.
 - ❖ Optimum Duration: 8 to 12 sessions.
 - ❖ Maximum Duration: 20 sessions per year.
- ii. Medication, such as nonsteroidal anti-inflammatory and analgesics would be indicated. Opioids are not normally indicated.
- iii. Injections: Biceps tendon sheath or subacromial steroid injections may be therapeutic. Injections under significant pressure should be avoided as the needle may be penetrating the tendon. Injection into the tendon can cause tendon degeneration, tendon breakdown, or rupture. Caution should be used in patients with a clinical suspicion of a partial tear. Injections should be minimized for patients under 30 years of age. For more information on steroid injections, please refer to Section F.4.d. Shoulder Joint Steroid Injections.
- iv. Return to work with appropriate restrictions should be considered early in the course of treatment. Refer to Section F.13. Return to Work. By 8 to 11 weeks, with restoration of full-motion, return to full-duty should be anticipated.

- v. Other therapies in Section F. Therapeutic Procedures - Non-operative, may be employed in individual cases.

f. Surgical Indications:

- i. Acute Distal Biceps Tendon Rupture: normally requires timely surgical repair, although non-operative treatment results in good strength of flexion and about 20% decrease in supination strength. Therefore, operative repair is more appropriate for younger patients or those who require supination strength in the dominant arm to perform job duties or other activities.
- ii. Acute Proximal Long Head Biceps Tendon Rupture: active patient participation in an appropriate shoulder rehabilitation program is often successful; however, earlier operative intervention may be indicated for young patients, manual laborers or others who require forceful flexion regularly for their work.
- iii. Bicipital Tendinitis: Conservative care prior to potential surgery must address flexibility and strength imbalances. Surgery may be considered when functional deficits interfere with activities of daily living and/or job duties after 12 weeks of active patient participation in non-operative therapy.
- iv. Subluxing Bicipital Tendon: Most patients with this condition also have a subscapularis tear. Surgical stabilization of the bicipital tendon is not commonly indicated. A good outcome may be achieved through successful rehabilitation procedures. Surgery may be considered when functional deficits interfere with activities of daily living and/or job duties after 12 weeks of active patient participation in an appropriate shoulder rehabilitation program.

Prior to surgical intervention, the patient and treating physician should identify functional operative goals and the likelihood of achieving improved ability to perform activities of daily living or work activities and the patient should agree to comply with the pre- and post-operative treatment plan and home exercise requirements. The patient should understand the length of partial and full disability expected post-operatively.

Informed decision making should be documented for all invasive procedures. This must include a thorough discussion of the pros and cons of the procedure and the possible complications as well as the natural history of the identified diagnosis. Since most patients with the most common conditions will improve significantly over time, without invasive interventions, patients must be able to make well-informed decisions regarding their treatment.

Smoking may affect soft tissue healing through tissue hypoxia. Patients should be strongly encouraged to stop smoking and be provided with appropriate counseling by the physician. If a treating physician recommends a specific

smoking cessation program peri-operatively, this should be covered by the insurer. Physicians may monitor smoking cessation with laboratory tests such as cotinine levels. The surgeon will make the final determination as to whether smoking cessation is required prior to surgery.

g. Complications:

Complications depend on the procedure. Distal repairs may injure the lateral antebrachial cutaneous nerve or the posterior interosseous nerve or cause heterotopic ossification. Complications may be higher for chronic repairs. Post-operative fracture, tendon rupture, complex regional pain syndrome, and wound infections have been reported.

h. Operative Procedures:

- i. Distal biceps tendon repair.
- ii. Repair of rotator cuff pulley lesion.
- iii. Proximal tenodesis or tenotomy: Impingement of the biceps tendon can cause continued irritation, and pain preventing shoulder elevation. Tenodesis or tenotomy has been used for decreased elevation after therapy in conjunction with a subscapular repair or in the presence of an irreparable rotator cuff tear.

There is some evidence that in the setting of repairable rotator cuff tears with lesions of the long head of the biceps, there is little difference in functional outcome at two years between tenotomy and tenotomy accompanied by tenodesis. Because tenodesis is a more complex procedure and requires more time off work, it is ***not recommended***.

Continuous interscalene blocks (ISB) are ***not recommended***. For more information, please refer to Section G.7. Interscalene Anesthesia.

i. Post-operative Treatment:

An individualized rehabilitation program will be based upon communication between the surgeon and the therapist using the treatments found in Section F. Therapeutic Procedures - Non-operative. Therapy may include the following:

It is reasonable to restrict ROM for 2 months for tenodesis and distal biceps tendon repair. Extension may gradually increase over 6 weeks. Early loading of the tendon should be avoided. Strengthening is usually delayed until 4 to 6 weeks post-op. Surgical patients may not recover sufficiently to perform full activity for 3 to 12 months. Rehabilitation, lasting at least 6 to 12 weeks, is necessary to facilitate Maximum Medical Improvement (MMI).

- ❖ Frequency: Suggested frequency pattern is 3 to 5 times per week for the first 2 weeks, 2 - 3 times per week for the following 2 weeks, then 1 to 2

times per week. The exact frequency per week will depend on the severity and the recommendation of the surgeon.

- ❖ Optimum Duration: 6 to 8 weeks with progression to home exercise and/or aquatic therapy.
- ❖ Maximum Duration: 12 weeks. Occasional follow-up visits may be justified to reinforce exercise patterns or to reach final functional goals if the therapy to date has demonstrated objective functional gains.

Return to work and restrictions after surgery may be made by an experienced primary occupational medicine physician in consultation with the surgeon or by the surgeon. The injured worker should adhere to the written return to work restrictions not only in the workplace, but at home and for 24 hours a day.

4. BRACHIAL PLEXUS AND SHOULDER PERIPHERAL NERVE INJURIES:

Injuries to the brachial plexus and nerves of the shoulder girdle region may result in loss of motor and sensory function, pain, and instability of the shoulder. Signs and symptoms vary with the degree and mechanism of injury. The two modes of injury are: 1) acute direct or indirect traumatic injuries to the shoulder region, and 2) repetitive motion or overuse. Neurapraxia is a temporary blockage of nerve conduction with transient loss of sensory and motor function, resulting from transient nerve compression or traction when external pressure compromises local blood flow. Recovery of function in 8 weeks or less is expected. Damage to the axon (axonotmesis) without disruption of the nerve framework may cause similar symptoms. The recovery time is delayed and depends upon axon re-growth distally from the site of injury. Laceration or disruption of the entire nerve with complete loss of framework (neurotmesis) is the most severe form of nerve injury and will invariably require surgical intervention. Return of function is dependent upon re-growth of the nerve distal to the injury site. Full return of motor function is variable and may take up to 18 months or longer.

Electromyography (EMG) is the most commonly used diagnostic modality to analyze nerve injuries. Electrophysiologic studies, such as electromyography and nerve conduction studies are generally accepted, well-established and widely used for localizing the source of neurological symptoms. These studies should be utilized as an extension of the history and clinical examination and to assess or monitor nerve recovery. Studies should be performed 6 weeks following injury or description of symptoms. Studies performed early may be falsely negative and usually require repeat testing 3 to 4 weeks after the original injury. Thus, early testing is ***not generally recommended***. If the symptoms have been present for longer than 3 to 4 weeks, studies may be performed immediately after the initial evaluation. Serial studies may be indicated if initial studies are negative and may also be useful for gauging prognosis. During the nerve study, limb temperature should be controlled at 30 to 40 degrees centigrade.

A description of six common nerve injuries to the shoulder girdle and their treatment follow.

a. Brachial Plexus Injuries:

i. Description/Definition:

The brachial plexus is formed by the nerve roots of C5-C8 and T1. These nerve roots exit the cervical spine and pass through the scalene musculature. After leaving the scalene musculature, at the level of the clavicle, they form trunks, division and cords which ultimately form the peripheral nerves of the arm.

ii. Occupational Relationship:

Direct injury to brachial plexus results in widespread sensory and motor loss. Direct trauma, subluxation to shoulder, clavicular fractures, shoulder depression, or head deviation away from the arm may result in variable brachial plexus lesions. Weight-lifting and carrying heavy back packs have also been associated with plexus injuries. Most injuries involve the upper and/or lower trunks. Upper trunk plexopathies may accompany full-thickness rotator cuff tears. Isolated middle trunk involvement is rare.

Infraclavicular brachial plexus injuries have been reported due to hematoma formation secondary to an axillary block. If this occurs, emergency evacuation of the hematoma may be indicated. Symptoms may appear hours-to-days after the procedure. Severe motor and sensory axonal loss is frequently seen on electrodiagnostic studies.

It is important to differentiate injuries to the brachial plexus from the acquired (non work-related) Parsonage-Turner Syndrome or neuralgic amyotrophy occurring without a history of trauma. This idiopathic syndrome begins with severe pain in the shoulder girdle and is accompanied by resistance to passive motion. As the pain decreases, severe, near total weakness of one or more shoulder girdle muscles occurs. Almost total recovery can be expected but occurs over 2 to 3 years.

iii. Specific Physical Exam Findings may include:

- Evidence of trauma or deformity;
- Identification of sensory loss and demonstration of weakness which relates to the severity and anatomy of the injury to the brachial plexus;
- Atrophy; and/or
- Pain with recreation of the motions related to the mechanism of injury.

iv. Diagnostic Testing Procedures:

- A) EMG may show acute or chronic denervation of specific nerves. Nerve Conduction Studies demonstrating a loss of amplitude of 50% compared to the normal side are considered abnormal. NCVs/EMGs will be repeated at appropriate intervals to assess reinnervation.
- B) If studies do not localize and give sufficient information, then additional information may be obtained from MRI and/or myelography. These studies are employed to differentiate root avulsion from severe brachial plexus injuries. Occasionally MRI may reveal the presence of an unexpected mass lesion consistent with a tumor.

v. Non-operative Treatment Procedures:

- A) In closed injuries, observation is favored. Repeat electrophysiologic studies may be helpful to assess or monitor recovery.
- B) Rehabilitation is based on procedures set forth in Section F. Treatment Procedures - Non-operative. However, utilization of ultrasound, cold and heat should be discussed with the primary treating physician, since these modalities may aggravate nerve injury.
- C) Medications such as analgesics, nonsteroidal anti-inflammatories, anti-depressants and anti-convulsants are indicated and opioids may be indicated acutely. All medications should be prescribed as found in Section F.7. or Section F.5. in Thoracic Outlet Syndrome Medical Treatment Guidelines.
- D) Return to work with appropriate restrictions should be considered early in the course of treatment. Refer to Section F.13. Return to Work.

vi. Surgical Indications:

In open injuries, acute exploration may be indicated if nerve discontinuity is visualized. Surgery may be considered post-injury when functional deficits interfere with activities of daily living and/or job duties after active participation in non-operative therapy.

In closed injuries, if functional deficits continue to be documented after 3 to 4 months of active patient participation in non-operative therapy, then exploration may be warranted and a surgical consultation should be considered. Patients with progressive weakness or a loss of function post-injury should be referred for surgical consultation immediately.

Prior to surgical intervention, the patient and treating physician should

identify functional operative goals and the likelihood of achieving improved ability to perform activities of daily living or work activities. The patient should also agree to comply with the pre- and post-operative treatment plan and home exercise requirements. The patient should understand the length of partial and full disability expected post-operatively.

Informed decision making should be documented for all invasive procedures. This must include a thorough discussion of the pros and cons of the procedure and the possible complications as well as the natural history of the identified diagnosis. Since most patients with the most common conditions will improve significantly over time, without invasive interventions, patients must be able to make well-informed decisions regarding their treatment.

Smoking may affect soft tissue healing through tissue hypoxia. Patients should be strongly encouraged to stop smoking and be provided with appropriate counseling by the physician. If a treating physician recommends a specific smoking cessation program peri-operatively, this should be covered by the insurer. Physicians may monitor smoking cessation with laboratory tests such as cotinine levels. The surgeon will make the final determination as to whether smoking cessation is required prior to surgery.

vii. Operative Procedures:

- Exploration and repair.

Continuous interscalene blocks (ISB) are ***not recommended***. For more information, please refer to Section G.7. Interscalene Anesthesia.

viii. Post-operative Treatment:

An individualized rehabilitation program based upon communication between the surgeon and the therapist. Treatment may include the following:

Early therapeutic rehabilitation interventions are recommended to maintain range-of-motion (ROM) and progressive strengthening.

- ❖ Frequency: Suggested frequency pattern is 3 to 5 times per week for the first 2 weeks, 2 - 3 times per week for the following 2 weeks, then 1 to 2 times per week. The exact frequency per week will depend on the severity and the recommendation of the surgeon.
- ❖ Optimum Duration: 6 to 8 weeks with progression to home exercise and/or aquatic therapy.

- ❖ Maximum Duration: Up to 24 sessions. Additional follow-up visits may be justified to reinforce exercise patterns or to reach final functional goals if the therapy to date has demonstrated objective functional gains.

Return to work and restrictions after surgery may be made by an experienced primary occupational medicine physician in consultation with the surgeon or by the surgeon. The injured worker should adhere to the written return to work restrictions not only in the workplace, but at home and for 24 hours a day.

b. Axillary Nerve:

i. Description/Definition:

This nerve is derived from the 5th and 6th cervical roots and passes around the shoulder, supplying motor branches to the teres minor and the three heads of the deltoid. The axillary nerve provides sensation to the top of the shoulder at the level of the deltoid.

ii. Occupational Relationship:

Direct injury and penetrating wounds to the shoulder and upward pressure on the axilla can cause injury to the axillary nerve. Blunt trauma to the anterolateral shoulder has also been reported. Abnormalities of the nerve can be seen with fractures of the surgical neck of the humerus and dislocation of the shoulder. Axillary nerve injury may also occur from shoulder surgery. Patients complain of reduced abduction of overhead strength and/or numbness in the lateral arm.

The axillary nerve and the posterior circumflex artery are in the space bound by the long head of the triceps, the teres minor, subscapularis, and latissimus dorsi when the arm is abducted. Quadriateral space syndrome may cause pain in the axillary nerve region with abduction, external rotation, and forward flexion in the scapular plane. This syndrome is most commonly reported in young males and has been associated with overhead sports.

iii. Specific Physical Exam Findings may include:

- A) Weakness and atrophy of the deltoid muscle and teres minor;
- B) Loss of strength in abduction, flexion, external rotation and extension of the shoulder; and/or
- C) Sensory loss is reported over the upper arm.

iv. Diagnostic Testing Procedures:

- A) Plain x-rays.
- B) EMG and Nerve Conduction Studies six weeks after the injury and repeated at appropriate intervals to assess for reinnervation. Comparison of EMG and Nerve Conduction Velocity (NCV) findings with the opposite side is usually necessary to diagnose the degree of injury.
- C) MRI may be done to rule out other pathology.
- D) To confirm quadrilateral space syndrome, an MRI angiogram may be done to visualize the posterior circumflex artery occlusion in abduction. However, occlusion is present in 80% of asymptomatic subjects when the arm is in abduction and external rotation. This study should only be done after conservative therapy and if surgery is being contemplated.

v. Non-operative Treatment Procedures:

- A) Rehabilitation is based on procedures set forth in Section F. Therapeutic Procedures - Non-operative. However, utilization of ultrasound, and cold and heat should be discussed with the primary treating physician since these modalities may aggravate the nerve injury. Shoulder range-of-motion should be emphasized. For quadrilateral space syndrome, stretching of the posterior shoulder and teres minor is recommended. Electrical stimulation may be used to stimulate the deltoid.
- B) Medications such as analgesics, nonsteroidal anti-inflammatory, anti-depressants and anti-convulsants are indicated. Opioids may be indicated acutely. All medications should be prescribed as described in Section F.7. or Section F.5. in Thoracic Outlet Syndrome Medical Treatment Guidelines.
- C) Return to work with appropriate restrictions should be considered early in the course of treatment. Refer to Section F.13. Return to Work.

vi. Surgical Indications:

Surgical procedures are usually not necessary, since most injuries to the axillary nerve are due to stretch and/or traction and recover within 3 to 6 months. Even when deltoid weakness persists, return to full activity can be expected. One may consider surgery when functional deficits interfere with activities of daily living and/or job duties after 3 to 4 months of active patient participation in non-operative therapy and with EMG/NCV documentation of ongoing denervation and loss of function. Lesions secondary to direct penetrating trauma or previous surgery may require more immediate intervention.

Surgery for quadrilateral space syndrome is not usually necessary as at least 70% of patients recover with conservative treatment. Indications may include a space occupying lesion or 3-6 months of conservative treatment with persisting functional deficits, a positive arteriogram, and point tenderness at the posterior quadrilateral space. Overall outcomes of surgery cannot be predicted, as only a small case series have been reported.

Prior to surgical intervention, the patient and treating physician should identify functional operative goals and the likelihood of achieving improved ability to perform activities of daily living or work activities. The patient should also agree to comply with the pre- and post-operative treatment plan and home exercise requirements. The patient should understand the length of partial and full disability expected post-operatively.

Informed decision making should be documented for all invasive procedures. This must include a thorough discussion of the pros and cons of the procedure and the possible complications as well as the natural history of the identified diagnosis. Since most patients with the most common conditions will improve significantly over time, without invasive interventions, patients must be able to make well-informed decisions regarding their treatment.

Smoking may affect soft tissue healing through tissue hypoxia. Patients should be strongly encouraged to stop smoking and be provided with appropriate counseling by the physician. If a treating physician recommends a specific smoking cessation program peri-operatively, this should be covered by the insurer. Physicians may monitor smoking cessation with laboratory tests such as cotinine levels. The surgeon will make the final determination as to whether smoking cessation is required prior to surgery.

vii. Operative Procedures:

- Exploration and repair.

Continuous interscalene blocks (ISB) are ***not recommended***. For more information, please refer to Section G.7. Interscalene Anesthesia.

viii. Post-operative Treatment:

An individualized rehabilitation program based upon communication between the surgeon and the therapist. Treatment may include the following:

Early therapeutic rehabilitation interventions are recommended to maintain range-of-motion (ROM) and progressive strengthening.

- ❖ Frequency: Suggested frequency pattern is 3 to 5 times per week for the first 2 weeks, 2 - 3 times per week for the following 2 weeks, then 1 to 2 times per week. The exact frequency per week will depend on the severity and the recommendation of the surgeon.
- ❖ Optimum Duration: 6 to 8 weeks with progression to home exercise and/or aquatic therapy.
- ❖ Maximum Duration: Up to 24 sessions. Additional follow-up visits may be justified to reinforce exercise patterns or to reach final functional goals if the therapy to date has demonstrated objective functional gains.

Return to work and restrictions after surgery may be made by an experienced primary occupational medicine physician in consultation with the surgeon or by the surgeon. The injured worker should adhere to the written return to work restrictions not only in the workplace, but at home and for 24 hours a day.

c. Long Thoracic Nerve:

i. Description/Definition:

The long thoracic nerve is formed by the cervical fifth, sixth, and seventh roots; it crosses the border of the first rib and descends along the posterior surface of the thoracic wall to the serratus anterior.

ii. Occupational Relationship:

Injury can occur by direct trauma to the posterior triangle of the neck or trauma may be the result of chronically repeated or forceful shoulder depression. Repeated forward, overhead motion of the arms with the head tilted or rotated to the unaffected side, as well as stretch or compression of the nerve with the arms abducted, can lead to long thoracic nerve dysfunction. Occasionally, severe traction with the shoulder compressed and the head tilted may be associated with long thoracic nerve pathology.

iii. Specific Physical Exam Findings may include:

- A) Dull ache in the region of the shoulder exacerbated by tilting the head away from the effected side and without sensory loss;
- B) Scapular deformity and/or winging may be described by patient or family; and/or
- C) Serratus anterior wasting; and

- D) Scapular winging at the inferior border that may be demonstrated by asking the patient to forward elevate and lean on his arms, such as against a wall and/or the examiner resisting protraction. (Spinal accessory nerve pathology also causes winging when the patient is abducting.)

iv. Diagnostic Testing Procedures:

- A) Plain x-rays.
- B) EMG and Nerve Conduction Studies six weeks after the injury and repeated at appropriate intervals to assess for reinnervation. Comparison of EMG and NCV findings with the opposite side is usually necessary to diagnose the degree of injury. Studies may also exclude more widespread brachial involvement.
- C) MRIs or CTs if there is a need to rule out other pathology.

v. Non-operative Treatment Procedures:

- A) Rehabilitation is based on procedures set forth in Section F. Therapeutic Procedures - Non-operative. Utilization of ultrasound, cold, and heat should be discussed with the primary treating physician since these modalities can aggravate nerve injury. Strengthening of the scapular stabilizers should be stressed.
- B) Orthotics may be used to stabilize the scapula but long-term benefit is not established.
- C) Medications such as analgesics, nonsteroidal anti-inflammatory, anti-depressants and anti-convulsants are indicated and opioids may be indicated acutely. All medications should be prescribed as seen in Section F.7. or Section F.5. in Thoracic Outlet Syndrome Medical Treatment Guidelines.
- D) Return to work with appropriate restrictions should be considered early in the course of treatment (Refer to Section F.13. Return to Work). Heavy lifting and other activities that might stress the nerve should be avoided.

vi. Surgical Indications:

Laceration of the nerve and progressive loss of function are indications for prompt surgical intervention.

Surgery may be considered when functional deficits interfere with activities of daily living and/or job duties after 4 to 6 months of active participation in non-operative therapy. Surgical consultation should occur

at 3 to 4 months post-injury for these patients. In most cases, function will recover with conservative therapy in 6 to 12 months.

Prior to surgical intervention, the patient and treating physician should identify functional operative goals and the likelihood of achieving improved ability to perform activities of daily living or work activities. The patient should also agree to comply with the pre- and post-operative treatment plan and home exercise requirements. The patient should understand the length of partial and full disability expected post-operatively.

Informed decision making should be documented for all invasive procedures. This must include a thorough discussion of the pros and cons of the procedure and the possible complications as well as the natural history of the identified diagnosis. Since most patients with the most common conditions will improve significantly over time, without invasive interventions, patients must be able to make well-informed decisions regarding their treatment.

Smoking may affect soft tissue healing through tissue hypoxia. Patients should be strongly encouraged to stop smoking and be provided with appropriate counseling by the physician. If a treating physician recommends a specific smoking cessation program peri-operatively, this should be covered by the insurer. Physicians may monitor smoking cessation with laboratory tests such as cotinine levels. The surgeon will make the final determination as to whether smoking cessation is required prior to surgery.

vii. Operative Procedures:

- Exploration and repair.
- Muscle transfer.
- Scapular fixation is rarely done and requires a second orthopedic opinion.

Continuous interscalene blocks (ISB) are **not recommended**. For more information, please refer to Section G.7. Interscalene Anesthesia.

viii. Post-operative Treatment:

An individualized rehabilitation program based upon communication between the surgeon and the therapist. Treatment may include the following:

Early therapeutic rehabilitation interventions are recommended to maintain ROM with progressive strengthening focusing on the scapular stabilizers.

- ❖ Frequency: Suggested frequency pattern is 3 to 5 times per week for the first 2 weeks, 2 - 3 times per week for the following 2 weeks, then 1 to 2 times per week. The exact frequency per week will depend on the severity and the recommendation of the surgeon.
- ❖ Optimum Duration: 6 to 8 weeks with progression to home exercise and/or aquatic therapy.
- ❖ Maximum Duration: Up to 24 sessions. Additional follow-up visits may be justified to reinforce exercise patterns or to reach final functional goals if the therapy to date has demonstrated objective functional gains.

Return to work and restrictions after surgery may be made by an experienced primary occupational medicine physician in consultation with the surgeon or by the surgeon. The injured worker should adhere to the written return to work restrictions not only in the workplace, but at home and for 24 hours a day.

d. Musculocutaneous Nerve:

i. Description/Definition:

The nerve is derived from the fifth and sixth cervical roots. It innervates the coracobrachialis, biceps and brachioradialis muscles and also provides sensation to the lateral aspect of the forearm.

ii. Occupational Relationship:

Trauma (including surgery) or penetrating wound to the brachial plexus, coracobrachialis, and shoulder often can cause nerve injury.

Most commonly, a stretch/traction injury with the arm in abduction and external rotation induces nerve dysfunction. Cases have been reported to be associated with backpack use, pitching, heavy weight-lifting, mal-position during sleep or surgery, and sudden, forceful extension of the elbow. Complaints may include pain from the axilla into the forearm, biceps weakness, or sensation changes to the lateral forearm from the lateral antebrachial cutaneous nerve.

iii. Specific Physical Exam Findings may include:

- A) Weakness and atrophy in the biceps and brachialis; and/or
- B) Sensory loss over the lateral aspect of the forearm; however, this is not always seen.

iv. Diagnostic Testing Procedures:

- EMG and Nerve Conduction Studies six weeks after the injury and repeated at appropriate intervals to assess for reinnervation. Comparison of EMG and NCV findings with the opposite side is usually necessary to diagnose the degree of injury.

v. Non-operative Treatment Procedures:

- A) Rehabilitation is based on procedures set forth in Section F. Therapeutic Procedures - Non-operative. Utilization of ultrasound, cold and heat should be discussed with the primary treating physician, since these modalities can aggravate nerve injury.
- B) Medications such as analgesics, nonsteroidal anti-inflammatory, anti-depressants and anti-convulsants are indicated and opioids may be indicated acutely. All medications should be prescribed as seen in Section F.7. or Section F.5. in Thoracic Outlet Syndrome Medical Treatment Guidelines.
- C) Return to work with appropriate restrictions should be considered early in the course of treatment. Refer to Section F.13. Return to Work.

vi. Surgical Indications:

Laceration of the nerve and progressive loss of function are indications for prompt surgical intervention.

Surgery may be considered when functional deficits interfere with activities of daily living and/or job duties after 4 to 6 months of active patient participation in non-operative therapy. Surgical consultation should occur at 3 to 4 months post-injury for these patients. In most cases, function will recover with conservative therapy in 6 to 12 months.

Prior to surgical intervention, the patient and treating physician should identify functional operative goals and the likelihood of achieving improved ability to perform activities of daily living or work activities. The patient should also agree to comply with the pre- and post-operative treatment plan and home exercise requirements. The patient should understand the length of partial and full disability expected post-operatively.

Informed decision making should be documented for all invasive procedures. This must include a thorough discussion of the pros and cons of the procedure and the possible complications as well as the natural history of the identified diagnosis. Since most patients with the most common conditions will improve significantly over time, without invasive interventions, patients must be able to make well-informed decisions regarding their treatment.

Smoking may affect soft tissue healing through tissue hypoxia. Patients should be strongly encouraged to stop smoking and be provided with appropriate counseling by the physician. If a treating physician recommends a specific smoking cessation program peri-operatively, this should be covered by the insurer. Physicians may monitor smoking cessation with laboratory tests such as cotinine levels. The surgeon will make the final determination as to whether smoking cessation is required prior to surgery.

vii. Operative Procedures:

- Exploration and repair.

Continuous interscalene blocks (ISB) are ***not recommended***. For more information, please refer to Section G.7. Interscalene Anesthesia.

viii. Post-operative Treatment:

An individualized rehabilitation program based upon communication between the surgeon and the therapist. Treatment may include the following:

Early therapeutic rehabilitation interventions are recommended to maintain ROM with progressive strengthening.

- ❖ Frequency: Suggested frequency pattern is 3 to 5 times per week for the first 2 weeks, 2 - 3 times per week for the following 2 weeks, then 1 to 2 times per week. The exact frequency per week will depend on the severity and the recommendation of the surgeon.
- ❖ Optimum Duration: 6 to 8 weeks with progression to home exercise and/or aquatic therapy.
- ❖ Maximum Duration: Up to 24 sessions. Additional follow-up visits may be justified to reinforce exercise patterns or to reach final functional goals if the therapy to date has demonstrated objective functional gains.

Return to work and restrictions after surgery may be made by an experienced primary occupational medicine physician in consultation with the surgeon or by the surgeon. The injured worker should adhere to the written return to work restrictions not only in the workplace, but at home and for 24 hours a day.

e. Spinal Accessory Nerve:

i. Description/Definition:

Spinal Accessory Nerve is the eleventh cranial nerve innervating the ipsilateral sternocleidomastoid and trapezius muscles which are extremely important for scapular control and ultimately shoulder function.

ii. Occupational Relationship:

Direct trauma to the posterior neck, forceful compression of the shoulder downward, and/or deviation of the head away from the traumatized shoulder can lead to injury to this nerve such as from a fall or motor vehicle accident. Surgical resection of the posterior neck can disrupt the nerve. Patients complain of inability to fully elevate or abduct above horizontal.

iii. Specific Physical Exam Findings may include:

- A) Pain in the shoulder;
- B) Asymmetrical neckline;
- C) Scapular winging with the arms out to the side, abduction, or with external rotation;
- D) Weakness or paralysis of the trapezius with weakness in forward flexion or abduction above 90 degrees; and/or
- E) Drooping of the shoulder.

iv. Diagnostic Testing Procedures:

- A) EMG and Nerve Conduction Studies six weeks after the injury and repeated at appropriate intervals to assess for reinnervation. Comparison of EMG and NCV findings with the opposite side is usually necessary to diagnose the degree of injury.
- B) Radiographic procedures may be necessary to exclude lesions at the base of the brain or upper cervical spine.

v. Non-operative Treatment Procedures:

- A) Rehabilitation is based on procedures set forth in Section F. Therapeutic Procedures - Non-operative. Utilization of ultrasound, cold and heat should be discussed with the primary treating physician, since these modalities can aggravate nerve injury. Resistance exercises to strengthen muscles. Braces may be used but probably have no long-term value.

- B) Occupational work station will usually need significant modification due to inability to work above 90 degrees flexion or abduction. Return to work with appropriate restrictions should be considered early in the course of treatment. Refer to Section F.13. Return to Work.
- C) Medications such as analgesics, nonsteroidal anti-inflammatory, anti-depressants and anti-convulsants are indicated and opioids may be indicated acutely. All medications should be prescribed as seen in Section F.7, or Section F.5.in Thoracic Outlet Syndrome Medical Treatment Guidelines.

vi. Surgical Indications:

Laceration of the nerve and progressive loss of function are indications for prompt surgical intervention.

Surgery may be considered when functional deficits interfere with activities of daily living and/or job duties after 4 to 6 months of active participation in non-operative therapy. Surgical consultation should occur at 3 to 4 months post-injury for these patients. In most cases, function will recover with conservative therapy in 6 to 12 months.

Prior to surgical intervention, the patient and treating physician should identify functional operative goals and the likelihood of achieving improved ability to perform activities of daily living or work activities. The patient should also agree to comply with the pre- and post-operative treatment plan and home exercise requirements. The patient should understand the length of partial and full disability expected post-operatively.

Informed decision making should be documented for all invasive procedures. This must include a thorough discussion of the pros and cons of the procedure and the possible complications as well as the natural history of the identified diagnosis. Since most patients with the most common conditions will improve significantly over time, without invasive interventions, patients must be able to make well-informed decisions regarding their treatment.

Smoking may affect soft tissue healing through tissue hypoxia. Patients should be strongly encouraged to stop smoking and be provided with appropriate counseling by the physician. If a treating physician recommends a specific smoking cessation program peri-operatively, this should be covered by the insurer. Physicians may monitor smoking cessation with laboratory tests such as cotinine levels. The surgeon will make the final determination as to whether smoking cessation is required prior to surgery.

vii. Operative Procedures:

- Exploration and repair.
- Tendon transfer – Trapezius, levator scapular, rhomboids.
- Scapular fixation for cases with heavy work demands and failed previous procedures.

Continuous interscalene blocks (ISB) are ***not recommended***. For more information, please refer to Section G.7. Interscalene Anesthesia.

viii. Post-operative Treatment:

An individualized rehabilitation program based upon communication between the surgeon and the therapist. Treatment may include the following:

Early therapeutic rehabilitation interventions are recommended to maintain ROM with progressive strengthening focusing on scapula stabilizers.

- ❖ Frequency: Suggested frequency pattern is 3 to 5 times per week for the first 2 weeks, 2 - 3 times per week for the following 2 weeks, then 1 to 2 times per week. The exact frequency per week will depend on the severity and the recommendation of the surgeon.
- ❖ Optimum Duration: 6 to 8 weeks with progression to home exercise and/or aquatic therapy.
- ❖ Maximum Duration: Up to 24 sessions. Additional follow-up visits may be justified to reinforce exercise patterns or to reach final functional goals if the therapy to date has demonstrated objective functional gains.

Return to work and restrictions after surgery may be made by an experienced primary occupational medicine physician in consultation with the surgeon or by the surgeon. The injured worker should adhere to the written return to work restrictions not only in the workplace, but at home and for 24 hours a day.

f. Suprascapular Nerve:

i. Description/Definition:

This nerve is derived from the fifth and sixth cervical root, superior trunk of the brachial plexus and it innervates the supraspinatus and infraspinatus muscles of the rotator cuff.

ii. Occupational Relationship:

Supraclavicular trauma, stretch, and friction through the suprascapular notch or against the transverse ligament at the notch, or a fall on an outstretched arm can cause injury to the nerve. Damage, may occur secondary to a ganglion cyst which usually causes infraspinatus atrophy. Ganglion cysts may be associated with labral pathology and/or rotator cuff tears. These are most commonly reported in athletes. Up to 1/3 of volleyball players in one study had asymptomatic infraspinatus atrophy secondary to nerve damage. Pain may be worsened by cross-body adduction and internal rotation. Exacerbation or fatigue with overhead throwing activities is common. Nerve damage may also occur associated with a full rotator cuff tear. Since the clinical findings are similar for both diagnoses, clinicians should always consider the possibility of nerve damage when atrophy accompanies a large rotator cuff tear. Symptoms include deep aching pain at the top of the shoulder.

iii. Specific Physical Exam Findings may include:

- A) Wasting at the supraspinatus and/or infraspinatus muscles with weakness of external rotation and abduction with overhead activity;
- B) Pain at the shoulder; and/or
- C) A positive Tinel's eliciting a provocative pain response.

iv. Diagnostic Testing Procedures:

- A) EMG and Nerve Conduction Studies six weeks after the injury and repeated at appropriate intervals to assess for reinnervation. Comparison of EMG and NCV findings with the opposite side is usually necessary to diagnose the degree of injury.
- B) A suprascapular fluoroscopically or ultrasound guided suprascapular diagnostic injection may be useful when EMG/NVC is negative and the patient has persistent symptoms.
- C) If one suspects a mass lesion at the suprascapular notch or related labral or cuff pathology, then an MRI or sonography may be indicated.
- D) CT scan with attention to the suprascapular notch may be used to evaluate for bony impingement.

v. Non-operative Treatment Procedures:

- A) Resolution of symptoms usually occurs within 6 to 12 months of diagnosis with non-operative treatment in the absence of lesions such as a cyst.
- B) Rehabilitation is based on procedures set forth in Section F. Therapeutic Procedures - Non-operative. An emphasis should be placed on posture; maintaining full shoulder motion; strengthening; stretching the posterior capsule; and scapular stabilization and mechanics. Utilization of ultrasound, cold and heat should be discussed with the primary treating physician, since these modalities can aggravate nerve injury.
- C) Medications such as analgesics, nonsteroidal anti-inflammatory, anti-depressants, and anti-convulsants are indicated and opioids may be indicated acutely. All medications should be prescribed as seen in Section F.7, or Section F.5. in Thoracic Outlet Syndrome Medical Treatment Guidelines.
- D) Return to work with appropriate restrictions should be considered early in the course of treatment (Refer to Section F.13. Return to Work). Heavy lifting or overhead activities that aggravate the condition should be avoided.

vi. Surgical Indications:

Surgical release is warranted depending upon the presence of a ganglion cyst, results of the electrophysiologic studies, and/or absence of improvement with conservative management.

In cases without cysts or other operative diagnoses, non-operative treatment may be tried for 3 to 6 months due to the observed recovery rate of cases with no treatment. Difficulty performing functional activities after active patient participation should be the deciding factor. (Refer to Section B.9 Surgical Interventions)

Prior to surgical intervention, the patient and treating physician should identify functional operative goals and the likelihood of achieving improved ability to perform activities of daily living or work activities. The patient should also agree to comply with the pre- and post-operative treatment plan and home exercise requirements. The patient should understand the length of partial and full disability expected post-operatively.

Informed decision making should be documented for all invasive procedures. This must include a thorough discussion of the pros and cons of the procedure and the possible complications as well as the natural history of the identified diagnosis. Since most patients with the most common conditions will improve significantly over time, without invasive interventions, patients must be able to make well-informed decisions regarding their treatment.

Smoking may affect soft tissue healing through tissue hypoxia. Patients should be strongly encouraged to stop smoking and be provided with appropriate counseling by the physician. If a treating physician recommends a specific smoking cessation program peri-operatively, this should be covered by the insurer. Physicians may monitor smoking cessation with laboratory tests such as cotinine levels. The surgeon will make the final determination as to whether smoking cessation is required prior to surgery.

vii. Operative Treatment Procedures:

- A) Decompression and/or excision of ganglion cyst; and/or labral repair.
- B) Surgical release at the suprascapular notch or spinoglenoid region.

Continuous interscalene blocks (ISB) are **not recommended**. For more information, please refer to Section G.7. Interscalene Anesthesia.

viii. Post-operative Treatment:

An individualized rehabilitation program based upon communication between the surgeon and the therapist using the treatments found in Section F. Therapeutic Procedures - Non-operative. Treatment may include the following:

Early therapeutic rehabilitation interventions are recommended to maintain ROM with progressive strengthening.

- ❖ Frequency: Suggested frequency pattern is 3 to 5 times per week for the first 2 weeks, 2 - 3 times per week for the following 2 weeks, then 1 to 2 times per week. The exact frequency per week will depend on the severity and the recommendation of the surgeon.
- ❖ Optimum Duration: 6 to 8 weeks with progression to home exercise and/or aquatic therapy.
- ❖ Maximum Duration: Up to 24 sessions. Additional follow-up visits may be justified to reinforce exercise patterns or to reach final functional goals if the therapy to date has demonstrated objective functional gains.

Return to work and restrictions after surgery may be made by an experienced primary occupational medicine physician in consultation with the surgeon or by the surgeon. The injured worker should adhere to the

written return to work restrictions not only in the workplace, but at home and for 24 hours a day.

5. BURSITIS:

a. Description/Definition:

Bursitis: Acute or chronic inflammation of the bursa (a potential fluid filled sac) that may be caused by trauma, chronic overuse, inflammatory arthritis, and acute or chronic infection, and generally presents with localized pain and tenderness of the shoulder.

History may include: nocturnal pain, pain with over-the-shoulder activities, feeling of shoulder weakness and specific limitations of movement. Prior treatment for presenting complaint(s) and pertinent familial history should be obtained.

b. Occupational Relationship:

Onset of symptoms, date, mechanism of onset, and occupational history and current job requirements should be correlated with the intensity, character, duration and frequency of associated pain and discomfort. Bursitis is often a sequela of an occupational strain or tendinopathy in the absence of other mitigating factors.

c. Specific Physical Exam Findings may include:

- i. Palpation elicits localized tenderness over the particular bursa or inflamed tendon with loss of motion during activity;
- ii. Painful arc may be seen between 60 and 110 degrees; and/or
- iii. Bursitis may be associated with other shoulder injury diagnoses such as impingement, rotator cuff instability, tendinitis, etc.; refer to applicable diagnosis subsections for additional guidelines.

d. Diagnostic Testing Procedures:

- i. Plain x-rays include:
 - A) AP view. Elevation of the humeral head indicates rotator cuff tear;
 - B) Axillary view identifies dislocations and humeral head deficits (Hill-Sachs lesion) and is useful to demonstrate arthritis and spurs on the anterior inferior acromion;
 - C) Outlet view determines if there is a downwardly tipped acromion.

ii. Lab Tests:

Laboratory tests may be used to rule out systemic illness or disease when proper clinical presentation indicates the necessity for such testing. Testing may include sedimentation rate, rheumatoid profile, complete blood count (CBC) with differential, and serum uric acid level. Routine screening for other medical disorders may be necessary, as well as, bursal aspiration with fluid analysis.

e. Non-operative Treatment Procedures:

i. Therapeutic interventions are the mainstay of treatment. They should include ROM, active therapies, and a home exercise program. Passive as well as active therapies may be used for control of pain and swelling. Therapy should progress to strengthening and instruction in a home exercise program targeted to further improve ROM and neuromuscular re-education of shoulder girdle musculature. Refer to Section F. Therapeutic Procedures - Non-operative.

ii. May return to work without overhead activities and lifting with involved arm. An evaluation of the occupational work being performed and the work station may be necessary to institute ergonomic changes or accommodations. Return to work with appropriate restrictions should be considered early in the course of treatment. Refer to Section F.13. Return to Work.

iii. Medications such as oral nonsteroidal anti-inflammatory, oral steroids, and analgesics.

iv. Steroid injections may be therapeutic. Injections under significant pressure should be avoided as the needle may be penetrating the tendon and injection into the tendon can cause possible tendon breakdown, tendon degeneration, or rupture. Injections should be minimized for patients under 30 years of age. For more information on steroid injections, please refer to Section F.4.d. Shoulder Joint Steroid Injections.

v. Botulinum Injection:

There is some evidence that in patients with subacromial bursitis or subacromial impingement syndrome, a single ultrasound-guided subacromial injection of botulinum toxin B may be more effective than a steroid injection in pain reduction and shoulder function 3 months after the injection, but the usefulness of repeated botulinum toxin injections is not known.

vi. Other therapies outlined in Section F. Therapeutic Procedures - Non-operative, may be employed in individual cases.

f. Operative Procedures:

Surgery is not commonly indicated for bursitis. Refer to impingement syndrome and other related diagnoses in Section E. Specific Diagnosis Testing and Treatment Procedures.

Continuous interscalene blocks (ISB) are ***not recommended***. For more information, please refer to Section G.7. Interscalene Anesthesia.

6. CALCIFIC TENDINITIS:

a. Description/Definition:

Calcific tendinitis is characterized by the deposition of hydroxyapatite (calcium phosphate) in any tendon of the rotator cuff. The supraspinatus tendon is affected most frequently. It is a morphologic diagnosis which may be asymptomatic or may produce pain. It may be present in a painful shoulder without being the cause of the pain. Radiographically evident calcifications are present without producing symptoms in some adults (7.5% to 20%). The calcific process occurs in two phases: the formative phase, in which calcium deposits coalesce in the tendon matrix, and the resorptive phase, in which the calcium deposits are removed by phagocytic cells. The resorptive phase is thought to be the painful phase of the disorder. The etiology is not known, but trauma is considered unlikely to be causative. Pain may be accompanied by loss of ROM, a painful arc of motion, and by impingement signs. After resorption, granulation tissue replaces the area of calcification.

Morphologic classification of calcium deposits is based on the homogeneity and borders of the deposit on plain x-ray. (Gartner and Simons Classifications) Type I is homogenous with well-defined borders. Type II is heterogeneous in structure with sharp outline or homogenous in structure with no defined border. Type III is cloudy and transparent with no well-defined border. Type III frequently resolves without treatment. Generally, they are not associated with rotator cuff tears. The size of the deposit has not been shown to be correlated with severity of symptoms.

b. Occupational Relationship:

Symptomatic calcific tendinitis does not have a known direct occupational relationship. It is thought to be related to degeneration of the supraspinatus tendon. This can be aggravated by specific work exposures.

c. Specific Physical Exam Findings may include:

- i. Pain with palpation to the shoulder with active or passive abduction and external rotation of the shoulder (painful arc);
- ii. Pain with specific activation of the involved muscles; and/or

- iii. Pain with impingement signs;
- iv. Severe pain on examination in some cases.

d. Diagnostic Testing Procedures:

- i. Plain x-ray films including AP lateral, axial, 30 degrees caudally angulated AP, outlet view.
- ii. If shoulder pain is refractory to 4 to 6 weeks of non-operative care and other diagnoses are suspected, adjunctive testing, such as MRI, sonography or arthrography, may be indicated.
- iii. Endocrine testing may be appropriate, since those with hypothyroidism, autoimmune issues, and estrogen related dysfunction appear to have a longer, more complex course and present at a younger age.

e. Non-operative Treatment Procedures:

- i. Therapeutic rehabilitation interventions are the mainstay of treatment. They should include ROM, active therapies, and a home exercise program. Passive as well as active therapies may be used for pain control, including acetic acid iontophoresis. Therapy should progress to instruction in a home exercise program targeted to ongoing ROM and neuromuscular re-education of shoulder girdle musculature. Refer to Section F. Therapeutic Procedures - Non-operative for other therapies as well as a description of active and passive therapies.
- ii. Medications such as oral nonsteroidal anti-inflammatories and analgesics. Cimetidine 200mg twice daily for 3 months has also been proposed. Refer to Section F.7. Medications.
- iii. Return to work without overhead activities and lifting with involved arm. An evaluation of the occupational work station may be necessary to institute ergonomic changes or accommodations. Return to work with appropriate restrictions should be considered early in the course of treatment. The injured worker should adhere to the written return to work restrictions not only in the workplace, but at home and for 24 hours a day. Refer to Section F.13. Return to Work.
- iv. Therapeutic ultrasound (Refer to Section F.15. Therapy-Passive.) Ultrasound may be used for tendinitis. There is some evidence that ultrasound alleviates symptoms, improves function, and reduces calcium deposits better than sham ultrasound in the short term. The advantage of ultrasound beyond 6 weeks is not certain.
- v. Ultrasound-guided needle lavage and aspiration requires a physician skilled in sonographic techniques and is still considered investigational due to lack of randomized controlled trials. It is less costly and reportedly

less painful than extracorporeal shock wave therapy. One study followed similar patients who had an ultrasound directed double needle lavage and those who did not. Significant differences in favor of the procedure for pain relief and improvement in Constant score appeared at one month and persisted through one year. The procedure is performed in 15-20 minutes and is not resource intensive. It requires prior authorization but may be an appropriate therapy in select patients who fail other conservative treatment. Subacromial injections have been used with lavage.

- vi. There is some evidence that low energy radial shock wave therapy may be beneficial in the setting of calcific tendinitis. This technique is less painful than high energy extracorporeal shock wave therapy (ESWT) and can be specifically directed. There is also good evidence that both high energy and low energy ESWT may provide functional benefits in the setting of calcific tendinitis, and may reduce the size of the calcific deposits and reduce pain. Radial shock wave therapy uses lower energy. General anesthesia or conscious sedation is not required for this procedure. Patients should be cautioned regarding the potential of avascular necrosis.
- vii. Steroid injections may be therapeutic. Injections under significant pressure should be avoided as the needle may be penetrating the tendon and injection into the tendon can cause tendon degeneration, tendon breakdown, or rupture. Injections should be minimized for patients under 30 years of age. For more information on steroid injections, please refer to Section F.4.d. Shoulder Joint Steroid Injections.
- viii. Other therapies outlined in Section F. Therapeutic Procedures - Non-operative, may be employed in individual cases.

f. Surgical Indications:

Surgical procedure is rarely necessary for this condition. When functional deficits interfere with activities of daily living and/or job duties after 3 to 4 months of active patient participation in non-operative therapy, it may be considered. The natural history of calcifications includes resorption over time, with or without therapy.

Prior to surgical intervention, the patient and treating physician should identify functional operative goals and the likelihood of achieving improved ability to perform activities of daily living or work activities. The patient should agree to comply with the pre- and post-operative treatment plan and home exercise requirements. The patient should understand the length of partial and full disability expected post-operatively.

Informed decision making should be documented for all invasive procedures. This must include a thorough discussion of the pros and cons of the procedure and the possible complications as well as the natural history of the identified diagnosis. Since most patients with the most common conditions will improve

significantly over time, without invasive interventions, patients must be able to make well-informed decisions regarding their treatment.

Smoking may affect soft tissue healing through tissue hypoxia. Patients should be strongly encouraged to stop smoking and be provided with appropriate counseling by the physician. If a treating physician recommends a specific smoking cessation program peri-operatively, this should be covered by the insurer. Physicians may monitor smoking cessation with laboratory tests such as cotinine levels. The surgeon will make the final determination as to whether smoking cessation is required prior to surgery.

g. Operative Procedures:

Either an arthroscopic or open procedure may be used. Careful lavage to remove all calcium deposits from the surgical field is important. Full recovery may vary from 3 to 6 months.

Continuous interscalene blocks (ISB) are ***not recommended***. For more information, please refer to Section G.7. Interscalene Anesthesia.

h. Post-operative Treatment:

Individualized rehabilitation programs are based upon communication between the surgeon and the therapist using the treatments found in Section F. Therapeutic Procedures - Non-operative. Treatment may include the following:

- i. Sling, pillow sling, or abduction splint;
- ii. Gentle pendulum exercise, passive glenohumeral range-of-motion and posterior scapular stabilizing training can be instituted;
- iii. Patients can judiciously return to activities as tolerated per physician recommendations. If there is a significant tendon repair, progression will be delayed;
- iv. Progressive resistive exercise program beginning at 2 months with gradual returning to full activity at 4 to 6 months; all active non-operative procedures listed in Section F. Therapeutic Procedures - Non-operative should be considered.
 - ❖ Frequency: Suggested frequency pattern is 3 to 5 times per week for the first 2 weeks, 2 - 3 times per week for the following 2 weeks, then 1 to 2 times per week. The exact frequency per week will depend on the severity and the recommendation of the surgeon.
 - ❖ Optimum Duration: 6 to 8 weeks with progression to home exercise and/or aquatic therapy.

- ❖ Maximum Duration: 12 weeks. Occasional follow-up visits may be justified to reinforce exercise patterns or to reach final functional goals if the therapy to date has demonstrated objective functional gains.

v. Return to work and restrictions after surgery may be made by an experienced primary occupational medicine physician in consultation with the surgeon or by the surgeon. The injured worker should adhere to the written return to work restrictions not only in the workplace, but at home and for 24 hours a day. Depending upon the patient's functional response and their job requirements, return to work with job modifications may be considered as early as one week post-operatively. The employer must be able to fully accommodate restrictions of overhead activities or heavy lifting. Physician/surgeon should be very specific regarding restrictions for overhead activities and heavy lifting.

Work restrictions should be evaluated every 4 to 6 weeks during post-operative recovery and rehabilitation, with appropriate written communications to both the patient and the employer. Should progress plateau, the provider should re-evaluate the patient's condition and make appropriate adjustments to the treatment plan.

7. FRACTURES:

There are five common types of shoulder fractures; each type is addressed separately and in the order of most frequent occurrence.

a. Clavicular Fracture:

i. Occupational Relationship: Can result from direct blows or axial loads applied to the upper limb; commonly associated injuries may include rib fractures, long-bone fractures of the ipsilateral limb and scapulothoracic dislocations.

ii. Specific Physical Exam Findings may include:

- Pain along the clavicle;
- Abrasions on the chest wall, clavicle or shoulder;
- Deformities in the above regions; and/or
- Pain with palpation and motion at the shoulder joint area.

iii. Diagnostic Testing Procedures: Clavicle x-rays. If they do not reveal sufficient information, then a 20 degree caudal-cranial AP view centered over both clavicles can be done.

iv. Non-operative Treatment Procedures:

- A) Most clavicular fractures, particularly the non-displaced mid-shaft fractures, are adequately managed by closed techniques and do not require surgery. After reduction, the arm is immobilized in a sling. Shoulder rehabilitation is begun with pendulum exercises 10 to 14 days after injury. Subsequently, with pain control, the therapy program can be progressed with therapeutic approaches as indicated in Section F. Therapeutic Procedures - Non-operative.
- B) Medication, such as analgesics and nonsteroidal anti-inflammatories, would be indicated; opioids may be indicated acutely for fractures and should be prescribed as indicated in Section F.7. Medications. There is some evidence that in the setting of long bone fractures of the femur, tibia, and humerus, NSAID administration in the first 48 hours after injury is associated with poor healing of the fracture.
- C) All patients with fractures, especially those over 50, should be encouraged to ingest at least 1200 mg of Calcium and 800 IU of Vitamin D per day, preferably through a healthy diet. Although the clinical implications of this are not known, there is greater non-union in this age group and thus, coverage for these medications during the fracture healing time period is recommended. At this time there is no evidence that bisphosphonates increase acute fracture healing.

All female patients over 65 and male patients over 70 should be screened for osteoporosis. Patients who have been on prednisone at a dose of 5mg or more for more than 3 months should be evaluated for glucocorticoid induced osteoporosis. An osteoporosis evaluation may be considered for younger post-menopausal or menopausal in transition women, for patients on medications that can cause bone loss, or patients who have suffered a fracture due to a low-impact fall or with minimum to no provocation. Risk factors for osteoporosis include current smoking, alcohol 3 or more drinks per day, low body mass index, rheumatoid arthritis, and other associated conditions such as hypogonadism, type 1 diabetes. Vitamin D levels may also be ordered. Patients may require additional medication based on bone mineral density testing. All patients should be encouraged to participate in regular weight-bearing and muscle-strengthening exercise, eat a diet rich in fruits and vegetables, and avoid excessive alcohol intake. Long-term care for osteoporosis is not covered under workers compensation even though it may be discovered due to an injury-related acute fracture.

- D) There is some evidence that tobacco use is also a risk factor for poor fracture healing; therefore it is recommended that insurers cover a smoking cessation program peri-operatively. If a treating physician recommends a specific smoking cessation program

peri-operatively, this should be covered by the insurer. Physicians may monitor smoking cessation with laboratory tests such as cotinine levels. The surgeon will make the final determination as to whether smoking cessation is required prior to surgery.

- E) Return to work with appropriate restrictions should be considered early in the course of treatment. Refer to Section F.13. Return to Work.

v. Surgical Indications: Open fractures, vascular or neural injuries requiring repair, bilateral fractures, ipsilateral scapular or glenoid neck fractures, scapulothoracic dislocations, flail chest and non-union (displaced-closed fractures that show no evidence of union after 4 to 6 months). A Type II fracture at the AC joint where the distal clavicular fragment remains with the acromion and the coracoid, and the large proximal fragment is displaced upwards is another indication for surgery.

Completely displaced midclavicular fractures and those with clavicular shortening of 15 mm or more, may be an indication for surgical repair.

There is strong evidence that operative treatment of displaced midshaft clavicular fractures lead to lower rates of nonunion and symptomatic malunion compared to treatment with a sling, but patients with preferences for nonoperative treatment may be counseled that they will probably do well, even though their fractures may not heal as well. There is inadequate evidence that patient-reported functional outcomes are significantly better for surgery than for conservative treatment at one year. A two year follow-up of one of the studies showed no change in functional status.

There is some evidence that open reduction and internal fixation of comminuted midshaft clavicle fractures leads to less pain and disability at one year than closed treatment of the same fractures.

Surgical correction is generally not necessary for midshaft fractures but may be considered based on severe displacement or presence of risk factors.

Prior to surgical intervention, the patient and treating physician should identify functional operative goals and the likelihood of achieving improved ability to perform activities of daily living or work activities and the patient should agree to comply with the pre- and post-operative treatment plan including home exercise. The provider should be especially careful to make sure the patient understands the amount of post-operative therapy required and the length of partial and full disability expected post-operatively.

Informed decision making should be documented for all invasive procedures. This must include a thorough discussion of the pros and

cons of the procedure and the possible complications as well as the natural history of the identified diagnosis. Since most patients with the most common conditions will improve significantly over time, without invasive interventions, patients must be able to make well-informed decisions regarding their treatment.

There is some evidence that tobacco use is also a risk factor for poor fracture healing; therefore it is recommended that insurers cover a smoking cessation program peri-operatively. If a treating physician recommends a specific smoking cessation program peri-operatively, this should be covered by the insurer. Physicians may monitor smoking cessation with laboratory tests such as cotinine levels. The surgeon will make the final determination as to whether smoking cessation is required prior to surgery.

- vi. Operative Procedures: Repair of fracture or associated distal clavicular resection using plates and screws or an intramedullary device.

Continuous interscalene blocks (ISB) are **not recommended**. For more information, please refer to Section G.7. Interscalene Anesthesia.

- vii. Post-operative Treatment: An individualized rehabilitation program based upon communication between the surgeon and the therapist. This program would begin with 2 to 3 weeks of rest with a shoulder immobilizer while encouraging isometric deltoid strengthening. Pendulum exercises with progression to assisted forward flexion and external rotation would follow. Strengthening exercises should be started at 10 to 12 weeks as indicated in Section F. Therapeutic Procedures - Non-operative.

- viii. Bone-Growth Stimulators:

- A) Electrical: High quality literature of electrical bone growth stimulation are lacking for shoulder injuries. Literature is conflicting in the use of electrical stimulation in other regions of the body. Due to a lack of supporting scientific evidence, it requires prior authorization.
- B) Low-intensity Pulsed Ultrasound: There is good evidence that low-intensity pulsed ultrasound (LIPUS) does not influence the healing of new non-displaced mid shaft clavicle fractures. Therefore, it is **not recommended**.

b. Proximal Humeral Fractures:

Fractures of the humeral head have been classically described using Neer criteria; however, literature has shown a low level of observer agreement. These fractures are commonly referred to as one, two, three or four part fractures based on the number of fracture fragments. Displaced fractures of the greater tuberosity

and impacted angulated fractures of the humeral head also have specific associated problems.

i. Occupational Relationship: May be caused by a fall onto an abducted arm; high-energy (velocity or crush) trauma with an abducted or non-abducted arm. Associated injuries include glenohumeral dislocation; stretch injuries to the axillary, musculocutaneous, and radial nerves; and axillary artery injuries with high-energy accident.

ii. Specific Physical Exam Findings may include:

- Pain in the upper arm;
- Swelling and bruising in the upper arm, shoulder and chest wall;
- Abrasions about the shoulder; and/or
- Pain with any attempted passive or active shoulder motion.

iii. Diagnostic Testing Procedures:

- A) X-ray trauma series (3 views) are needed; AP view, axillary view and a lateral view in the plane of the scapula. The latter two views are needed to determine if there is a glenohumeral dislocation. When an axillary view cannot be obtained, a CT should be done to rule out dislocation.
- B) Vascular studies are obtained emergently if the radial and brachial pulses are absent.
- C) Classification can be by the Neer method, however, agreement between observers using this method is poor. There are four fragments: the humeral shaft, humeral head, greater tuberosity, and the lesser tuberosity. The fragments are not usually considered fragments unless they are separated by 1cm or are angulated 45 degrees or more.

iv. Non-operative Treatment Procedures:

- A) Non-displaced and minimally displaced fractures are generally treated conservatively with broad arm sling or body swath. There is some evidence that simple non-displaced proximal humeral fractures recover normal function more quickly when physical therapy is started one week after the fracture than when it is started three weeks after the fracture. Immobilization without physical therapy for more than one week is **not recommended**. Complications of conservative treatment include 15% loss of motion, possible subacromial impingement from displaced tubercle and necrosis of humeral head.

- B) Anterior or posterior dislocation associated with minimally displaced fractures can usually be reduced by closed means, but a general anesthetic is needed. These are usually not performed in the emergency room in order to avoid displacement of the fracture.
- C) Medication, such as analgesics and nonsteroidal anti-inflammatories, would be indicated; opioids may be indicated acutely for fracture and should be prescribed as indicated in Section F.7. Medications. There is some evidence that in the setting of long bone fractures of the femur, tibia, and humerus, NSAID administration in the first 48 hours after injury is associated with poor healing of the fracture.
- D) Ultrasound and shockwave therapy are **not recommended** as routine treatment for acute fractures, as there is insufficient evidence to support their use.
- E) Immobilization may be provided with a sling, to support the elbow, or with an abduction immobilizer if a non-impacted greater tuberosity fragment is present. Immobilization is usually continued for 4 to 6 weeks; however, the time will vary according to the type of fracture and surgeon's discretion.
- F) Pendulum exercises are usually done at 2-3 weeks followed by active assisted physical therapy to 90° abduction and flexion. Subsequently, with pain control, the therapy program can be progressed with therapeutic approaches as described in Section F. Therapeutic Procedures - Non-operative. Home exercises are essential for recovery.
 - ❖ Time to Produce Effect: 6 sessions.
 - ❖ Optimum Duration: 9 sessions.
 - ❖ Maximum Duration: 12 to 24 sessions.
- G) Use of the injured arm at work is determined by the orthopedist. The patient may, however, return to work without use of the injured arm soon after the injury. Refer to Section F.13. Return to Work.
- H) Also refer to osteoporosis in this Section E.7.a. Clavicular Fracture.
- I) There is some evidence that tobacco use is also a risk factor for poor fracture healing; therefore it is recommended that insurers cover a smoking cessation program peri-operatively. If a treating physician recommends a specific smoking cessation program

peri-operatively, this should be covered by the insurer. Physicians may monitor smoking cessation with laboratory tests such as cotinine levels. The surgeon will make the final determination as to whether smoking cessation is required prior to surgery.

v. Surgical Indications: There is insufficient evidence to determine the management of proximal humeral fractures. Early physiotherapy, without immobilization, may be sufficient for some undisplaced fractures. Absolute indications include open fractures, vascular injuries, neurologic damage and true humeral head splits. It is unclear whether surgery consistently produces better long-term outcomes. Surgery is associated with a higher risk of complications and re-operative rate. There is insufficient evidence to establish what is the best type of surgical treatment. There is insufficient evidence to say when to start mobilization after either surgical fixation or hemiarthroplasty.

- A) Greater tuberosity fractures with 5mm of displacement usually require surgical fixation. However, rehabilitation may start as early as 2 to 3 days post-operatively.
- B) Two-part fractures are repaired according to the surgeon's preference. Internal fixation may be necessary to prevent varus or valgus angulation of the humerus; however, it is unclear whether this technique is more successful than more conservative treatment particularly in patients over 70. Percutaneous techniques and closed reduction have both been used. Younger patients should usually be considered for surgical repair.
- C) Three and four-part fractures frequently require operative treatment. Head preserving treatment is preferred over hemiarthroplasty. Plated fractures have an excellent functional success rate. Internal fixation is commonly used. Hemiarthroplasty may be used in the elderly population or for severely comminuted fractures. Use of this technique in the younger active patients frequently leads to the need for revision surgery and/or increased wear of the glenoid cavity. Hemiarthroplasty provides pain relief but frequently results in limited range of motion. For four-part fractures with a fractured greater tuberosity, reverse arthroplasties have also been described. This procedure is described under Section G.6. Shoulder Replacement (arthroplasty).

Prior to surgical intervention, the patient and treating physician should identify functional operative goals and the likelihood of achieving improved ability to perform activities of daily living or work activities and the patient should agree to comply with the pre- and post-operative treatment plan including home exercise. The provider should be especially careful to make sure the patient understands the amount of

post-operative therapy required and the length of partial and full disability expected post-operatively.

Informed decision making should be documented for all invasive procedures. This must include a thorough discussion of the pros and cons of the procedure and the possible complications as well as the natural history of the identified diagnosis. Since most patients with the most common conditions will improve significantly over time, without invasive interventions, patients must be able to make well-informed decisions regarding their treatment.

There is some evidence that tobacco use is also a risk factor for poor fracture healing; therefore it is recommended that insurers cover a smoking cessation program peri-operatively. If a treating physician recommends a specific smoking cessation program peri-operatively, this should be covered by the insurer. Physicians may monitor smoking cessation with laboratory tests such as cotinine levels. The surgeon will make the final determination as to whether smoking cessation is required prior to surgery.

vi. Operative Procedures:

Percutaneous or internal fixation of the fracture or arthroplasty.

Continuous interscalene blocks (ISB) are **not recommended**. For more information, please refer to Section G.7. Interscalene Anesthesia.

vii. Complications: occur in about 30% of cases and include necrosis of the humeral head, impingement, loss of reposition, and plate breakage. The highest complication rates are for reverse shoulder arthroplasty which may be up to four times higher than hemiarthroplasty with similar functional outcomes. Complication rates are also common for conventional plate surgery.

viii. Post-operative Treatment:

- A) An individualized rehabilitation program based upon communication between the surgeon and the therapist using the treatment found in Section F. There is insufficient evidence to determine when mobilization should be started after either surgical fixation or hemiarthroplasty.
- B) Schanz pins will require removal, frequently between 2 to 6 weeks.
- C) One-time extracorporeal shock wave therapy (ESWT) has been purported to increase healing in non-union fractures of long bones. ESWT has not been tested in prospective controlled

studies. They are all considered experimental and are **not recommended** at this time.

- D) Bone-Growth Stimulators. (Refer to this Section E.7.a. Clavicular Fractures.)
- E) Hyperbaric oxygen therapy – there is no evidence to support long-term benefit of hyperbaric oxygen therapy for non-union of upper extremity fractures. It is **not recommended**.
- F) Return to work and restrictions after surgery may be made by an experienced primary occupational medicine physician in consultation with the surgeon or by the surgeon. The injured worker should adhere to the written return to work restrictions not only in the workplace, but at home and for 24 hours a day.

ix. Bone-Growth Stimulators: Refer to Section E.7.a.viii.

c. Humeral Shaft Fractures:

i. Occupational Relationship: A direct blow can fracture the humeral shaft at the junction of its middle and distal thirds. Twisting injuries to the arm will cause a spiral humeral shaft fracture. High energy (velocity or crush) will cause a comminuted humeral shaft fracture.

ii. Specific Physical Exam Findings may include:

- Deformity of the arm;
- Bruising and swelling; and/or
- Possible sensory and/or motor dysfunction of the radial nerve.

iii. Diagnostic Testing Procedures:

- A) Plain x-rays including AP view and lateral of the entire humeral shaft.
- B) Vascular studies if the radial pulse is absent.
- C) Compartment pressure measurements if the surrounding muscles are swollen, tense and painful and particularly if the fracture resulted from a crush injury.

iv. Non-operative Treatment Procedures:

- A) Most isolated humeral shaft fractures can be managed non-operatively.

- B) Medication, such as analgesics and nonsteroidal anti-inflammatories, would be indicated. Opioids may be indicated acutely for fracture and should be prescribed as indicated in Section F.7. Medications. There is some evidence that in the setting of long bone fractures of the femur, tibia, and humerus, NSAID administration in the first 48 hours after injury is associated with poor healing of the fracture.
- C) A coaptation splint may be used.
- D) At 2 to 3 weeks after injury, a humeral fracture orthosis may be used to allow for full elbow motion.
- E) Return to work with appropriate restrictions should be considered early in the course of treatment. Refer to Section F.13. Return to Work.
- F) Other therapies outlined in Section F. Therapeutic Procedures - Non-operative, may be employed in individual cases.
- G) Refer to comments related to osteoporosis in this Section E.7.a. Clavicular Fracture.
- H) There is some evidence that tobacco use is also a risk factor for poor fracture healing; therefore it is recommended that insurers cover a smoking cessation program peri-operatively. If a treating physician recommends a specific smoking cessation program peri-operatively, this should be covered by the insurer. Physicians may monitor smoking cessation with laboratory tests such as cotinine levels. The surgeon will make the final determination as to whether smoking cessation is required prior to surgery.

v. Surgical Indications:

Indications for operative care would include:

- Open fracture;
- Associated forearm or elbow fracture (i.e. the floating elbow injury);
- Burned upper extremity;
- Associated paraplegia;
- Multiple injuries (polytrauma);
- A radial nerve palsy which presented after closed reduction;

- Pathologic fracture related to an occupational injury; and/or
- Inability to perform basic activities of daily living while following conservative care.
- Non-union of conservatively treated fractures (closed fracture treatment for 6-8 weeks) is an indication for open reduction with internal fixation and plating with bone graft. This procedure has good functional outcomes and greater than 90% rate of union.

Prior to surgical intervention, the patient and treating physician should identify functional operative goals and the likelihood of achieving improved ability to perform activities of daily living or work activities and the patient should agree to comply with the pre- and post-operative treatment plan including home exercise. The provider should be especially careful to make sure the patient understands the amount of post-operative therapy required and the length of partial and full disability expected post-operatively.

Informed decision making should be documented for all invasive procedures. This must include a thorough discussion of the pros and cons of the procedure and the possible complications as well as the natural history of the identified diagnosis. Since most patients with the most common conditions will improve significantly over time, without invasive interventions, patients must be able to make well-informed decisions regarding their treatment.

There is some evidence that tobacco use is also a risk factor for poor fracture healing; therefore it is recommended that insurers cover a smoking cessation program peri-operatively. If a treating physician recommends a specific smoking cessation program peri-operatively, this should be covered by the insurer. Physicians may monitor smoking cessation with laboratory tests such as cotinine levels. The surgeon will make the final determination as to whether smoking cessation is required prior to surgery.

vi. Operative Procedures:

- A) Accepted methods of internal fixation of the fracture include:
- A broad plate and screws; and/or
 - Intramedullary rodding with or without cross-locking screws may be used but is associated with increased shoulder pain;
- B) Human Bone Morphogenetic Protein (RhBMP). RhBMP is a member of a family of proteins which are involved in the growth, remodeling, and regeneration of bone tissue. It has become

available as a recombinant biomaterial with osteo-inductive potential for application in long bone fracture non-union and other situations in which the promotion of bone formation is desired. In the treatment of non-union of fractures of the humerus and clavicle, no controlled clinical trials have been conducted as of this date, though small case series have resulted in union of some fractures. Ectopic ossification into adjacent muscle has been reported to restrict motion in periarticular fractures. Due to lack of information on the incidence of complications and overall success rate, it is ***not recommended***.

No randomized trials of rh-BMP2 for humerus fractures have been found at the time of this guideline publication. Currently, there is a paucity of evidence for its use in fractures of the upper extremity.

Continuous interscalene blocks (ISB) are ***not recommended***. For more information, please refer to Section G.7. Interscalene Anesthesia.

vii. Post-operative Treatment:

An individualized rehabilitation program based upon communication between the surgeon and the therapist using the treatments found in Section F. Therapeutic Procedures - Non-operative. Treatment may include the following:

- A) Following rigid internal fixation, therapy may be started to obtain passive and later active shoulder motion using appropriate therapeutic approaches as indicated in Section F. Therapeutic Procedures - Non-operative. Active elbow and wrist motion may be started immediately.

Early therapeutic rehabilitation interventions are recommended to maintain range-of-motion (ROM) and progressive strengthening.

- ❖ Frequency: Suggested frequency pattern is 3 to 5 times per week for the first 2 weeks, 2 - 3 times per week for the following 2 weeks, then 1 to 2 times per week. The exact frequency per week will depend on the severity and the recommendation of the surgeon.
- ❖ Optimum Duration: 6 to 8 weeks with progression to home exercise and/or aquatic therapy.
- ❖ Maximum Duration: 12 weeks. Additional follow-up visits may be justified to reinforce exercise patterns or to reach final functional goals if the therapy to date has

demonstrated objective functional gains or if a nerve injury accompanies the fracture.

- B) Return to work and restrictions after surgery may be made by an experienced primary occupational medicine physician in consultation with the surgeon or by the surgeon. The injured worker should adhere to the written return to work restrictions not only in the workplace, but at home and for 24 hours a day.
- C) Bone Growth Stimulation. (Refer to Section E.7.a. Clavicular Fractures.)

d. Scapular Fractures:

i. Occupational Relationship:

These are the least common of the fractures about the shoulder and include acromial, glenoid, glenoid neck and scapular body fractures. With the exception of anterior glenoid lip fractures caused by an anterior shoulder dislocation, all other scapular fractures are due to a high-energy injury.

ii. Specific Physical Findings may include:

- Pain about the shoulder and thorax;
- Bruising and abrasions;
- Possibility of associated humeral or rib fractures; and/or
- Vascular problems (pulse evaluation and Doppler examination).

iii. Diagnostic Testing Procedures:

- Trauma x-ray series - AP view, axillary view, and a lateral view in the plane of the scapula.
- Arteriography if a vascular injury is suspected.
- Electromyographic exam if nerve injuries are noted.
- CT tomography with holographic reconstruction is a valuable pre-operative evaluative tool.

iv. Non-operative Treatment:

- A) Non-displaced acromial, coracoid, glenoid, glenoid neck and scapular body fractures may all be treated with the use of a

shoulder immobilizer. The majority of scapular fractures are treated non-operatively and have favorable results, particularly scapular body fractures.

- B) Medication, such as analgesics and nonsteroidal anti-inflammatories, would be indicated. Opioids may be indicated acutely for fracture and should be prescribed as indicated in Section F.7. Medications. There is some evidence that in the setting of long bone fractures of the femur, tibia, and humerus, NSAID administration in the first 48 hours after injury is associated with poor healing of the fracture.
- C) Pendulum exercises may be started within the first week.
- D) Progress to assisted range-of-motion exercises at 3 to 4 weeks using appropriate therapeutic procedures as indicated in Section F. Therapeutic Procedures - Non-operative.
- E) Return to work with appropriate restrictions should be considered early in the course of treatment. Refer to Section F.13. Return to Work.
- F) Refer to comments related to osteoporosis in this Section E.7.a. Clavicular Fracture.

v. Surgical Indications:

- Displaced acromial fractures.
- Displaced glenoid fractures.
- Displaced scapular body fractures in rare circumstances.
- Displaced fractures of the scapular neck and the ipsilateral clavicle.

Prior to surgical intervention, the patient and treating physician should identify functional operative goals and the likelihood of achieving improved ability to perform activities of daily living or work activities and the patient should agree to comply with the pre- and post-operative treatment plan including home exercise. The provider should be especially careful to make sure the patient understands the amount of post-operative therapy required and the length of partial and full disability expected post-operatively.

Informed decision making should be documented for all invasive procedures. This must include a thorough discussion of the pros and cons of the procedure and the possible complications as well as the natural history of the identified diagnosis. Since most patients with the

most common conditions will improve significantly over time, without invasive interventions, patients must be able to make well-informed decisions regarding their treatment.

There is some evidence that tobacco use is also a risk factor for poor fracture healing; therefore it is recommended that insurers cover a smoking cessation program peri-operatively. If a treating physician recommends a specific smoking cessation program peri-operatively, this should be covered by the insurer. Physicians may monitor smoking cessation with laboratory tests such as cotinine levels. The surgeon will make the final determination as to whether smoking cessation is required prior to surgery.

vi. Complications: Complications occur in less than 10% of cases and include non-union, infection, removal of hardware, and damage to the axillary or suprascapular nerve.

vii. Operative Treatment:

- A) Displaced acromial fractures are treated with internal fixation.
- B) Displaced glenoid fossa fractures greater than 5 mm should be fixed internally. Fractures with less displacement may be treated surgically according to the surgeon's discretion. Two and three dimensional CT scans may be useful in planning the surgical approach. Glenoid neck fractures with more than 40° of rotation or 1 cm medial displacement are associated with higher likelihood of symptoms and weakness and may require fixation.
- C) Displaced scapular body fractures require internal fixation if the lateral or medial borders are displaced to such a degree as to interfere with scapulothoracic motion.
- D) Displaced fractures of the scapular neck and the ipsilateral clavicle may require internal fixation of the clavicle to reduce the scapular neck fracture. However, if ligaments are intact they will heal well with conservative care.

Continuous interscalene blocks (ISB) are **not recommended**. For more information, please refer to Section G.7. Interscalene Anesthesia.

viii. Post-operative Treatment:

An individualized rehabilitation program based upon communication between the surgeon and the therapist using the appropriate therapeutic procedures as indicated in Section F. Therapeutic Procedures - Non-operative. Treatment may include the following:

- A) A shoulder immobilizer is utilized. Pendulum exercises initially begin at one week, and deltoid isometric exercises are started early at 4 to 6 weeks, active ROM is usually commenced.
- B) Early therapeutic rehabilitation interventions are recommended to maintain ROM with progressive strengthening.
- ❖ Frequency: Suggested frequency pattern is 3 to 5 times per week for the first 2 weeks, 2 - 3 times per week for the following 2 weeks, then 1 to 2 times per week. The exact frequency per week will depend on the severity and the recommendation of the surgeon.
 - ❖ Optimum Duration: 8 to 10 weeks with progression to home exercise and/or aquatic therapy.
 - ❖ Maximum Duration: 12 to 14 weeks. Occasional follow-up visits may be justified to reinforce exercise patterns or to reach final functional goals if the therapy to date has demonstrated objective functional gains.
- C) Return to work and restrictions after surgery may be made by an experienced primary occupational medicine physician in consultation with the surgeon or by the surgeon. The injured worker should adhere to the written return to work restrictions not only in the workplace, but at home and for 24 hours a day.

ix. Bone-Growth Stimulators: Refer to Section E.7.a.viii.

e. Sternoclavicular Dislocation/Fracture:

i. Occupational Relationship: Sudden trauma to the shoulder/anterior chest wall. Instability can also occur secondary to atraumatic conditions such as arthritis or muscle pattern issues.

ii. Specific Physical Findings may include:

- Dysphagia and shortness of breath which requires emergency reduction.
- Pain at the sternoclavicular area;
- Abrasions on the chest wall, clavicle and shoulder;
- Deformities in the above regions; and/or
- Pain with palpation and motion at the sternoclavicular joint area.

iii. Diagnostic Testing Procedures:

- A) Plain x-rays of the sternoclavicular joint are routinely done. When indicated, comparative views of the contralateral limb or specialized views may be necessary. Posterior dislocations may be more difficult to diagnose by physical exam or plain x-ray.
- B) X-rays of other shoulder areas and chest may be done if clinically indicated.
- C) CT scan for classification of pathology.
- D) Vascular studies should be considered if the history and clinical examination indicate extensive injury.

iv. Non-operative Treatment Procedures:

- A) Symptomatic posterior dislocations should be reduced in the operating room under general anesthesia.
- B) Immobilize with a sling for 3 to 4 weeks. Subsequently, further rehabilitation may be utilized using procedures set forth in Section F. Therapeutic Procedures - Non-operative.
- C) Medications, such as analgesics and nonsteroidal anti-inflammatories, would be indicated. Opioids may be indicated acutely for fracture and should be prescribed as indicated in Section F.7. Medications. There is some evidence that in the setting of long bone fractures of the femur, tibia, and humerus, NSAID administration in the first 48 hours after injury is associated with poor healing of the fracture.
- D) Biofeedback and physiotherapy may be used when an inappropriate pectoralis major recruitment pattern is present.
- E) Steroid injections are occasionally used.
- F) Return to work with appropriate restrictions should be considered early in the course of treatment. Refer to Section F.13. Return to Work. The injured worker should adhere to the written return to work restrictions not only in the workplace, but at home and for 24 hours a day.
- G) Refer to comments related to osteoporosis in this Section E.7.a. Clavicular fracture.
- H) There is some evidence that tobacco use is also a risk factor for poor fracture healing; therefore it is recommended that insurers cover a smoking cessation program peri-operatively. If a treating

physician recommends a specific smoking cessation program peri-operatively, this should be covered by the insurer. Physicians may monitor smoking cessation with laboratory tests such as cotinine levels The surgeon will make the final determination as to whether smoking cessation is required prior to surgery.

v. Surgical Indications:

- Failure of closed reduction, or recurrent dislocation.

Prior to surgical intervention, the patient and treating physician should identify functional operative goals and the likelihood of achieving improved ability to perform activities of daily living or work activities and the patient should agree to comply with the pre- and post-operative treatment plan including home exercise. The provider should be especially careful to make sure the patient understands the amount of post-operative therapy required and the length of partial and full disability expected post-operatively.

Informed decision making should be documented for all invasive procedures. This must include a thorough discussion of the pros and cons of the procedure and the possible complications as well as the natural history of the identified diagnosis. Since most patients with the most common conditions will improve significantly over time, without invasive interventions, patients must be able to make well-informed decisions regarding their treatment.

There is some evidence that tobacco use is also a risk factor for poor fracture healing; therefore it is recommended that insurers cover a smoking cessation program peri-operatively. If a treating physician recommends a specific smoking cessation program peri-operatively, this should be covered by the insurer. Physicians may monitor smoking cessation with laboratory tests such as cotinine levels The surgeon will make the final determination as to whether smoking cessation is required prior to surgery.

vi. Operative Procedures:

- Reduction with soft tissue reconstruction is preferred.
- Internal fixation - significant complications can occur with use of pins due to migration into other tissues.

Continuous interscalene blocks (ISB) are ***not recommended***. For more information, please refer to Section G.7. Interscalene Anesthesia.

vii. Post-operative Treatment:

An individualized rehabilitation program based upon communication between the surgeon and the therapist. This program would begin with a shoulder immobilizer for 4 to 6 weeks, followed by therapeutic rehabilitation interventions.

- A) Early therapeutic rehabilitation interventions are recommended to maintain ROM with progressive strengthening.
- ❖ Frequency: Suggested frequency pattern is 3 to 5 times per week for the first 2 weeks, 2 - 3 times per week for the following 2 weeks, then 1 to 2 times per week. The exact frequency per week will depend on the severity and the recommendation of the surgeon.
 - ❖ Optimum Duration: 6 to 8 weeks with progression to home exercise and/or aquatic therapy.
 - ❖ Maximum Duration: 12 weeks. Occasional follow-up visits may be justified to reinforce exercise patterns or to reach final functional goals if the therapy to date has demonstrated objective functional gains.
- B) Return to work and restrictions after surgery may be made by an experienced primary occupational medicine physician in consultation with the surgeon or by the surgeon. The injured worker should adhere to the written return to work restrictions not only in the workplace, but at home and for 24 hours a day.

viii. Bone-Growth Stimulators: Refer to Section E.7.a.viii.

8. POST TRAUMATIC STIFF SHOULDER

Capsular contraction or stiffness may occur secondary to trauma or surgery. Therapy and additional treatment recommendations for other specific diagnoses should be strictly followed to decrease the occurrence of secondary restricted ROM.

a. Occupational Relationship:

There should be some history of work related injury or surgery resulting in decreased range of motion.

b. Specific Physical Exam Findings may include:

Restricted active and passive glenohumeral ROM is often uniplanar. Posterior capsule tightness often presents with loss of internal rotation. The contralateral asymptomatic limb is useful to help diagnose ROM loss. A 20 degree difference is usually significant.

c. Diagnostic Testing Procedures:

- i. Plain x-rays should be done to rule out concomitant pathology such as subluxation or tumor.
- ii. Other diagnostic testing may be indicated to rule out associated pathology. Refer Section D. Follow-up Diagnostic Procedures and to Section E. Specific Diagnosis, Testing, and Treatment. Dynamic sonography may be useful to specifically identify the movements most affected and rule out other pathology.
- iii. Laboratory tests should be considered to rule out systemic diseases.

d. Non-operative Treatment Procedures:

Address the goal to restore and maintain function and may include the following:

- i. Non-operative interventions are the mainstay of treatment. They should include ROM, active therapies, and a home exercise program. Passive as well as active therapies may be used for control of pain and swelling. Therapy should progress to strengthening and instruction in a home exercise program targeted to further improve ROM and neuromuscular re-education of the shoulder girdle musculature. These sessions are in addition to any sessions already performed for the original primary related diagnosis. Refer to Section F. Therapeutic Procedures - Non-operative for all other therapies as well as a description of active and passive therapies.
 - ❖ Time to Produce Effect for active therapy: 8 sessions.
 - ❖ Frequency: 2 times per week for the first 2 weeks and 2 or less thereafter per week.
 - ❖ Optimum Duration: 12 to 14 sessions.
 - ❖ Maximum Duration: 20 sessions per year. Additional follow-up visits may be justified to reinforce exercise patterns or to reach final functional goals if therapy to date has demonstrated objective functional gains.
- ii. Return to work duties with increased ROM as tolerated are also helpful to increase function. Refer to Section F.13. Return to Work.
- iii. Medications, such as NSAIDs and analgesics, may be helpful. Opioids may be used for post-manipulation or post-operative cases. Judicious use of pain medications to optimize function may be indicated. Opioid use is generally limited to 2 weeks. Refer to Section F.7. Medications.
- iv. In cases that are refractory to conservative therapy lasting at least 3 to 6 months, and in whom ROM remains significantly restricted (abduction

usually less than 90 degrees), the following treatment may be considered:

- A) Distension arthrography or “brisement” in which saline, an anesthetic and usually a steroid are forcefully injected into the shoulder joint causing disruption of the capsule preferably with ultrasound or fluoroscopic guidance. There is some evidence that arthrographic distention of up to 90 ml of fluid is better than injection of only 6 ml of placebo in improving function and pain for patients with painful stiff shoulder lasting more than three months. Early therapy to maintain ROM, and restore strength and function should follow distension arthrography
- B) Return to work with restrictions should be expected within one week of the procedure; return to full-duty is expected within 4 to 6 weeks.
- C) Dynamic splinting may be appropriate for rare cases when a functional ROM has not been achieved with the treatment listed above. Use must be justified by documented failure of active therapy.

v. Other therapies in Section F. Therapeutic Procedures - Non-operative, may be employed in individual cases.

e. Surgical Indications:

Surgery may be considered when functional deficits interfere with activities of daily living and/or job duties after 3 to 6 months of active patient participation in non-operative therapy. For most individuals this constitutes limitations in the range of 130 degrees elevation and 120 degrees abduction with significant functional limitations; however, individuals who must perform overhead work and lifting may require a greater ROM.

Contraindications to include anti-coagulation or bleeding diatheses, significant osteopenia, or recent surgical repair of shoulder soft tissue, fracture or neurological lesion. Complications may include humeral fracture, dislocation, cuff injuries, labral tears or brachial plexus injury.

Prior to surgical intervention, the patient and treating physician should identify functional operative goals and the likelihood of achieving improved ability to perform activities of daily living or work activities. The patient should also agree to comply with the pre- and post-operative treatment plan and home exercise requirements. The patient should understand the length of partial and full disability expected post-operatively.

Informed decision making should be documented for all invasive procedures. This must include a thorough discussion of the pros and cons of the procedure and the possible complications as well as the natural history of the identified diagnosis. Since most patients with the most common conditions will improve

significantly over time, without invasive interventions, patients must be able to make well-informed decisions regarding their treatment.

Smoking may affect soft tissue healing through tissue hypoxia. Patients should be strongly encouraged to stop smoking and be provided with appropriate counseling by the physician. If a treating physician recommends a specific smoking cessation program peri-operatively, this should be covered by the insurer. Physicians may monitor smoking cessation with laboratory tests such as cotinine levels. The surgeon will make the final determination as to whether smoking cessation is required prior to surgery.

f. Operative Procedures:

Manipulation under anesthesia may be done in combination with steroid injection or capsular release.

Arthroscopic capsular release or open surgical release may be appropriate in rare cases with failure of previous methods and when the patient has demonstrated ability to follow through with required physical and occupational therapy.

Continuous interscalene blocks (ISB) are ***not recommended***. For more information, please refer to Section G.7. Interscalene Anesthesia.

g. Post-operative Treatment:

An individualized rehabilitation program based upon communication between the surgeon and the therapist using the treatments found in Section F. Therapeutic Procedures - Non-operative.

Early therapeutic rehabilitation interventions are recommended to maintain ROM and should progress to strengthening exercises.

- ❖ Frequency: Suggested frequency pattern is 3 to 5 times per week for the first 2 weeks, 2 - 3 times per week for the following 2 weeks, then 1 to 2 times per week. The exact frequency per week will depend on the severity and the recommendation of the surgeon.
- ❖ Optimum Duration: 6 to 8 weeks with progression to home exercise and/or aquatic therapy.
- ❖ Maximum Duration: Up to 12 weeks. Additional follow-up visits may be justified to reinforce exercise patterns or to reach final functional goals if the therapy to date has demonstrated objective functional gains.

Return to work and restrictions after surgery may be made by an experienced primary occupational medicine physician in consultation with the surgeon or by the surgeon. The injured worker should adhere to the written return to work restrictions not only in the workplace, but at home and for 24 hours a day.

Patient should be approaching full recovery for this condition within 8 to 12 weeks post-operatively; however, co-existence of other pathology should be taken into consideration.

9. ROTATOR CUFF SYNDROME/IMPINGEMENT SYNDROME AND OTHER ASSOCIATED SHOULDER TENDINOPATHIES:

a. Description/Definition:

A collection of symptoms, not a pathologic diagnosis. The extrinsic theory of pathology attributes most symptoms to the encroachment of the acromion, coracoacromial ligament, coracoid process, and/or the AC joint of the rotator cuff mechanism that passes beneath them as the shoulder is moved. The cuff mechanism is intimately related to the coracoacromial arch. Separated only by the thin lubricating surfaces of the bursa, compression and friction can be minimized by several factors, such as:

- Shape of the coracoacromial arch that allows passage of the subjacent rotator cuff;
- Normal undersurface of the AC joint;
- Normal bursa;
- Normal capsular laxity; and
- Coordinated scapulothoracic function.

The intrinsic theory would relate symptoms to issues with scapular motion and other muscle function. It is thought that impingement may occur in part because of abnormal scapular motion with increased upper trapezius activation and lesser involvement of middle, lower trapezius and the serratus anterior. The impingement syndrome may be associated with AC joint arthritis and both partial and full thickness rotator cuff tears, as well as adhesive capsulitis/frozen shoulder. Normal function of the rotator cuff mechanism and biceps tendon assist to diminish impingement syndrome.

Tendinopathy: includes the terms tendinitis, an inflammation of the tendon and tendinosis, non-inflammatory degenerative processes. Rotator cuff tendinopathy may involve one or more of the four musculotendinous structures arising from the scapula and inserting on the lesser or greater tuberosity of the humerus. These structures include one internal rotator (subscapularis), and two external rotators (infraspinatus and teres minor), and the supraspinatus which assists in abduction.

i. History may include:

- A) Delayed presentation (since the syndrome is usually not an acute problem). Patients will access care if their symptoms have not resolved with rest, time and "trying to work it out";
- B) Complaints of functional losses due to pain, stiffness, weakness and catching when the arm is flexed and internally rotated; and
- C) Sleep complaints are common. Pain is often felt down the lateral aspect of the upper arm near the deltoid insertion or over the anterior proximal humerus.

b. Occupational Relationship:

Onset of symptoms, date, mechanism of onset, occupational history, and current job requirements should be correlated with the intensity, character, duration and frequency of associated pain and discomfort. Tendinopathies are often seen with frequent overhead motion. Symptoms may include pain and/or achiness that occur after blunt trauma or repetitive use of the shoulder. For details refer to Section C.2. Relationships to Work and Other Activities.

c. Specific Physical Exam Findings may include:

As with most shoulder diagnoses, the examiner should not rely upon one set of physical exam findings alone due to the lack of specificity and sensitivity of most tests and common overlap of diagnoses.

Physical examination findings may include the following:

- i. Range-of-motion is limited particularly in internal rotation and in cross-body adduction, which may reflect posterior capsular tightness. Forward flexion and elevation may also be limited.
- ii. Passive motion through the 60 to 110 degrees arc of flexion may be accompanied by pain and crepitus. This is accentuated as the shoulder is moved in and out of internal rotation.
- iii. Active elevation of the shoulder is usually more uncomfortable than passive elevation.
- iv. Pain on maximum active forward flexion is frequently seen with impingement syndrome, but is not specific for diagnosis.
- v. Strength testing may reveal weakness of flexion and external rotation in the scapular plane. This weakness may be the result of disuse, tendon damage, or poor scapulothoracic mechanics.
- vi. Pain on resisted abduction or external rotation may also indicate that the integrity of the rotator cuff tendons may be compromised, causing alteration of shoulder mechanics.

- vii. Weakness of the posterior scapular stabilizers causing alteration of shoulder mechanics can also contribute to impingement syndrome.
- viii. If inspection of the shoulder reveals deltoid and rotator cuff atrophy, other diagnoses should be suspected such as cervical radiculopathy, axillary nerve pathology, or massive rotator cuff tears.
- ix. Painful arc may be seen between 60 and 110 degrees.

Impingement syndromes commonly co-exist with other shoulder abnormalities such as rotator cuff tears, AC joint arthritis, biceps tendon ruptures, calcific tendinitis, bursitis, labral tears, and in older patients, glenohumeral instability. This combination of pathology further complicates diagnostic decisions based mainly on clinical findings. Physicians use a combination of test results with history and other findings to create a differential diagnosis.

Commonly used clinical tests include the following:

- Hawkins;
- Neer;
- Horizontal adduction;
- Drop arm test;
- Yergason's;
- Speed test.

Refer to Section C.1.c. Initial Diagnostic Procedures, for a description of each test.

d. Diagnostic Testing Procedures:

i. Plain x-rays include:

- A) AP view is useful to evaluate for arthritis and elevation of the humeral head which are not typically present in impingement syndrome.
- B) Axillary view identifies dislocations and humeral head deficits (Hill-Sachs lesion) and is useful to demonstrate arthritis, spurs on the anterior inferior acromion, and os acromiale (an unfused accessory center of ossification in the acromion).
- C) Outlet view determines if there is a downward curved acromion. A downward curved acromion does not necessarily establish the

diagnosis of impingement syndrome and is not a sole indication for operative treatment.

- ii. Adjunctive testing, sonography or MRI, may be considered when shoulder pain is refractory to 4 to 6 weeks of an appropriate shoulder rehabilitation program and the diagnosis is not readily identified by a good history and clinical examination. (Refer to Section D. Follow-up Diagnostic Imaging and Testing Procedures.)
- iii. The subacromial injection has generally been considered the gold standard for differentiating ROM loss from impingement versus rotator cuff tears. Alleviation from pain may help to confirm the diagnosis. Patients with impingement should recover normal strength after the injection, while those with rotator cuff tears usually do not recover normal strength. However, manually tested elevation strength perceived as normal does not always rule out rotator cuff tear and this may contribute to incorrect diagnoses with this technique. One study demonstrated that at least half of the positive responders did so up to 40 minutes after the injection. Therefore, a negative response should not be diagnosed until 40 minutes post injection. The inaccuracy of the injection and patient response in some cases may contribute to its inability to completely predict the amount of recovery from subacromial decompression. Please refer to Section F.4.f. Subacromial Injections, for more information.

If there is a concern regarding needle placement, sonography, fluoroscopy or referral to a specialist may be appropriate.

There is some evidence that subacromial injection of 60 mg of ketorolac is at least as effective as an injection of 40 mg of triamcinolone in the short-term treatment of subacromial impingement syndrome. For more information on steroid injections, please refer to Section F.4.d. Shoulder Joint Steroid Injections.

e. Non-operative Treatment Procedures:

- i. An aggressive attempt should be made to define the contributing factors which are driving the syndrome, such as shoulder stiffness, humeral head depressor weakness (rotator cuff fiber failure), posterior capsular tightness and subacromial crowding, AC joint arthritis, muscle imbalance, and postural dysfunction. It is thought that impingement may occur in part because of abnormal scapular motion with increased upper trapezius activation and lesser involvement of middle, lower trapezius and the serratus anterior. Because impingement can be caused by a number of different pathological conditions, these causes should be thoroughly investigated before a therapy plan is begun.
- ii. Benefits may be achieved through active therapeutic interventions.

There is strong evidence for those with subacromial impingement

syndrome that; 1) exercise has a small to moderate effect in reducing pain and improving function in the short term; 2) exercise has a small to moderate effect in improving function in the long-term. There is good evidence that exercise provides moderate improvement in strength in the short-term. Common exercises used in the studies are scapular stability training and progressive rotator cuff strengthening exercises using pulley equipment or elastic resistance bands under supervision 1 to 2 times per week along with daily home exercises. Exercises are conducted through range to 90° abduction.

There is some evidence that a specific exercise strategy, focusing on strengthening eccentric exercises for the rotator cuff and concentric/eccentric exercises for the scapula stabilizers, is effective in reducing pain and improving shoulder function in patients with persistent subacromial impingement syndrome. In addition, this specific exercise strategy reduces the need for arthroscopic subacromial decompression within the three month timeframe used in the study. There is some evidence that a scapular focused exercise treatment protocol that includes scapular motor control exercises, scapular mobilizations, and stretching is effective for reducing pain and improving shoulder function in patients with subacromial impingement syndrome.

Exercise programs should include ROM, active therapies, and a home exercise program. Passive as well as active therapies may be used for control of pain and swelling. In patients with scapular dyskinesis, neuromuscular reeducation may first be needed to assure the patient will be able to perform these exercises with the necessary proper scapular stabilization. Therapy should progress to strengthening and an independent home exercise program targeted to further improve ROM and neuromuscular re-education of the shoulder girdle musculature. Refer to Section F. Therapeutic Procedures - Non-operative.

- iii. Manual therapy may be useful. There is some evidence that in the setting of shoulder impingement syndrome, a program of six half-hour sessions of manual therapy combined with a home stretching and strengthening exercise program is more effective than a program of six half-hour sessions of supervised performance of the same stretching and strengthening exercise program. There is some evidence that 6 sessions of manual physical therapy over a three week period are as effective as an injection of 40 mg triamcinolone for relief of symptoms of shoulder impingement symptoms and impairment up to one year after initial treatment. The same study also showed reduced use of health care services one year in the manual therapy group. Given the evidence, manual therapy with exercise is likely to improve shoulder function for nonspecific rotator cuff pathology.

- ❖ Time to effect: 6 sessions
- ❖ Optimum Duration: 12 sessions

❖ Maximum duration:18 sessions

- iv. Patients may return to work without overhead activities and lifting with involved arm. An evaluation of the jobsite may be necessary to institute ergonomic changes or accommodations. Return to work with appropriate restrictions should be considered early in the course of treatment. Return to Work. The injured worker should adhere to the written return to work restrictions not only in the workplace, but at home and for 24 hours a day. Refer to Section F.13.
- v. Medications, such as nonsteroidal anti-inflammatories and analgesics, may be prescribed. Refer to Section F.7. Medications.
- vi. Steroid injections may be therapeutic. Injections under significant pressure should be avoided as the needle may be penetrating the tendon and injection into the tendon can cause possible tendon breakdown, tendon degeneration, or rupture. Injections should be minimized for patients under 30 years of age. For more information on steroid injections, please refer to Section F.4.d. Shoulder Joint Steroid Injections.
- vii. There is strong evidence that subacromial steroid injections for rotator cuff tendinopathy can produce rapid benefit. However, there is no evidence that it differs from alternative therapies for intermediate or long-term relief.
- viii. There is some evidence that both subacromial corticosteroid injection and a series of 10 acupuncture treatments combined with home exercises significantly decreased pain and improved shoulder function in patients with subacromial impingement syndrome, but neither treatment was significantly superior to the other.
- ix. There is some evidence that in patients with subacromial bursitis or subacromial impingement syndrome, a single ultrasound-guided subacromial injection of botulinum toxin B may be more effective than a steroid injection for pain reduction and increased shoulder function 3 months after the injection, but the usefulness of repeated botulinum toxin injections is not known. Refer to Section F.4.a. Botulinum Toxin Injections for more information.
- x. There is good evidence that subacromial injection of hyaluronic acid is not more effective than steroid or placebo for pain relief and functional improvement of subacromial impingement syndrome. Therefore, it is ***not recommended***.
- xi. Other therapies in Section F. Therapeutic Procedures - Non-operative may be employed in individual cases.

- xii. There is good evidence that a clinically important effect of low level laser therapy on pain and range of motion is unlikely. Therefore, it is ***not recommended***.

f. Surgical Indications:

i. Related Evidence:

There is some evidence that in the setting of non-traumatic subacromial impingement syndrome, bursectomy can decrease shoulder pain and improve function. There is also some evidence that adding acromioplasty to bursectomy is not likely to significantly enhance the outcome of surgery.

One high quality study compared two groups of patients undergoing arthroscopic acromioplasty: one group had an individualized home exercise program from a physiotherapist which used a painless series of repetitions with elastic stretch bands and light weights, aimed at strengthening the rotator cuff tendon and other shoulder girdle muscles. The other group had the same exercise program following arthroscopic acromioplasty plus release of the coracoacromial ligament. The results at 24 months were similar, but recovery occurred more rapidly in the acromioplasty patients. Thus, there is good evidence that in patients who have shoulder impingement but do not have osteoarthritis or rotator cuff tears, an individualized exercise program yields long-term (24 month) pain relief comparable to the same program following acromioplasty, but also that recovery is more rapid with acromioplasty. Therefore, acromioplasty is ***not generally recommended***.

ii. Indications:

When functional deficits interfere with activities of daily living and/or job duties after 3 to 6 months of active patient participation in an appropriate shoulder rehabilitation program, surgery may restore functional anatomy and reduce the potential for repeated impingement.

Prior to surgical intervention, the patient and treating physician should identify functional operative goals and the likelihood of achieving improved ability to perform activities of daily living or work activities and the patient should agree to comply with the pre- and post-operative treatment plan including home exercise. The provider should be especially careful to make sure the patient understands the amount of post-operative therapy required and the length of partial and full disability expected post-operatively.

Informed decision making should be documented for all invasive procedures. This must include a thorough discussion of the pros and cons of the procedure and the possible complications as well as the natural history of the identified diagnosis. Since most patients with the

most common conditions will improve significantly over time, without invasive interventions, patients must be able to make well-informed decisions regarding their treatment.

Smoking may affect soft tissue healing through tissue hypoxia. Patients should be strongly encouraged to stop smoking and be provided with appropriate counseling by the physician. If a treating physician recommends a specific smoking cessation program peri-operatively, this should be covered by the insurer. Physicians may monitor smoking cessation with laboratory tests such as cotinine levels. The surgeon will make the final determination as to whether smoking cessation is required prior to surgery.

g. Complications: Re-operative rate is reported at about 16%. Shoulder instability can occur with more aggressive surgery.

h. Operative Procedures:

Procedures for impingement without a rotator cuff tear might include bursectomy with or without acromioplasty. An open or arthroscopic acromioplasty is not always necessary as an adjunct to rotator cuff repair and acromioplasty is ***not generally recommended***.

If after three months of active therapy and injection there is insufficient function, surgery may be considered. Spurs from the acromion may be removed. The distal clavicle should not be removed unless there is AC joint pain reproducible with direct compression. Preservation of the coracoacromial ligament is recommended to maintain joint stability.

Continuous interscalene blocks (ISB) are ***not recommended***. For more information, please refer to Section G.7. Interscalene Anesthesia.

i. Post-operative Treatment:

An individualized rehabilitation program will be based upon communication between the surgeon and the therapist using the treatments found in Section F. Therapeutic Procedures - Non-operative. Treatment may include the following:

- i.** Sling, pillow sling, or abduction splint;
- ii.** Gentle pendulum exercises, passive glenohumeral range-of-motion, and posterior scapular stabilizing training can be instituted;
- iii.** Patients can judiciously return to activities as tolerated per physician recommendations. If there is a significant tendon repair, progression will be delayed;
- iv.** Progressive resistive exercises with gradual return to full activity at 2-3 months if there is no associated rotator cuff tear.

- v. Return to work and restrictions after surgery may be made by an experienced primary occupational medicine physician in consultation with the surgeon or by the surgeon. The injured worker should adhere to the written return to work restrictions not only in the workplace, but at home and for 24 hours a day.

Depending upon the patient's functional response and their job requirements, return to work with job modifications may be considered as early as one week post-operatively, depending on job requirements. The employer must be able to fully accommodate restrictions of overhead activities or heavy lifting.

Work restrictions should be evaluated every 4 to 6 weeks during post-operative recovery and rehabilitation with appropriate written communications to both the patient and the employer. Should progress plateau, the provider should re-evaluate the patient's condition and make appropriate adjustments to the treatment plan.

10. ROTATOR CUFF TEAR:

a. Description/Definition:

Partial or full-thickness tears of the rotator cuff tendons, most often the supraspinatus, can be caused by vascular, traumatic or degenerative factors or a combination. Further tear classification includes: a small tear is less than 1cm; medium tear is 1 to 3cm; large tear is 3 to 5cm; and massive tear is greater than 5cm, usually with retraction. Partial thickness cuff tears usually occur in age groups older than 30. Full-thickness tears can occur in younger age groups; however, they are uncommon. Approximately 25% of asymptomatic patients over 60 have full thickness tears and between 40-60% have partial thickness tears. About 50% of those with asymptomatic full thickness tears will become symptomatic with tear progression in 2 years. This is more common with larger initial tears. Only about 10% of partial tears increase in size over time. Tendons do not repair themselves over time. The patient usually complains of pain along anterior, lateral shoulder or posterior glenohumeral joint.

b. Occupational Relationship:

Onset of symptoms, date, mechanism of onset, and occupational history and current job requirements should be correlated with the intensity, character, duration and frequency of associated pain and discomfort. May be caused by 1) sudden trauma to the shoulder such as breaking a fall using an overhead railing or an out-stretched arm; or 2) chronic use. For details refer to Section C.2 Relationships to Work and Other Activities.

c. Specific Physical Exam Findings may include:

i. Partial -Thickness Tear:

- A) There may be pain at the end of range-of-motion (ROM) when full passive ROM for abduction, elevation, external rotation and internal rotation are obtainable;
- B) Occasionally, there is a restriction of passive motion in one or more planes;
- C) Active ROM will be limited and painful for abduction and external rotation, as well as internal rotation and forward flexion;
- D) A painful arc may be present with active elevation;
- E) Pain will be positive for resisted tests (abduction, flexion, external rotation, internal rotation, abduction/internal rotation at 90 degrees, and abduction/external rotation at 45 degrees); and/or
- F) There may be positive impingement signs, refer to Section E.9. Impingement Syndrome.

ii. Full-Thickness Tear:

- A) Passive and resisted findings are similar to those for partial thickness tears with greater weakness of abduction and external rotation;
- B) Active elevation may be severely limited with substitution of scapular rotation;
- C) Occasionally strength remains well preserved.

Rotator cuff tears commonly co-exist with other shoulder abnormalities such as impingement, AC joint arthritis, biceps tendon ruptures, and calcific tendinitis. In older patients, tears may co-exist with glenohumeral instability, bursitis, and labral tears. This combination of pathology further complicates diagnostic decisions based mainly on the clinical findings. Full-thickness tears are usually readily apparent from the drop arm test or weakness with elevation. For other diagnoses, physicians should use a combination of test results with history and other findings to create a differential diagnosis. The following tests may be used:

- Hawkins.
- Drop arm.
- Lift off.
- Subscapularis strength test.

- Empty can test.
- External rotation lag test.

Neurological lesions can occur with rotator cuff tears or may be missed as isolated lesions. When muscle atrophy and weakness are present, the physician should consider neurologic lesions in the differential diagnoses.

d. Diagnostic Testing Procedures:

- i. AP view is useful to evaluate for arthritis and elevation of the humeral head. Superior migration of the humeral head is indicative of an extensive, and possibly irreparable, rotator cuff tear.
- ii. Axillary view identifies dislocations and humeral head deficits (Hill-Sachs lesion) and is useful to demonstrate arthritis and spurs on the anterior inferior acromion;
- iii. Outlet view determines if there is a downward curved acromion. A downward curved acromion does not necessarily establish the diagnosis of impingement syndrome and is not a sole indication for operative treatment.

Cases with the presence of significant weakness on elevation or rotation, a palpated defect at the greater tuberosity or a traumatic history should have early MRI. Adjunctive testing such as sonography or MRI should be considered for other shoulder cases refractory to 4 to 6 weeks of an appropriate shoulder rehabilitation program. Sonography may be better at detecting partial thickness tears but is operator dependent. The sonogram is very specific for rotator cuff tears but is not sensitive (Dinnes, 2003 [Health Technology Assessment]).

Rotator cuff tears, both full-thickness and partial, appear to occur commonly in asymptomatic individuals. MRI diagnostic criteria for full rotator cuff tear may be met in approximately 28% of asymptomatic persons, and in asymptomatic persons over age 60, contralateral rotator cuff tears may occur in approximately 35%. There also appears to be a linear trend with age, such that more than half of asymptomatic individuals over the age of 60 may demonstrate imaging changes consistent with rotator cuff tear. A small minority of patients younger than age 40 demonstrate these changes. Correlation of radiological and clinical findings is an important part of patient management.

There is good evidence that MRI, MRA, and US are all accurate at identifying full thickness rotator cuff tears in patients whose history and physical examination makes them candidates for possible surgery. There is no evidence to suggest that any of the three is superior for this purpose. There is inadequate evidence regarding the comparative accuracy for diagnosing partial thickness tears. Available studies utilize clinically very different categories which lead to equivocal interpretation of the findings.

e. Non-operative Treatment Procedures:

- i. Medications, such as nonsteroidal anti-inflammatories and analgesics, may be indicated. Acute rotator cuff tear may indicate the need for limited opioids use.
- ii. There is some evidence that intra-articular triamcinolone provides pain relief for up to 3 months in elderly patients with full thickness rotator cuff tears, and that a single injection is likely to be as beneficial as two injections.
- iii. There is some evidence that in the setting of supraspinatus tendinosis or partial thickness tears less than 1 cm in size, either dry needling or an injection of 3 ml of platelet-rich plasma (PRP) have clinical benefits lasting up to 6 months, and that the benefits of PRP appear to be greater than those for dry needling. Dry needling has not been proven to be an efficacious therapy for supraspinatus tendinitis.

There is good evidence that in the setting of rotator cuff tendinopathy, a single dose of PRP provides no additional benefit over saline injection when the patients are enrolled in a program of active physical therapy.

There is strong evidence that platelet rich therapy does not show a clinically important treatment effect for shoulder pain or function when given as an adjunct to arthroscopic rotator cuff repair. However, at present, there is also a lack of standardization of platelet preparation methods, which precludes clear conclusions about the effect of platelet-rich therapies for musculoskeletal soft tissue injuries. Therefore, PRP is ***not recommended***.

- iv. Relative rest initially and procedures outlined in Section F. Therapeutic Procedures - Non-operative. Therapeutic rehabilitation interventions may include ROM and use of a home exercise program and passive modalities for pain control. Therapy should progress to strengthening and independent home exercise programs targeted to ongoing ROM and neuromuscular re-education of shoulder girdle musculature. Maladaptive compensatory strain patterns should always be addressed.

There is some evidence that in patients over 55 with nontraumatic small tears of the supraspinatus tendon, an intervention of home exercise supervised by a shoulder-trained physiotherapist, may be as beneficial at one year as the same physiotherapy program initiated after acromioplasty or acromioplasty with repair of the rotator cuff.

- v. Return to work with appropriate restrictions should be considered early in the course of treatment. Refer to Section F.13. Return to Work. The injured worker should adhere to the written work restrictions not only in the workplace, but at home and for 24 hours per day.

- vi. Other therapies outlined in Section F. Therapeutic Procedures - Non-operative, may be employed in individual cases.

f. Surgical Indications:

Goals of surgical intervention are to restore functional anatomy by re-establishing continuity of the rotator cuff, addressing associated pathology and reducing the potential for repeated impingement.

If no increase in function for a partial tear is observed after 6 to 12 weeks, a surgical consultation is indicated. For full-thickness tears, it is thought that early surgical intervention produces better surgical outcome due to healthier tissues and often less limitation of movement prior to and after surgery. Patients may need pre-operative therapy to increase ROM.

Full thickness tears are uncommon in the 40-60 age groups. About 25% of asymptomatic patients over 60 will have a full thickness tear. Full-thickness tears greater than 1 cm, in individuals less than 60 should generally be repaired. Smaller tears appear to show less likelihood of progression (25%). Only about 10 percent of partial tears increase in size over time. The recovery rate for those with a full thickness tear without surgery is 60%. In patients over 65 the decision to repair a full rotator cuff tear depends on the length of time since the injury, the amount of muscle or tendon that has retracted, the level of fatty infiltration and the quality of the tendon. For patients with lack of active elevation above 90 degrees, arthroscopic biceps tenotomy may be effective in returning some elevation. The recurrence rate may be up to 50% in older patients with multiple tendon full-thickness tears. Pseudo paralysis or severe rotator cuff arthropathy are contraindications to the procedure.

Failure of healing after an RCT repair is not uncommon with a re-tear rate of about 30% and a re-operative rate of 20%. Those with intact tendon repairs had a re-operative rate at 7 years of 5% due to impingement. Success rates as high as 90% have been reported in some centers, but these may not represent all patients undergoing rotator cuff repair. Grade 2 fatty infiltration and age (over 65) are both associated with worse outcomes, forty-three percent healed repair versus 86%.

Another factor with prognostic significance is supraspinatus atrophy. Thomazeau 1996 used an oblique-sagittal MRI view of the supraspinatus fossa to estimate the degree of atrophy of the muscle belly in relation to the fossa, classifying the results into three classes. Stage I was considered normal or only slightly atrophied, with the muscle filling 60% or more of the supraspinatus fossa. Stage II, moderate atrophy, filled 40-60% of the fossa, and Stage III, severe atrophy, filled less than 40% of the fossa. Liem 2007 used a slightly modified version of the Thomazeau classification of supraspinatus atrophy, comparing the rates of re-tear between Stage I and Stage II. There were 35 cases with Stage I, with 5 retears (14%). There were 10 cases with Stage II atrophy, with 5 retears (50%). The degree of supraspinatus atrophy on the preoperative MRI is likely to predict the probability of a re-tear after arthroscopic rotator cuff repair.

Early repair is suggested for acute full thickness tears greater than 1 cm. If age is greater than 65 an appropriate shoulder rehabilitation program should be implemented for 6 to 8 weeks before surgery. Partial thickness tears and full thickness tears less than 1 cm are treated non-operatively initially.

Prior to surgical intervention, the patient and treating physician should identify functional operative goals and the likelihood of achieving improved ability to perform activities of daily living or work activities and the patient should agree to comply with the pre- and post-operative treatment plan and home exercise requirements. The patient should understand the length of partial and full disability expected post-operatively.

Informed decision making should be documented for all invasive procedures. This must include a thorough discussion of the pros and cons of the procedure and the possible complications as well as the natural history of the identified diagnosis. Since most patients with the most common conditions will improve significantly over time without invasive interventions, patients must be able to make well-informed decisions regarding their treatment.

Smoking may affect soft tissue healing through tissue hypoxia. Patients should be strongly encouraged to stop smoking and be provided with appropriate counseling by the physician. If a treating physician recommends a specific smoking cessation program peri-operatively, this should be covered by the insurer. Physicians may monitor smoking cessation with laboratory tests such as cotinine levels. The surgeon will make the final determination as to whether smoking cessation is required prior to surgery.

i. Related Evidence:

There is some evidence that in patients over 55 with nontraumatic small tears of the supraspinatus tendon, an intervention of home exercise supervised by a shoulder-trained physiotherapist may be as beneficial at one year as the same physiotherapy program initiated after acromioplasty or acromioplasty with repair of the rotator cuff.

There is good evidence that symptomatic full thickness rotator cuff tears less than 3 cm in size receive more benefit from surgical intervention than from physical therapy one year after the injury.

There is some evidence that in patients with reparable full-thickness rotator cuff tears and a Type II acromion, there are no appreciable differences in pain and shoulder function between rotator cuff repairs done with and without subacromial decompression up to one year after surgery.

g. Operative Procedures:

Options would include arthroscopic or open debridement and/or repair.

Routine acromioplasty is ***not recommended***.

Tenodesis is a more complex procedure and requires more time off work compared to tenotomy and is **not generally recommended**.

Coplaning of the clavicle involves the removal of spurs from its inferior surface with the purpose of increasing the space available for movement of the supraspinatus tendon. It is an acceptable procedure. Studies are conflicting concerning the consequences of the procedure for the stability of the acromioclavicular joint.

Distal clavicular resection is **not recommended** for patients without AC joint pain. This should only be performed on patients with reproducible pain at the AC joint which is relieved with a local anesthetic injection.

In cases with extensive rotator cuff tear, preservation of the coracoacromial ligament is recommended to prevent instability.

Arthroscopic laser treatment is **not recommended** due to lack of evidence regarding outcomes.

Use of porcine submucosa grafts are **not recommended** due to a high failure rate.

Platelet-rich plasma therapy is **not recommended** due to lack of evidence.

Acellular dermal matrix augmentation of rotator cuff tears larger than 3 cm and less than 5 cm require prior authorization.

Continuous interscalene blocks (ISB) are **not recommended**. For more information, please refer to Section G.7. Interscalene Anesthesia.

Continuous subacromial infusion are **not recommended**, refer to Section G.8. Continuous Subacromial Anesthesia Injection, for more information.

i. Related Evidence:

There is some evidence that interscalene regional blocks (ISB) at the time of elective arthroscopic rotator cuff repair results in faster hospital discharge than general anesthesia, therefore ISB is recommended. There is some evidence that continuous ISB for 48 hours is associated with somewhat greater pain relief at the seventh postoperative day than single injection ISB, but there is little if any difference in the use of opioids at that time between continuous and single injection anesthesia. Therefore, continuous ISB is **not recommended**.

There is some evidence that in the setting of arthroscopic rotator cuff repair, a subacromial infusion of 4 ml/hour of 0.5% bupivacaine for 50 hours does not reduce post-operative pain or oxycodone consumption in a clinically meaningful way. Therefore, it is **not recommended**.

There is good evidence that in the setting of surgical repair of full thickness rotator cuff tears, routine acromioplasty does not improve the outcome of surgery compared to cuff repair alone.

There is some evidence, with data pooled from two studies, that reoperations are done less often in the two years following surgery when an acromioplasty is included as part of the arthroscopic rotator cuff repair operation. It is unknown to what extent the second surgery increased function.

An additional study provided some evidence that patient-reported pain and function does not differ greatly when acromioplasty is either done or not done in the setting of full thickness rotator cuff tears repaired arthroscopically. There is inadequate evidence that physician-measured outcomes are equivalent for the two operations.

There is good evidence that in the setting of arthroscopic repair of full-thickness rotator cuff tears, two-year patient-reported outcomes are similar with and without acromioplasty.

There is strong evidence that platelet rich therapy does not show a clinically important treatment effect for shoulder pain or function when given as an adjunct to arthroscopic rotator cuff repair. However, at present, there is also a lack of standardization of platelet preparation methods, which precludes clear conclusions about the effect of platelet-rich therapies for musculoskeletal soft tissue injuries. Therefore it is ***not recommended***.

There is some evidence that acellular dermal matrix augmentation of reparable rotator cuff tears larger than 3 cm but less than 5 cm may improve tendon repair and reduce the rate of recurrent rotator cuff tears in the first 12 to 24 months after surgery, provided that the patients are nonsmokers. This may be allowed with prior authorization.

There is good evidence that arthroscopic and open rotator cuff surgery do not differ in long-term outcome results. There is a lack of evidence about the comparative effectiveness of surgery and active PT for supraspinatus syndrome.

There is good evidence that symptomatic full thickness rotator cuff tears less than 3 cm in size, in the absence of severe supraspinatus atrophy, receive more benefit from arthroscopic tendon repair than from physical therapy at 12 months.

There is some evidence that in the setting of full thickness rotator cuff tears smaller than 3 cm in the longest direction and in the absence of acromial spurs, acromioplasty with cuff repair does not improve the 2 year pain and functional outcomes compared to cuff repair alone.

There is some evidence that in the setting of repairable rotator cuff tears

with lesions of the long head of the biceps, there is little difference in functional outcome at two years between tenotomy and tenotomy accompanied by tenodesis. Because tenodesis is a more complex procedure and requires more time off work, it is **generally not recommended**.

There is good evidence that in patients over 55 with reparable rotator cuff tears and lesions of the long head of the biceps, tenotomy and tenodesis at the intertubercular groove provide equal functional and symptomatic benefits two years after surgery.

There is some evidence that in patients over 50 who have both rotator cuff repairs and Type II SLAP lesions, the outcomes of a tenotomy of the long head of the biceps are at least as good as those of repairing the SLAP lesion, and the operating time is likely to be shorter.

There is some evidence that in patients over 60 with symptomatic rotator cuff tears, repair of the tear at the time of acromioplasty/tenotomy leads to better function at one year than acromioplasty/tenotomy alone.

h. Post-operative Treatment:

An individualized rehabilitation program will be based upon communication between the surgeon and the therapist. Treatment may include the following:

- i. Sling, pillow sling, or abduction splint. Sling protection for a period of two to eight weeks is usually recommended after rotator cuff repair;
- ii. Gentle pendulum exercise, passive glenohumeral range-of-motion in flexion and external rotation to prevent adhesions and maintain mobilization;
- iii. There is inadequate evidence for the addition of continuous passive motion exercise to a standard physiotherapy rehabilitation program of passive self-assisted range of motion exercises after arthroscopic rotator cuff repair as this study did not provide baseline data. Continuous passive motion is **not generally recommended**. It may be used if the patient has no home assistance to regularly perform the passive motion required in the first 6 weeks and/or access to therapy is limited.
- iv. Isometrics and activity of daily living skills usually begin at 6 weeks post-operatively.
- v. Active assisted range-of-motion exercises in supine with progression to sitting, timing based on surgeon's discretion;
- vi. Light resistive exercise may begin at 6 to 12 weeks, depending on quality of tissue and surgeon's discretion;

- vii. Pool exercise initially under therapists or surgeon's direction, then progressed to independent pool program;
- viii. Progression to a home exercise program is essential;
- ix. Gradual resistive exercise from 3 to 4 months, with gradual return to full activity at 6 months;
- x. Time frames for all post-operative therapy (excluding aquatic therapy).
 - ❖ Optimum: 24 sessions.
 - ❖ Maximum: 36 sessions. If functional gains are being achieved, additional visits may be authorized for the patient to achieve their functional goal.
- xi. If progress plateaus, the provider should re-evaluate the patient's condition and make appropriate adjustments to the treatment plan. Refer to Section F for other therapies that may be employed in individual cases.
- xii. Nutritional supplements are generally not covered under Workers' Compensation. One study showed no evidence of functional gains after surgery using a specific proprietary supplement.
- xiii. Return to work and restrictions after surgery may be made by an experienced primary occupational medicine physician in consultation with the surgeon or by the surgeon. The injured worker should adhere to the written return to work restrictions not only in the workplace, but at home and for 24 hours a day. Work restrictions should be evaluated every 4 to 6 weeks during post-operative recovery and rehabilitation with appropriate written communications to both the patient and employer. Return to full-duty too early in the course of tendon recovery increases the likelihood of recurrent, symptomatic tears. Recovery to full duty in most cases by 6 months.
- xiv. Related Evidence:

There is some evidence that a postoperative rehabilitation protocol of early or delayed initiation of passive range of motion exercises demonstrate very similar clinical outcomes and range of motion at 1-year after arthroscopic repair of a full-thickness supraspinatus tear, indicating no significant advantage to beginning early passive ROM after surgery. Patients in the delayed range of motion group had a slightly higher rotator cuff healing rate per ultrasound imaging (91% vs. 85%). However, there was no statistically significant difference. It is possible that there is a potential benefit to delaying passive ROM in an effort to protect the surgical repair.

There is some evidence that aggressive early passive rehabilitation consisting of passive shoulder stretching and manual therapy without range of motion limits yields faster recovery of range of motion at 3 months after arthroscopic single-row rotator cuff repair than limited early passive rehabilitation, but after 12 months postoperatively, no differences in range of motion were found between the 2 groups. The re-tear rate of the aggressive early passive rehabilitation group was more than twice the rate of the limited early passive rehabilitation group.

11. SHOULDER INSTABILITY/GLENOHUMERAL INSTABILITY:

a. Description/Definition:

Subluxation (partial dislocation), or dislocation of the glenohumeral joint in either an anterior, inferior, posterior or a combination of positions.

History may include:

- A slipping sensation in the arm;
- Severe pain with inability to move the arm;
- Abduction and external rotation producing a feeling that the shoulder might “come out” (apprehension); or
- Feeling of shoulder weakness.

b. Occupational Relationship:

Instability may be caused by any of the following:

- A direct traumatic blow to the shoulder;
- A fall on an outstretched arm;
- Performing repetitive forceful overhead activities similar to pitching a baseball;
- A significant traction injury to the arm.

Posterior dislocations are uncommon. They usually occur with a direct fall on the shoulder or outstretched arm resulting in posteriorly directed forces to the humeral head. Seizures or electrocution may also cause posterior dislocations.

In cases of subluxation, symptoms may be exacerbated or provoked by work and initially alleviated with a period of rest. Symptoms may also be exacerbated by other activities that are not necessarily work related (e.g. driving a car or sports).

c. Specific Physical Exam Findings may include:

- i. Anterior dislocations may exhibit loss of normal shoulder contour; fullness in the axilla and pain over the shoulder with any motion. The patient may hold the extremity in a static position; and the pain is always severe.
- ii. Neurologic examination may reveal findings consistent with axillary nerve injuries, musculocutaneous nerve injuries, generalized brachioplexopathies or other entrapment neuropathies;
- iii. Posterior dislocations - Patients present with inability to externally rotate the shoulder;
- iv. Abduction and external rotation positioning classically produces apprehension in those who have anterior instability. This finding may be present with other diagnoses. If apprehension is reproduced and then relieved with positive posterior pressure after a positive first maneuver, this is considered a positive relocation test. As with all shoulder diagnoses, a combination of physical findings and history should guide the provider in determining the final diagnoses. Direct posterior stress may produce pain and apprehension in those with posterior instability;
- v. The contralateral joint should always be examined. Patients who have laxity in multiple positions and multiple joints, who have similar contralateral joint laxity or who have increased external rotation (90 degrees or more) with the arm at the side are not likely to be surgical candidates and can be treated conservatively.
- vi. Other clinical findings (described in the Initial Diagnostic Procedures Section C):
 - Sulcus sign.
 - Inferior instability.
 - Posterior instability.
 - Apprehension, also known as, crank, fulcrum or Fegin.
 - Relocation.
 - Load and shift or anterior and posterior drawer.

d. Diagnostic Testing Procedures:

- i. Plain x-rays to rule out bony deficit of the glenoid, including AP, axillary view, lateral in the plane of the scapula and possibly the West Point view. Axillary view to identify larger Hill-Sachs lesion of humeral head.

- ii. More difficult diagnostic cases with subtle history and physical findings suggesting instability, rotator cuff or labral tear, may require an MRI, MRA or a CT arthrogram. There is good evidence that MRA is marginally more sensitive and specific for the detection of many glenohumeral labral lesions, including SLAP lesions. This is especially true with a 1.5 Tesla scanner. Imaging may be useful to evaluate for labral detachment and capsular stress injury or laxity after 4 to 8 weeks of active patient involvement in therapy.
- iii. For suspected rotator cuff tear cases, refer to Section E.9. Rotator Cuff Tear.

e. Non-operative Treatment Procedures:

In subacute and/or chronic instabilities, age of onset of instability is an important part of the history. Older patients are less likely to have recurrent dislocations unless they have associated large rotator cuff tears. Therefore, the rotator cuff tear protocol should be followed if there is a suspicion of this pathology. Associated axillary nerve injuries are more common in older patients. Patients less than 30 years of age, especially males actively participating in sports, tend to have a higher recurrence rate. Surgery should be considered for these patients after the first dislocation.

Avoid any aggressive treatment in patients with history of voluntary subluxation or dislocation. These patients may need a psychiatric evaluation. Patient may not return to work with overhead activity or lifting with involved arm until cleared by physician for heavier activities.

i. First-time dislocation:

- A) Immobilization. There is no evidence that immobilization beyond splinting for comfort initially affords any additional treatment advantage; thus, it is not routinely required. An MRI study showed that with the arm in internal rotation, the joint cavity anterior to the glenoid is wide open, and this cavity closes when the arm is externally rotated, placing the labrum next to the glenoid rim. Overall, there is some evidence that bracing of dislocations in external rotation with closed reductions reduce the risk of recurrent dislocation, compared to bracing in internal rotation. Decisions concerning external rotation splinting versus other options will depend on surgeon and patient preferences.
- B) Consider surgical intervention for young patients active in sports, or older patients with significant rotator cuff tears. There is some evidence that open Bankart repair of first time anterior shoulder dislocation reduces the risk of redislocation for up to ten years, and that the risk of recurrence is greatest in younger patients age 15 to 24. There is good evidence that in active young persons engaged in physical activities, a first anterior shoulder dislocation treated surgically is less likely to redislocate than a

dislocation treated with sling immobilization only. If additional pathology is present consult appropriate diagnostic categories.

- C) Medications such as analgesics and anti-inflammatories may be helpful. (Refer to medication discussions in Section F.7.).
- D) Other therapeutic procedures may include instruction in therapeutic exercise and proper work techniques, evaluation of occupational work station and passive modalities for pain control. (Refer to Section F. Therapeutic Procedures-Non operative, for specific time parameters). There is a lack of evidence to inform other specific treatment decisions.
- E) Additional treatment may include, depending on level of improvement, osteopathic manipulative medicine, manual therapy techniques, work conditioning and other treatment found in Section F.
- F) Patient may not return to work with overhead activity or lifting with involved arm until cleared by physician for heavier activities. Return to work with appropriate restrictions should be considered early in the course of treatment. Refer to Section F.13. Return to Work.

The injured worker should adhere to the written return to work restrictions not only in the workplace, but at home and for 24 hours a day.

ii. Acute or chronic dislocations: with a fracture contributing to instability;

Practitioners should reduce and immobilize dislocations if in an acceptable position. Consultation should be obtained as soon as possible, surgical repair may be necessary.

Return-to-work will be directly related to the time it takes the fracture to heal.

iii. Subacute and/or chronic instability:

Chronic dislocations should first be treated similarly to acute dislocation. If continuing treatment is unsuccessful, and there are findings of instability, operative repair should be considered.

iv. Posterior dislocation: Posterior shoulder dislocations are quite rare, and are less than 5% of shoulder dislocations.

Usual treatment after reduction includes bracing for at least 6 weeks in neutral or external rotation. Non-operative treatment is suggested for older patients with low physical demands, those with no posterior

instability or with less than 10% defect of the humeral head. Reverse Hill-Sachs lesions, posterior Bankart lesions, and fractures of the surgical neck of the humerus are all relatively common. In patients with humeral head defects involving 10-40% of the articular surface, biologic reconstruction with allograft or autograft are appropriate treatment options. If the defect covers 45% or more of the articular surface, total shoulder arthroplasty may be necessary. Instability in the first year for posterior dislocations is usually around 18%. Patients older than 50 may have rotator cuff lesions amenable to physical therapy. Patients should be assessed for hyper-mobility or ability to sublux at will. They may require muscle retraining to correct. Patients with posterior dislocations are likely to have limited internal rotation after treatment.

v. Brachial plexus injury, dislocation, and rotator cuff tear – the “terrible triad”:

Patients over 40 are more likely to suffer this entity and should be evaluated by an orthopedic surgeon if there is continual difficulty with abduction.

f. Surgical Indications:

Identify causative agent for the instability (i.e. labral detachment, bony lesion, large rotator cuff tear, subscapularis tendon rupture, or multi-directional instability). There is good evidence that in active young persons engaged in physical activities, a first anterior shoulder dislocation treated surgically is less likely to redislocate than a dislocation treated with sling immobilization only. There is strong evidence that in the setting of first-time traumatic shoulder dislocation in patients aged between 16 and 40, surgical Bankart repair more effectively prevents later recurrence of instability than more conservative treatment, and some evidence that the effects of Bankart repair are likely to last for five years or longer.

A study describing long-term arthropathy after initial anterior dislocation found more moderate / severe cases in patients who were aged 26-33 at first dislocation and less moderate / severe arthropathy in those with no recurrence or who were initially surgically addressed.

Consider surgical intervention for young patients active in sports, or older patients with significant rotator cuff tears. There is some evidence that open Bankart repair of first time anterior shoulder dislocation reduces the risk of redislocation for up to ten years, and that the risk of recurrence is greatest in younger patients age 15 to 24. One systematic review reported a risk of instability at 10 years of between 34% and 35%. Risk factors were age below 22 years old, male gender, the number of preoperative dislocations and participation in competitive sports. If additional pathology is present, consult appropriate diagnostic categories.

Those with Hill-Sachs lesions, bony Bankart injuries, or significant glenoid bone loss have a worse prognosis for recurrences. In one study of cost effectiveness,

primary arthroscopic stabilization for first time dislocations in 15 year old and 25 year old men was cost effective. It was effective but costly for 25 year old women and 35 year old men.

Fractures not amenable to immobilization and/or with 1 cm displacement may also need operative management after the first dislocation. Even with open repairs, some decrease in function should be expected. Loss of external rotation is common. In some cases the loss of motion may have an adverse effect on post-operative function. The decision for surgery should carefully consider the desire to prevent recurrent dislocations and the need for full ROM.

Older patients with documented large rotator cuff tears should also be considered for operative repair after first time dislocations. Repair of the rotator cuff tear alone or in combination with stabilization should be considered. Refer to Section E.10. Rotator Cuff Tear.

In general, older patients without the above lesions will suffer few recurrences, and therefore, are treated conservatively. Operative repair may be considered after recurrent dislocations when functional deficits interfere with activities of daily living and/or job duties and active patient participation in non-operative therapy has occurred. For anterior dislocations there may be limitation in external rotation. Patients with multi-directional laxity and/or laxity in the contralateral shoulder are usually not good candidates for operative repair.

Prior to surgical intervention, the patient and treating physician should identify functional operative goals and the likelihood of achieving improved ability to perform activities of daily living or work activities. The patient should also agree to comply with the pre- and post-operative treatment plan and home exercise requirements. The patient should understand the length of partial and full disability expected post-operatively.

Informed decision making should be documented for all invasive procedures. This must include a thorough discussion of the pros and cons of the procedure and the possible complications as well as the natural history of the identified diagnosis. Since most patients with the most common conditions will improve significantly over time, without invasive interventions, patients must be able to make well-informed decisions regarding their treatment.

Smoking may affect soft tissue healing through tissue hypoxia. Patients should be strongly encouraged to stop smoking and be provided with appropriate counseling by the physician. If a treating physician recommends a specific smoking cessation program peri-operatively, this should be covered by the insurer. Physicians may monitor smoking cessation with laboratory tests such as cotinine levels. The surgeon will make the final determination as to whether smoking cessation is required prior to surgery.

Specific Indications:

- Dislocation with a fracture not amenable to immobilization such as those with 1 cm displacement;

- First time dislocations in younger patients up to age 40, and those less than 60 who perform lifting and overhead work;
- Repeat dislocations when not accompanied by multiple joint laxity.

g. Operative Procedures:

- i. Bankart lesion repair; or
- ii. Capsular tightening. There is no evidence of benefit from thermal capsulorrhaphy and it is **not recommended**;
- iii. Bony block transfer; e.g. Laterjet procedure.
- iv. Additional surgery, such as SLAP repair or rotator cuff repair as indicated in the specific diagnostic sections.

Continuous interscalene blocks (ISB) are **not recommended**. For more information, please refer to Section G.7. Interscalene Anesthesia.

h. Post-operative Treatment:

- i. Depending upon the type of surgery, the patient will be immobilized for 3 to 6 weeks.
- ii. As soon as it is safe to proceed without damaging the repair, therapeutic exercise should begin. An individualized rehabilitation program will be based upon communication between the surgeon and the therapist. Aquatic therapy may be beneficial. The optimum number of treatments is 16-25. Refer to Section F. Therapeutic Procedures - Non-operative for other therapies.)
- iii. During this period of time, the patient could resume working when the surgeon has cleared the patient for specific activities and appropriate modifications can be made in the workplace. Return to work and restrictions after surgery may be made by an experienced primary occupational medicine physician in consultation with the surgeon or by the surgeon. The injured worker should adhere to the written return to work restrictions not only in the workplace, but at home and for 24 hours a day. Full ROM, lifting and pushing are prohibited, usually for at least 3 months. Overhead work may be restricted up to 6 months.
- iv. MMI can be expected 3 months after non-operative treatment and 6 to 12 months after operative treatment. Further job assessment and adjusted work restrictions may be needed prior to the patients return to full-duty.

12. SUPERIOR LABRUM ANTERIOR AND POSTERIOR (SLAP) LESIONS:

a. Description/Definition:

Lesions of the superior aspect of the glenoid labrum that extend anteriorly and posteriorly in relation to the biceps tendon insertion. There are several different types of SLAP lesions described.

- i. Type I is a fraying of the superior labral edge without detachment of the labrum from the glenoid rim.
- ii. Type II is a detachment of the biceps anchor from the glenoid. Three distinct Type II lesions have been described as anterior only, posterior only, or combined anterior and posterior. Type II lesions do not commonly require surgical repair.
- iii. Type III is a bucket handle tear in the superior labrum only with biceps tendon and remainder of the superior labrum having stable attachment.
- iv. Type IV is a bucket handle tear as in Type III, but with extension of the tear into the biceps tendon. Additional types of lesions have been described that include extensions of the above-described lesions or extensions of Bankart lesions.

History may include:

- Symptoms with overhead throwing motions;
- Dislocation, subluxation, or subjective sense of instability;
- Poorly localized shoulder pain that is exacerbated by overhead activities;
- Catching, locking, popping or snapping;
- Subtle instability.

b. Occupational Relationship:

Onset of symptoms, date, mechanism of onset, and occupational history and current job requirements should be correlated with the intensity, character, duration and frequency of associated pain and discomfort. Common mechanisms of injury that are thought to contribute to SLAP lesions include: 1) compression injury such as fall on an outstretched arm with the shoulder in forward flexion and abduction or direct blow to the glenohumeral joint; 2) traction injury such as repetitive overhead throwing, attempting to break a fall from a height, and sudden pull when losing hold of a heavy object; 3) driver of an automobile who is rear ended; 4) repetitive overhead motions with force such as pitching; or 5) a fall on adducted arm with upward force directed on elbow. In some cases no mechanism of injury can be identified. For details refer to Section C.2 Relationships to Work and Other Activities.

- c. Specific Physical Exam Findings:** The physical examination is often nonspecific secondary to other associated intra-articular abnormalities. No one test or combination of tests has been shown to have an acceptable sensitivity and specificity or positive predictive values for diagnosing SLAP lesions. Sensitivity and specificity are relatively low for individual tests and combinations.

Overall physical examination tests for SLAP lesions may be used to strengthen a diagnosis of SLAP lesion, but the decision to proceed to operative management should not be based on physical examination alone. A combination of test results usually assists in diagnosis. The most common test are listed below, however other physical exam maneuvers may be used. Refer to Section C. Initial Diagnostic Procedures for specific descriptions of these signs and tests.

- Speed Test.
- Yergason's Test.
- Active Compression (O'Brien) Test.
- Jobe Relocation Test.
- Crank Test.
- Anterior Apprehension Maneuver.
- Tenderness at the bicipital groove.
- Anterior Slide (Kibler) Test.
- Compression Rotation Test.
- Pain Provocation Test.
- Biceps Load Test II.

d. Diagnostic Testing Procedures:

- i. Radiographs are usually normal in isolated SLAP lesions. However, they can be useful in identifying other sources of abnormalities.
- ii. Magnetic resonance imaging with arthrogram has the highest reported accuracy for both diagnosis and classification of SLAP lesions; however, it may be difficult to differentiate SLAP lesions, especially Type II lesions, from normal anatomic variants and from asymptomatic age related changes. One retrospective study found that a negative MRI had a only a 5% chance of being a SLAP lesion.
- iii. Arthroscopic evaluation is the most definitive diagnostic test.

e. Non-operative Treatment Procedures:

Most SLAP lesions are associated with other pathology such as rotator cuff tears, Bankart lesions, joint instability, biceps tendon tears, and supraspinatus tears. The provider should refer to the treatment protocols for these conditions and follow both the surgical and non-surgical recommendations. For suspected isolated SLAP lesions, non-invasive care, consider the following.

- i. Medications such as analgesics and anti-inflammatories may be helpful. (Refer to medication discussions are in Section F.7. Medications.)
- ii. Therapeutic procedures may include instruction in therapeutic exercise and proper work techniques, evaluation of occupational work station.
- iii. Benefits may be achieved through therapeutic rehabilitation and rehabilitation interventions. They should include range-of-motion (ROM), active therapies, and a home exercise program. Passive as well as active therapies may be used for control of pain and swelling. Therapy should progress to strengthening and an independent home exercise program targeted to further improve ROM and neuromuscular re-education of the shoulder girdle musculature. Three months of conservative management is recommended for cases not qualifying for surgery due to other indications. Therapy should be directed at scapular dyskinesis and rotator cuff imbalance with closed and open chain exercises. Stretching of posterior capsule with the sleeper stretch may be helpful (shoulder flexion to 90 degrees, adduction, and internal rotation). This may be followed by core and trunk strengthening. Maladaptive compensatory strain patterns should always be addressed. (Refer to Section F. Therapeutic Procedures - Non-operative.)
- iv. Subacromial bursal and/or glenohumeral steroid injections can decrease inflammation and allow the therapist to progress with functional exercise and ROM. For more information on steroid injections, please refer to Section F.4.d. Shoulder Joint Steroid Injections.
- v. Return to work with appropriate restrictions should be considered early in the course of treatment. Refer to Section F.13. Return to Work.
- vi. Other therapies in Section F. Therapeutic Procedures - Non-operative may be employed in individual cases.

f. Surgical Indications:

There is a significant amount of normal anatomic variation of the superior glenoid labrum and origin of the long head of the biceps tendon. Differentiation between normal variation and pathology is imperative. Given the total available evidence at this time, SLAP repair is most likely to improve outcomes for those under 35, laborers who need supination strength, or those with current instability. Therefore, when the below indications are met, an arthroscopy can be performed

with appropriate surgical repair.

Arthroscopic SLAP repair is usually **not recommended** in cases of severe arthritis. The rotator cuff should generally be intact or repairable. In one study overall total shoulder arthroplasty success was good with an 85% 15-20 year survival rate. Another study reported secondary rotator cuff dysfunction at initially low levels but increasing to 55% at 15 years.

i. The physician should identify other shoulder pathology if any exists and follow the appropriate surgical indications. If a SLAP lesion is suspected, an arthroscopic exam should be performed in conjunction with the primary surgical procedure and an appropriate repair performed if necessary. See Section E, Specific Diagnosis Testing, & Treatment related sections.

or

ii. When no additional pathology is identified and there is an inadequate response to at least three months of an appropriate shoulder rehabilitation program with active patient participation as evidenced by continued pain with functional limitations and/or instability significantly affecting activities of daily living or work duties;

iii. Prior to surgical intervention, the patient and treating physician should identify functional operative goals and the likelihood of achieving improved ability to perform activities of daily living or work activities and the patient should agree to comply with the pre- and post-operative treatment plan and home exercise requirements. The patient should understand the length of partial and full disability expected post-operatively. The patient should also understand that 1) an appropriate shoulder rehabilitation program is an acceptable option and that 2) a potential complication of the surgery is shoulder stiffness with pain and possibly decreased function.

Informed decision making should be documented for all invasive procedures. This must include a thorough discussion of the pros and cons of the procedure and the possible complications as well as the natural history of the identified diagnosis. Since most patients with the most common conditions will improve significantly over time, without invasive interventions, patients must be able to make well-informed decisions regarding their treatment.

Smoking may affect soft tissue healing through tissue hypoxia. Patients should be strongly encouraged to stop smoking and be provided with appropriate counseling by the physician. If a treating physician recommends a specific smoking cessation program peri-operatively, this should be covered by the insurer. Physicians may monitor smoking cessation with laboratory tests such as cotinine levels. The surgeon will make the final determination as to whether smoking cessation is required prior to surgery.

g. Operative Procedures:

Operative treatment of SLAP lesions depends on the type of lesion present and whether any other intra-articular abnormalities are present. A five-year follow-up of patients over 40 years old with an isolated Type II SLAP repair, found high patient satisfaction and improvement in the Rowe score for function and disability. One case series reported better return to sports for younger patients with an isolated Type II SLAP, who had a biceps tenodesis versus a more classic repair. Overall results from both an anchor SLAP repair and biceps tenodesis are good with long-term follow up of demonstrating around 80% good results and about 70% or greater return to athletic overhead activities. However, patients 40 and older were less likely to do well with a SLAP repair and more likely to have a biceps tenodesis. Advantages of a biceps tenodesis are shorter recovery time with return to work in 6 – 8 weeks and possible better outcome for those who participate in overhead throwing activities. Biceps tenodesis may be considered for those over 40 years of age, for revision surgery and those with glenohumeral arthritis. Tenotomy appears to have equally reliable results with a shorter recovery time of 2 weeks and should be an additional option, especially for those with a rotator cuff tear. The following are generally accepted protocols for surgical intervention; however, due to current lack of evidence, operative treatment is not limited to these.

- i. Type I: Debridement is reasonable but not required;
- ii. Type II: Repair via suture anchors or biceps tenotomy or tenodesis are reasonable options;
- iii. Type III: Debridement or excision of the bucket handle component alone or repair via suture anchors or biceps tenotomy/tenodesis are reasonable options;
- iv. Type IV: Debridement and/or biceps tenotomy or tenodesis are reasonable options.

Continuous interscalene blocks (ISB) are ***not recommended***. For more information, please refer to Section G.7. Interscalene Anesthesia.

h. Complications:

SLAP repair usually results in some permanent range of motion deficits and may limit ability to participate in overhead competitive sports. Other complications may include anchor failure and suprascapular nerve damage. In one series, over 30% had revision surgery. Biceps tenodesis is less likely to have complications, frequently less than 3%.

i. Post-operative Treatment:

Post-operative rehabilitation programs should be individualized and dependent upon whether any other intra-articular abnormalities exist and were operatively

treated. There is a paucity of information on rehabilitation of isolated SLAP lesions. Common post-operative care involves wearing a sling, without active shoulder motion for 3 to 6 weeks. Elbow, wrist, and hand range-of-motion (ROM) exercises may be used at this time. The sling is removed at 3 to 4 weeks and active ROM is usually begun with restrictions directed by the surgeon. Active biceps exercise may be restricted for 12 weeks. Biceps tenodesis patients require fewer restrictions and may frequently return to full duty at 6 – 8 weeks.

Return to work and restrictions after surgery may be made by an experienced primary occupational medicine physician in consultation with the surgeon or by the surgeon. The injured worker should adhere to the written return to work restrictions not only in the workplace, but at home and for 24 hours a day. Most patients will be able to return to full duty by seven months.

THERAPEUTIC PROCEDURES — NON-OPERATIVE

Before initiation of any therapeutic procedure, the authorized treating provider, employer, and insurer must consider these four important issues in the care of the injured worker.

First, patients undergoing therapeutic procedure(s) should be released or returned to modified or restricted duty during their rehabilitation at the earliest appropriate time. Refer to F.12. Return to Work for detailed information.

Second, cessation and/or review of treatment modalities should be undertaken when no further significant subjective or objective improvement in the patient's condition is noted. If patients are not responding within the recommended duration periods, alternative treatment interventions, further diagnostic studies, or consultations should be pursued.

Third, providers should provide and document patient education. Functional progression is expected through prescribed activity such as neuromuscular and postural re-education/re-patterning exercises. Before diagnostic tests or referrals for invasive treatment take place, the patient should be able to clearly articulate the goals of the intervention, the general side effects and associated risks, and the patient's agreement with the expected treatment plan.

Last, formal psychological or psychosocial evaluation should be performed on patients not making expected progress within 6 to 12 weeks following injury and whose subjective symptoms do not correlate with objective signs and tests.

Home therapy is an important component of therapy and may include active and passive therapeutic procedures as well as other modalities to assist in alleviating pain, swelling, and abnormal muscle tone.

The following procedures are listed in alphabetical order.

1. ACUPUNCTURE When acupuncture has been studied in randomized clinical trials, it is often compared with sham acupuncture and/or no acupuncture (usual care). The differences between true acupuncture and usual care have been moderate, but clinically important. These differences can be partitioned into two components: non-specific effects and specific effects. Non-specific effects include patient beliefs and expectations, attention from the acupuncturist, administration of acupuncture in a relaxing setting, and other components of what is often called the placebo effect. Specific effects refer to any additional effects which occur in the same setting of expectations and attention, but they are attributable to the penetration of the skin in the specific, classic acupuncture points on the surface of the body by the needles themselves.

A sham procedure is a non-therapeutic procedure that appears similar to the patient as the purported therapeutic procedure being tested. In most controlled studies, sham and classic acupuncture have produced similar effects. However, the sham controlled studies have shown consistent advantages of both true and sham acupuncture over no acupuncture when the studies have included a third comparison group that was randomized to usual medical care. Having this third comparison group has been

advantageous in the interpretation of the non-specific effects of acupuncture, since the third comparison group controls for some influences on study outcome. These influences include more frequent contact with providers, the natural history of the condition, regression to the mean, the effect of being observed in a clinical trial, and, if the follow-up observations are done consistently in all three treatment groups, for biased reporting of outcomes. Controlling for these factors enables researchers to more closely estimate the contextual and personal interactive effects of acupuncture as it is generally practiced.

Because the sham acupuncture interventions in the clinical trials are generally done by trained acupuncturists, and not by totally untrained personnel, the sham acupuncture interventions may include some of the effects of true acupuncture, much as a partial agonist of a drug may produce some of the effects of the actual drug. For example, a sham procedure involving toothpicks rather than acupuncture needles may stimulate cutaneous afferents in spite of not penetrating the skin, much as a neurological sensory examination may test nociceptor function without skin penetration. To the extent that afferent stimulation is part of the mechanism of action of acupuncture, interpreting the sham results as purely a control group would lead to an underestimation of the analgesic effects of acupuncture. Thus we consider in our analysis that “sham” or non-classic acupuncture may have a positive clinical effect when compared to usual care.

Clinical trials of acupuncture typically enroll participants who are interested in acupuncture, and who may respond to some of the non-specific aspects of the intervention more than would be expected of patients who have no interest in or desire for acupuncture. The non-specific effects of acupuncture may not be produced in patients who have no wish to be referred for it.

Another study provides good evidence that true acupuncture at traditional medians is marginally better than sham acupuncture with blunt needles in reducing pain, but effects on disability are unclear. In these studies 5–15 treatments were provided. Comparisons of acupuncture and sham acupuncture have been inconsistent, and the advantage of true over sham acupuncture has been small in relation to the advantage of sham over no acupuncture.

Acupuncture is recommended for subacute or chronic pain patients who are trying to increase function and/or decrease medication usage and have an expressed interest in this modality. It is also recommended for subacute or acute pain for patients who cannot tolerate nonsteroidal anti-inflammatory drugs (NSAIDs) or other medications.

Acupuncture is not the same procedure as dry needling for coding purposes; however, some acupuncturists may use acupuncture treatment for myofascial trigger points. Dry needling is performed specifically on myofascial trigger points. Refer to F.4.h. Trigger Point Injections and Dry Needling Treatment.

Acupuncture should generally be used in conjunction with manipulative and physical therapy/rehabilitation.

Credentialed practitioners with experience in evaluation and treatment of chronic pain patients must perform acupuncture evaluations prior to acupuncture treatments. The exact mode of action is only partially understood. Western medicine studies suggest that acupuncture stimulates the nervous system at the level of the brain, promotes deep

relaxation, and affects the release of neurotransmitters. Acupuncture is commonly used as an alternative or in addition to traditional Western pharmaceuticals. It may be used when pain medication is reduced or not tolerated; as an adjunct to physical rehabilitation and surgical intervention; and/or as part of multidisciplinary treatment to hasten the return of functional activity. Acupuncture must be performed by practitioners with the appropriate credentials in accordance with state and other applicable regulations. Therefore, if not otherwise within their professional scope of practice and licensure, those performing acupuncture must have the appropriate credentials, such as L.A.c. R.A.c, or Dipl. Ac.

There is some evidence that both subacromial corticosteroid injection and a series of 10 acupuncture treatments combined with home exercises significantly decreased pain and improved shoulder function in patients with subacromial impingement syndrome, but neither treatment was significantly superior to the other.

- a. Acupuncture:** is the insertion and removal of filiform needles to stimulate acupoints (acupuncture points). Needles may be inserted, manipulated, and retained for a period of time. Acupuncture can be used to reduce pain, reduce inflammation, increase blood flow, increase range of motion, decrease the side effect of medication-induced nausea, promote relaxation in an anxious patient, and reduce muscle spasm.

Indications include joint pain, joint stiffness, soft tissue pain and inflammation, paresthesia, post-surgical pain relief, muscle spasm, and scar tissue pain.

- b. Acupuncture with Electrical Stimulation:** is the use of electrical current (micro-amperage or milli-amperage) on the needles at the acupuncture site. It is used to increase effectiveness of the needles by continuous stimulation of the acupoint. Physiological effects (depending on location and settings) can include endorphin release for pain relief, reduction of inflammation, increased blood circulation, analgesia through interruption of pain stimulus, and muscle relaxation.

It is indicated to treat chronic pain conditions, radiating pain along a nerve pathway, muscle spasm, inflammation, scar tissue pain, and pain located in multiple sites.

- c. Total Time Frames for Acupuncture and Acupuncture with Electrical Stimulation:** Time frames are not meant to be applied to each of the above sections separately. The time frames are to be applied to all acupuncture treatments regardless of the type or combination of therapies being provided.

- ❖ Time to Produce Effect: 3 to 6 treatments.
- ❖ Frequency: 1 to 3 times per week.
- ❖ Optimum Duration: 1 to 2 months.
- ❖ Maximum Duration: 15 treatments.

Any of the above acupuncture treatments may extend longer if objective functional gains can be documented and when symptomatic benefits facilitate progression in the patient's treatment program. Treatment beyond 14 treatments must be documented with respect to need and ability to facilitate positive symptomatic and functional gains. Such care should be re-evaluated and documented with each series of treatments.

d. Other Acupuncture Modalities: Acupuncture treatment is based on individual patient needs and therefore treatment may include a combination of procedures to enhance treatment effect. Other procedures may include the use of heat, soft tissue manipulation/massage, and exercise. Refer to Active Therapy (Therapeutic Exercise) and Passive Therapy sections (Massage and Superficial Heat and Cold Therapy) for a description of these adjunctive acupuncture modalities and time frames.

2. BIOFEEDBACK: Biofeedback is a form of behavioral medicine that helps patients learn self-awareness and self-regulation skills for the purpose of gaining greater control of their physiology, such as muscle activity, brain waves, and measures of autonomic nervous system activity. Stress-related psycho-physiological reactions may arise as a reaction to organic pain and in some cases may cause pain. Electronic instrumentation is used to monitor the targeted physiology and then displayed or fed back to the patient visually, auditorily, or tactilely, with coaching by a biofeedback specialist. There is good evidence that biofeedback or relaxation therapy is equal in effect to cognitive behavioral therapy for chronic low back pain.

Indications for biofeedback include cases of musculoskeletal injury, in which muscle dysfunction or other physiological indicators of excessive or prolonged stress response affects and/or delays recovery. Other applications include training to improve self-management of pain, anxiety, panic, anger or emotional distress, opioid withdrawal, insomnia/sleep disturbance, and other central and autonomic nervous system imbalances. Biofeedback is often utilized for relaxation training. Mental health professionals may also utilize it as a component of psychotherapy, where biofeedback and other behavioral techniques are integrated with psychotherapeutic interventions. Biofeedback is often used in conjunction with physical therapy or medical treatment.

Recognized types of biofeedback include the following:

a. Electromyogram (EMG): Used for self-management of pain and stress reactions involving muscle tension.

b. Skin Temperature: Used for self-management of pain and stress reactions, especially vascular headaches.

c. Respiration Feedback (RFB): Used for self-management of pain and stress reactions via breathing control.

d. Respiratory Sinus Arrhythmia (RSA): Used for self-management of pain and stress reactions via synchronous control of heart rate and respiration. Respiratory sinus arrhythmia is a benign phenomenon that consists of a small

rise in heart rate during inhalation, and a corresponding decrease during exhalation. This phenomenon has been observed in meditators and athletes, and is thought to be a psycho-physiological indicator of health.

- e. **Heart Rate Variability (HRV):** Used for self-management of stress via managing cardiac reactivity.
- f. **Electrodermal Response (EDR):** Used for self-management of stress involving palmar sweating or galvanic skin response.
- g. **Electroencephalograph (EEG, QEEG):** Used for self-management of various psychological states by controlling brainwaves.

The goal in biofeedback treatment is normalizing the physiology to the pre-injury status to the extent possible and involves transfer of learned skills to the workplace and daily life. Candidates for biofeedback therapy or training should be motivated to learn and practice biofeedback and self-regulation techniques. In the course of biofeedback treatment, patient stressors are discussed and self-management strategies are devised. If the patient has not been previously evaluated, a psychological evaluation should be performed prior to beginning biofeedback treatment for chronic pain. The psychological evaluation may reveal cognitive difficulties, belief system conflicts, somatic delusions, secondary gain issues, hypochondriasis, and possible biases in patient self-reports, which can affect biofeedback. Home practice of skills is often helpful for mastery and may be facilitated by the use of home training tapes.

Psychologists or psychiatrists who provide psycho-physiological therapy, which integrates biofeedback with psychotherapy, should be either Biofeedback Certification International Alliance (BCIA) certified or practicing within the scope of their training. All non-licensed health care providers of biofeedback for chronic pain patients must be BCIA certified and shall have their biofeedback treatment plan approved by the authorized treating psychologist or psychiatrist. Biofeedback treatment must be done in conjunction with the patient's psychosocial intervention. Biofeedback may also be provided by health care providers who follow a set treatment and educational protocol. Such treatment may utilize standardized material or relaxation tapes.

Coordination between the biofeedback provider and the other health care providers is strongly encouraged.

- ❖ Time to Produce Effect: 3 to 4 sessions.
- ❖ Frequency: 1 to 2 times per week.
- ❖ Optimum Duration: 6 to 8 sessions.
- ❖ Maximum Duration: 10 to 12 sessions. Treatment beyond 12 sessions must be documented with respect to need, expectation, and ability to facilitate positive symptomatic and functional gains.

3. EXTRACORPOREAL SHOCK WAVE THERAPY (ESWT) AND RADIAL SHOCK WAVE

THERAPY: is used to increase function and decrease pain in patients with specified types of calcific tendinitis who have failed conservative therapy. It is not a first line therapy. ESWT uses acoustic impulses with duration in microseconds focused on the target tissue. The mechanism of action is not known, but is not likely to be simply the mechanical disintegration of the calcium deposit. High-energy application of ESWT may be painful, and rare complications such as osteonecrosis of the humeral head have been reported. Dosage is established according to patient tolerance. There is some evidence that low energy radial shock wave therapy may be beneficial in the setting of calcific tendinitis. This technique is less painful than high energy ESWT and can be specifically directed. There is also good evidence that both high energy and low energy ESWT may provide functional benefits in the setting of calcific tendinitis, and may reduce the size of the calcific deposits and reduce pain. In the absence of a documented calcium deposit, there is no evidence that ESWT is effective and its use in this setting is **not recommended**. Neither anesthesia nor conscious sedation is required nor is it recommended for this procedure. There is no evidence that results with fluoroscopic guidance or with computer-assisted navigation are superior to results obtained by palpation. These are **not recommended**.

Indications - patients with calcific tendinitis who have not achieved functional goals after 2 to 3 months of active therapy. The calcium deposits must be Type I, homogenous calcification with well-defined borders or Type II, heterogeneous with sharp border or homogenous with no defined border.

- ❖ Time to Produce Effect: 3 days.
- ❖ Frequency: Every 4 to 7 days.
- ❖ Optimum Duration: 2 sessions. Progress can be documented by functional reports and/or x-ray or sonographic decrease in calcium.
- ❖ Maximum Duration: 4 sessions.

4. INJECTIONS-THERAPEUTIC:

Description – Therapeutic injection procedures are generally accepted, well-established procedures that may play a significant role in the treatment of patients with upper extremity pain or pathology. Therapeutic injections involve the delivery of anesthetic and/or anti-inflammatory medications to the painful structure. Therapeutic injections have many potential benefits. Ideally, a therapeutic injection will: (a) reduce inflammation in a specific target area; (b) relieve secondary muscle spasm; (c) allow a break from pain; and (d) support therapy directed to functional recovery. Diagnostic and therapeutic injections should be used early and selectively to establish a diagnosis and support rehabilitation. If injections are overused or used outside the context of a monitored rehabilitation program, they may be of significantly less value.

Caution should be used when ordering four or more steroid injections total for all anatomic sites in one year. Please refer to Section F.4.d. Shoulder Joint Steroid Injections.

Diagnostic injections are procedures which may be used to identify pain generators or pathology. For additional specific clinical indications, see Specific Diagnosis, Testing and Treatment Procedures.

Contraindications – General contraindications include local or systemic infection, bleeding disorders, allergy to medications used and patient refusal. Specific contraindications may apply to individual injections.

a. Botulinum Toxin Injections: Description – Used to temporarily weaken or paralyze muscles. May reduce muscle pain in conditions associated with spasticity, dystonia, or other types of painful muscle spasm. Neutralizing antibodies develop in at least 4% of patients treated with botulinum toxin type A, rendering it ineffective. Several antigenic types of botulinum toxin have been described. Botulinum toxin type B, first approved by the Food and Drug Administration (FDA) in 2001, is similar pharmacologically to botulinum toxin type A. It appears to be effective in patients who have become resistant to the type A toxin. The immune responses to botulinum toxins type A and B are not cross-reactive, allowing type B toxin to be used when type A action is blocked by antibody. Experimental work with healthy human volunteers suggests that muscle paralysis from type B toxin is not as complete or as long lasting as that resulting from type A. The duration of treatment effect of botulinum toxin type B for cervical dystonia has been estimated to be 12 to 16 weeks. EMG needle guidance may permit more precise delivery of botulinum toxin to the target area.

There is strong evidence that botulinum toxin A has objective and symptomatic benefits over placebo for cervical dystonia.

There is some evidence that in patients with subacromial bursitis or subacromial impingement syndrome, a single ultrasound-guided subacromial injection of botulinum toxin B may be more effective than a steroid injection in pain reduction and shoulder function 3 months after the injection, but the usefulness of repeated botulinum injections is not known.

Indications – For conditions which produce cervical dystonia, bursitis, or impingement. There should be evidence of limited range-of-motion prior to the injection.

There is insufficient evidence to support its use for other myofascial trigger points for longer-term pain relief and it is likely to cause muscle weakness or atrophy if used repeatedly. Examples of such consequences include subacromial impingement, as the stabilizers of the shoulder are weakened by repeated injections of trigger points in the upper trapezii. Therefore it is **not recommended** for use for other myofascial trigger points.

Complications – There is good evidence that cervical botulinum toxin A injections cause transient dysphagia and neck weakness. Allergic reaction to medications, dry mouth and vocal hoarseness may also occur. Rare systemic effects include flu-like syndrome, and weakening of distant muscle. There is an increased risk of

systemic effects in patients with motor neuropathy or disorders of the neuromuscular junction.

- ❖ Time to Produce Effect: 24 to 72 hours post injection with peak effect by 4 to 6 weeks.
- ❖ Frequency: No less than 3 months between re-administration. Patients should be reassessed after each injection session for an 80% improvement in pain (as measured by accepted pain scales) and evidence of functional improvement for 3 months. A positive result would include a return to base line function, return to increased work duties, and measurable improvement in physical activity goals including return to baseline after an exacerbation.
- ❖ Optimum Duration: 3 to 4 months.
- ❖ Maximum Duration: 1 time. Prior authorization is required for additional injections. Repeat injections should be based upon functional improvement and therefore used sparingly in order to avoid development of antibodies that might render future injections ineffective. In most cases, not more than four injections are appropriate due to accompanying muscle atrophy.

b. Plasma Rich Protein (PRP): There is some evidence that in the setting of supraspinatus tendinosis or partial thickness tears less than 1 cm in size, either dry needling or an injection of 3 ml of platelet-rich plasma have clinical benefits lasting up to 6 months, and that the benefits of PRP appear to be greater than those for dry needling. Dry needling has not been proven to be an efficacious therapy for supraspinatus tendinitis.

There is good evidence that in the setting of rotator cuff tendinopathy, a single dose of PRP provides no additional benefit over saline injection when the patients are enrolled in a program of active physical therapy.

There is strong evidence that platelet rich therapy does not show a clinically important treatment effect for shoulder pain or function when given as an adjunct to arthroscopic rotator cuff repair. However, at present, there is also a lack of standardization of platelet preparation methods, which precludes clear conclusions about the effect of platelet-rich therapies for musculoskeletal soft tissue injuries. Therefore, PRP is **not recommended**.

c. Prolotherapy: (also known as Sclerotherapy/Regenerative Injection Therapy) consists of peri- or intra-ligamentous injections of hypertonic dextrose with or without phenol with the goal of inducing an inflammatory response that will recruit cytokine growth factors involved in the proliferation of connective tissue. Advocates of prolotherapy propose that these injections will alleviate complaints related to joint laxity by promoting the growth of connective tissue and stabilizing the involved joint.

Laboratory studies may lend some biological plausibility to claims of connective tissue growth, but high quality published clinical studies are lacking. The dependence of the therapeutic effect on the inflammatory response is poorly defined, raising concerns about the use of conventional anti-inflammatory drugs when proliferant injections are given. The evidence in support of prolotherapy is insufficient and therefore, its use is **not recommended** in upper extremity injuries.

d. Shoulder Joint Steroid Injections: are generally accepted, well-established procedures that can be performed as analgesic or anti-inflammatory procedures. Common shoulder joint injections include anterior and posterior glenohumeral and acromioclavicular. There is some evidence that ultrasound-guided injection of corticosteroid into the shoulder provides a more anatomically accurate injection and is likely to have a small to moderate advantage over landmark-guided injection for pain relief at 6 weeks after the injection.

Complications: General complications of injections may include transient neurapraxia, nerve injury, infection, hematoma, glucoses elevation, and endocrine changes.

The majority of diabetic patients will experience an increase in glucose following steroid injections. Average increases in one study were 125mg/dL and returned to normal in 48 hours, whereas in other studies, the increased glucose levels remained elevated up to 7 days, especially after multiple injections. All diabetic patients should be told to follow their glucose levels carefully over the 7 days after a steroid injection. For patients who have not been diagnosed with diabetes, one can expect some increase in glucose due to insulin depression for a few days after a steroid injection. Clinicians may consider diabetic screening tests for those who appear to be at risk for type 2 diabetes.

Intra-articular or epidural injections cause rapid drops in plasma cortisol levels which usually resolve in one to 4 weeks. There is some evidence that an intra-articular injection of 80 mg of methylprednisolone acetate into the knee has about a 25% probability of suppressing the adrenal gland response to exogenous ACTH for four or more weeks after injection, but complete recovery of the adrenal response is seen by week 8 after injection. This adrenal suppression could require treatment if surgery or other physiologically stressful events occur.

Case reports of Cushing's syndrome, hypopituitarism and growth hormone deficiency have been reported uncommonly and have been tied to systemic absorption of intra-articular and epidural steroid injections. Cushing's syndrome has also been reported from serial occipital nerve injections and paraspinal injections.

Morning cortisol measurements may be ordered prior to repeating steroid injections or prior to the initial steroid injection when the patient has received multiple previous steroid injections.

The effect of steroid injections on bone mineral density (BMD) and any contribution to osteoporotic fractures is less clear. Patients on long term steroids

are clearly more likely to suffer from fractures than those who do not take steroids however, the contribution from steroid injections to this phenomena does not appear to be large. A well-controlled, large retrospective cohort study found that individuals with the same risk factors for osteoporotic fractures were 20% more likely to suffer a lumbar fracture if they had an epidural steroid injection. The risk increased with multiple injections. Other studies have shown inconsistent findings regarding BMD changes.

Given this information regarding increase in blood glucose levels, effects on the endocrine system, and possible osteoporotic influence, it is suggested that intra-articular and epidural injections be limited to a total of 3 to 4 per year [***all joints combined***].

- ❖ Time to Produce Effect: Immediate with local anesthesia, or within 5 days if no anesthesia
- ❖ Optimum Duration: Usually 1 or 2 injections are adequate.
- ❖ Maximum Duration: 3 or 4 injections in one year at least 4 to 8 weeks apart, when functional benefits are demonstrated with each injection.

e. Soft Tissue Injections: include bursa and tendon insertions. Injections under significant pressure should be avoided as the needle may be penetrating the tendon. Injection into the tendon can cause tendon degeneration, tendon breakdown, or rupture. Injections should be minimized for patients under 30 years of age.

The risk of tendon rupture should be discussed with the patient and the need for restricted duty emphasized.

- ❖ Frequency: Usually 1 or 2 injections are adequate.
- ❖ Time to Produce Effect: Immediate with local anesthesia, or within 3 days if no anesthesia.
- ❖ Optimum/Maximum Duration: 3 steroid injections at the same site per year.

f. Subacromial Injections:

There is some evidence that in patients with chronic shoulder pain with or without accompanying stiffness, individually-tailored exercise therapy aimed at restoring dynamic joint stabilizing mechanisms and muscle coordination, or a single unguided subacromial injection of corticosteroid, or a combination of various physical modalities and ROM exercises is equally effective in the short term.

There is some evidence that a subacromial injection of 60 mg of ketorolac is at least as effective as injection of 40 mg of triamcinolone in the short-term treatment of subacromial impingement syndrome.

There is some evidence that 6 sessions of manual physical over a three week period are as effective as an injection of 40 mg triamcinolone for relief of symptoms of shoulder impingement symptoms and impairment up to one year after initial treatment. The same study also showed reduced use of health care services one year in the manual therapy group.

There is strong evidence that subacromial steroid injections for rotator cuff tendinopathy have a rapid benefit. However, there is no evidence that differ from alternative therapies for intermediate or long-term relief.

There is some evidence that both subacromial corticosteroid injection and a series of 10 acupuncture treatments combined with home exercises significantly decreased pain and improved shoulder function in patients with subacromial impingement syndrome, but neither treatment was significantly superior to the other.

A study of a small group of healthy volunteers showed that a non-radiographically guided injection did not affect shoulder strength in the normal shoulder and was accurately placed in the subacromial bursa 90% of the time.

There is some evidence that ultrasound-guided injections of corticosteroid into the shoulder provides a more anatomically accurate injection and is likely to have a small to moderate advantage over landmark-guided injection for pain relief at 6 weeks after the injection.

There is some evidence that when subacromial injections are done without imaging guidance, there are no differences between anteromedial versus posteromedial approaches to subacromial injection with respect to accuracy or effectiveness, however the rotator cuff is frequently inadvertently injected with either approach.

If there is a concern regarding needle placement, sonography or fluoroscopy may be used. The subacromial injection may also be repeated by a specialist skilled in this procedure to confirm the diagnosis.

Please refer to Section F.4.d. Shoulder Joint Steroid Injections, for steroid complications and number of treatments.

- g. Suprascapular Nerve Block:** There is no clear long-term functional benefit for suprascapular nerve blocks, however, blocks may be appropriate for patients when pain is not well-controlled and injections improve function. These blocks may delay onset of significant pain post-surgery. There is no clear evidence of long-term functional gains in nonspecific shoulder pain, acromioclavicular joint disease, or rotator cuff disease.

- ❖ Time to Produce Effect: One block should demonstrate increased ability to perform exercises and/or range-of-motion.

- ❖ Maximum Duration: 3 per year.

h. Trigger Point Injections and Dry Needling Treatment:

- i. Description – Trigger point injections are a generally accepted treatment. Trigger point treatment can consist of dry needling or injection of local anesthetic, with or without corticosteroid, into highly localized, extremely sensitive bands of skeletal muscle fibers that produce local and referred pain when activated. Medication is injected in a four-quadrant manner in the area of maximum tenderness. Injection efficacy can be enhanced if injections are immediately followed by myofascial therapeutic interventions, such as vapo-coolant spray and stretch, ischemic pressure massage (myotherapy), specific soft tissue mobilization and physical modalities. There is conflicting evidence regarding the benefit of trigger point injections. A truly blinded study comparing dry needle treatment of trigger points is not feasible. There is no evidence that injection of medications improves the results of trigger-point injections. Needling alone may account for some of the therapeutic response. Needling must be performed by practitioners with the appropriate credentials in accordance with state and other applicable regulations.

There is no indication for conscious sedation for patients receiving trigger point injections. The patient must be alert to help identify the site of the injection.

- ii. Indications – Trigger point injections may be used to relieve myofascial pain and facilitate active therapy and stretching of the affected areas. They are to be used as an adjunctive treatment in combination with other treatment modalities such as active therapy programs. Trigger point injections should be utilized primarily for the purpose of facilitating functional progress. Patients should continue in an aggressive aerobic and stretching therapeutic exercise program as tolerated throughout the time period they are undergoing intensive myofascial interventions. Myofascial pain is often associated with other underlying structural problems and any abnormalities need to be ruled out prior to injection.

Trigger point injections are indicated in those patients where well circumscribed trigger points have been consistently observed, demonstrating a local twitch response, characteristic radiation of pain pattern and local autonomic reaction, such as persistent hyperemia following palpation. Generally, these injections are not necessary unless consistently observed trigger points are not responding to specific, noninvasive, myofascial interventions within approximately a 6-week time frame. However, trigger point injections may be occasionally effective when utilized in the patient with immediate, acute onset of pain.

- iii. Complications – Potential but rare complications of trigger point injections include infection, pneumothorax, anaphylaxis, penetration of viscera, neurapraxia, and neuropathy. If corticosteroids are injected in

addition to local anesthetic, there is a risk of local myopathy. Severe pain on injection suggests the possibility of an intraneural injection, and the needle should be immediately repositioned.

- ❖ Time to produce effect: Local anesthetic 30 minutes; 24 to 48 hours for no anesthesia.
- ❖ Frequency: Weekly. Suggest no more than 4 injection sites per session per week to avoid significant post-injection soreness.
- ❖ Optimum duration: 4 Weeks total for all injection sites.
- ❖ Maximum duration: 8 weeks total for all injection sites. Occasional patients may require 2 to 4 repetitions of trigger point injection series over a 1 to 2 year period.

i. **Viscosupplementation/Intracapsular Acid Salts**: involves the injection of hyaluronic acid and its derivatives into the glenohumeral joint space. Hyaluronic acid is secreted into the joint space by the healthy synovium and has functions of lubrication and cartilage protection. As of the time of this guidelines writing, viscosupplementation has been FDA approved for the treatment of knee osteoarthritis when conservative non-pharmacologic treatment and simple analgesics (e.g. acetaminophen) have failed. Specific indications may vary according to the brand-name product. The FDA has not approved this for use in the shoulder.

There is insufficient evidence of the effectiveness of hyaluronate in rotator cuff tendonopathy, therefore it is **not recommended** for this condition.

There is some evidence that hyaluronic acid (HA) added to physical therapy (PT) does not improve symptomatic and functional outcomes of adhesive capsulitis over the improvements seen with PT alone. Therefore, it is **not recommended**.

There is good evidence that subacromial injection of hyaluronic acid is not more effective than steroid or placebo for pain relief and functional improvement of subacromial impingement syndrome. Therefore, it is **not recommended**.

There is good evidence that three weekly injections of HA alleviate the symptoms of glenohumeral osteoarthritis for up to 26 weeks in the absence of other shoulder pathology.

- ❖ Indications – glenohumeral osteoarthritis in the absence of other symptomatic shoulder pathology.
- ❖ Optimum Duration– 1 series of injections or a single injection, depending on the product used. Time parameters will vary according to the treatment regime as directed on the package insert. The regimes vary, from a single injection to a series of weekly injections over a period of

several weeks. Providers must review brand name package insert prior to prescribing this treatment.

- ❖ Maximum Duration –sessions can be repeated only after a period of 6 months to encourage active therapy or delay joint replacement.

5. INTERDISCIPLINARY REHABILITATION PROGRAMS: This is the gold standard of treatment for individuals who have not responded to less intensive modes of treatment. There is good evidence that interdisciplinary programs which include screening for psychological issues, identification of fear-avoidance beliefs and treatment barriers, and establishment of individual functional and work goals will improve function and decrease disability. These programs should assess the impact of pain and suffering on the patient's medical, physical, psychological, social, and/or vocational functioning. In general, interdisciplinary programs evaluate and treat multiple and sometimes irreversible conditions, including, but not limited to: painful musculoskeletal, neurological, and other chronic pain conditions and psychological issues; drug dependence, abuse, or addiction; high levels of stress and anxiety; failed surgery; and pre-existing or latent psychopathology. The number of professions involved on the team in a chronic pain program may vary due to the complexity of the needs of the person served. The Division recommends consideration of referral to an interdisciplinary program within six months post-injury in patients with delayed recovery, unless successful surgical interventions or other medical and/or psychological treatment complications intervene.

Chronic pain patients need to be treated as outpatients within a continuum of treatment intensity. Outpatient chronic pain programs are available with services provided by a coordinated interdisciplinary team within the same facility (formal) or as coordinated among practices by the authorized treating physician (informal). Formal programs are able to provide a coordinated, high-intensity level of services and are recommended for most chronic pain patients who have received multiple therapies during acute management.

Patients with addiction problems, high-dose opioid use, or use of other drugs of abuse may require inpatient and/or outpatient chemical dependency treatment programs before or in conjunction with other interdisciplinary rehabilitation. Guidelines from the American Society of Addiction Medicine are available and may be consulted relating to the intensity of services required for different classes of patients in order to achieve successful treatment.

Informal interdisciplinary pain programs may be considered for patients who are currently employed, those who cannot attend all-day programs, those with language barriers, or those living in areas not offering formal programs. Before treatment has been initiated, the patient, physician, and insurer should agree on treatment approach, methods, and goals. Generally, the type of outpatient program needed will depend on the degree of impact the pain has had on the patient's medical, physical, psychological, social, and/or vocational functioning.

When referring a patient for formal outpatient interdisciplinary pain rehabilitation, an occupational rehabilitation program, or an opioid treatment program, the Division recommends the program meets the criteria of the Commission on Accreditation of Rehabilitation Facilities (CARF).

Inpatient pain rehabilitation programs are rarely needed but may be necessary for patients with any of the following conditions: (a) high risk for medical instability; (b) moderate-to-severe impairment of physical/functional status; (c) moderate-to-severe pain behaviors; (d) moderate impairment of cognitive and/or emotional status; (e) dependence on medications from which he/she needs to be withdrawn; and (f) the need for 24-hour supervised nursing.

Whether formal or informal programs, they should be comprised of the following dimensions:

- **Communication:** To ensure positive functional outcomes, communication between the patient, insurer, and all professionals involved must be coordinated and consistent. Any exchange of information must be provided to all professionals, including the patient. Care decisions should be communicated to all and should include the family and/or support system.
- **Documentation:** Through documentation by all professionals involved and/or discussions with the patient, it should be clear that functional goals are being actively pursued and measured on a regular basis to determine their achievement or need for modification. It is advisable to have the patient undergo objective functional measures.
- **Treatment Modalities:** Use of modalities may be necessary early in the process to facilitate compliance with and tolerance to therapeutic exercise, physical conditioning, and increasing functional activities. Active treatments should be emphasized over passive treatments. Active and self-monitored passive treatments should encourage self-coping skills and management of pain, which can be continued independently at home or at work. Treatments that can foster a sense of dependency by the patient on the caregiver should be avoided. Treatment length should be decided based upon observed functional improvement. For a complete list of active and passive therapies, refer to F.12. Therapy – Active and F.13. Therapy – Passive. All treatment timeframes may be extended based on the patient's positive functional improvement.
- **Therapeutic Exercise Programs:** A therapeutic exercise program should be initiated at the start of any treatment rehabilitation. Such programs should emphasize education, independence, and the importance of an on-going exercise regimen. There is good evidence that exercise alone or part of a multi-disciplinary program results in decreased disability for workers with non-acute low back pain. There is not sufficient evidence to support the recommendation of any particular exercise regimen over any other exercise regimen.
- **Return to Work:** The authorized treating physician should continually evaluate the patient for their potential to return to work. For patients currently employed, efforts should be aimed at keeping them employed. Formal rehabilitation programs should provide assistance in creating work profiles. For more specific information regarding return to work, refer to F.11. Return to Work.

- **Patient Education:** Patients with pain need to re-establish a healthy balance in lifestyle. All providers should educate patients on how to overcome barriers to resuming daily activity, including pain management, decreased energy levels, financial constraints, decreased physical ability, and change in family dynamics.
- **Psychosocial Evaluation and Treatment:** Psychosocial evaluation should be initiated, if not previously done. Providers of care should have a thorough understanding of the patient's personality profile, especially if dependency issues are involved. Psychosocial treatment may enhance the patient's ability to participate in pain treatment rehabilitation, manage stress, and increase their problem-solving and self-management skills.
- **Vocational Assistance:** Vocational assistance can define future employment opportunities or assist patients in obtaining future employment. Refer to F.13. Return to Work for detailed information.

Interdisciplinary programs are characterized by a variety of disciplines that participate in the assessment, planning, and/or implementation of the treatment program. These programs are for patients with greater levels of perceived disability, dysfunction, de-conditioning, and psychological involvement. Programs should have sufficient personnel to work with the individual in the following areas: behavioral, functional, medical, cognitive, pain management, psychological, social, and vocational.

a. Formal Interdisciplinary Rehabilitation Programs:

- i. Interdisciplinary Pain Rehabilitation: An Interdisciplinary Pain Rehabilitation Program provides outcome-focused, coordinated, goal-oriented interdisciplinary team services to measure and improve the functioning of persons with pain and encourage their appropriate use of health care system and services. The program can benefit persons who have limitations that interfere with their physical, psychological, social, and/or vocational functioning. The program shares information about the scope of the services and the outcomes achieved with patients, authorized providers, and insurers.

The interdisciplinary team maintains consistent integration and communication to ensure that all interdisciplinary team members are aware of the plan of care for the patient, are exchanging information, and implement the plan of care. The team members make interdisciplinary team decisions with the patient and then ensure that decisions are communicated to the entire care team.

The Medical Director of the pain program should ideally be board certified in pain management; or he/she should be board certified in his/her specialty area and have completed a one-year fellowship in interdisciplinary pain medicine or palliative care recognized by a national board or have two years of experience in an interdisciplinary pain rehabilitation program. Teams that assist in the accomplishment of functional, physical, psychological, social, and vocational goals must

include: a medical director, pain team physician(s), who should preferably be board certified in an appropriate specialty, and a pain team psychologist. Professionals from other disciplines on the team may include, but are not limited to: a biofeedback therapist, an occupational therapist, a physical therapist, a registered nurse (RN), a case manager, an exercise physiologist, a psychologist, a psychiatrist, and/or a nutritionist.

- ❖ Time to Produce Effect: 3 to 4 weeks.
- ❖ Frequency: Full time programs – No less than 5 hours per day, 5 days per week; part-time programs – 4 hours per day, 2–3 days per week.
- ❖ Optimum Duration: 3 to 12 weeks at least 2–3 times a week. Follow-up visits weekly or every other week during the first 1 to 2 months after the initial program is completed.
- ❖ Maximum Duration: 4 months for full-time programs and up to 6 months for part-time programs. Periodic review and monitoring thereafter for 1 year, AND additional follow-up based on the documented maintenance of functional gains.

ii. Occupational Rehabilitation: This is a formal interdisciplinary program addressing a patient's employability and return to work. It includes a progressive increase in the number of hours per day that a patient completes work simulation tasks until the patient can tolerate a full work day. A full work day is case specific and is defined by the previous employment of the patient. Safe workplace practices and education of the employer and family and/or social support system regarding the person's status should be included. This is accomplished by addressing the medical, psychological, behavioral, physical, functional, and vocational components of employability and return to work.

There is some evidence that an integrated care program, consisting of workplace interventions and graded activity teaching that pain need not limit activity, is effective in returning patients with chronic low back pain to work, even with minimal reported reduction of pain.

The occupational medicine rehabilitation interdisciplinary team should, at a minimum, be comprised of a qualified medical director who is board certified with documented training in occupational rehabilitation; team physicians having experience in occupational rehabilitation; an occupational therapist; and a physical therapist.

As appropriate, the team may also include any of the following: chiropractor, an RN, a case manager, a psychologist, a vocational specialist, or a certified biofeedback therapist.

- ❖ Time to Produce Effect: 2 weeks.
- ❖ Frequency: 2 to 5 visits per week, up to 8 hours per day.
- ❖ Optimum Duration: 2 to 4 weeks.
- ❖ Maximum Duration: 6 weeks. Participation in a program beyond 6 weeks must be documented with respect to need and the ability to facilitate positive symptomatic and functional gains.

iii. Opioid/Chemical Treatment Programs: Refer to the Division's Chronic Pain Disorder Medical Treatment Guidelines.

b. Informal Interdisciplinary Rehabilitation Program: A coordinated interdisciplinary pain rehabilitation program is one in which the authorized treating physician coordinates all aspects of care. This type of program is similar to the formal programs in that it is goal-oriented and provides interdisciplinary rehabilitation services to manage the needs of the patient in the following areas: (a) functional, (b) medical, (c) physical, (d) psychological, (e) social, and (f) vocational.

This program is different from a formal program in that it involves lower frequency and intensity of services/treatment. Informal rehabilitation is geared toward those patients who do not need the intensity of service offered in a formal program or who cannot attend an all-day program due to employment, daycare, language, or other barriers.

Patients should be referred to professionals experienced in outpatient treatment of chronic pain. The Division recommends the authorized treating physician consult with physicians experienced in the treatment of chronic pain to develop the plan of care. Communication among care providers regarding clear objective goals and progress toward the goals is essential. Employers should be involved in return to work and work restrictions, and the family and/or social support system should be included in the treatment plan. Professionals from other disciplines likely to be involved include: a biofeedback therapist, an occupational therapist, a physical therapist, an RN, a psychologist, a case manager, an exercise physiologist, a psychiatrist, and/or a nutritionist.

- ❖ Time to Produce Effect: 3 to 4 weeks.
- ❖ Frequency: Full-time programs – No less than 5 hours per day, 5 days per week; Part-time programs – 4 hours per day for 2–3 days per week.
- ❖ Optimum Duration: 3 to 12 weeks at least 2–3 times a week. Follow-up visits weekly or every other week during the first 1 to 2 months after the initial program is completed.
- ❖ Maximum Duration: 4 months for full-time programs and up to 6 months for part-time programs. Periodic review and monitoring thereafter for 1

year, and additional follow-up based upon the documented maintenance of functional gains.

- 6. JOB SITE ALTERATION:** Early evaluation and training of body mechanics are essential for every injured worker. Risk factors to be addressed include repetitive overhead work, lifting and/or tool use. In some cases, this requires a jobsite evaluation. There is no single factor or combination of factors that is proven to prevent or ameliorate shoulder pain, but a combination of ergonomic and psychosocial factors are generally considered to be important. Physical factors that may be considered include use of force, repetitive overhead work, and awkward overhead positions requiring use of force, upper extremity vibration, and contact pressure on the nerve. Psychosocial factors to be considered include pacing, degree of control over job duties, perception of job stress, and supervisory support.

The job analysis and modification should include input from the employee, employer, and ergonomist or other professional familiar with work place evaluation. The employee must be observed performing all job functions in order for the jobsite analysis to be valid. Periodic follow-up is recommended to evaluate effectiveness of the intervention and need for additional ergonomic changes.

- a. Ergonomic Changes:** may be made to modify the hazards identified. In addition, workers should be counseled to vary tasks throughout the day whenever possible. OSHA suggests that workers' who perform overhead repetitive tasks with or without force, take 15 to 30 second breaks every 10 to 20 minutes, or 5-minute breaks every hour. Mini-breaks should include stretching exercises.
- b. Interventions:** should consider engineering controls (e.g. mechanizing the task, changing the tool used, or adjusting the jobsite), or administrative controls (e.g. adjusting the time an individual performs the task).

Temporary restrictions may be needed while recommended ergonomic or adaptive equipment is obtained; employers should obtain recommended equipment in a timely manner.

- 7. MEDICATIONS:** for the treatment of upper extremity injuries is appropriate to control acute pain and inflammation. Use of medications will vary widely due to the spectrum of injuries from simple strains to complicated fractures. All drugs should be used according to patient needs. A thorough medication history, including use of alternative and over the counter medications, should be performed at the time of the initial visit and updated periodically. Treatment for pain control is initially accomplished with acetaminophen and/or NSAIDs. The patient should be educated regarding the interaction with prescription and over-the-counter medications as well as the contents of over-the-counter herbal products.

Nonsteroidal anti-inflammatory drugs (NSAIDs) and acetaminophen are useful in the treatment of injuries associated with degenerative joint disease and/or inflammation. These same medications can be used for pain control.

Topical agents may be beneficial for pain management in some patients with upper extremity injuries. This includes topical capsaicin, nonsteroidal, as well as, topical iontophoresis/phonophoresis, such as steroid creams and lidocaine.

The following are listed in alphabetical order.

- a. Acetaminophen:** An effective analgesic with anti-pyretic but not anti-inflammatory activity. Acetaminophen is generally well-tolerated, causes little or no gastrointestinal (GI) irritation, and is not associated with ulcer formation. Acetaminophen has been associated with liver toxicity in overdose situations or in chronic alcohol use. Patients may not realize that many over-the-counter preparations contain acetaminophen. The total daily dose of acetaminophen is recommended not to exceed three grams per 24-hour period, from all sources, including narcotic-acetaminophen combination preparations.
- ❖ Optimum Duration: 7 to 10 days.
 - ❖ Maximum Duration: Long-term use as indicated on a case-by-case basis. Use of this substance long-term (for 3 days per week or greater) may be associated with rebound pain upon cessation.
- b. Minor Tranquilizer/Muscle Relaxants:** Appropriate for objective findings of muscle spasm with pain. When prescribing these agents, physicians must seriously consider all central nervous system (CNS) side effects including drowsiness or dizziness and the fact that benzodiazepines may be habit-forming. Carisoprodol should not be used as its active metabolite, meprobamate, is commonly abused. Chronic use of benzodiazepines or any muscle relaxant is **not recommended** due to their habit-forming potential, seizure risk following abrupt withdrawal, and documented contribution to deaths of patients on opioids due to respiratory depression. A number of muscle relaxants interact with other medications.
- ❖ Optimum Duration: 1 week.
 - ❖ Maximum Duration: 2 weeks (or longer if used only at night).
- c. Nonsteroidal Anti-Inflammatory Drugs (NSAIDs):** Useful for pain and inflammation. In mild cases, they may be the only drugs required for analgesia. There are several classes of NSAIDs, and the response of the individual injured worker to a specific medication is unpredictable. For this reason, a range of NSAIDs may be tried in each case, with the most effective preparation being continued. Patients should be closely monitored for adverse reactions. The FDA advises that many NSAIDs may cause an increased risk of serious cardiovascular thrombotic events, myocardial infarction, and stroke, which can be fatal. There is good evidence that naproxen has the least risk for cardiovascular events when compared to other NSAIDs. Administration of proton pump inhibitors, Histamine 2 Blockers or prostaglandin analog misoprostol along with these NSAIDs may reduce the risk of duodenal and gastric ulceration, in those at higher risk for this adverse event (e.g. age > 60, concurrent antiplatelet or

corticosteroid therapy). They do not impact possible cardiovascular complications. Due to the cross-reactivity between aspirin and NSAIDs, NSAIDs should not be used in aspirin-sensitive patients, and it should be used with caution in all asthma patients. NSAIDs are associated with abnormal renal function, including renal failure, as well as, abnormal liver function. Patients with renal or hepatic disease may need increased dosing intervals with chronic use. Chronic use of NSAIDs is **generally not recommended** due to increased risk of cardiovascular events and GI bleeding.

There is some evidence that in the setting of long bone fractures of the femur, tibia, and humerus, NSAID administration in the first 48 hours after injury is associated with poor healing of the fracture.

Certain NSAIDs may have interactions with various other medications. Individuals may have adverse events not listed above. Intervals for metabolic screening are dependent on the patient's age and general health status and should be within parameters listed for each specific medication. Complete Blood Count (CBC) and liver and renal function should be monitored at least every six months in patients on chronic NSAIDs and initially when indicated.

i. Non-Selective Non-Steroidal Anti-Inflammatory Drugs:

Includes NSAIDs and acetylsalicylic acid. Serious GI toxicity, such as bleeding, perforation, and ulceration can occur at any time, with or without warning symptoms, in patients treated with traditional NSAIDs. Physicians should inform patients about the signs and/or symptoms of serious GI toxicity and what steps to take if they occur. Anaphylactoid reactions may occur in patients taking NSAIDs. NSAIDs may interfere with platelet function. Fluid retention and edema have been observed in some patients taking NSAIDs.

- ❖ Optimal Duration: 1 week.
- ❖ Maximum duration: 1 year. Use of these substances long-term (3 days per week or greater) is associated with rebound pain upon cessation.

ii. Selective Cyclo-oxygenase-2 (COX-2) Inhibitors:

COX-2 inhibitors differ from the traditional NSAIDs in adverse side effect profiles. The major advantages of selective COX-2 inhibitors over traditional NSAIDs are that they have less GI toxicity and no platelet effects. COX-2 inhibitors can worsen renal function in patients with renal insufficiency; thus, renal function may need monitoring.

COX-2 inhibitors should not be first-line for low risk patients who will be using an NSAID short-term but are indicated in select patients for whom traditional NSAIDs are not tolerated. Serious upper GI adverse events can occur even in asymptomatic patients. Patients at high risk for GI

bleed include those who use alcohol, smoke, are older than 65, take corticosteroids or anti-coagulants, or have a longer duration of therapy. Celecoxib is contraindicated in sulfonamide allergic patients.

- ❖ Optimal Duration: 7 to 10 days.
- ❖ Maximum Duration: Chronic use is appropriate in individual cases. Use of these substances long-term (3 days per week or greater) is associated with rebound pain upon cessation.

d. Opioids: should be primarily reserved for the treatment of severe upper extremity pain. There are circumstances where prolonged use of opioids is justified based upon specific diagnosis and in pre- and post-operative patients. In these and other cases, it should be documented and justified. In mild-to-moderate cases of upper extremity pain, opioid medication should be used cautiously on a case-by-case basis. Adverse effects include respiratory depression, the development of physical and psychological dependence, and impaired alertness.

Opioids medications should be prescribed with strict time, quantity, and duration guidelines, and with definitive cessation parameters. Pain is subjective in nature and should be evaluated using a pain scale and assessment of function to rate effectiveness of the opioid prescribed. Any use beyond the maximum should be documented and justified based on the diagnosis and/or invasive procedures.

- ❖ Optimum Duration: Up to 10 days.
- ❖ Maximum Duration: 2 weeks. Use beyond 2 weeks is acceptable in appropriate cases when functional improvement is documented. Refer to the Division's Chronic Pain Disorder Medical Treatment Guidelines, which give a detailed discussion regarding medication use in chronic pain management. Use beyond 30 days after non-traumatic injuries, or 6 weeks post-surgery after the original injury or post-operatively is **not recommended**. If necessary the physician should access the Colorado Prescription Drug Monitoring Program (PDMP) and follow recommendations in Chronic Pain Guideline. This system allows the prescribing physician to see most of the controlled substances prescribed by other physicians for an individual patient.

e. Platelet Rich Therapy: Refer to Section F.4.b. Plasma Rich Protein (PRP).

f. Psychotropic/Anti-anxiety/Hypnotic Agents: May be useful for treatment of mild and chronic pain, dysesthesias, sleep disorders, and depression. Antidepressant medications, such as tricyclics and Selective Serotonin Reuptake Inhibitors (SSRIs), are useful for affective disorder and chronic pain management. Tricyclic antidepressant agents, in low doses, are useful for chronic neurogenic pain with difficulty sleeping but have more frequent side effects.

Anti-anxiety medications are best used for short-term treatment (i.e. less than 6 months). Accompanying sleep disorders are best treated with sedating antidepressants prior to bedtime. Frequently, combinations of the above agents are useful. As a general rule, physicians should assess the patient's prior history of substance abuse or depression prior to prescribing any of these agents. Due to the habit-forming potential of the benzodiazepines and other drugs found in this class, they are **not generally recommended**. Refer to the Division's Chronic Pain Disorder Medical Treatment Guidelines, which give a detailed discussion regarding medication use in chronic pain management.

- ❖ Optimum Duration: 1 to 6 months.
- ❖ Maximum Duration: 6 to 12 months, with monitoring.

g. Tramadol: Useful in the relief of pain and has been shown to provide pain relief equivalent to that of commonly prescribed NSAIDs. Tramadol is an atypical opioid with norepinephrine and serotonin reuptake inhibition. It is not considered a controlled substance in the U.S. Although Tramadol may cause impaired alertness, it is generally well-tolerated, does not cause GI ulceration, and does not exacerbate hypertension or congestive heart failure. Tramadol should be used cautiously in patients who have a history of seizures or who are taking medication that may lower the seizure threshold, such as monoamine oxidase (MAO) inhibitors, SSRIs, some muscle relaxants, and tricyclic antidepressants. Because it inhibits the reuptake of norepinephrine and serotonin, use with other agents that increase norepinephrine and/or serotonin (e.g. SNRIs, mirtazapine, TCAs, SSRIs) can result in serotonin syndrome. This medication has physically addictive properties, and withdrawal may follow abrupt discontinuation; thus, it is **not recommended** for those with prior opioid addiction.

- ❖ Optimum Duration: 3 to 7 days.
- ❖ Maximum Duration: 2 weeks. Use beyond 2 weeks is acceptable in appropriate cases.

h. Topical Drug Delivery: Creams and patches may be an alternative treatment of localized musculoskeletal disorders. It is necessary that all topical agents be used with strict instructions for application as well as maximum number of applications per day to obtain the desired benefit and avoid potential toxicity. As with all medications, patient selection must be rigorous to select those patients with the highest probability of compliance.

i. Topical Salicylates and Nonsalicylates: have been shown to be effective in relieving pain in acute and chronic musculoskeletal conditions. Topical salicylate and nonsalicylates achieve tissue levels that are potentially therapeutic, at least with regard to COX inhibition. Other than local skin reactions, the side effects of therapy are minimal, although not nonexistent, and the usual contraindications to use of these compounds needs to be considered. Local skin reactions are rare and systemic effects were even less common. Their use in patients receiving warfarin

therapy may result in alterations in bleeding time. Overall, the low level of systemic absorption can be advantageous; allowing the topical use of these medications when systemic administration is relatively contraindicated such as is the case in patients with hypertension, cardiac failure, or renal insufficiency.

There is no evidence that topical agents are more effective than oral medications. Therefore, they should not generally be used unless the patient has an intolerance to oral anti-inflammatories.

- ❖ Optimum Duration: One week.

- ❖ Maximum Duration: 2 weeks per episode.

ii. Capsaicin: is another medication option for topical drug use in upper extremity injury. Capsaicin offers a safe and effective alternative to systemic NSAID therapy. Although it is quite safe, effective use of capsaicin is limited by the local stinging or burning sensation that typically dissipates with regular use, usually after the first 7 to 10 days of treatment. Patients should be advised to apply the cream on the affected area with a plastic glove or cotton applicator and to avoid inadvertent contact with eyes and mucous membranes.

- ❖ Optimum Duration: One week.

- ❖ Maximum Duration: 2 weeks per episode.

iii. Other Agents: Other topical agents, including prescription drugs (i.e. lidocaine), prescription compound agents, and prescribed over-the-counter medications (i.e. blue ice), may be useful for pain and inflammation. These drugs should be used according to patient needs.

- ❖ Optimum Duration: Varies with drug or compound.

- ❖ Maximum Duration: Varies with drug or compound.

iv. Iontophoretic Agents: Refer to Section F.15.e. Iontophoresis.

8. ORTHOTICS AND PROSTHETICS:

a. **Fabrication/Modification of Orthotics**: facilitate better motion response, stabilize a joint with insufficient muscle or proprioceptive/reflex competencies, to protect subacute conditions as needed during movement, and correct biomechanical problems. For specific types of orthotics/prosthetics, refer to Section E. Specific Diagnosis, Testing and Treatment Procedures.

- ❖ Time to Produce Effect: 1 to 3 sessions (includes wearing schedule evaluation).

- ❖ Frequency: 1 to 2 times per week.
- ❖ Optimum/Maximum Duration: 4 sessions of evaluation, casting, fitting, and re-evaluation.

b. Orthotic/Prosthetic Training: is the skilled instruction (preferably by qualified providers) in the proper use of orthotic devices and/or prosthetic limbs including stump preparation, donning and doffing limbs, instruction in wearing schedule and orthotic/prosthetic maintenance training. Training can include activities of daily living and self-care techniques.

- ❖ Time to Produce Effect: 2 to 6 sessions.
- ❖ Frequency: 3 times per week.
- ❖ Optimum/Maximum Duration: 2 to 4 months.

c. Splints or Adaptive Equipment: design, fabrication and/or modification indications include the need to control neurological and orthopedic injuries for reduced stress during functional activities and modify tasks through instruction in the use of a device or physical modification of a device, which reduces stress on the injury. Equipment should improve safety and reduce risk of re-injury. This includes high and low technology assistive options such as workplace modifications, computer interface or seating, and self-care aids.

- ❖ Time to Produce Effect: Immediate.
- ❖ Frequency: 1 to 3 sessions or as indicated to establish independent use.
- ❖ Optimum/Maximum Duration: 1 to 3 sessions.

9. EDUCATION/INFORMED DECISION MAKING of the patient and family, as well as the employer, insurer, policy makers and the community should be the primary emphasis in the treatment of shoulder pain and disability. Unfortunately, practitioners often think of education and informed decision making last, after medications, manual therapy, and surgery.

Informed decision making is the hallmark of a successful treatment plan. In most cases the continuum of treatment from the least invasive to the most invasive (e.g. surgery) should be discussed. The intention is to find the treatment along this continuum which most completely addresses the condition. Patients should identify their personal functional goals of treatment at the first visit. It is recommended that specific individual goals are articulated at the beginning of treatment as this is likely to lead to increased patient satisfaction above that achieved from improvement in pain or other physical function. Progress toward the individual functional goals identified should be addressed at follow up visits and throughout treatment by other members of the health care team as well as the authorized physicians.

Documentation of this process should occur whenever diagnostic tests or referrals from the authorized treating physician are contemplated. The informed decision making process asks the patient to set their personal functional goals of treatment, describe their current health status and any concerns they have regarding adhering to the diagnostic or treatment plan proposed. The provider should clearly describe the following:

- The expected functional outcomes from the proposed treatment, or expected results and plan of action if diagnostic tests are involved.
- Any side effects and risks to the patient.
- Required post treatment rehabilitation time and impact on work, if any.
- Alternative therapies or diagnostic testing.

Before diagnostic tests or referrals for invasive treatment take place the patient should be able to clearly articulate the goals of the intervention, the general side effects and risks associated with it and their decision regarding compliance with the suggested plan. There is some evidence that information provided only by video is not sufficient education.

Practitioners must develop and implement an effective strategy and skills to educate patients, employers, insurance systems, policy makers, and the community as a whole. An education-based paradigm should always start with providing reassuring information to the patient and informed decision making. More in-depth education currently exists within a treatment regimen employing functional restoration, prevention, and cognitive behavioral techniques. Patient education and informed decision making should facilitate self-management of symptoms and prevention.

❖ Time to produce effect: Varies with individual patient

❖ Frequency: Should occur at every visit.

10. PERSONALITY/PSYCHOSOCIAL/PSYCHOLOGICAL INTERVENTION: Psychosocial treatment is a well-established therapeutic and diagnostic intervention with selected use in acute pain problems and more widespread use in sub-acute and chronic pain populations. Psychosocial treatment is recommended as an important component in the total management of a patient with chronic pain and should be implemented as soon as the problem is identified.

If a diagnosis consistent with the standards of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM) has been determined, the patient should be evaluated for the potential need for psychiatric medications. Use of any medication to treat a diagnosed condition may be ordered by the authorized treating physician or by the consulting psychiatrist. Visits for management of psychiatric medications are medical in nature and are not a component of psychosocial treatment. Therefore, separate visits for medication management may be necessary, depending on the patient and medications selected.

Psychosocial interventions include psychotherapeutic treatments for mental health

conditions, as well as behavioral medicine treatments. These interventions may similarly be beneficial for patients without psychiatric conditions, but who may need to make major life changes in order to cope with pain or adjust to disability. Examples of these treatments include cognitive behavioral therapy (CBT), relaxation training, mindfulness training, and sleep hygiene training.

The screening or diagnostic workup should clarify and distinguish between pre-existing, aggravated, and/or purely causative psychological conditions. Therapeutic and diagnostic modalities include, but are not limited to, individual counseling and group therapy. Treatment can occur within an individualized model, a multi-disciplinary model, or a structured pain management program.

A psychologist with a PhD, PsyD, EdD credentials, or a psychiatric MD/DO may perform psychosocial treatments. Other licensed mental health providers or licensed health care providers with training in CBT, or certified as CBT therapists who have experience in treating chronic pain disorders in injured workers, may also perform treatment in consultation with a PhD, PsyD, EdD, or psychiatric MD/DO.

CBT refers to a group of psychological therapies that are sometimes referred to by more specific names, such as Rational Emotive Behavior Therapy, Rational Behavior Therapy, Rational Living Therapy, Cognitive Therapy, and Dialectic Behavior Therapy. Variations of CBT methods can be used to treat a variety of conditions, including chronic pain, depression, anxiety, phobias, and post-traumatic stress disorder (PTSD). For patients with multiple diagnoses, more than one type of CBT might be needed. The CBT used in research studies is often "manualized CBT," meaning that the treatment follows a specific protocol in a manual. In clinical settings, CBT may involve the use of standardized materials, but it is also commonly adapted by a psychologist or psychiatrist to the patient's unique circumstances. If the CBT is being performed by a non-mental health professional, a manual approach would be strongly recommended. CBT must be distinguished from neuropsychological therapies used to teach compensatory strategies to brain injured patients, which are also called "cognitive therapy."

It should be noted that most clinical trials on CBT exclude subjects who have significant psychiatric diagnoses. Consequently, the selection of patients for CBT should include the following considerations. CBT is instructive and structured, using an educational model with homework to teach inductive rational thinking. Because of this educational model, a certain level of literacy is assumed for most CBT protocols. Patients who lack the cognitive and educational abilities required by a CBT protocol are unlikely to be successful. Further, given the highly structured nature of CBT, it is more effective when a patient's circumstances are relatively stable. For example, if a patient is about to be evicted, is actively suicidal, or is coming to sessions intoxicated, these matters will generally preempt CBT treatment for pain, and require other types of psychotherapeutic response. Conversely, literate patients whose circumstances are relatively stable, but who catastrophize or cope poorly with pain or disability are often good candidates for CBT for pain. Similarly, literate patients whose circumstances are relatively stable, but who exhibit unfounded medical phobias, are often good candidates for CBT for anxiety.

There is good evidence that cognitive intervention reduces low back disability in the short term and in the long term. In one of the studies the therapy consisted of 6, 2-hour sessions given weekly to workers who had been sick-listed for 8-12 weeks. Comparison

groups included those who received routine care. There is good evidence that psychological interventions, especially CBT, are superior to no psychological intervention for chronic low back pain, and that self-regulatory interventions, such as biofeedback and relaxation training, may be equally effective. There is good evidence that six group therapy sessions lasting one and a half hours each focused on CBT skills improved function and alleviated pain in uncomplicated sub-acute and chronic low back pain patients. There is some evidence that CBT provided in seven two-hour small group sessions can reduce the severity of insomnia in chronic pain patients. A Cochrane meta-analysis grouped very heterogeneous behavioral interventions and concluded that there was good evidence that CBT may reduce pain and disability but the effect size was uncertain. In total, the evidence clearly supports CBT, and it should be offered to all chronic pain patients who do not have other serious issues, as discussed above.

CBT is often combined with active therapy in an interdisciplinary program, whether formal or informal. It must be coordinated with a psychologist or psychiatrist. CBT can be done in a small group or individually, and the usual number of treatments varies between 8 and 16 sessions.

Before CBT is done, the patient must have a full psychological evaluation. The CBT program must be done under the supervision of a PhD, PsyD, EdD, or psychiatric MD/DO.

Psychological Diagnostic and Statistical Manual of Mental Disorders (DSM) Axis I disorders are common in chronic pain. One study demonstrated that the majority of patients who had failed other therapy and participated in an active therapy program also suffered from major depression. However, in a program that included CBT and other psychological counseling, the success rate for return to work was similar for those with and without a DSM IV diagnosis. This study further strengthens the argument for having some psychological intervention included in all chronic pain treatment plans.

For all psychological/psychiatric interventions, an assessment and treatment plan with measurable behavioral goals, time frames, and specific interventions planned, must be provided to the treating physician prior to initiating treatment. A status report must be provided to the authorized treating physician every two weeks during initial more frequent treatment and monthly thereafter. The report should provide documentation of progress toward functional recovery and a discussion of the psychosocial issues affecting the patient's ability to participate in treatment. The report should also address pertinent issues such as pre-existing, aggravated, and/or causative issues, as well as realistic functional prognosis.

a. Cognitive Behavioral Therapy (CBT) or Similar Treatment:

- ❖ Time to Produce Effect: 6 to 8 1–2 hour session, group or individual (1-hour individual or 2-hour group).
- ❖ Maximum Duration: 16 sessions.

NOTE: Before CBT is done, the patient must have a full psychological evaluation. The CBT program must be done under the supervision of a PhD, PsyD, EdD, or Psychiatric MD/DO.

b. Other Psychological/Psychiatric Interventions:

- ❖ Time to Produce Effect: 6 to 8 weeks.
- ❖ Frequency: 1 to 2 times weekly for the first 2 weeks (excluding hospitalization, if required), decreasing to 1 time per week for the second month. Thereafter, 2 to 4 times monthly with the exception of exacerbations, which may require increased frequency of visits. Not to include visits for medication management
- ❖ Optimum Duration: 2 to 6 months.
- ❖ Maximum Duration: 6 months. Not to include visits for medication management. For select patients, longer supervised psychological/psychiatric treatment may be required, especially if there are ongoing medical procedures or complications. If counseling beyond 6 months is indicated, the management of psychosocial risks or functional progress must be documented. Treatment plan/progress must show severity.

11. RESTRICTION OF ACTIVITIES: Continuation of normal daily activities is the recommendation for most patients since immobility will negatively affect rehabilitation. Prolonged immobility results in a wide range of deleterious effects, such as a reduction in aerobic capacity and conditioning, loss of muscle strength and flexibility, increased segmental stiffness, promotion of bone demineralization, impaired disc nutrition, and the facilitation of the illness role.

Some level of immobility may occasionally be appropriate which could include bracing. While these interventions may occasionally have been ordered in the acute phase, the provider should be aware of their impact on the patient's ability to adequately comply with and successfully complete rehabilitation. Activity should be increased based on the improvement of core strengthening.

Patients should be educated regarding the detrimental effects of immobility versus the efficacious use of limited rest periods. Adequate rest allows the patient to comply with active treatment and benefit from the rehabilitation program. In addition, complete work cessation should be avoided, if possible, since it often further aggravates the pain presentation and promotes disability. Modified return to work is almost always more efficacious and rarely contraindicated in the vast majority of injured workers.

12. RETURN-TO-WORK: Return to work and/or work-related activities whenever possible is one of the major components in treatment and rehabilitation. Return to work is a subject that should be addressed by each workers' compensation provider at the first meeting with the injured employee and updated at each additional visit. A return-to-work format should be part of a company's health plan, knowing that return to work can decrease

anxiety, reduce the possibility of depression, and reconnect the worker with society.

Because a prolonged period of time off work will decrease the likelihood of return to work, the first weeks of treatment are crucial in preventing and/or reversing chronicity and disability mindset. In complex cases, experienced nurse case managers may be required to assist in return to work. Other services, including psychological evaluation and/or treatment, jobsite analysis, and vocational assistance, may be employed.

Two counseling sessions with an occupational physician, and work site visit if necessary, may be helpful for workers who are concerned about returning to work.

At least one study suggests that health status is worse for those who do not return to work than those who do. Self-employment and injury severity predict return to work. Difficulty with pain control, ADLs, and anxiety and depression were common.

The following should be considered when attempting to return an injured worker with chronic pain to work.

- a. **Job History Interview:** The authorized treating physician should perform a job history interview at the time of the initial evaluation and before any plan of treatment is established. Documentation should include the workers' job demands, stressors, duties of current job, and duties of job at the time of the initial injury. In addition, cognitive and social issues should be identified, and treatment of these issues should be incorporated into the plan of care.
- b. **Coordination of Care:** Management of the case is a significant part of return to work and may be the responsibility of the authorized treating physician, occupational health nurse, risk manager, or others. Case management is a method of communication between the primary provider, referral providers, insurer, employer, and employee. Because case management may be coordinated by a variety of professionals, the case manager should be identified in the medical record.
- c. **Communication:** This is essential between the patient, authorized treating physician, employer, and insurer. Employers should be contacted to verify employment status, job duties and demands, and policies regarding injured workers. In addition, the availability and duration of temporary and permanent restrictions, as well as other placement options, should be discussed and documented. All communications in the absence of the patient are required to be documented and made available to the patient.
- d. **Establishment of Return-to-Work Status:** Return to work for persons with chronic pain should be considered therapeutic, assuming that work is not likely to aggravate the basic problem or increase the discomfort. In most cases of chronic pain, the worker may not be currently working or even employed. The goal of return to work would be to implement a plan of care to return the worker to any level of employment with the current employer or to return him/her to any type of new employment. Temporary restrictions may be needed while recommended

ergonomic or adaptive equipment is obtained; employers should obtain recommended equipment in a timely manner.

- e. **Establishment of Activity Level Restrictions:** A formal job description for the injured worker is necessary to identify physical demands at work and assist in the creation of modified duty. A jobsite evaluation may be utilized to identify applicable tasks such as pushing, pulling, lifting, reaching, grasping, pinching, sitting, standing, posture, ambulatory distance and terrain, and if applicable, environment for temperature, air flow, noise, and the number of hours that may be worked per day. Also refer to Section F.6. Jobsite Alterations. Due to the lack of predictability regarding exacerbation of symptoms affecting function, an extended, occupationally focused functional capacity evaluation may be necessary to determine the patient's tolerance for job type tasks over a continued period of time. Job requirements should be reviewed for the entire 8 hours or more of the working day. Between one and three days after the evaluation, there should be a follow-up evaluation by the treating therapist and/or the authorized treating physician to assess the patient's status. When prescribing the FCE, the physician must assess the probability of return to work against the potential for exacerbation of the work related condition. Work restrictions assigned by the authorized treating physician may be temporary or permanent. The case manager should continue to seek out modified work until restrictions become less cumbersome or as the worker's condition improves or deteriorates.
- f. **Rehabilitation and Return to Work:** As part of rehabilitation, every attempt should be made to simulate work activities so that the authorized treating physician may promote adequate job performance. The use of ergonomic or adaptive equipment, therapeutic breaks, and interventional modalities at work may be necessary to maintain employment.
- g. **Vocational Assistance:** Formal vocational rehabilitation is a generally accepted intervention and can assist disabled persons to return to viable employment. Assisting patients to identify vocational goals will facilitate medical recovery and aid in the achievement of MMI by (1) increasing motivation towards treatment and (2) alleviating the patient's emotional distress. Physically limited patients will benefit most if vocational assistance is provided during the interdisciplinary rehabilitation phase of treatment. To assess the patient's vocational capacity, a vocational assessment utilizing the information from occupational and physical therapy assessments may be utilized to identify rehabilitation program goals, as well as optimize both patient motivation and utilization of rehabilitation resources. This may be extremely helpful in decreasing the patient's fear regarding an inability to earn a living, which can add to his/her anxiety and depression.

Recommendations to Employers and Employees of Small Businesses: employees of small businesses who are diagnosed with chronic pain may not be able to perform any jobs for which openings exist. Temporary employees may fill those slots while the employee functionally improves. Some small businesses hire other workers, and if the injured employee returns to the job, the supervisor/owner may have an extra employee. To avoid this, it is suggested that

case managers be accessed through their payer or third-party administrator. Case managers may assist with resolution of these problems, as well as assist in finding modified job tasks, or find jobs with reduced hours, etc. depending on company philosophy and employee needs.

Recommendations to Employers and Employees of Mid-sized and Large Businesses: Employers are encouraged by the Division to identify modified work within the company that may be available to injured workers with chronic pain who are returning to work with temporary or permanent restrictions. To assist with temporary or permanent placement of the injured worker, it is suggested that a program be implemented that allows the case manager to access descriptions of all jobs within the organization.

13. THERAPY-ACTIVE:

The following active therapies are widely used and accepted methods of care for a variety of work-related injuries. They are based on the philosophy that therapeutic exercise and/or activity are beneficial for restoring flexibility, strength, endurance, function, range of motion, and can alleviate discomfort. Active therapy requires an internal effort by the individual to complete a specific exercise or task. This form of therapy requires supervision from a therapist or medical provider such as verbal, visual and/or tactile instruction(s). At times, the provider may help stabilize the patient or guide the movement pattern but the energy required to complete the task is predominately executed by the patient.

The use and integration of active and passive therapies should be directed at addressing impairments found in the clinical examination which may include abnormal posture, head tilting forward, scapula dyskinesia and joint/tissue hypomobility/hypermobility. These clinical findings are frequently contributors to shoulder and thoracic outlet symptoms and many times result in scapula anterior tipping and altered motor control of the scapula/thoracic and glenohumeral joints. In this classification of scapula dysfunction, the primary external visual feature is the anterior tilting of the scapula in the sagittal plane which produces the prominent inferior angle of the scapula. Many times the anterior tilting is associated with shortening of the pectoralis minor and poor function of the scapula muscles controlling the inferior angle. This myofascial and scapula dysfunction places the acromion in a position closer to the rotator cuff and humeral head and can thereby compromise the subacromial space. Additionally, this resultant scapula dyskinesia disrupts the length tension relationships of the shoulder complex's static and dynamic constraints and subsequently facilitates poor humeral head positioning on the glenoid. (The static constraints are the glenohumeral ligaments and the dynamic constraints are the deltoid and cuff musculature.) Therefore the treatment of this scapula dyskinesia and myofascial dysfunction is important for restoration of the normal upper quarter function.

The healthy function of the shoulder is inextricably dependent on the proper function and balanced relationships with its neighboring structures: cervical, thoracic, costal, and when one acknowledges the role of fascia, particularly the thoracodorsal fascia. Therefore, effective and expedient rehabilitation requires providers to have an excellent understanding of the functional anatomy of these structures and their dynamic inter-relatedness. Shoulder injuries are complex. Successful treatment of these injuries requires the providers have expert skills. Collaboration is essential in achieving optimal

outcomes.

Patients should be instructed to continue active therapies at home as an extension of the treatment process in order to maintain improvement levels. Follow-up visits to reinforce and monitor progress and proper technique are recommended. Home exercise can include exercise with or without mechanical assistance or resistance and functional activities with assistive devices. Frequency times and duration of treatment apply only to diagnoses not previously covered in Section E.

The use of a patient completed pain drawing, visual analog scale (VAS), and functional outcome tools is highly recommended to help providers track progress. Functional objective goals including minimum clinically important difference (MCID) of the functional tools should be monitored and documented regularly to determine the effectiveness of treatment.

On occasion, specific diagnoses and post-surgical conditions may warrant durations of treatment beyond those listed as "maximum." Factors such as exacerbation of symptoms, re-injury, interrupted continuity of care and co-morbidities may also extend durations of care. Specific goals with objectively measured functional improvement during treatment must be cited to justify extended durations of care. It is recommended that, if no functional gain is observed after the number of treatments under "time to produce effect" have been completed, then alternative treatment interventions, further diagnostic studies, or further consultations should be pursued.

The following active therapies are listed in alphabetical order:

a. Activities of Daily Living (ADL): are well-established interventions which involve instruction, active-assisted training, and/or adaptation of activities or equipment to improve a person's capacity in normal daily activities such as self-care, work re-integration training, homemaking, and driving.

- ❖ Time to Produce Effect: 4 to 5 treatments.
- ❖ Frequency: 3 to 5 times per week.
- ❖ Optimum Duration: 4 to 6 weeks.
- ❖ Maximum Duration: 6 weeks.

b. Aquatic Therapy: is a well-accepted treatment which consists of the therapeutic use of aquatic immersion for therapeutic exercise to promote ROM, flexibility, strengthening, core stabilization, endurance, body mechanics, and pain management. Aquatic therapy includes the implementation of active therapeutic procedures in a swimming or therapeutic pool. The water provides a buoyancy force that lessens the amount of force gravity applies to the body. The decreased gravity effect allows the patient to have a mechanical advantage and more likely to have a successful trial of therapeutic exercise. Literature has shown that the muscle recruitment for aquatic therapy versus similar non-aquatic motions is significantly less. Because there is always a risk of recurrent or additional

damage to the muscle tendon unit after a surgical repair, aquatic therapy may be preferred by surgeons to gain early return of range of motion. In some cases the patient will be able to do the exercises unsupervised after the initial supervised session. Parks and recreation contacts may be used to locate less expensive facilities for patients. Indications include:

- Postoperative therapy as ordered by the surgeon;
- Intolerance for active land-based or full-weight bearing therapeutic procedures;
- Symptoms that are exacerbated in a dry environment; and/or
- Willingness to follow through with the therapy on a regular basis.

The pool should be large enough to allow full extremity ROM and fully erect posture. Aquatic vests, belts, snorkels, and other devices may be used to provide stability, balance, buoyancy, and resistance.

- ❖ Time to Produce Effect: 4 to 5 treatments.
- ❖ Frequency: 3 to 5 times per week.
- ❖ Optimum Duration: 4 to 6 weeks.
- ❖ Maximum Duration: 8 weeks.

A self-directed program is recommended after the supervised aquatics program has been established, or, alternatively a transition to a self-directed dry environment exercise program.

c. Functional Activities: are well-established interventions which involve the use of therapeutic activity to enhance mobility, body mechanics, employability, coordination, balance, and sensory motor integration.

- ❖ Time to Produce Effect: 4 to 5 treatments.
- ❖ Frequency: 3 to 5 times per week.
- ❖ Optimum Duration: 4 to 6 weeks.
- ❖ Maximum Duration: 6 weeks.

d. Functional Electrical Stimulation: is an accepted treatment in which the application of electrical current to elicit involuntary or assisted contractions of atrophied and/or impaired muscles. Indications include muscle atrophy, weakness, and sluggish muscle contraction secondary to pain, injury,

neuromuscular dysfunction or peripheral nerve lesion. Indications also may include an individual who is precluded from active therapy.

- ❖ Time to Produce Effect: 2 to 6 treatments.
- ❖ Frequency: 3 times per week.
- ❖ Optimum Duration: 8 weeks.
- ❖ Maximum Duration: 8 weeks. If functional gains are documented by a therapist, a home unit may be provided.

e. Neuromuscular Re-education: is a generally accepted treatment.

Neuromuscular re-education is the skilled application of exercise with manual, mechanical, or electrical facilitation to enhance strength; movement patterns; neuromuscular response; proprioception, kinesthetic sense, coordination; education of movement, balance and posture. Changes in posture and scapula movements are important to restore normal upper quarter movements and minimize shoulder and thoracic outlet symptoms. Indications include the need to promote neuromuscular responses through carefully timed proprioceptive stimuli to elicit and improve motor activity in patterns similar to normal neurologically developed sequences, and improve neuromotor response with independent control. Muscles that should be targeted for correct timing and recruitment include the serratus anterior, upper trapezius, lower trapezius and middle trapezius. Accessory stabilizers including the rhomboids, latissimus dorsi and levator scapula should also be addressed to assist with scapula setting. Normal scapula positioning and movements should be the goal of the neuromuscular re-education. Furthermore, the limitations in flexibility and motor control of the pectoralis minor are a common incriminator with this type of dysfunction.

- ❖ Time to Produce Effect: 2 to 6 treatments.
- ❖ Frequency: 3 times per week.
- ❖ Optimum Duration: 4 to 8 weeks.
- ❖ Maximum Duration: 8 weeks.

f. Therapeutic Exercise: is a generally well-accepted treatment. Therapeutic exercise with or without mechanical assistance or resistance, may include manual facilitation, isoinertial, isotonic, isometric and isokinetic types of exercises. The exact type of program and length of therapy should be determined by the treating physician with the physical or occupational therapist. In most cases the therapist instructs the patient in a supervised clinic and home program to increase motion with tissue elasticity and subsequently increase strength and endurance. Usually, manual therapy is performed initially to assure correct muscle activation followed by isometrics and progressing to isotonic exercises as tolerated.

There is strong evidence for those with subacromial impingement syndrome that; 1) exercise has a small to moderate effect in reducing pain and improving function in the short term; 2) exercise has a small to moderate effect in improving function in the long-term. There is good evidence that exercise provides moderate improvement in strength in the short-term. There is inadequate evidence to determine a specific evidence-based exercise protocol or frequency. Common exercises used in the studies are scapular stability training and progressive rotator cuff strengthening exercises using pulley equipment or elastic resistance bands under supervision 1 to 2 times per week along with daily home exercises. Exercises are conducted through range to 90° abduction.

There is some evidence that a scapular focused exercise treatment protocol that includes scapular motor control exercises, scapular mobilizations, and stretching is effective for reducing pain and improving shoulder function in patients with subacromial impingement syndrome.

Therapeutic exercise, with or without mechanical assistance or resistance, may include isoinertial, isotonic, isometric and isokinetic types of exercises. The exact type of program and length of therapy should be determined by the treating physician with the physical or occupational therapist. Refer to Section E. regarding specific diagnoses for details. In most cases, the therapist instructs the patient in a supervised clinic and home program to increase motion and subsequently increase strength. Usually, isometrics are performed initially, progressing to isotonic exercises as tolerated.

- ❖ Time to Produce Effect: 2 to 6 treatments.
- ❖ Frequency: 2 to 3 times per week.
- ❖ Optimum Duration: 16 to 24 sessions.
- ❖ Maximum Duration: 36 sessions. Additional visits may be necessary in cases of re-injury, interrupted continuity of care, exacerbation of symptoms, and in those patients with co-morbidities. Functional gains (including increased ROM) must be demonstrated to justify continuing treatment.

14. THERAPY-PASSIVE: Most of the following passive therapies and modalities are generally accepted methods of care for a variety of work-related injuries. Passive therapy includes those treatment modalities that do not require energy expenditure on the part of the patient. They are principally effective during the early phases of treatment and are directed at controlling symptoms such as pain, inflammation and swelling and to improve the rate of healing soft tissue injuries. They should be used adjunctively with active therapies to help control swelling, pain, and inflammation during the rehabilitation process. They may be used intermittently as a therapist deems appropriate or regularly if there are specific goals with objectively measured functional improvements during treatment.

On occasion, specific diagnoses and post-surgical conditions may warrant durations of treatment beyond those listed as "maximum." Factors such as exacerbation of symptoms, re-injury, interrupted continuity of care, and comorbidities may also extend durations of care. Specific goals with objectively measured functional improvement during treatment must be cited to justify extended durations of care. It is recommended that, if no functional gain is observed after the number of treatments under "time to produce effect" have been completed, alternative treatment interventions, further diagnostic studies, or further consultations should be pursued.

The following passive therapies and modalities are listed in alphabetical order.

a. Continuous Passive Motion (CPM):

This is ***not generally recommended***, please refer to Rotator Cuff Tear, Section E.10.

b. Electrical Stimulation (Unattended): is an accepted treatment. Unattended electrical stimulation once applied, requires minimal on-site supervision by the physician or non-physician provider. Indications include pain, inflammation, muscle spasm, atrophy, decreased circulation, and the need for osteogenic stimulation.

- ❖ Time to Produce Effect: 2 to 4 treatments.
- ❖ Frequency: Varies. Depending upon indication, between 2 to 3 times per day to 1 time a week. Provide home unit if frequent use.
- ❖ Optimum Duration: 1 month.
- ❖ Maximum Duration: Use beyond 6 weeks requires a home unit.

c. Hyperbaric Oxygen Therapy: There is no evidence to support long-term benefit of hyperbaric oxygen therapy for non-union upper extremity fractures. It is ***not recommended***.

d. Immobilization: Time and duration are dependent upon type of injury.

- ❖ Time to Produce Effect: One day.
- ❖ Frequency: Once.
- ❖ Optimum Duration: One week.
- ❖ Maximum Duration: 12 weeks.

The arm may be immobilized in a sling for 1 to 12 weeks post-injury, depending upon the age of the patient and diagnosis. The patient is instructed in isometric

exercises while in the sling for the internal and external rotators and the deltoid. Refer to specific diagnosis for details.

e. Iontophoresis: is an accepted treatment which consists of the transfer of medication, including, but not limited to, steroidal anti-inflammatory and anesthetics, through the use of electrical stimulation. Indications include pain (Lidocaine), inflammation (hydrocortisone, salicylate, dexamethasone), edema (mecholy, hyaluronidase, salicylate), ischemia (magnesium, mecholy, iodine), muscle spasm (magnesium, calcium), calcific deposits (acetate), scars, and keloids (chlorine, iodine, acetate). An experimental study with healthy human volunteers that an iontophoretic preparation of dexamethasone phosphate penetrated up to a depth of 12 mm, but even after 400 minutes following iontophoresis, half of the dexamethasone had penetrated no deeper than 2 mm. Iontophoresis appears to be effective only in superficial tissues. Per the Colorado Physical Therapy Practice Act, referring physician must write a prescription for medication, and the individual must bring the medication (not the prescription for medication) to the treating therapist for use in iontophoresis.

- ❖ Time to Produce Effect: 1 to 4 treatments.
- ❖ Frequency: 3 times per week with at least 48 hours between treatments.
- ❖ Optimum Duration: 8 to 10 treatments.
- ❖ Maximum Duration: 10 treatments.

f. Low Level Laser Therapy: There is good evidence that a clinically important effect of laser on pain and range of motion is unlikely. Therefore, it is ***not recommended***.

g. Manipulation: is a generally accepted, well-established and widely used therapeutic intervention for shoulder injuries. Manipulative treatment (not therapy) is defined as the therapeutic application of manually guided forces by an operator to improve physiologic function and/or support homeostasis that has been altered by the injury or occupational disease, and has associated clinical significance.

High velocity, low amplitude (HVLA) technique, chiropractic manipulation, osteopathic manipulation, muscle energy techniques, counter strain, and non-force techniques are all types of manipulative treatment. This may be applied by osteopathic physicians (D.O.), chiropractors (D.C.), properly trained physical therapists (P.T.), properly trained occupational therapists (O.T.), or properly trained medical physicians. Under these different types of manipulation exist many subsets of different techniques that can be described as a) direct- a forceful engagement of a restrictive/pathologic barrier, b) indirect- a gentle/non-forceful disengagement of a restrictive/pathologic barrier, c) the patient actively assists in the treatment and d) the patient relaxing, allowing the practitioner to move the body tissues. When the proper diagnosis is made and coupled with the appropriate technique, manipulation has no contraindications and can be applied to all tissues of the body. Pre-treatment assessment should be performed as part

of each manipulative treatment visit to ensure that the correct diagnosis and correct treatment is employed.

- ❖ Time to Produce Effect for all types of manipulative treatment: 1 to 6 treatments.
- ❖ Frequency: Up to 3 times per week for the first 3 weeks as indicated by the severity of involvement and the desired effect.
- ❖ Optimum Duration: 10 treatments.
- ❖ Maximum Duration: 12 treatments. Additional visits may be necessary in cases of re-injury, interrupted continuity of care, exacerbation of symptoms, and in those patients with co-morbidities. Functional gains including increased ROM must be demonstrated to justify continuing treatment.

h. Manual Electrical Stimulation: is used for peripheral nerve injuries or pain reduction that requires continuous application, supervision, or involves extensive teaching. Indications include muscle spasm, atrophy, decreased circulation, osteogenic stimulation, inflammation, peripheral neuropathies and the need to facilitate muscle hypertrophy, muscle strengthening, and muscle responsiveness.

- ❖ Time to Produce Effect: Variable, depending upon use.
- ❖ Frequency: 3 to 7 times per week.
- ❖ Optimum Duration: 8 weeks.
- ❖ Maximum Duration: 2 months.

i. Massage—Manual or Mechanical: Massage is manipulation of soft tissue with broad ranging relaxation and circulatory benefits. This may include stimulation of acupuncture points and acupuncture channels (acupressure), application of suction cups and techniques that include pressing, lifting, rubbing, pinching of soft tissues by, or with, the practitioner's hands. Indications include edema (peripheral or hard and non-pliable edema), muscle spasm, adhesions, the need to improve peripheral circulation and ROM, or to increase muscle relaxation and flexibility prior to exercise. In cases with edema, deep vein thrombosis should be ruled out prior to treatment.

- ❖ Time to Produce Effect: Immediate.
- ❖ Frequency: 1 to 2 times per week.
- ❖ Optimum Duration: 6 weeks.
- ❖ Maximum Duration: 2 months.

j. Microwave Diathermy: There is some evidence that microwave diathermy plus superficial heat and exercise is not more clinically effective than placebo microwave diathermy plus superficial heat and exercise in the reduction of pain and disability, and the improvement of ROM, muscle strength, functional status, quality of life, and depression after 3 weeks of treatment in patients with subacromial impingement syndrome. Therefore, it is **not recommended**.

k. Mobilization (Joint): is a generally well-accepted treatment. Mobilization is passive movement which may include passive ROM performed in such a manner (particularly in relation to the speed of the movement) that it is, at all times, within the ability of the patient to prevent the movement if they so choose. It may include skilled manual joint tissue stretching. Indications include the need to improve joint play, improve intracapsular arthrokinematics, or reduce pain associated with tissue impingement/maltraction.

There is some evidence that 6 sessions of manual physical therapy over a three week period are as effective as an injection of 40 mg triamcinolone for relief of symptoms of shoulder impingement symptoms and impairment up to one year after initial treatment. The same study also showed reduced use of health care services one year in the manual therapy group.

- ❖ Time to Produce Effect: 6 to 9 treatments.
- ❖ Frequency: 3 times per week.
- ❖ Optimum Duration: 6 weeks.
- ❖ Maximum Duration: 2 months.

l. Mobilization (Soft Tissue): is a generally well-accepted treatment. Mobilization of soft tissue is the skilled application of muscle energy, strain/counter strain, myofascial release, manual trigger point release and manual therapy techniques designed to improve or normalize movement patterns through the reduction of soft tissue pain and restrictions. These can be interactive with the patient participating or can be with the patient relaxing and letting the practitioner move the body tissues. Indications include muscle spasm around a joint, trigger points, adhesions, and neural compression. Mobilization should be accompanied by active therapy.

- ❖ Time to Produce Effect: 2 to 3 weeks.
- ❖ Frequency: 2 to 3 times per week.
- ❖ Optimum Duration: 4 to 6 weeks.
- ❖ Maximum Duration: 6 weeks.

m. Superficial Heat and Cold Therapy: is a generally accepted treatment. Superficial heat and cold therapies are thermal agents applied in various manners that lower or raise the body tissue temperature for the reduction of pain, inflammation, and/or effusion resulting from injury or induced by exercise. It may be used acutely with compression and elevation. Indications include acute pain, edema and hemorrhage, need to increase pain threshold, reduce muscle spasm and promote stretching/flexibility. Includes portable cryotherapy units, and application of heat just above the surface of the skin at acupuncture points.

- ❖ Time to Produce Effect: Immediate.
- ❖ Frequency: 2 to 5 times per week.
- ❖ Optimum Duration: 3 weeks as primary, or up to 2 months if used intermittently as an adjunct to other therapeutic procedures.
- ❖ Maximum Duration: 2 months.

n. Transcutaneous Electrical Nerve Stimulation (TENS): is a generally accepted treatment. TENS should include at least one instructional session for proper application and use. Indications include muscle spasm, atrophy, and decreased circulation and pain control. Minimal TENS unit parameters should include pulse rate, pulse width, and amplitude modulation. Consistent, measurable functional improvement must be documented prior to the purchase of a home unit.

- ❖ Time to Produce Effect: Immediate.
- ❖ Frequency: Variable.
- ❖ Optimum Duration: 3 sessions.
- ❖ Maximum Duration: 3 sessions. If beneficial, provide with home unit or purchase if effective.

o. Ultrasound (including Phonophoresis): is an accepted treatment. Ultrasound includes ultrasound with electrical stimulation and phonophoresis. Ultrasound uses sonic generators to deliver acoustic energy for therapeutic thermal and/or non-thermal soft tissue effects. Indications include scar tissue, adhesions, and muscle spasm, and the need to extend muscle tissue or accelerate the soft tissue healing.

Ultrasound with electrical stimulation is concurrent delivery of electrical energy that involves a dispersive electrode placement. Indications include muscle spasm, scar tissue, and pain modulation and muscle facilitation. There is some evidence that ultrasound compared with sham ultrasound as part of an overall rehabilitation protocol including exercise, stretching, and heat treatments have approximately equal effects in the treatment of patients with adhesive capsulitis.

There is no evidence that phonophoresis should be used as an isolated treatment. All phonophoresis should be used in conjunction with manipulative and physical therapy/rehabilitation.

Phonophoresis is the transfer of medication to the target tissue to control inflammation and pain through the use of sonic generators. These topical medications include, but are not limited to, steroidal anti-inflammatories and anesthetics.

- ❖ Time to Produce Effect: 6 to 15 treatments.
- ❖ Frequency: 3 times per week.
- ❖ Optimum Duration: 4 to 8 weeks.
- ❖ Maximum Duration: 2 months.

THERAPEUTIC PROCEDURES - OPERATIVE

All operative interventions must be based upon positive correlation of clinical findings, clinical course and diagnostic tests. A comprehensive assimilation of these factors must lead to a specific diagnosis with positive identification of pathologic condition(s). It is imperative to rule out non-physiologic modifiers of pain presentation or non-operative conditions mimicking operative conditions (e.g. peripheral neuropathy, myofascial pain, scleratogenous or sympathetically mediated pain syndromes, psychological), prior to consideration of elective surgical intervention.

In addition, operative treatment is indicated when the natural history of surgically treated lesions is better than the natural history for non-operatively treated lesions. All patients being considered for surgical intervention should first undergo a comprehensive neuro-musculoskeletal examination to identify mechanical pain generators that may respond to non-surgical techniques or may be refractory to surgical intervention.

Structured rehabilitation interventions should strongly be considered post-operatively in any patient not making expected functional progress within three weeks after surgery.

Post-operative therapy will frequently require a repeat of the therapy provided pre-operatively. Refer to Section F. Therapeutic Procedures - Non-operative, and consider the first post-operative visit as visit number one, for the time frame parameters provided.

Return-to-work restrictions should be specific according to the recommendation in Section F.13. Return-To-Work.

The patient and treating physician have identified functional operative goals and the likelihood of achieving improved ability to perform activities of daily living or work activities. The patient should agree to comply with the pre- and post-operative treatment plan including home exercise. The provider should be especially careful to make sure the patient understands the amount of post-operative treatment required and the length of partial- and full-disability expected post-operatively. The patient should have committed to the recommended post-operative treatment plan and fully completed the recommended active, manual and pre-operative treatment plans.

Informed decision making should be documented for all invasive procedures. This must include a thorough discussion of the pros and cons of the procedure and the possible complications as well as the natural history of the identified diagnosis. Since most patients with the most common conditions will improve significantly over time, without invasive interventions, patients must be able to make well-informed decisions regarding their treatment.

1. ARTHRODESIS:

a. Description/Definition:

Fusion of the shoulder. Used as a salvage procedure.

b. Occupational Relationship:

Secondary to severe trauma and failure of other procedures.

c. Specific Physical Exam Findings:

Shoulder function is minimal and is usually associated with severe rotator cuff pathology.

d. Diagnostic Testing Procedures:

See Specific Diagnostic sections.

e. Surgical Indications:

Inability to perform activities of daily living due to failed previous procedures and severe chronic pain unresponsive to non-addicting medication.

Prior to surgical intervention, the patient and treating physician should identify functional operative goals and the likelihood of achieving improved ability to perform activities of daily living or work activities. The patient should also agree to comply with the pre- and post-operative treatment plan and home exercise requirements. The patient should understand the length of partial and full disability expected post-operatively.

Informed decision making should be documented for all invasive procedures. This must include a thorough discussion of the pros and cons of the procedure and the possible complications as well as the natural history of the identified diagnosis. Since most patients with the most common conditions will improve significantly over time, without invasive interventions, patients must be able to make well-informed decisions regarding their treatment.

Smoking may affect soft tissue healing through tissue hypoxia. Patients should be strongly encouraged to stop smoking and be provided with appropriate counseling by the physician. If a treating physician recommends a specific smoking cessation program peri-operatively, this should be covered by the insurer. Physicians may monitor smoking cessation with laboratory tests such as cotinine levels. The surgeon will make the final determination as to whether smoking cessation is required prior to surgery.

f. Operative Treatment:

Fusion.

g. Post-operative Treatment:

An individualized rehabilitation program will be based upon communication between the surgeon and the therapist. Therapy may begin 6 weeks to 3 months

after surgery, depending on recovery. Occupational therapy is critical to improve function in activities of daily living. Assistive devices may be necessary.

- ❖ Time frames for therapy (excluding aquatic therapy).
- ❖ Optimum: 12 to 24 sessions.
- ❖ Maximum: 36 sessions. If functional gains are being achieved, additional visits may be authorized for the patient to achieve their functional goal.

2. HARDWARE REMOVAL:

a. Description/Definition:

Surgical removal of internal or external fixation device, commonly related to fracture repairs.

b. Occupational Relationship:

Following healing of a post-traumatic injury that required fixation or reconstruction using instrumentation.

c. Specific Physical Exam Findings:

Local pain to palpation, swelling, erythema.

d. Diagnostic Testing Procedures:

Radiographs, tomography, CT scan, MRI.

e. Non-operative Treatment:

Active and/or passive therapy for local modalities, activity modification. Nonsteroidal Anti-Inflammatory Drugs (NSAIDs).

f. Surgical Indications:

Persistent local pain, irritation around hardware.

g. Operative Treatment:

Removal of instrumentation may be accompanied by scar release/resection, capsular release, and/or manipulation. Some instrumentation may be removed in the course of standard treatment without local irritation.

h. Post-operative Treatment:

Include an individualized rehabilitation program based upon communication

between the surgeon and the therapist.

Early rehabilitation interventions are recommended to maintain range-of-motion and progressive strengthening.

- ❖ Frequency: 3 to 5 times per week for the first 2 weeks, 3 times per week for the following 2 weeks, then 1 to 2 times per week.
- ❖ Optimum Duration: 6 to 8 weeks with progression to home exercise and or aquatic therapy.
- ❖ Maximum Duration: 12 weeks. Occasional follow-up visits may be justified to reinforce exercise patterns or to reach final functional goals, if the therapy to date has demonstrated objective functional gains.

Return to work and restrictions after surgery may be made by an experienced primary occupational medicine physician in consultation with the surgeon or by the surgeon. The injured worker should adhere to the written return to work restrictions not only in the workplace, but at home and for 24 hours a day.

3. MANIPULATION UNDER ANESTHESIA: (Refer to Section E.2. Adhesive Capsulitis/Frozen Shoulder Disorder)

4. OSTEOARTICULAR ALLOGRAFT TRANSPLANTATION (OATS) PROCEDURE AND OTHER CARTILAGE TRANSPLANTATION PROCEDURES:

Osteoarticular allograft transplantation is a procedure which places a plug of cadaveric bone tissue into a chondral defect at the articular surface of an injured bone. Its use has been described in case reports in the treatment of recurrent shoulder instability when large humeral head defects (Hill-Sachs lesions) are thought to be responsible for repeated episodes of subluxation.

Cases with cartilaginous damage to both the humeral head and the glenoid fossa, or larger areas of damage, tend to have more complications and worse outcomes with or without treatment. There is no evidence to support osteochondral allograft transplantation, nor autologous chondrocyte implantation in the shoulder. Debridement and microfracture are commonly performed, especially when cartilage damage is found during other procedures and are acceptable procedures in these cases. At this time, there is limited information concerning the effectiveness of OATS and appropriate application.

Implantation and transplantation require prior authorization or are ***not generally recommended***. They may be appropriate for younger active patients with full thickness cartilage damage who would otherwise qualify for hemiarthroplasty. Hemiarthroplasty or total shoulder replacement are ***not recommended*** for younger patients.

5. RECOMBINANT HUMAN BONE MORPHOGENETIC PROTEIN (RHBMP-2): RhBMP-2 is a member of a family of proteins which are involved in the growth, remodeling, and regeneration of bone tissue. It has become available as a recombinant biomaterial with

osteo-inductive potential for application in long bone fracture non-union and other situations in which the promotion of bone formation is desired. In the treatment of non-union of fractures of the humerus and clavicle, no controlled clinical trials have been conducted as of this date, though small case series have resulted in union of some fractures. Ectopic ossification into adjacent muscle has been reported to restrict motion in periarticular fractures. Due to lack of information on the incidence of complications and overall success rate, it is ***not recommended***.

No randomized trials of rhBMP-2 for humerus fractures have been found at the time of this guideline publication. Currently, there is a paucity of evidence for its use in fractures of the upper extremity.

6. SHOULDER REPLACEMENT (ARTHROPLASTY):

a. Description/Definition:

Prosthetic replacement of the articulating surfaces of the shoulder joint. There are three types of procedures commonly performed: 1) the total shoulder component in which the glenoid and humeral head are replaced anatomically; 2) the hemiarthroplasty which involves replacement of the humeral head only; and 3) the reverse arthroplasty in which the head of the humerus is replaced by a prosthesis forming a socket and the glenoid is replaced with a ball prosthesis.

b. Occupational Relationship:

Usually from post-traumatic arthritis, or from trauma resulting in severe humeral head fractures.

c. Specific Physical Exam Findings:

Stiff, painful shoulder with limited function.

d. Diagnostic Testing Procedures:

Radiographs or CTs demonstrating humeral head fracture. CTs to explore the status of rotator cuff and associated muscles and tendons, the presence of arthritis or subluxation, or superior migration of the humeral head. For revision procedures, a non-MRI arthrography or sonogram may be important to better visualize associated pathology.

e. Surgical Indications:

The decision of whether a patient receives a total arthroplasty or a hemiarthroplasty depends on the surgeon's discretion. Factors to consider are the presence of glenoid erosions, humeral head subluxation, and rotator cuff strength. There is good evidence that functional outcomes are better at two years for total shoulder arthroplasty as compared with hemiarthroplasty in patients with glenohumeral osteoarthritis.

Prior to surgical intervention, the patient and treating physician should identify functional operative goals and the likelihood of achieving improved ability to perform activities of daily living or work activities and the patient should agree to comply with the pre- and post-operative treatment plan including home exercise. The provider should be especially careful to make sure the patient understands the amount of post-operative therapy required and the length of partial and full disability expected post-operatively.

Informed decision making should be documented for all invasive procedures. This must include a thorough discussion of the pros and cons of the procedure and the possible complications as well as the natural history of the identified diagnosis. Since most patients with the most common conditions will improve significantly over time, without invasive interventions, patients must be able to make well-informed decisions regarding their treatment.

Allergy to implant components can play a role in arthroplasty failure. Pre-operative screening of patients with the following questions is suggested:

1. Do you have an allergy to metal, such as nickel?
2. Have you ever had a rash or itching under jewelry, jean snaps, or watchbands?
3. If you have ever worn artificial nails, did you ever have a skin reaction?
4. Have you ever developed a rash from topical antibiotics, such as Neosporin?

If there are positive or equivocal responses to any of the questions, patch and or lymphocyte proliferation testing is recommended in advance of surgery.

Because smokers have a higher risk of delayed bone healing and post-operative costs, it is recommended that insurers cover a smoking cessation program peri-operatively. If a treating physician recommends a specific smoking cessation program peri-operatively, this should be covered by the insurer. Physicians may monitor smoking cessation with laboratory tests such as cotinine levels. The surgeon will make the final determination as to whether smoking cessation is required prior to surgery.

- i. Hemiarthroplasty may utilize a long stem humeral head replacement or a resurfacing device. It may also be performed for humeral head fractures. It has been used for severe arthritis unresponsive to other treatments; however, there is good evidence that functional outcomes are better at two years for total shoulder arthroplasty as compared with hemiarthroplasty in patients with glenohumeral osteoarthritis. In younger active patients the eventual wear on the glenoid cartilage may cause decreased function over time. Total arthroplasty may therefore be preferred in many cases.

Partial humeral head prosthesis may be useful in some cases. Cementless surface humeral head replacement may be indicated in young patients with glenohumeral arthritis and retained glenoid cartilage or osteonecrosis of the humeral head.

A large follow-up of more than 1000 cases found that total shoulder arthroplasty function was better than hemiarthroplasty at one year and that resurfacing hemiarthroplasty appeared better at one year than stemmed hemiarthroplasty. The revision rate for resurfacing hemiarthroplasty was 10% at 5 year follow-up and patients younger than 55 had a worse functional score than older patients. A small follow-up of ten patients with hemiarthroplasty versus total shoulder replacement (TSR) found no statistical difference in pain or function although more TSR patients were pain free. Glenoid erosion resulted in reversion to TRS for 1/3 of the hemiarthroplasty patients.

- ii. Total shoulder arthroplasty is usually performed in cases of severe arthritis when all reasonable conservative measures have been exhausted without sufficient return to activities of daily living. Arthroscopic surgery may be considered in selected patients with a milder degree of arthritis. Arthroscopic SLAP repair is usually **not recommended** in cases of severe arthritis. The rotator cuff should generally be intact or repairable. In one study overall total shoulder arthroplasty success was good with an 85% 15-20 year survival rate. Another study reported secondary rotator cuff dysfunction at initially low levels but increasing to 55% at 15 years. Consideration of metal allergies and testing is recommended prior to surgery for appropriate patients.
- iii. Reverse arthroplasty is generally considered a salvage procedure for patients over 70 with severe osteoarthritis, massive rotator cuff tears and pseudo paralysis with integrity of the deltoid. Good recovery of active elevation can be expected.

Reverse arthroplasty may also be the treatment for failed hemiarthroplasty with extensive cuff tears and/or instability. Most literature confirms that the complication rate is higher and the success rate lower when reverse arthroplasty is performed on a previously operated joint. Older patients report similar activity levels after reverse arthroplasty compared to those with total or hemiarthroplasty. Fifty-three percent of patients with reverse arthroplasty are able to perform high demand activities. The most common complaint was inability to reach overhead.

- A) Indications include massive rotator cuff tear with inability to flex anteriorly, chronic pseudoparalysis due to massive tears, humeral malunion, and failure of previous arthroplasty. This procedure is generally limited to patients older than 65 with low physical demands. Patient satisfaction is higher if pre-operative flexion is less than 90°. Internal rotation is usually limited post-operatively.

- B) Post-operative care: Patients must understand that full compliance with post-operative limitations is absolutely required to prevent dislocation and other complications. The patient may not fully extend the elbow for 6-12 weeks post-operatively.
- C) Contraindications: Deltoid function is a requirement for the procedure; therefore, severe impairment of deltoid contraction is a contraindication. If only the supraspinatus is torn in an arthritic shoulder, a total shoulder arthroplasty, rather than a reverse arthroplasty, is appropriate. If a patient with a massive rotator cuff tear can nevertheless elevate the shoulder, nonoperative treatment such as NSAIDs and steroid injections are preferable to surgery.

iv. Procedural complications of hemiarthroplasty or total arthroplasty may include humeral head subluxation or dislocation, humeral and/or glenoid loosening, rotator cuff tear, fractures, stiffness, painful glenoid erosion, transient nerve palsies, heterotopic ossification, bone loss, and component mal-positioning.

v. Revision surgery may be performed by an orthopedic surgeon in cases with chronic pain and stiffness, painful glenoid erosion, or difficulty with activities of daily living. Prior authorization is required and a second opinion by a surgeon with special expertise in shoulder surgery should usually be performed. In the case of a total failure of the prosthesis, arthrodesis is the salvage procedure.

f. Operative Treatment:

Prosthetic replacement of the articular surfaces of the shoulder.

g. Post-operative Treatment:

i. Individualized rehabilitation program will be based on communication between the surgeon and the therapist. Timing of passive motion and active rehabilitation is dependent on the type of procedures performed.

- Aquatic exercises initially under therapists or surgeon's direction then progressed to independent pool program.
 - Progression to a home exercise is essential. Therapy should continue for at least 10 weeks with transition to home exercises at the beginning of each new phase of therapy.
 - Gradual resistive exercise from 3 to 12 months, with gradual return to full activity at 6 to 12 months.
- ❖ Time frames for therapy (excluding aquatic therapy).

- ❖ Optimum: 12 to 24 sessions.
 - ❖ Maximum: 36 sessions. If functional gains are being achieved additional visits may be authorized for the patient to achieve their functional goal.
- ii. Reverse arthroplasty patients may have a more rapid rehabilitation in some cases. Per the recommendation of the surgeon the following therapies may take place: Sling use for the first 3 weeks, ADLs at 3 to 6 weeks, and then gentle strengthening.
 - iii. Should progress plateau the provider should reevaluate the patient's condition and make appropriate adjustments to the treatment plan. Other therapies may be employed in individual cases.
 - iv. Gradual return to full activity can occur between 6 to 12 months, depending on the procedure.
 - v. Return to work and restrictions after surgery may be made by an experienced primary occupational medicine physician in consultation with the surgeon or by the surgeon. The injured worker should adhere to the written return to work restrictions not only in the workplace, but at home and for 24 hours a day.

7. INTERSCALENE ANESTHESIA:

Interscalene anesthesia is generally performed for surgical procedures such as subacromial debridement with or without rotator cuff repair. There is some evidence that interscalene regional anesthetic block (ISB) at the time of elective arthroscopic rotator cuff repair results in faster hospital discharge than general anesthesia, therefore ISB is recommended, provided the following precautions are taken.

Interscalene brachial plexus blocks (ISBs) almost always cause hemidiaphragmatic dysfunction acutely, which causes respiratory impairment. This can be symptomatic. Smaller volumes and lower concentrations of bupivacaine may be preferable. Permanent injury of the phrenic nerve has been reported rarely. Permanent or temporary paralysis of the hemidiaphragm can cause significant respiratory impairment, particularly in those with underlying lung disease. There is some evidence that in the setting of elective shoulder surgery when interscalene brachial plexus block is being used for anesthesia, and in the absence of chronic pulmonary or cardiac disease, needle guidance with ultrasound reduces the risk of diaphragmatic paresis in comparison to nerve stimulation guidance. The use of ultrasound guidance on all ISBs is encouraged. Alternative blocks and/or pre-operative pulmonary evaluation should be considered in patients with underlying lung disease and in smokers.

There is some evidence that continuous ISB for 48 hours is associated with somewhat greater pain relief at the seventh postoperative day than single injection ISB, but there is little if any difference in the use of opioids at that time between continuous and single injection anesthesia. There is no convincing evidence that continuous ISB is

advantageous and due to the higher cost of ISB and the common respiratory compromise that may be prolonged with continuous use, continuous ISB is ***not recommended***.

8. CONTINUOUS SUBACROMIAL ANESTHESIA INJECTION:

There is some evidence that in the setting of arthroscopic rotator cuff repair, a subacromial infusion of 4 ml/hour of 0.5% bupivacaine for 50 hours does not reduce post-operative pain or oxycodone consumption in a clinically meaningful way. Therefore, it is ***not recommended***.

Notice of Rulemaking Hearing

Tracking number

2014-01038

Department

1100 - Department of Labor and Employment

Agency

1101 - Division of Labor (Includes 1103 Series)

CCR number

7 CCR 1103-1

Rule title

COLORADO MINIMUM WAGE ORDER NUMBER 31

Rulemaking Hearing

Date

11/04/2014

Time

02:00 PM

Location

Colorado Division of Labor 633 17th Street, Second Floor, Suite 200 Denver, CO 80202

Subjects and issues involved

To reflect the new state minimum wage pursuant to Article XVIII, Section 15, of the Colorado Constitution.

Statutory authority

8-1-107(2)(p), 8-6-106, 8-6-108(2), and 8-6-109, C.R.S.

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DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Labor

COLORADO MINIMUM WAGE ORDER NUMBER 31

7 CCR 1103-1

Authority:

This Colorado Minimum Wage Order Number 31 is promulgated under the authority vested by Title 8, Articles 1, 4, 6, and 12, C.R.S. (2014). This Wage Order shall supersede all previous Wage Orders.

Important Information on Minimum Wage:

Colorado Minimum Wage Order Number 31 establishes a Colorado state minimum wage pursuant to the requirements of Article XVIII, Section 15, of the Colorado Constitution.

In addition to state minimum wage requirements, there are also federal minimum wage requirements. If an employee is covered by both state and federal minimum wage laws, the law which provides a higher minimum wage or sets a higher standard shall apply. For information on federal minimum wage law, contact the U.S. Department of Labor.

2015 Colorado State Minimum Wage:

Pursuant to the inflation adjustment requirement of Article XVIII, Section 15, of the Colorado Constitution, if either of the following two situations applies to an employee, then the employee is entitled to the \$8.23 state minimum wage or the \$5.21 state tipped employee minimum wage, effective January 1, 2015:

1. The employee is covered by the minimum wage provisions of Colorado Minimum Wage Order Number 31.
2. The employee is covered by the minimum wage provisions of the Fair Labor Standards Act.

Some restrictions and exemptions may apply; contact the Colorado Division of Labor for additional information. The Colorado Division of Labor accepts complaints for minimum wage violations involving employees who receive the state or federal minimum wage.

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1. Coverage:

This Colorado Minimum Wage Order Number 31 regulates wages, hours, working conditions and procedures for certain employers and employees for work performed within the boundaries of the state of Colorado in the following industries:

(A) Retail and Service	(C) Food and Beverage
(B) Commercial Support Service	(D) Health and Medical

2. Definitions:

- (A) **Retail and Service:** any business or enterprise that sells or offers for sale, any service, commodity, article, good, real estate, wares, or merchandise to the consuming public, and that generates 50% or more of its annual dollar volume of business from such sales. The retail and service industry offers goods or services that will not be made available for resale. It also includes amusement and recreation, public accommodations, banks, credit unions, savings and loans, and includes any employee who is engaged in the performance of work connected with or incidental to such business or enterprise, including office personnel.

- (B) **Commercial Support Service:** any business or enterprise engaged directly or indirectly in providing services to other commercial firms through the use of service employees who perform duties such as: clerical, keypunching, janitorial, laundry or dry cleaning, security, building or plant maintenance, parking attendants, equipment operations, landscaping and grounds maintenance. Commercial support service also includes temporary help firms which provide employees to any business or enterprise covered by this Wage Order. Any employee, including office personnel, engaged in the performance of work connected with or incidental to such business or enterprise, is covered by the provisions of this Wage Order.
- (C) **Food and Beverage:** any business or enterprise that prepares and offers for sale, food or beverages for consumption either on or off the premises. Such business or enterprise includes but is not limited to: restaurants, snack bars, drinking establishments, catering services, fast-food businesses, country clubs and any other business or establishment required to have a food or liquor license or permit, and includes any employee who is engaged in the performance of work connected with or incidental to such business or enterprise, including office personnel.
- (D) **Health and Medical:** any business or enterprise engaged in providing medical, dental, surgical or other health services including but not limited to medical and dental offices, hospitals, home health care, hospice care, nursing homes, and mental health centers, and includes any employee who is engaged in the performance of work connected with or incidental to such business or enterprise, including office personnel.

Director: the director of the division of labor.

Division: the division of labor in the Colorado Department of Labor and Employment.

Emancipated Minor: any individual less than eighteen years of age who:

- a) has the sole or primary responsibility for his or her own support.
- b) is married and living away from parents or guardian.
- c) is able to show that his or her well-being is substantially dependent upon being gainfully employed.

Emergency: an unpredictable or unavoidable occurrence at unscheduled intervals requiring immediate action with regard to the employment of minors in overtime situations.

Employee: any person performing labor or services for the benefit of an employer in which the employer may command when, where, and how much labor or services shall be performed. For the purpose of this Wage Order, an individual primarily free from control and direction in the performance of contracted labor or services, and who is customarily engaged in an independent trade, occupation, profession, or business related to the service performed is not an employee.

Employer: every person, firm, partnership, association, corporation, receiver, or other officer of court in Colorado, and any agent or officer thereof, of the above-mentioned classes, employing any person in Colorado, except that the provisions of this Wage Order shall not apply to state, federal and municipal governments or political sub-divisions thereof, including; cities, counties, municipal corporations, quasi-municipal corporations, school districts, and irrigation, reservoir, or drainage conservation companies or special districts organized and existing under the laws of Colorado.

Full Time Employee: for the purpose of the exemption described in section 5(b) of this Wage Order, a full time employee is one who performs work for the benefit of an employer for a minimum of 32 hours per work week.

Regular Rate of Pay: the regular rate of pay actually paid to employees for a standard, non-overtime workweek. The regular rate of pay shall include all compensation paid to employees including the set hourly rate, shift differential, minimum wage tip credit, non-discretionary bonuses, production bonuses, and commissions used for the purpose of calculating the overtime hourly rate for non-exempt employees. Business expenses, bonafide gifts, discretionary bonuses, employer investment contributions, vacation pay, holiday pay, sick leave, jury duty, or other pay for non-work hours may be excluded from the regular rate of pay.

Time Worked: the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work whether or not required to do so. Requiring or permitting employees to remain at the place of employment awaiting a decision on job assignment or when to begin work or to perform clean up or other duties "off the clock" shall be considered time worked and said time must be compensated.

- a) **Travel Time:** all travel time spent at the control or direction of an employer, excluding normal home to work travel, shall be considered as time worked.
- b) **Sleep Time:** where an employee's tour of duty is 24 hours or longer, up to 8 hours of sleeping time can be excluded from overtime compensation, if: (1) an express agreement excluding sleeping time exists; and (2) adequate sleeping facilities for an uninterrupted night's sleep are provided; and (3) at least five hours of sleep are possible during the scheduled sleeping periods; and (4) interruptions to perform duties are considered time worked. When said employee's tour of duty is less than 24 hours, periods during which the employee is permitted to sleep are compensable work time, as long as the employee is on duty and must work when required. Only actual sleep time may be excluded up to a maximum of eight (8) hours per work day. When work related interruptions prevent five (5) hours of sleep, the employee shall be compensated for the entire work day.

Tipped Employee: any employee engaged in an occupation in which he or she customarily and regularly receives more than \$30.00 a month in tips. Tips include amounts designated as a "tip" by credit card customers on their charge slips. Nothing herein contained shall prevent an employer covered hereby from requiring employees to share or allocate such tips or gratuities on a pre-established basis among other employees of said business who customarily and regularly receive tips. Employer-required sharing of tips with employees who do not customarily and regularly receive tips, such as management or food preparers, or deduction of credit card processing fees from tipped employees, shall nullify allowable tip credits towards the minimum wage authorized in section 3(c).

Wages or Compensation: all amounts due employees for labor or service; whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculating the same, or whether the labor or service is performed under contract, subcontract, partnership, subpartnership, station plan, or other agreement, provided that the labor or service is performed personally by the person demanding payment.

Workday: any consecutive twenty-four (24) hour period starting with the same hour each day and the same hour as the beginning of the workweek. The workday is set by the employer and may accommodate flexible work shift scheduling.

Work Shift: the hours an employee is normally scheduled to work within a work day.

Workweek: any consecutive seven (7) day period starting with the same calendar day and hour each week. A workweek is a fixed and recurring period of 168 hours, seven (7) consecutive twenty-four (24) hour periods.

3. Minimum Wage and Allowable Credits:

Minimum Wage: all adult employees and emancipated minors, employed in any of the industries covered herein, whether employed on an hourly, piecework, commission, time, task, or other basis, shall be paid not less than \$8.23 effective January 1, 2015, less any applicable lawful credits for all hours worked.

Allowable Credits: the only allowable credits that may be taken by an employer toward the minimum wage are as follows:

- a) **Lodging:** the reasonable cost or fair market value for lodging (not to exceed \$25.00 per week) furnished by the employer and used by the employee may be considered part of the minimum wage when furnished.
- b) **Meals:** the reasonable cost or fair market value of meals provided to the employee may be used as part of the minimum hourly wage. No profits to the employer may be included in the reasonable cost or fair market value of such meals furnished. The meal must be consumed before deductions are permitted.
- c) **Tips:** employers of "tipped employees" must pay a cash wage of at least \$5.21 per hour if they claim a tip credit against their minimum hourly wage obligation. If an employee's tips combined with the employer's cash wage of at least \$5.21 per hour do not equal the minimum hourly wage, the employer must make up the difference in cash wages.

Exception: employees whose physical disability has been certified by the director to significantly impair such disabled employee's ability to perform the duties involved in the employment, and unemancipated minors under 18 years of age, may be paid 15% below the current minimum wage less any applicable lawful credits, for all hours worked.

4. Overtime Hours:

Overtime Rate: employees shall be paid time and one-half of the regular rate of pay for any work in excess of: (1) forty (40) hours per workweek; (2) twelve (12) hours per workday, or (3) twelve (12) consecutive hours without regard to the starting and ending time of the workday (excluding duty free meal periods), whichever calculation results in the greater payment of wages. Hours worked in two or more workweeks shall not be averaged for computation of overtime. Performance of work in two or more positions at different pay rates for the same employer shall be computed at the overtime rate based on the regular rate of pay for the position in which the overtime occurs, or at a weighted average of the rates for each position, as provided in the Fair Labor Standards Act.

Note: the requirement to pay overtime for work in excess of twelve (12) consecutive hours will not alter the employee's established workday or workweek, as previously defined.

Exception: in the event of a bonafide emergency situation, an employer may require minors, subject to the Colorado youth employment opportunity act, to work in excess of eight (8) hours in a twenty-four (24) hour period or in excess of forty (40) hours per week. Said minors shall be compensated at time and one-half the regular rate of pay for all hours worked in excess of eight (8) hours in any twenty-four (24) hour period, or for all work in excess of forty (40) hours per week, whichever calculation results in the greater payment of wages. The employer shall keep specific records to substantiate the existence of a bonafide emergency.

Note: a person under eighteen (18) years of age who has received a high school diploma or a passing grade on a General Education Development (GED) examination, is not considered a minor.

5. Exemptions from the Wage Order:

The following employees or occupations, as defined below, are exempt from all provisions of Minimum Wage Order No. 31: administrative, executive/supervisor, professional, outside sales employees, and elected officials and members of their staff. Other exemptions are: companions, casual babysitters, and domestic employees employed by households or family members to perform duties in private residences, property managers, interstate drivers, driver helpers, loaders or mechanics of motor carriers, taxi cab drivers, and bona fide volunteers. Also exempt are: students employed by sororities, fraternities, college clubs, or dormitories, and students employed in a work experience study program and employees working in laundries of charitable institutions which pay no wages to workers and inmates, or patient workers who work in institutional laundries.

Exemption Definitions:

- a) **Administrative Employee:** a salaried individual who directly serves the executive, and regularly performs duties important to the decision-making process of the executive. Said employee regularly exercises independent judgment and discretion in matters of significance and their primary duty is non-manual in nature and directly related to management policies or general business operations.
- b) **Executive or Supervisor:** a salaried employee earning in excess of the equivalent of the minimum wage for all hours worked in a workweek. Said employee must supervise the work of at least two full-time employees and have the authority to hire and fire, or to effectively recommend such action. The executive or supervisor must spend a minimum of 50% percent of the workweek in duties directly related to supervision.
- c) **Professional:** a salaried individual employed in a field of endeavor who has knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study. The professional employee must be employed in the field in which they are trained to be considered a professional employee.

Note: the requirement that a professional employee must be paid on a salary basis does not apply to doctors, lawyers, teachers, and employees in highly technical computer occupations earning at least \$27.63 per hour.

- d) **Outside Salesperson:** any person employed primarily away from the employer's place of business or enterprise for the purpose of making sales or obtaining orders or contracts for any commodities, articles, goods, real estate, wares, merchandise or services. Such outside sales employee must spend a minimum of 80% of the workweek in activities directly related to their own outside sales.

6. Exemptions from Overtime:

The following employees are exempt from the overtime provisions of Minimum Wage Order No. 31:

- a) **Salespersons, parts-persons, and mechanics** employed by automobile, truck, or farm implement (retail) dealers; salespersons employed by trailer, aircraft and boat (retail) dealers.
- b) **Commission Sales Exemption:** sales employees of retail or service industries paid on a commission basis, provided that 50% of their total earnings in a pay period are derived from commission sales, and their regular rate of pay is at least one and one-half times the minimum wage. This exemption is only applicable for employees of retail or service employers who receive in excess of 75% of their annual dollar volume from retail or service sales.

- c) **Ski Industry Exemption:** employees of the ski industry performing duties directly related to ski area operations for downhill skiing or snow boarding, and those employees engaged in providing food and beverage services at on-mountain locations, are exempt from the forty (40) hour overtime requirement of this Wage Order. The daily overtime requirement of one and one-half the regular rate of pay for all hours worked in excess of twelve (12) in a workday shall apply. This partial overtime exemption does not apply to ski area employees performing duties related to lodging.
- d) **Medical Transportation Exemption:** employees of the medical transportation industry who are scheduled to work twenty-four (24) hour shifts, are exempt from the twelve (12) hour overtime requirement **provided** they receive overtime wages for hours worked in excess of forty (40) hours per work week.

Note: a hospital or nursing home may seek an agreement with individual employees to pay overtime pursuant to the provisions of the Federal Fair Labor Standards Act **"8 and 80 rule"**, whereby employees are paid time and one-half their regular rate of pay for any work performed in excess of eighty (80) hours in a fourteen (14) consecutive day period and for any work in excess of eight (8) hours per day.

7. Meal Periods:

Employees shall be entitled to an uninterrupted and "duty free" meal period of at least a thirty minute duration when the scheduled work shift exceeds five consecutive hours of work. The employees must be completely relieved of all duties and permitted to pursue personal activities to qualify as a non-work, uncompensated period of time. When the nature of the business activity or other circumstances exist that makes an uninterrupted meal period impractical, the employee shall be permitted to consume an "on-duty" meal while performing duties. Employees shall be permitted to fully consume a meal of choice "on the job" and be fully compensated for the "on-duty" meal period without any loss of time or compensation.

8. Rest Periods:

Every employer shall authorize and permit rest periods, which, insofar as practicable, shall be in the middle of each four (4) hour work period. A compensated ten (10) minute rest period for each four (4) hours or major fractions thereof shall be permitted for all employees. Such rest periods shall not be deducted from the employee's wages. It is not necessary that the employee leave the premises for said rest period.

9. Legal Deductions:

No employer shall make a deduction from the wages or compensation of an employee in violation of the Colorado Wage Act, § 8-4-105, C.R.S. (2014).

10. Presents, Tips, or Gratuities:

It shall be unlawful to deny presents, tips, or gratuities intended for employees in violation of the Colorado Wage Act, § 8-4-103(6), C.R.S. (2014).

11. Wearing of Uniforms:

Where the wearing of a particular uniform or special apparel is a condition of employment, the employer shall pay the cost of purchases, maintenance, and cleaning of the uniforms or special apparel. If the uniform furnished by the employer is plain and washable and does not need or require special care such as ironing, dry cleaning, pressing, etc., the employer need not maintain or pay for cleaning. An employer may require a reasonable deposit (up to one-half of actual cost) as security for the return of each uniform furnished to employees upon issuance of a receipt to the employee for such deposit. The entire deposit

shall be returned to the employee when the uniform is returned. The cost of ordinary wear and tear of a uniform or special apparel shall not be deducted from the employee's wages or deposit.

Exception: clothing accepted as ordinary street wear and the ordinary white or any light colored plain and washable uniform need not be furnished by the employer unless a special color, make, pattern, logo or material is required.

12. Record Keeping:

Every employer shall keep at the place of employment or at the employer's principal place of business in Colorado, a true and accurate record for each employee which contains the following information:

- a) name, address, social security number, occupation and date of hire of said employee.
- b) date of birth, if the employee is under eighteen (18) years of age.
- c) daily record of all hours worked.
- d) record of allowable credits and declared tips.
- e) regular rates of pay, gross wages earned, withholdings made and net amounts paid each pay period.

An itemized earnings statement of this information shall be provided to each employee each pay period. An employer shall retain records reflecting the information contained in an employee's itemized earnings statement as described in this rule for a period of at least three (3) years after the wages or compensation were due.

13. Administration and Interpretation:

The division of labor shall have jurisdiction over all questions of fact arising with respect to the administration and interpretation of this Wage Order.

14. Separability Clause:

If any section, sentence, clause or phrase of this Wage Order is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion of the Wage Order.

15. Filing of Complaints:

Any person may register with the division, a written complaint that alleges a violation of the Minimum Wage Order within two (2) years of said violation(s), except that all actions brought for a willful violation shall be commenced within three (3) years after the cause of action accrues and not after that time.

16. Investigations:

The director or designated agent shall investigate and take all proceedings necessary to enforce the payment of the minimum wage rate and other alleged violations of this Wage Order, pursuant to these rules and the Colorado Wage Act, § 8-4-101, et seq., C.R.S. (2014). Violations of this Wage Order may be subject to the administrative procedure as described in the Colorado Wage Act, § 8-4-101, et. seq., C.R.S.

17. Enforcement:

The director has the power, in person or through any authorized representative, to inspect, examine and make excerpts from any book, reports, contracts, payrolls, documents, papers, and other records of any employer that in any way pertain to the question of wages, and to require from any such employer full and true statement of the wages paid.

18. Recovery of Wages:

An employee receiving less than the legal minimum wage applicable to such employee is entitled to recover in a civil action the unpaid balance of the full amount of such minimum wage, together with reasonable attorney fees and court costs, notwithstanding any agreement to work for a lesser wage, pursuant to § 8-6-118 C.R.S. (2014). Alternatively, an employee may elect to pursue a minimum wage complaint through the division's administrative procedure as described in the Colorado Wage Act, § 8-4-101, et. seq., C.R.S. (2014).

19. Reprisals:

Employers shall not threaten, coerce, or discharge any employee because of participation in any investigation or hearing relating to the minimum wage act. Violators may be subject to a fine of not less than two hundred dollars (\$200.00), up to one thousand dollars (\$1,000.00) for each violation, pursuant to § 8-6-115 C.R.S. (2014).

20. Violations:

Any employer or other person who individually or as an officer, agent or employee of a corporation or other person, pays or causes to be paid an employee covered by this Wage Order less than the minimum wage, is guilty of a misdemeanor. Conviction thereof will subject the offender to a fine of not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00), or by imprisonment in the county jail for not less than thirty (30) days, nor more than one (1) year, or both such fine and imprisonment, pursuant to § 8-6-116 C.R.S. (2014).

21. Posting Requirements:

Every employer subject to this Wage Order must display a Wage Order poster in an area frequented by employees where it may be easily read during the work day. If the work site or other conditions make this impractical, the employer shall keep a copy of this Wage Order and make it available to employees upon request.

22. Dual Jurisdiction:

Whenever employers are subjected to both federal and Colorado law, the law providing greater protection or setting the higher standard shall apply. For information on the federal law contact the nearest office of the U.S. Department of Labor, Wage and Hour Division.

Editor's Notes

History

Entire rule eff. 01/01/2008.

Entire rule eff. 01/01/2009.

Entire rule eff. 01/01/2010.

Entire rule eff. 01/01/2011.

Entire rule eff. 01/01/2012.

Entire rule eff. 01/01/2013.

Entire rule eff. 01/01/2014.

Entire rule eff. 01/01/2015.

Annotations

Wrongful discharge in violation of public policy was based upon not receiving rest and lunch breaks in violation of Wage Order No. 22, sections 7 and 8, promulgated by the Colorado Department of Labor and Employment. *Bonidy v. Vail Valley Ctr. for Aesthetic Dentistry, P.C., and James J. Harding, DDS., Colo. App. 06CA1849*

**COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT
DIVISION OF LABOR**

**NOTICE OF PUBLIC HEARING CONCERNING
TWO PROPOSED SETS OF RULES:**

**COLORADO MINIMUM WAGE ORDER NUMBER 31
COLORADO WAGE PROTECTION ACT RULES**

Notice is hereby given of a public hearing to afford all interested persons an opportunity to be heard prior to the adoption of Colorado Minimum Wage Order Number 31, 7 CCR 1103-1 and the Colorado Wage Protection Act Rules, 7 CCR 1103-7 under the authority granted the Division of Labor in § 8-1-107(2)(p), § 8-6-106, § 8-6-108(2), § 8-6-109, § 8-4-111(1)(b), § 8-4-111(2)(a)(i), § 8-4-111.5(1), C.R.S. (2014).

Date and Time of Hearing: **Tuesday, November 4, 2014, at 2:00 p.m.**

Place of Hearing: **Colorado Division of Labor
633 17th Street, Second Floor, Suite 200
Denver, CO 80202**

This hearing will be held in accordance with the provisions of the Colorado Administrative Procedures Act, § 24-4-101, et seq., C.R.S. (2014), to receive any testimony, written data, views, or arguments which interested parties may wish to submit regarding the proposed rules.

Colorado Minimum Wage Order Number 31:

It is proposed, in accordance with Article XVIII, Section 15, of the Colorado Constitution, that the Director of the Division of Labor adopt Colorado Minimum Wage Order Number 31, 7 CCR 1103-1, to reflect the new state minimum wage.

Pursuant to Article XVIII, Section 15, of the Colorado Constitution, Colorado Minimum Wage Order Number 31 will establish a new state minimum wage of \$8.23 per hour.

Colorado Minimum Wage Order Number 31 differs from the current Colorado Minimum Wage Order Number 30 in the state minimum wage. Colorado Minimum Wage Order Number 31 also includes reference to the newly enacted Wage Protection Act of 2014.

Colorado Wage Protection Act Rules:

It is proposed that the Director of the Division of Labor adopt the Colorado Wage Protection Act Rules, 7 CCR 1103-7, to implement the Wage Protection Act of 2014.

Copies of the proposed sets of rules shall be available at least five days before the hearing at www.coloradolaborlaw.gov or:

Colorado Division of Labor
633 17th Street, Suite 200
Denver, Colorado 80202

To ensure sufficient time for consideration prior to adopting final rules, comments must be provided to the Division by the close of business on Thursday, November 6, 2014. Comments will be accepted at any time prior to the hearing.

Comments may be delivered by mail, faxed to 303-318-8400, or emailed to Elizabeth.Funk@state.co.us.

Comment Deadline: Thursday, November 6, 2014

STATEMENT OF BASIS AND PURPOSE

COLORADO MINIMUM WAGE ORDER NUMBER 31 7 CCR 1103-1

BASIS: § 8-1-107(2)(p), § 8-6-106, § 8-6-108(2), and § 8-6-109 C.R.S. (2014), provide the Director of the Division of Labor with the authority to adopt rules and regulations pertaining to state minimum wage rates and workplace conditions.

PURPOSE: The purpose of Colorado Minimum Wage Order Number 31 is to reflect the new state minimum wage of \$8.23 per hour. The new state minimum wage is required by Article XVIII, Section 15 of the Colorado Constitution, which provides:

Section 15. State minimum wage rate.

Effective January 1, 2007, Colorado's minimum wage shall be increased to \$6.85 per hour and shall be adjusted annually for inflation, as measured by the Consumer Price Index used for Colorado. This minimum wage shall be paid to employees who receive the state or federal minimum wage. No more than \$3.02 per hour in tip income may be used to offset the minimum wage of employees who regularly receive tips.

Pursuant to § 24-4-103(4)(b), C.R.S. (2014), the Director finds that: 1) there is a demonstrated need for the rules; 2) the proper statutory authority exists for the rules; 3) to the extent practicable, the rules are clearly stated so that their meaning will be understood by any party required to comply with the rules; 4) the rules do not conflict with other provisions of law; and 5) the duplicating or overlapping of the rules is explained by the agency proposing the rules.

Notice of Rulemaking Hearing

Tracking number

2014-01037

Department

1100 - Department of Labor and Employment

Agency

1101 - Division of Labor (Includes 1103 Series)

CCR number

7 CCR 1103-7

Rule title

Colorado Wage Protection Act Rules

Rulemaking Hearing

Date

11/04/2014

Time

02:00 PM

Location

Colorado Division of Labor 633 17th Street, Second Floor, Suite 200 Denver, CO 80202

Subjects and issues involved

The purpose of the proposed Colorado Wage Protection Act Rules is to implement the Wage Protection Act of 2014.

Statutory authority

§ 8-1-103(3), § 8-1-107(2)(p), § 8-1-111, and § 8-4-101, et. seq., C.R.S

Contact information

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DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Labor

WAGE PROTECTION ACT RULES

7 CCR 1103-7

Rule 1. Statement of Purpose

The general purpose of the Wage Protection Act Rules, effective January 1, 2015, is to implement the Wage Protection Act of 2014. These rules are adopted pursuant to the Division of Labor's authority in § 8-1-103(3), C.R.S., § 8-1-107(2)(p), C.R.S., § 8-1-111, C.R.S., and § 8-4-101, et. seq., C.R.S.

Rule 2. Definitions

- 2.1** "Citation" means a written determination by the division that a wage payment requirement has been violated.
- 2.2** "Credit" means an arrangement or understanding with the bank or other drawee for the payment of an order, check, draft, note, memorandum, or other acknowledgment of indebtedness.
- 2.3** "Director" means the director of the division of labor or his or her designee.
- 2.4** "Division" means the division of labor in the department of labor and employment.
- 2.5** "Employee" means any person, including a migratory laborer, performing labor or services for the benefit of an employer in which the employer may command when, where, and how much labor or services shall be performed. For the purpose of article 4, title 8, C.R.S., an individual primarily free from control and direction in the performance of the service, both under his or her contract for the performance of service and in fact, and who is customarily engaged in an independent trade, occupation, profession, or business related to the service performed is not an "employee".
- 2.6** "Employer" means every person, firm, partnership, association, corporation, migratory field labor contractor or crew leader, receiver, or other officer of court in Colorado, and any agent or officer thereof, of the above mentioned classes, employing any person in Colorado; except that the provisions of article 4, title 8, C.R.S., shall not apply to the state or its agencies or entities, counties, cities and counties, municipal corporations, quasi-municipal corporations, school districts, and irrigation, reservoir, or drainage conservation companies or districts organized and existing under the laws of Colorado.
- 2.7** "Fine" means any monetary amount assessed against an employer and payable to the division.
- 2.8** "Notice of assessment" means a written notice by the division, based on a citation, that the employer shall pay the amount of wages, penalties, or fines assessed.
- 2.9** "Notice of complaint" means the letter sent by the division to the employer as described in § 8-4-111(2)(a), C.R.S.
- 2.10** "Penalty" means any monetary amount assessed against an employer and payable to an employee.

- 2.11** "Wage complaint" means a complaint filed with the division from an employee for unpaid wages alleging that an employer has violated section 15 of article XVIII of the Colorado Constitution, article 4 or article 6 of title 8, C.R.S., or any rule adopted by the director pursuant to article 4 or article 6 of title 8, C.R.S.
- 2.12** "Wages" or "compensation" means:
- A. All amounts for labor or service performed by employees, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculating the same or whether the labor or service is performed under contract, subcontract, partnership, subpartnership, station plan, or other agreement for the performance of labor or service if the labor or service to be paid for is performed personally by the person demanding payment. No amount is considered to be wages or compensation until such amount is earned, vested, and determinable, at which time such amount shall be payable to the employee pursuant to article 4, title 8, C.R.S.
 - B. Bonuses or commissions earned for labor or services performed in accordance with the terms of any agreement between an employer and employee;
 - C. Vacation pay earned in accordance with the terms of any agreement. If an employer provides paid vacation for an employee, the employer shall pay upon separation from employment all vacation pay earned and determinable in accordance with the terms of any agreement between the employer and the employee.
- 2.12.1** "Wages" or "compensation" does not include severance pay.
- 2.13** "Written demand" means any written demand for wages or compensation from or on behalf of an employee, including a notice of complaint, mailed or delivered to the employer.

Rule 3. Proper Payment – Methods of Payment – Direct Deposit and Paycards

- 3.1** No employer or agent or officer thereof shall issue, in payment of or as an evidence of indebtedness for wages due an employee, any order, check, draft, note, memorandum, or other acknowledgment of indebtedness unless the same is negotiable and payable upon demand without discount in cash at a bank organized and existing under the general banking laws of the state of Colorado or the United States or at some established place of business in the state.
- 3.1.1** The name and address of the drawee shall appear upon the face of the order, check, draft, note, memorandum, or other acknowledgment of indebtedness; except that such provisions shall not apply to a public utility engaged in interstate commerce and otherwise subject to the power of the public utilities commission.
- 3.1.2** At the time of the issuance of same, the maker or drawer shall have sufficient funds in or credit with the bank or other drawee for the payment of same. Where such order, check, draft, note, memorandum, or other acknowledgment of indebtedness is protested or dishonored on the ground of insufficiency of funds or credit, the notice of memorandum of protest or dishonor thereof shall be admissible as proof of presentation, nonpayment, and protest.
- 3.2** Nothing in these rules shall prohibit an employer from depositing wages due or to become due or an advance on wages to be earned in an account in any bank, savings and loan association, credit union, or other financial institution authorized by the United States or one of the several states to receive deposits in the United States if the employee has voluntarily authorized such deposit in the financial institution of the employee's choice.

- 3.3** Nothing in these rules shall prohibit an employer from depositing an employee's wages on a paycard, so long as the employee:
- A. Is provided free means of access to the entire amount of net pay at least once per pay period; or
 - B. May choose to use other means for payment of wages as authorized in rule 3.1 and 3.2.
- 3.3.1** As used in this rule, "paycard" means an access device that an employee uses to receive his or her payroll funds from his or her employer.

Rule 4. Payment of Wages – Paydays – Itemized Pay Statements and Tips Notification

- 4.1** All wages or compensation, other than those mentioned in § 8-4-109, C.R.S., earned by any employee in any employment, other than those specified in § 8-4-103(3), C.R.S., shall be due and payable for regular pay periods of no greater duration than one calendar month or thirty days, whichever is longer, and on regular paydays no later than ten days following the close of each pay period unless the employer and the employee shall mutually agree on any other alternative period of wage or salary payments.
- 4.1.1** An employer is subject to the fine specified in § 8-4-113(1), C.R.S., if, two or more times within any twenty-four-month period, the employer causes an employee's check, draft, or order to not be paid because the employer's bank does not honor an employee's paycheck upon presentment. The director may investigate complaints regarding alleged violations of this rule.
- 4.2** Nothing in these rules shall apply to compensation payments due an employee under a profit-sharing plan, a pension plan, or other similar deferred compensation programs.
- 4.3** Every employer shall at least monthly, or at the time of each payment of wages or compensation, furnish to each employee an itemized pay statement in writing showing the following:
- A. Gross wages earned;
 - B. All withholdings and deductions;
 - C. Net wages earned;
 - D. The inclusive dates of the pay period;
 - E. The name of the employee or the employee's social security number; and
 - F. The name and address of the employer.
- 4.4** An employer shall retain records reflecting the information contained in an employee's itemized pay statement as described in § 8-4-103(4), C.R.S., for a period of at least three years after the wages or compensation were due.
- 4.4.1** The records shall be available for inspection by the division, and the employer shall provide copies of the records upon request by the division or the employee.
- 4.4.2** The director may impose a fine of up to two hundred fifty dollars per employee per month on an employer who violates § 8-4-103(4.5), C.R.S., up to a maximum fine of seven thousand five hundred dollars.

- 4.5** It is unlawful for any employer engaged in any business where the custom prevails of the giving of presents, tips, or gratuities by patrons thereof to an employee of said business to assert any claim to, or right of ownership in, or control over such presents, tips, or gratuities; and such presents, tips, or gratuities shall be the sole property of the employee of said business unless the employer posts in his or her place of business in a conspicuous place a printed card, at least twelve inches by fifteen inches in size, containing a notice to the general public in letters at least one-half inch high that all presents, tips, or gratuities given by any patron of said business to an employee thereof are not the property of said employee but belong to the employer.
- 4.5.1** Nothing in rule 4.5 shall prevent an employer covered hereby from requiring employees to share or allocate such presents, tips, or gratuities on a preestablished basis among the employees of such business.

Rule 5. Payroll Deductions

- 5.1** No employer shall make a deduction from the wages or compensation of an employee except as follows:
- A. Deductions mandated by or in accordance with local, state, or federal law including, but not limited to, deductions for taxes, "Federal Insurance Contributions Act" ("FICA") requirements, garnishments, or any other court-ordered deduction;
 - 1. Deductions for contributions attributable to automatic enrollment in an employee retirement plan, as defined in § 8-4-105.5, C.R.S., regardless of whether the plan is subject to the federal "Employee Retirement Income Security Act of 1974", as amended;
 - B. Deductions for loans, advances, goods or services, and equipment or property provided by an employer to an employee pursuant to a written agreement between such employer and employee, so long as it is enforceable and not in violation of law;
 - C. Any deduction necessary to cover the replacement cost of a shortage due to theft by an employee if a report has been filed with the proper law enforcement agency in connection with such theft pending a final adjudication by a court of competent jurisdiction; except that, if the accused employee is found not guilty in a court action or if criminal charges related to such theft are not filed against the accused employee within ninety days after the filing of the report with the proper law enforcement agency, or such charges are dismissed, the accused employee shall be entitled to recover any amount wrongfully withheld plus interest. In the event an employer acts without good faith, in addition to the amount wrongfully withheld and legally proven to be due, the accused employee may be awarded an amount not to exceed treble the amount wrongfully withheld. In any such action the prevailing party shall be entitled to reasonable costs related to the recovery of such amount including attorney fees and court costs;
 - D. Any deduction, not listed in (A), (B), or (C) of rule 5.1, that is authorized by an employee if the authorization is revocable, including deductions for hospitalization and medical insurance, other insurance, savings plans, stock purchases, supplemental retirement plans, charities, and deposits to financial institutions;
 - E. A deduction for the amount of money or the value of property that the employee failed to properly pay or return to the employer in the case where a terminated employee was entrusted during his or her employment with the collection, disbursement, or handling of such money or property.

1. The employer shall have ten calendar days after the termination of employment to audit and adjust the accounts and property value of any items entrusted to the employee before the employee's wages or compensation shall be paid as provided in § 8-4-109, C.R.S. This is an exception to the pay requirements in § 8-4-109, C.R.S. The penalty provided in § 8-4-109, C.R.S., shall apply only from the date of demand made after the expiration of the ten-day period allowed for payment of the employee's wages or compensation.
2. If, upon such audit and adjustment of the accounts and property value of any items entrusted to the employee, it is found that any money or property entrusted to the employee by the employer has not been properly paid or returned the employer as provided by the terms of any agreement between the employer and the employee, the employee shall not be entitled to the benefit of payment pursuant to § 8-4-109, C.R.S., but the claim for unpaid wages or compensation of such employee shall be disposed of as provided for by article 4, title 8, C.R.S.

5.2 Nothing in this section authorizes a deduction below the minimum wage applicable under the "Fair Labor Standards Act of 1938", 29 U.S.C. § 201 et seq.

Rule 6. Early Payment of Wages Permitted

6.1 Nothing contained in article 4, title 8, C.R.S., shall in any way limit or prohibit the payment of wages or compensation at earlier dates, or at more frequent intervals, or in greater amounts, or in full when or before due.

Rule 7. Post Notice of Paydays

7.1 Every employer shall post and keep posted conspicuously at the place of work if practicable, or otherwise where it can be seen as employees come or go to their places of work, or at the office or nearest agency for payment kept by the employer a notice specifying the regular paydays and the time and place of payment, in accordance with the provisions of § 8-4-103, C.R.S., and also any changes concerning them that may occur from time to time.

Rule 8. Termination of Employment – Payments Required - Penalties

8.1 When an interruption in the employer-employee relationship by volition of the employer occurs, the wages or compensation for labor or service earned, vested, determinable, and unpaid at the time of such discharge is due and payable immediately. If at such time the employer's accounting unit, responsible for the drawing of payroll checks, is not regularly scheduled to be operational, then the wages due the separated employee shall be made available to the employee no later than six hours after the start of such employer's accounting unit's next regular workday; except that, if the accounting unit is located off the work site, the employer shall deliver the check for wages due the separated employee no later than twenty-four hours after the start of such employer's accounting unit's next regular workday to one of the following locations selected by the employer:

- A. The work site;
- B. The employer's local office; or
- C. The employee's last-known mailing address.

- 8.2** When an employee quits or resigns such employee's employment, the wages or compensation shall become due and payable upon the next regular payday. When a separation of employment occurs, the employer shall make the separated employee's check for wages due available at one of the following locations selected by the employer:
- A. The work site;
 - B. The employer's local office; or
 - C. The employee's last-known mailing address.
- 8.3** If an employer has made the employee's wages or compensation available at the work site or at the employer's local officer under § 8-4-109(1)(a)-(b), C.R.S., and the employee has not received the wages or compensation within sixty days after the wages or compensation were due, the employer shall mail the employee's check for wages or compensation due to the employee's last-known mailing address.
- 8.4** Nothing in § 8-4-109(1), C.R.S., shall limit the right of an employer to set off any deductions pursuant to § 8-4-105, C.R.S., owing by the employee to the employer or require the payment at the time employment is severed of compensation not yet fully earned under the compensation agreement between the employee and employer, whether written or oral.
- 8.5** If an employer refuses to pay wages or compensation in accordance with § 8-4-109(1), C.R.S., the employee, his or her designated agent, or the division may send a written demand for the payment.
- 8.5.1** If the employer disputes the amount of wages or compensation claimed by an employee under article 4, title 8, C.R.S., and if, within fourteen days after the written demand is sent, the employer makes a legal tender of the amount that the employer in good faith believes is due, the employer shall not be liable for any penalty unless, in a legal proceeding, including a civil action or an administrative procedure under § 8-4-111, C.R.S., and § 8-4-111.5, C.R.S., the employee recovers a greater sum than the amount so tendered.
- 8.6** If an employee's earned, vested, and determinable wages or compensation is not paid within fourteen days after the written demand is sent in the manner set forth in § 8-4-109(3)(d), C.R.S., the employer shall be liable to the employee for the wages or compensation, and a penalty of the sum of the amount of wages or compensation due or, if greater, the employee's average daily earnings for each day, not to exceed ten days, until such payment or other settlement satisfactory to the employee is made:
- A. One hundred twenty-five percent of that amount of such wages or compensation up to and including seven thousand five hundred dollars
- 8.7** If the employee can show that the employer's failure to pay is willful, the penalty required under § 8-4-109(3)(b), C.R.S., shall increase by fifty percent. Evidence that a judgment has, within the previous five years, been entered against the employer for failure to pay wages or compensation is admissible as evidence of willful conduct.
- 8.8** Penalties established by § 8-4-109(3), C.R.S., apply to actions instituted by the director under article 4, title 8, C.R.S., when no interruption of the employer-employee relationship has occurred.

- 8.9** The employer shall send or deliver payment, by check, draft or voucher in the employee's name, to the employee at the address contained in the written demand; or make the payment by direct deposit authorized under § 8-4-102(2), C.R.S., if the employee has not revoked the authorization.
- 8.9.1** The employer may, but is not required to, make the payment by direct deposit to an account specified by the employee in the demand, even if the employee has not previously authorized direct deposit of the employee's compensation, or make the payment by another method requested by the employee in the demand, if applicable.
- 8.9.2** If the employee has not previously authorized direct deposit of compensation and the demand does not state an address in which the payment should be mailed, the employer shall make the payment as follows:
- A. To the employee's last-known address according to the records of the employer;
or
 - B. If applicable and if the employer so elects, as otherwise requested by the employee in the demand.
- 8.10** The employee or his or her designated agent may commence a civil action to recover the penalty set forth in § 8-4-109(3), C.R.S. For an action filed in a small claims court, established pursuant to part 4 of article 6 of title 13, C.R.S., if the employer has not received a written demand at least fourteen days before the employer is served with the complaint or other document commencing the action, service of the complaint or other document serves as the written demand under § 8-4-109(3), C.R.S. If an employer makes a legal tender of the full amount claimed in the action within fourteen days after service of the complaint or other document commencing the action, the employee shall dismiss the action.

Rule 9. Wage Complaint Adjudication – Administrative Procedure

- 9.1** An employee may pursue a wage complaint through either the court system or the division's administrative procedure. Employees may elect either option, and are not required to utilize the division's administrative procedure in order to pursue a wage complaint in court. However, § 8-4-111(2)(e), C.R.S., provides that: upon payment by an employer, and acceptance by an employee, of all wages, compensation, and penalties assessed by the division in a citation and notice of assessment issued to the employer, the payment shall constitute a full and complete satisfaction by the employer and bar the employee from initiating or pursuing any civil action or other administrative proceeding based on the wage complaint addressed by the citation and notice of assessment.
- 9.1.1** The administrative procedure applies to wages and compensation earned on and after January 1, 2015.
- 9.1.2** The administrative procedure is subject to a dollar limit for nonpayment of wages or compensation of seven thousand five hundred dollars or less, exclusive of penalties and fines.
- 9.1.3** Wage complaints of employees where no interruption of the employer-employee relationship has occurred are subject to the administrative procedure.
- 9.2** An employee who wishes to file a wage complaint with the division shall utilize the division-approved form.

- 9.2.1** A wage complaint may only be filed by the employee (or the employee's representative) who has been directly affected by the employer's alleged violations. The complainant shall be the specific employee who has not received his or her wages or compensation, or who has been affected by other non-monetary violations under the division's authority.
- 9.2.2** A wage complaint shall include the complainant's signature, contact information, and basis for the wage complaint. Failure to include this information on the wage complaint form may result in administrative dismissal of the wage complaint.
- 9.2.3** The failure of a complainant to respond to informational or investigatory requests by the division may result in administrative dismissal of the wage complaint.

Rule 10. Notice of Complaint

- 10.1** The division shall initiate the administrative procedure by sending a notice of complaint to the employer by mail or electronic means. An employer who is subject to a wage complaint shall be notified in writing of the wage complaint by the division via U.S. postal mail. In the event that the employer cannot be contacted via U.S. postal mail, or other circumstances exist which the division deems to warrant the use of other contact methods, the division shall utilize other methods to contact the employer.
 - 10.1.2** The notice of complaint provided by the division to the employer shall include:
 - A. The name of the complainant;
 - B. The nature of the wage complaint; and
 - C. The amount for which the employer may be liable, including any potential fines or penalties.
- 10.2** An employer shall respond to the division within fourteen days after the notice of complaint is sent.
- 10.3** The division's notice of complaint filed pursuant to § 8-4-111(2), C.R.S., satisfies the requirement of a written demand as described in § 8-4-109(3)(a), C.R.S.

Rule 11. Investigations

- 11.1** Wage complaints shall be assigned to division investigators. Investigatory methods utilized by the division may include, but are not limited to:
 - A. Interviews of the employer, employee, and other parties;
 - B. Information gathering, fact-finding, and reviews of written submissions;
 - C. Any other techniques which enable the division to assess the employer's compliance.

Rule 12. Citation and Notice of Assessment

- 12.1** The division shall issue a determination within ninety days after the notice of complaint is sent unless the division extends the time period by providing advance written notice to the employee and employer stating good cause for the extension of time.
- 12.2** If the division does not find a violation based on the wage complaint and any response, including the failure by the employee to pursue the wage complaint, the division shall issue a notice of

dismissal of the wage complaint and send the notice of dismissal to all interested parties. The notice will set forth the employee's rights to any other relief available under § 8-4-111(2)(b), C.R.S., or § 8-4-111.5, C.R.S.

- 12.3** If the division determines that an employer has violated article 4, title 8, C.R.S., for nonpayment of wages or compensation, the division shall issue a citation and notice of assessment for the amount determined that is owed, which amount will include all wages and compensation owed, penalties pursuant to § 8-4-109, C.R.S., and any fines pursuant to § 8-4-113, C.R.S.
- 12.4** To encourage compliance by the employer, if the employer pays the employee all wages and compensation owed within fourteen days after the citation and notice of assessment is sent to the employer, the division may waive or reduce any fines imposed pursuant to § 8-4-113(1), C.R.S., and reduce by up to fifty percent penalties imposed pursuant to § 8-4-109, C.R.S.
- 12.5** Upon payment by an employer, and acceptance by an employee of all wages, compensation, and penalties assessed by the division in a citation and notice of assessment issued to the employer, the payment shall constitute a full and complete satisfaction by the employer and bar the employee from initiating or pursuing any civil action or other administrative proceeding based on the wage complaint addressed by the citation and notice of assessment.

Rule 13. Fines Pursuant to Enforcement

- 13.1** If a case against an employer is enforced pursuant to § 8-4-111, C.R.S., any employer who without good faith legal justification fails to pay the wages of each of his or her employees shall forfeit to the people of the state of Colorado a fine in an amount determined by the director or hearing officer but no more than the sum of fifty dollars per day for each such failure to pay each employee, commencing from the date that such wages first became due and payable.
 - 13.1.1** The division may collect the fine through its citation and notice of assessment issued pursuant to § 8-4-111(2), C.R.S., or after a hearing conducted pursuant to § 8-4-111.5, C.R.S.
- 13.2** The director or hearing officer shall impose a fine of two hundred fifty dollars on an employer who fails to respond to a notice of complaint or to any other notice from the division to which a response is required.
 - 13.2.1** The director or hearing officer may waive or reduce the fine only if he or she finds good cause for an extension of the time for the employer to file the response.
- 13.3** A certified copy of any citation, notice of assessment, or order imposing wages due, fines or penalties pursuant to article 4, title 8, C.R.S., may be filed with the clerk of any court having jurisdiction over the parties at any time after the entry of the order. The certified copy shall be recorded by the clerk of the district court in the judgment book of said court and entry thereof made in the judgment docket, and it shall thenceforth have all the effect of a judgment of the district court, and execution may issue thereon out of said court as in other cases.
- 13.4** The division shall transmit all fines collected pursuant to § 8-4-113, C.R.S., to the state treasurer, who shall credit the same to the wage theft enforcement fund, referred to in this rule as the "fund". The moneys in the fund are subject to annual appropriation by the general assembly to the division for the direct and indirect costs associated with implementing article 4, title 8, C.R.S.

Rule 14. Termination of Division's Administrative Procedure

- 14.1** An employee who has filed a wage complaint with the division pursuant to § 8-4-111(2), C.R.S., may elect to terminate the division's administrative procedure within thirty-five days after the

issuance of the determination of compliance or citation and notice of assessment by providing a written notice to the division.

14.2 An employee who terminates the division's administrative procedure preserves any private right of action the employee may have.

14.3 Upon receipt of the written notice of termination, the division shall immediately discontinue its action against the employer and revoke any compliance determination.

Rule 15. Appeals and Hearings

15.1 Any interested party who is dissatisfied with the division's compliance determination on a wage complaint filed pursuant to § 8-4-111(2), C.R.S., may file a request for an administrative appeals hearing within thirty-five days after the division's compliance determination is sent.

15.1.1 If no request is filed within the thirty-five day period, the division's compliance determination is considered the division's final agency decision.

15.1.2 The division's compliance determination shall contain information on appeal rights and appeal procedures.

15.2 Parties who wish to appeal the division's compliance determination are sent to the division's hearing officer and afforded an administrative appeals hearing and a final agency decision in conformity with § 8-4-111.5, C.R.S.

15.2.1 A division hearing officer shall preside over the administrative appeals hearing.

15.3 The hearing officer's decision constitutes a final agency action pursuant to § 24-4-106, C.R.S.

15.4 Any party to the division's administrative appeals hearing may appeal the hearing officer's decision only by commencing an action for judicial review in the district court of competent jurisdiction within thirty-five days after the date of mailing of the decision by the division.

15.4.1 Judicial review is limited to appeal briefs and the record designated on appeal.

Rule 16. Limitation of Actions

16.1 All actions brought pursuant to article 4, title 8, C.R.S., shall be commenced within two years after the cause of action accrues and not after that time; except that all actions brought for a willful violation of article 4, title 8, C.R.S., shall be commenced within three years after the cause of action accrues and not after that time.

16.2 Nothing in these rules shall be construed to limit the right of the division to pursue any action available with respect to an employee that is identified as a result of a wage complaint or with respect to an employer in the absence of a wage complaint.

Rule 17. Claims Other Than Those Considered by the Division

17.1 Nothing in these rules shall be construed to limit the right of the employee to pursue any civil action or administrative proceeding for any claims other than those considered by the division in the employee's wage complaint. The claims considered by the division in the employee's wage complaint are subject to the limitations set forth in § 8-4-111(2)(e), C.R.S., and § 8-4-111(3), C.R.S.

Rule 18. Nonwaiver of Employee Rights

- 18.1** Any agreement, written or oral, by any employee purporting to waive or to modify such employee's rights in violation of article 4, title 8, C.R.S., shall be void.

Rule 19. Enforcement

- 19.1** The director of the division of labor in the department of labor and employment shall enforce the Wage Protection Act and these rules.

Rule 20. Severability

- 20.1** If any provision of these rules or their application to any person or circumstance is held illegal, invalid, or unenforceable, no other provisions or applications of the rules shall be affected that can be given effect without the illegal, invalid, or unenforceable provision or application, and to this end the provisions of these rules are severable.

**COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT
DIVISION OF LABOR**

**NOTICE OF PUBLIC HEARING CONCERNING
TWO PROPOSED SETS OF RULES:**

**COLORADO MINIMUM WAGE ORDER NUMBER 31
COLORADO WAGE PROTECTION ACT RULES**

Notice is hereby given of a public hearing to afford all interested persons an opportunity to be heard prior to the adoption of Colorado Minimum Wage Order Number 31, 7 CCR 1103-1 and the Colorado Wage Protection Act Rules, 7 CCR 1103-7 under the authority granted the Division of Labor in § 8-1-107(2)(p), § 8-6-106, § 8-6-108(2), § 8-6-109, § 8-4-111(1)(b), § 8-4-111(2)(a)(i), § 8-4-111.5(1), C.R.S. (2014).

Date and Time of Hearing: **Tuesday, November 4, 2014, at 2:00 p.m.**

Place of Hearing: **Colorado Division of Labor
633 17th Street, Second Floor, Suite 200
Denver, CO 80202**

This hearing will be held in accordance with the provisions of the Colorado Administrative Procedures Act, § 24-4-101, et seq., C.R.S. (2014), to receive any testimony, written data, views, or arguments which interested parties may wish to submit regarding the proposed rules.

Colorado Minimum Wage Order Number 31:

It is proposed, in accordance with Article XVIII, Section 15, of the Colorado Constitution, that the Director of the Division of Labor adopt Colorado Minimum Wage Order Number 31, 7 CCR 1103-1, to reflect the new state minimum wage.

Pursuant to Article XVIII, Section 15, of the Colorado Constitution, Colorado Minimum Wage Order Number 31 will establish a new state minimum wage of \$8.23 per hour.

Colorado Minimum Wage Order Number 31 differs from the current Colorado Minimum Wage Order Number 30 in the state minimum wage. Colorado Minimum Wage Order Number 31 also includes reference to the newly enacted Wage Protection Act of 2014.

Colorado Wage Protection Act Rules:

It is proposed that the Director of the Division of Labor adopt the Colorado Wage Protection Act Rules, 7 CCR 1103-7, to implement the Wage Protection Act of 2014.

Copies of the proposed sets of rules shall be available at least five days before the hearing at www.coloradolaborlaw.gov or:

Colorado Division of Labor
633 17th Street, Suite 200
Denver, Colorado 80202

To ensure sufficient time for consideration prior to adopting final rules, comments must be provided to the Division by the close of business on Thursday, November 6, 2014. Comments will be accepted at any time prior to the hearing.

Comments may be delivered by mail, faxed to 303-318-8400, or emailed to Elizabeth.Funk@state.co.us.

Comment Deadline: Thursday, November 6, 2014

STATEMENT OF BASIS AND PURPOSE

COLORADO WAGE PROTECTION ACT RULES 7 CCR 1103-7

BASIS: § 8-1-107(2)(p) and § 8-4-101, et. seq., C.R.S. (2014), provide the Director of the Division of Labor with the authority to adopt rules and regulations pertaining to the implementation of the Wage Protection Act.

PURPOSE: The purpose of the proposed Colorado Wage Protection Act Rules is to implement the Wage Protection Act of 2014.

Pursuant to § 24-4-103(4)(b), C.R.S. (2013), the Director finds that: 1) there is a demonstrated need for the rules; 2) the proper statutory authority exists for the rules; 3) to the extent practicable, the rules are clearly stated so that their meaning will be understood by any party required to comply with the rules; 4) the rules do not conflict with other provisions of law; and 5) the duplicating or overlapping of the rules is explained by the agency proposing the rules.

Notice of Rulemaking Hearing

Tracking number

2014-00991

Department

1507 - Department of Public Safety

Agency

1507 - Colorado Bureau of Investigation

CCR number

8 CCR 1507-33

Rule title

Rules and Regulations Concerning the Medina Alert Program

Rulemaking Hearing

Date

10/31/2014

Time

08:00 AM

Location

690 Kipling Street, Lakewood, CO 1st floor conference room

Subjects and issues involved

Rules and Regulations Concerning the Medina Alert Program

Statutory authority

24-33.5-416.7, C.R.S.

Contact information

Name

Jan Coffindaffer

Title

General Professional IV

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303-813-5757

Email

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DEPARTMENT OF PUBLIC SAFETY COLORADO BUREAU OF INVESTIGATION

8 CCR 1507-33

RULES AND REGULATIONS CONCERNING THE MEDINA ALERT PROGRAM

STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE

Pursuant to 24-33.5-416.7 C.R.S., the Executive Director of the Colorado Department of Public Safety shall promulgate rules and regulations concerning the Medina Alert Program.

It was declared by the General Assembly that this act is necessary for the immediate preservation of the public peace, health and safety of Colorado citizens. The absence of implementing rules to carry out the purpose of the statute would be contrary to this declaration. For these reasons, it is imperatively necessary that the proposed rules be adopted.

Stan Hilkey, Executive Director
Colorado Department of Public Safety

Date of Adoption

DEPARTMENT OF PUBLIC SAFETY COLORADO BUREAU OF INVESTIGATION

RULES AND REGULATIONS CONCERNING THE MEDINA ALERT PROGRAM 8 CCR 1507-33

Authority to Adopt Rules and Regulations

The Executive Director of the Colorado Department of Public Safety is mandated to promulgate rules and regulations regarding the Medina Alert Program (MAP) pursuant to 24-33.5-416.7, C.R.S.

Definitions

The definitions provided in section 24-33.5-416.7(2) shall apply to these rules and regulations. The following definitions shall also apply.

“Notification Period”- means the time the alert will be active until the suspect(s) is apprehended or the requesting agency provides information that the alert is no longer necessary and should be canceled.

“Serious Bodily Injury” – has the same meaning as defined in section 42-4-1601(4)(b), C.R.S., namely: injury that involves, either at the time of the actual injury or at a later time, a substantial risk of death, a substantial risk of serious permanent disfigurement, or a substantial risk of protracted loss or impairment of the function of any part or organ of the body, or breaks, fractures, or burns of the second or third degree.

“Hit And Run” - means an incident when the driver of a motor vehicle involved in an accident fails to stop at the scene of the accident as required by section 42-4-1601, C.R.S.

“Medina Alert Broadcast” – means a public broadcast notification issued pursuant to these rules containing information regarding the imminent threat to the safety of the public when a person kills or inflicts a serious bodily injury upon a person during a motor vehicle accident and flees the scene.

Applicability

These Rules and Regulations shall apply to the Colorado Bureau of Investigation (CBI) and law enforcement agencies statewide.

Rules / Regulations / Procedures

CBI-MAP 1

- A. During the course of their investigation, and upon verifying that a motor vehicle accident has occurred that involves a death or serious bodily injury and the suspect or suspects have fled the scene of the offense, a local law enforcement agency, operating under their individual policy and procedures, may notify the CBI at the main number and request that the information be conveyed to the bureau for a Medina Alert Broadcast.

CBI-MAP 2

- A. The CBI will verify the accuracy of the information based on personal contact with a representative from the law enforcement agency. The verification of information provided by the law enforcement agency will include, but is not limited to:
 - 1) Verifying the identity of the law enforcement agency and the reporting law enforcement official;
 - 2) Verifying all appropriate information that the reporting law enforcement agency has that may assist in the apprehension of the suspect or suspects;
 - 3) Verifying that the information being reported meets the definition of “Hit and Run” and “Serious Bodily Injury” as defined in Colorado statute and this rule;
 - 4) Verifying law enforcement has sufficient additional information concerning the suspect or the suspect’s vehicle, including but not limited to;
 - A complete license plate number of the suspect’s vehicle;
 - A partial license plate number and the make, style, and color of the suspect’s vehicle; and/or
 - The identity of the Suspect.

CBI-MAP 3

The Medina Alert Broadcast may contain, but is not limited to, the following information:

- A. All appropriate information that the reporting law enforcement agency has that may assist in the apprehension of the suspect(s);
- B. A statement instructing anyone with information related to the hit and run accident to contact his or her local law enforcement agency;
- C. A warning that the suspect(s) are dangerous and that members of the public should not attempt to apprehend the suspect(s) themselves.

CBI-MAP 4

- A) The Medina Alert Broadcast may be rebroadcast to the public as often as possible, but it is recommended to rebroadcast every 15 minutes the first 2 hours, then every 30 minutes thereafter. The update of information may be at the request of state or local law enforcement, as additional information becomes available, or as investigation circumstances change. This information is provided to the CBI and forwarded to the broadcasters.
- B) The cancellation of the Medina Alert Broadcast shall be the responsibility of the CBI. The requesting law enforcement agency must contact the CBI designee to deactivate the Medina Alert Broadcast once the suspect or suspects have been apprehended or at the end of the determined notification period.

- C) The CBI will notify the participating radio stations, television stations, and other media outlets in Colorado that the suspect or suspects have been apprehended or at the end of the determined notification period, whichever comes first.
- D) A list of broadcasters receiving the alert will be maintained by the CBI.

DRAFT

Notice of Rulemaking Hearing

Tracking number

2014-01066

Department

1507 - Department of Public Safety

Agency

1507 - Division of Fire Prevention and Control

CCR number

8 CCR 1507-34

Rule title

Local Firefighter Safety and Disease Prevention Fund

Rulemaking Hearing

Date

11/05/2014

Time

01:00 PM

Location

690 Kipling St. Lakewood, CO 80215 First Floor Conference Room

Subjects and issues involved

Firefighter Safety Grant authorized by SB 14-046

Statutory authority

24-33.5-1203.5; 24-33.5-1231

Contact information

Name

Mark Quick

Title

State Fire Training Director

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**DEPARTMENT OF PUBLIC SAFETY
DIVISION OF FIRE PREVENTION AND CONTROL
RULES AND REGULATIONS
CONCERNING
8 CCR 1507-17
COLORADO FIREFIGHTER SAFETY AND DISEASE PREVENTION FUND**

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 Procedure Act, Section 24-4-101, et seq., C.R.S.

Senate Bill 14-046 directed the Division to implement a needs-based grant program in Colorado to governing bodies to provide funding or reimbursement for equipment and training designed to increase firefighter safety and prevent occupation-related diseases.

Senate Bill 14-046 also tasked the division with promulgating rules to structure the grant application process, which must include a merit-based, peer-review process with grant reviewers from the Colorado state fire chiefs, Colorado Professional Fire Fighters Association and the Colorado State Fire Fighters Association in equal representation.

The purpose of this rule is to incorporate the provisions of SB 14- 046 within the rules of the Division of Fire Prevention and Control pertaining to grant awards for firefighter safety and disease prevention.

These responsibilities are considered a matter of public safety; therefore the absence of implementing rules to carry out the purpose of these 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 Cooke, Director
Colorado Department of Public Safety
Division of Fire Prevention and Control

Date of Adoption

**DEPARTMENT OF PUBLIC SAFETY
DIVISION OF FIRE PREVENTION AND CONTROL
RULES AND REGULATIONS
CONCERNING
8 CCR 1507-17
COLORADO FIREFIGHTER SAFETY AND DISEASE PREVENTION FUND**

APPLICABILITY

These rules and regulations constitute the minimum standards for all applications, distributions of equipment, and funding through the Colorado Firefighter Safety and Disease Prevention Fund.

ARTICLE 1 – AUTHORITY TO ADOPT RULES AND REGULATIONS

- 1.1 The Director of the Division of Fire Prevention and Control 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 Prevention and Control.
- 1.2 Section 24-33.5-1231 establishes the duty of the Director of the Division of Fire Prevention and Control to promulgate rules governing the award of grants from the Local Firefighter Safety and Disease Prevention Fund.

ARTICLE 2 – DEFINITIONS

2.1 The definitions provided in 24-33.5-1202, C.R.S., apply to these rules. The following definitions also apply:

“Applicant” means an entity that applies for funding.

“Board” means the Fire Service Training and Certification Advisory Board established in 24-33.5-1204, C.R.S.

“Director” means the Director of the Division of Fire Prevention and Control in the Department of Public Safety.

“Division” or “DFPC” means the Division of Fire Prevention and Control in the Department of Public Safety.

“Fire department” means the duly authorized fire protection organization of a town, city, county, or city and county, a fire protection district, or a metropolitan district or county improvement district that provides fire protection.

“Governing body” means the governing body of a municipality, fire protection district, or county improvement district.

“Policies” means formal guidelines promulgated by DPFC concerning the methods, procedures, and processes for implementing these rules and administering the program.

“Safely” means to perform the objective without endangering or injuring oneself or others.

“State agency” means all of the departments, divisions, commissions, boards, bureaus, and institutions in the executive branch of state government. “State agency” does not include the legislative or judicial department, the department of law, the department of state, the department of the treasury, or state-supported institutions of higher education.

ARTICLE 3 – GUIDES, DOCUMENTS, AND STANDARDS INCORPORATED BY REFERENCE

3.1 The following guides and standards are adopted by these regulations. The following standards are published by the National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02269. Copies of these standards can be obtained from the NFPA Office, 1 Batterymarch Park, Quincy, MA 02269 or via www.nfpa.ORG.

- 3.1.1 Standard on Open-Circuit Self-Contained Breathing Apparatus (SCBA) for Emergency Services (NFPA 1981, 2013 Edition)
- 3.1.2 Standard on Selection, Care, and Maintenance of Open-Circuit Self-Contained Breathing Apparatus (SCBA) (NFPA 1852, 2013 Edition)
- 3.1.3 Standard on Selection, Care, and Maintenance of Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting (NFPA 1851, 2014 Edition)
- 3.1.4 Standard on Breathing Air Quality for Emergency Services Respiratory Protection (NFPA 1989, 2013 Edition)
- 3.1.5 Standard on Comprehensive Occupational Medical Program for Fire Departments (NFPA 1582, 2013 Edition)
- 3.1.6 Standard on Fire Department Occupational Safety and Health Program (NFPA 1500, 2013 Edition)
- 3.1.7 Standard for Fire Fighter Professional Qualifications (NFPA 1001, 2013 Edition)

3.2 The Division shall maintain copies of the complete texts of the adopted guides and standards for public inspection. Interested parties may inspect the referenced incorporated materials during regular business hours at the Division Office located at 690 Kipling St, Lakewood, CO 80215.

3.3 This rule does not include later amendments or editions of the incorporated material.

3.4 Questions, clarifications, or interpretation of any guidelines, policy, procedure, or standard adopted by reference in these rules should be addressed in writing to: Firefighter Safety and Disease Prevention Program Manager/Section Chief, Colorado Division of Fire Prevention and Control, 690 Kipling St, Lakewood, CO 80215.

ARTICLE 4 – TYPES OF GRANTS

4.1 The following funding opportunities are available through the Division:

4.1.1 Firefighter equipment, training and services related to firefighter safety

4.1.2 Firefighter equipment, training and services related to firefighter disease prevention

4.2. Application Requirements

a) Applicants must submit written application to the DFPC during the posted application acceptance period. Applications submitted prior to or after the application acceptance period will not be eligible for award consideration.

b) Applications will be reviewed and awarded in the following sequence:

1) Peer-review process: Utilizing established scoring and grading criteria, a peer review process will be conducted with grant reviewers from the Colorado State Fire Chiefs, Colorado Professional Fire Fighters Association, and the Colorado State Fire Fighters Association, in equal representation.

2) Technical review: An application review will be conducted to ensure requested equipment is NFPA compliant and of reasonable cost.

3) Review for recommendation of award: The Fire Service Training Certification and Advisory Board shall review and approve the grant application process, funding priorities.

4) Grant Award: The Director will make awards based on the recommendations of the peer reviewers.

ARTICLE 5: AUDITING

5.1 The rules and standards provided in this Article 5 govern auditing practices by the Division.

5.2 In order to be considered for an award from the Local Firefighter Safety and Disease Prevention Fund, applicants must make available for inspection purchased equipment and all necessary financial information related to purchase, installation and associated costs of obtaining any grant award for equipment, training, and services.

5.3 Applicants found to have misused used grant funding will be responsible for complete reimbursement including collection fees.

ARTICLE 6: SEVERABILITY

6.1 If any provision or application of these rules is held invalid, all other provisions and applications of these rules will remain in effect.

ARTICLE 7: INQUIRIES

7.1 All questions or requests for interpretation of these rules should be submitted in writing to the Colorado Division of Fire Prevention and Control, Firefighter Safety and Disease Prevention Program Manager/Section Chief.

Notice of Rulemaking Hearing

Tracking number

2014-01005

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

11/14/2014

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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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

September 30, 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 November 2014 meeting of the Medical Services Board of the Department of Health Care Policy and Financing. The meeting will be held on Friday, November 14, 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, November 14, 2014, beginning at 9:00 a.m., in the seventh floor conference room at the 303 East 17th Avenue, Denver, CO 80203. Reasonable accommodations will be provided upon request prior to the meeting, by contacting the Medical Services Board Coordinator at 303-866-4416.

A copy of the full text of these proposed rule changes is available for review from the Medical Services Board Office, 1570 Grant Street, Denver, Colorado 80203, 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 14-07-28-B. Revision to the Health Programs Benefits and Operations Hospital Services Rule Concerning Bariatric Surgery, Section 8.300.C

Medical Assistance. Health Programs Specialty, Chronic and Hospital. This rule change will define the amount scope and duration of the Bariatric Surgery benefit. In order to define amount, scope and duration, the Department is amending the existing rule to place all of the substantive content from the Benefit Coverage Standards into rule. The authority for this rule is contained in, 25.5-1-301 through 25.5-1-303, C.R.S. (2013).

MSB 14-07-28-C, Revision to the Medical Assistance Health Programs Benefits and Operations Rule Concerning Dialysis Treatment Centers, Section 8.310

Medical Assistance. Health Programs Specialty, Chronic and Hospital. This rule change will define the amount scope and duration of the Dialysis Center benefit. In order to define amount, scope and duration, the Department is amending the existing Dialysis Center rule to place all of the substantive content from the Benefit Coverage Standards into rule. The authority for this rule is contained in 25.5-1-301 through 25.5-1-303, C.R.S. (2013).

MSB 14-05-06-A, Revision to the Medical Assistance Managed Care Contracts Division Rule Concerning Billing Procedures, Section 8.564

Medical Assistance. Health Programs benefits Management. This rule is amending the reference to a specific claim form that will no longer be accepted by the Department of Health Care and Policy. The existing form is the Colorado 1500, the new form will be the CMS 1500. The CMS 1500 is the standard form for claim submission. The authority for this rule is contained in Colorado Revised Statutes, sections 25.5-1-301 through 25.5-1-303 C.R.S. (2013).

MSB 14-06-04-A, Revision to the Medical Assistance Home and Community Based Services Home Modification Rule for Persons with Brain Injury Waiver, Community Mental Health Supports Waiver, and Elderly, Blind, and Disabled Waiver, Section 8.493

Medical Assistance. Long Term Services and Support, Home and Community Based Services. The

Joint Budget Committee has directed the Department to allocate the appropriated funds to increase the Home Modification benefit. The rules set forth at 10 CCR 2505-10 Section 8.493 are being altered to allow for this increase of \$2,500 to occur.

The authority for this rule is contained in 25.5-1-301 through 25.5-1-303, C.R.S. (2013).

MSB 14-07-15-A, Revision to the Medical Assistance Community Living Benefits Rule Concerning Consumer Directed Attendant Support Services, 10 CCR 2505-10 Section 8.510

Medical Assistance. Consumer Directed Attendant Support Services. These revisions to Section 8.510 in the Medical Assistance Home and Community Based Services rules regarding Consumer Directed Attendant Support Services allow for more than one Financial Management Services (FMS) agency and FMS model for clients enrolled in CDASS. Prior to this revision, only one FMS agency and one FMS model were allowed. These revisions offer CDASS clients more FMS options for directing their own care.

The authority for this rule is contained in 25.5-1-301 through 25.5-1-303, C.R.S. (2013).

MSB 14-07-28-D, Revision to the Medical Assistance Client and Clinical Care Durable Medical Equipment Rule Concerning Complex Rehabilitation Technology, Section 8.590

Medical Assistance. Pharmacy Unit, Durable Medical Equipment and Durable Medical Supplies. Pursuant to HB 14-1211 the Department is recognizing Complex Rehabilitation Technology (CRT) as a unique category of services under Medicaid. In doing that the Department is adopting CRT supplier standards and restricting the provision of CRT to only suppliers meeting the standards. This rule change is to comply with HB 14-1211 standards. The authority for this rule is contained in 25.5-1-301 through 25.5-1-303, C.R.S. (2013).

MSB 14-09-03-A, Revision to the Medical Assistance Eligibility Rule Concerning Five Percent (5%) Income Disregard, Section 8.100.4.D

Medical Assistance. Eligibility. The proposed rule changes amend 10 CCR 2505-10 § 8.100.4.D to incorporate changes to the rule mandated by the Patient Protection and Affordable Care Act of 2010 (ACA) as they pertain to MAGI-based methodologies. Among these changes: modification to the current regulation regarding the five percent (5%) disregard at 8.100.4.D. Currently the five percent (5%) disregard is applied across-the-board for all MAGI populations under title XIX and XXI when determining eligibility. The proposed change will only apply the five percent (5%) disregard to MAGI populations under title XIX or XXI with the highest income threshold identified as the following: MAGI Adult Program (adults), Medicaid and CHP+ program (for children), Medicaid and the CHP+ Prenatal program (for pregnant women). In addition, the five percent (5%) disregard will only be applied as a last step in determining eligibility when the individual is above the income threshold.

The proposed rule will impact MAGI populations under title XIX or XXI with the highest income threshold identified as the following: MAGI Adult Program (adults), Medicaid and CHP+ program (for children), and Medicaid and CHP+ Prenatal program (for pregnant women). The benefit of the

five percent (5%) disregard is to help those who would otherwise become ineligible.

Budget estimates that there will be a loss of eligibility for clients in specific circumstances as a result of implementation of these rules. An estimated 272 clients will be expected to either lose eligibility when they reapply and new applicants won't get coverage even though they would have before the rule change. This effect will be limited to parents with FPL between 63% and 68% FPL that were either over the age of 64, or insured by Medicare. Changes in Medicaid financing and eligibility loss as a result of implementing the proposed rule would be expected to result in a decrease of approximately \$10.5 million with an offsetting increase of \$10.7 million federal funds and \$500,000 in other state funds. Because Medicaid financing can vary from population to population (specifically those with different income levels), changing in the financing source for clients may change as a result of implementing the proposed rule.

In July 2013 CMS revised the rule regarding the applicability of the five percent (5%) disregard. They allowed states to schedule system changes as long as updates were made by no later than January 1, 2015. This rule will bring us in compliance with federal regulations by updating the five percent (5%) disregard to only apply to MAGI populations under title XIX or XXI with the highest income threshold identified as the following: MAGI Adult Program (adults), Medicaid and CHP+ program (for children), Medicaid and the CHP+ Prenatal program (for pregnant women). The five percent (5%) disregard will only be applied as a last step in determining eligibility when the applicant is above the income threshold.

MSB 14-06-19-A, Revision to the Medical Assistance Eligibility Rule Concerning Long-Term Care Institution Recipient Income Calculation of Patient Payment Increase to the Personal Needs Allowance for Residents of Nursing Facilities or Intermediate Care Facilities for Individuals with Intellectual Disabilities, Section 8.100.7.V.3 .d and .f

Medical Assistance. Eligibility. The rule amendment is to comply with Senate Bill 14-130 which amends C.R.S. 25.5-6-206-(2)(a). This amendment increases the monthly personal needs allowance (PNA) for persons who are residents of nursing facilities or intermediate care facilities for persons with intellectual disabilities from \$50 to \$75 beginning July 1, 2014. Additionally, beginning January 1, 2015, the PNA will be adjusted yearly at the same rate of the state wide average per diem rate increase pursuant to C.R.S. 25.5-6-202(9)(b)(I). The increase in HCPF expenditures has been accounted for within the fiscal note for Senate Bill 14-130.

This rule will impact all Medicaid eligible persons who are residents of nursing facilities or intermediate care facilities for individuals with intellectual disabilities.

The \$50 personal needs allowance has not been keeping up with the cost of living. By increasing the personal needs amount and applying an annual adjustment, the residents will be able to keep enough of their income to pay for personal needs that are not covered by the nursing facilities or intermediate care facilities for individuals with intellectual disabilities.

To implement this change, the rules at 10 C.C.R. 2505-10, Section 8.100.7.v.3.d and .f are being amended.

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

2014-01002

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 2509-2

Rule title

RULE MANUAL VOLUME 7 PROGRAM FOR THE PROTECTION OF AT-RISK ADULTS
UNABLE TO PROTECT THEIR OWN INTERESTS (PROGRAM AREA 2) [Repealed eff.
08/01/2012]

Rulemaking Hearing**Date**

11/07/2014

Time

10:00 AM

Location

Colorado Department of Human Services, Conference Room 4A/B, 1575 Sherman Street, Denver, CO 80203

Subjects and issues involved

#14-9-3-1: Colorado Child Abuse and Neglect Hotline Pursuant to H.B. 13-1271

Statutory authority

26-1-107; 26-1-109; 26-1-111; 26-5-111(1)(a)(II), (4), C.R.S. (2013)

Contact information**Name**

Jomar White

Title

Division of Child Welfare

Telephone

303-866-2304

Email

jomar.white@state.co.us

Title of Proposed Rule: Colorado Child Abuse and Neglect Hotline Requirements Pursuant to H.B. 13-1271

Rule-making#: 14-9-3-1

Office/Division or Program:
Office of Children, Youth and
Families/ Division of Child
Welfare

Rule Author: Jomar White

Phone: 303-866-2304

E-Mail:
jomar.white@state.co.us

STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for the rule or rule change. *(State what the rule says or does, explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule.)*

Section 26-5-111, C.R.S., requires the creation of a statewide child abuse and neglect reporting hotline system and authorizes rule-making to outline standards to promote consistency in hotline and screening practices throughout the state. Accordingly, the purpose of these proposed rules is to implement legislation pursuant to H.B. 13-1271 and to establish operations of the statewide child abuse and neglect hotline reporting system, which will go live on January 1, 2015.

These rules establish procedures to ensure that all calls routed through the Colorado Child Abuse and Neglect Hotline are answered by a live person; that all reports and inquiries received throughout the state are thoroughly documented in the state automated case management system; that calls, reports, and inquiries are quickly transferred to the county departments that are responsible for decision-making; and, that there is more consistency of call data collection to assess where more supports and resources may be needed throughout the state.

An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

☐
☐

to comply with state/federal law and/or

to preserve public health, safety and welfare

Explain:

Authority for Rule:

State Board Authority: 26-1-107, C.R.S. (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.

(continued)

Initial Review	<u>10/03/2014</u>	Final Adoption	<u>11/07/2014</u>
Proposed Effective Date	<u>01/01/2015</u>	EMERGENCY Adoption	<u>N/A</u>

DOCUMENT 5

[Note: "Strikethrough" indicates deletion from existing rules and "all caps" indicates addition of new rules.]

Title of Proposed Rule: Colorado Child Abuse and Neglect Hotline Requirements Pursuant to H.B. 13-1271

Rule-making#: 14-9-3-1

Office/Division or Program: Rule Author: Jomar White
Office of Children, Youth and
Families/ Division of Child
Welfare

Phone: 303-866-2304

E-Mail:
jomar.white@state.co.us

STATEMENT OF BASIS AND PURPOSE (continued)

Program Authority: (give federal and/or state citations and a summary of the language authorizing the rule-making)
26-5-111(1)(a)(II), C.R.S. (2013) – “Authorize rule-making by the State Board to ensure that there are standards for the consistent screening, assessment, and decision-making in response to reports of known or suspected child abuse and neglect and to inquiries made to a county department or to the hotline system”.

26-5-111(4), C.R.S. (2013) – the state board is authorized to adopt rules, based upon the recommendations of the child abuse hotline steering committee, and may revise rules, as necessary, including, but not limited to: type of technology, operation of the hotline system, standards and steps for information and referral and how an inquiry is routed, routing of the initial report, process for county option to have the state receive the reports, standardized training and certification, consistent screening process, consistent decision-making and steps for the county to following acting on a report or inquiry or when to take no action.

Does the rule incorporate material by reference?

☐	Yes	☒	No
☐	Yes	☒	No

Does this rule repeat language found in statute?

If yes, please explain.

The program has sent this proposed rule-making package to which stakeholders?

The rules are based upon the recommendations of the Hotline Steering Committee, which approved the rules on August 22, 2014. The rules were also presented to the Child Welfare Sub-PAC, and we anticipate receiving comments from county stakeholders over the next couple of weeks. We're also presenting these rules to the Child Protection Task Group on September 12, 2014.

Attachments:

Regulatory Analysis

Overview of Proposed Rule

Stakeholder Comment Summary

Title of Proposed Rule: Colorado Child Abuse and Neglect Hotline Requirements Pursuant to H.B. 13-1271

Rule-making#: 14-9-3-1

Office/Division or Program:
Office of Children, Youth and
Families/ Division of Child
Welfare

Rule Author: Jomar White

Phone: 303-866-2304

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, families, and reporters of child abuse and neglect will benefit the most from the proposed rules. Research by the Hotline Steering Committee in September 2013 revealed inconsistencies throughout the state in callers' ability to reach a live call taker. These proposed rules require that all calls to the Colorado Child Abuse and Neglect Hotline are answered by a live person.

Counties with limited staff resources will also benefit in that the proposed rules allow counties to request another county department or the Hotline County Connection Center to receive reports and inquiries on their behalf. Trained and certified hotline workers at the other county department or the Hotline County Connection Center will interview callers, gather information, and thoroughly document reports and inquiries, which will be quickly transferred to the requesting county for initial review and decision-making. This option allows staff at the county with limited staff resources to focus more on casework responsibilities.

The statewide hotline system has been designed to allow as much flexibility for counties as possible. Counties will benefit from the flexibility because they will be able to opt to integrate with the system in such a way that minimally impacts their existing hotline business processes or in a manner that requires some modifications to their hotline business processes. The Department's Hotline System Manager is in the process of meeting with counties individually to understand their hotline business processes, explain the statewide hotline system's technology, and assist them in identifying a solution that best meets the needs of their county. If a county chooses to route calls through the system in such a manner that call data is not collected through the statewide hotline system, the proposed rules require the county department to submit monthly data reports designated by the State Department. This may increase their staff's workload to compile the data and complete the reports required by the State Department.

All counties may be adversely impacted by the requirement to document all reports and inquiries in the state automated case management system. Currently, county departments are only required to document reports of child abuse and neglect; however, Section 26-5-111(4)(b), C.R.S., authorizes rules to require "central record-keeping and tracking of reports and inquiries statewide." This will increase workload for county staff; however, CDHS has taken steps to mitigate the workload increase by the following actions:

- Development of a new web-based Trails Hotline Application, which is a more user friendly application for county workers. Documenting inquiries in the new Trails Hotline Application will be quick, easy, and simple.
- Distribution of approximately \$2.8 million in additional funding for counties to implement the Hotline Steering Committee's recommendations and build capacity to address a probable increase in call volume.
- Additional services available through the Hotline County Connection Center including Telephone Answering Services (filter calls, document, and forward child welfare related calls to the county) and Information Gathering Services (take reports and send documentation to county) if requested by county departments and approved by CDHS' Executive Director.

Title of Proposed Rule: Colorado Child Abuse and Neglect Hotline Requirements Pursuant to H.B. 13-1271

Rule-making#: 14-9-3-1

Office/Division or Program:
Office of Children, Youth and
Families/ Division of Child
Welfare

Rule Author: Jomar White

Phone: 303-866-2304

REGULATORY ANALYSIS (continued)

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 proposed new Sections 7.102.1, B, and 7.102.1, C, will have the largest impact on county departments. The Hotline Steering Committee's survey of the counties, conducted in September 2013, shows that when all lines are busy, callers get busy signals in seven counties; and in twenty three counties, callers hear a variety of different recordings. Some recordings ask callers to wait for the next available call taker; some say hang-up and call another number; and others ask callers to leave a voice message. After normal business hours and on holidays, callers hear announcements to hang-up and call another number in approximately twenty six (26) counties. The proposed rule at Section 7.102.1, B, seeks to eliminate these situations by requiring county departments to make arrangements to ensure that callers can reach a live person. There is considerable flexibility in the proposed rule that aligns with existing county call-handling practices. Routing technology through the hotline system, additional funding, and possible assistance through the Hotline County Connection Center will also help to mitigate the impacts of this proposed rule.

As discussed in the response to question 1, the requirement to document all reports and inquiries in the state automated case management system (7.102.1, C) will increase county workload. Approximately two hundred (200) county workers may be impacted by this rule. Unfortunately, it is difficult to accurately assess statewide impact of this rule as there is very limited statewide data available related to child abuse and neglect hotline operations.

Denver and Jefferson Counties are among the few counties that have telephone systems that collect and report call data. In 2013, Jefferson County received 18,683 calls on its child abuse hotline. In all of those calls, only 7,403 referrals were generated and documented in the state automated case management system. In the same year, Denver handled a total of 20,181 calls; however, 9,604 referrals were generated and documented in the state automated case management system. The proposed rule, as authorized by statute, will require both counties to maintain some level of documentation about all calls that are received on their child abuse hotlines. Please refer to the response to question 1 for the steps CDHS has taken to mitigate the impact of the proposed requirement.

The short term consequence of these rules will be an increased workload for county staff. Also, there may be a need to modify some of their hotline business processes depending on how counties choose to integrate into the statewide hotline system. The long term consequence of these rules is similar to the short term consequences; however, the State Department will be able to better ascertain where supports are needed across the state with data collected through the hotline system and reports submitted by county departments pursuant to the proposed rule 7.102.1, D.

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.

Title of Proposed Rule: Colorado Child Abuse and Neglect Hotline Requirements Pursuant to H.B. 13-1271

Rule-making#: 14-9-3-1

Office/Division or Program:
Office of Children, Youth and
Families/ Division of Child
Welfare

Rule Author: Jomar White

Phone: 303-866-2304

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 Department was appropriated approximately \$4.6 million in funding to cover the anticipated costs of the hotline system. Part of this funding has been distributed to the Governor's Office of Information Technology to cover costs they will incur to assist in the implementation of the statewide hotline system.

County Fiscal Impact

The State Department has allocated approximately \$1.4 million for counties to build capacity to implement the Hotline Steering Committee's recommendations and address any increase in call volume as a result of the public awareness campaign that will accompany the launch of the statewide hotline system. Additionally, the Child Welfare Services Block Appropriation was increased by approximately \$1.4 million to address a probable increase in demand for child welfare services as a result of the public awareness campaign.

Federal Fiscal Impact

N/A

Other Fiscal Impact (*such as providers, local governments, etc.*)

N/A

4. Data Description:

List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?

The following data informed the development of these rules:

- Hotline Steering Committee Survey of County Hotline Practices (published November 8, 2013)
- 2013 Call Data from Denver, Larimer, and Jefferson counties

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 H.B. 13-1271 authorized rules governing the operations of the statewide hotline system. The proposed rules are necessary for the implementation and operations of the statewide hotline system.

Title of Proposed Rule: Colorado Child Abuse and Neglect Hotline Requirements Pursuant to H.B. 13-1271

Rule-making#: 14-9-3-1

Office/Division or Program:
Office of Children, Youth and
Families/ Division of Child
Welfare

Rule Author: Jomar White

Phone: 303-866-2304

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>			
7.000.2	Definitions	Add definitions related to the Hotline	<u> X </u>	Yes	<u> </u>	No
7.102.1	N/A	Add county responsibilities	<u> X </u>	Yes	<u> </u>	No
7.102.2	N/A	Add Hotline County Connection Center responsibilities	<u> X </u>	Yes	<u> </u>	No
7.102.3	N/A	Add rules governing how counties can transfer their hotline responsibilities	<u> X </u>	Yes	<u> </u>	No

Title of Proposed Rule: Colorado Child Abuse and Neglect Hotline Requirements Pursuant to H.B. 13-1271

Rule-making#: 14-9-3-1

Office/Division or Program: Rule Author: Jomar White
Office of Children, Youth and
Families/ Division of Child
Welfare

Phone: 303-866-2304

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):

Please see the attached document entitled "Stakeholder Engagement" listing participants and reviewers. All feedback was used to draft the rules.

THIS RULE-MAKING PACKAGE

The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the State Board of Human Services:

The rules are based upon the recommendations of the Hotline Steering Committee, which approved the rules on August 22, 2014. The rules were also presented to the Policy Advisory Committee (PAC), the Child Welfare Sub-PAC, and the Child Welfare Executive Leadership Council; and we anticipate receiving comments from county stakeholders over the next couple of weeks. We're also presenting these rules to the Child Protection Task Group on September 12, 2014.

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 Trails team of the Governor's Office of Information Technology will be impacted by these rules. One of Trails' Business Analysts attended the Hotline Steering Committee's Rule Subcommittee meetings as the rule recommendations were being developed. Also, the Trails team's Project Manager is a regular attendee of the Hotline Steering Committee and was present when the attached rules were presented, revised, and approved by the steering committee.

Have these rules been reviewed by the appropriate Sub-PAC Committee?

☒ Yes ☐ No

Date presented September 4, 2014. Were there any issues raised? X Yes ____ No

If not, why.

Title of Proposed Rule: Colorado Child Abuse and Neglect Hotline Requirements Pursuant to H.B. 13-1271

Rule-making#: 14-9-3-1

Office/Division or Program: Rule Author: Jomar White
Office of Children, Youth and
Families/ Division of Child
Welfare

Phone: 303-866-2304

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.

Stakeholder Engagement

The following individuals participated in the Hotline Steering Committee's rules subcommittee that developed the rule proposals:

- Megan Davis, Boulder County
- Sue Nichols, CDHS – Administrative Review Division
- Shirley Rhodus, El Paso County
- Jill Ruttenberg, Larimer County
- Mimi Scheuermann, CDHS Division of Child Welfare - Training
- Laura Solomon, CDHS Division of Child Welfare – Child Protection
- Commissioner Julie Westendorff, La Plata County
- Jomar White, CDHS – OCYF

The follow individuals were present at the August 22nd Hotline Steering Committee meeting where the proposed hotline rules were presented, revised, and approved:

- Lisa Ault, Sedgwick County
- Les Cowger, CDHS – Division of Child Welfare
- Commissioner Thomas Davidson, Summit County
- Megan Davis, Boulder County
- Matt Dodson, Archuleta County
- Commissioner Cindy Domenico, Boulder County
- Betty Donovan, Gilpin County
- Lucille Echohawk, Denver Youth and Family Resource Center
- Katie Facchinello, CDHS – OCYF
- Jack Hilbert, CDHS – Division of Child Welfare
- Mahesh Karekar , OIT
- Commissioner Kevin Karney, Otero County
- Dave Long, Logan County
- Dan Makelky, Douglas County
- Kim Mauthe, Teller County
- Penny May, Denver County
- Victoria McVicker, SafeHouse Denver
- Angela Mead, Larimer County
- Mary Alice Mehaffey, CDHS – Division of Child Welfare
- Lanie Meyers-Mireles, Prowers County
- Sue Nichols, CDHS- Administrative Review Representative
- Robin Overmyer, Weld County
- Shirley Rhodus, El Paso County
- Donna Rohde, Otero County
- Paige Rosemond, CDHS- DCW
- Ann "Mimi" Scheuermann, CDHS – Division of Child Welfare
- Karen Silveski, Jefferson County
- Robin Smart, JBC staff
- Jerri Spear, Elbert County
- Nan Sundeen, Pitkin County
- Jonathan Sushinsky, CDHS - Division of Child Welfare
- Cheryl Ternes, Arapahoe County
- Michael Vente, CDHS – OCYF
- Gail Waggoner, OIT-EPPMO
- Emily Wengrovius, CDHS
- Jomar White, CDHS – OCYF

(12 CCR 2509-1)

7.000.2 Definitions [Rev. eff. 1/1/15]

“Child Abuse and Neglect Reporting Hotline System” or “the hotline system” is the telephony system that:

- A. Routes calls that are received through the toll-free, statewide child abuse and neglect hotline or county dedicated child abuse and neglect reporting telephone lines to the applicable entity responsible for accepting a report of child abuse and/or neglect, or the applicable entity responsible for responding to an inquiry;
- B. Records calls; and,
- C. Captures call data including but not limited to call volume, average call wait time, and average call duration.

===

“Dedicated Child Abuse and Neglect Reporting Telephone Line” is a county department telephone number that is used to receive calls related to child abuse and/or neglect. Calls to county departments’ dedicated child abuse and neglect reporting telephone lines will be routed through the statewide hotline system for recording and data collection purposes and routed to the county departments’ hotline workers.

===

“Hotline County Connection Center” is an entity contracted by the State department to route calls to county departments, and at county departments’ request subject to the approval of the State department’s Executive Director, receive reports and inquiries on their behalf.

===

“Inquiry” means a request for information or for specific services.

===

“Personal Contact” is a method of contact in which two people exchange information in person or through live communication either via telephone or other emerging communications technology.

===

“Report” means an initial report of known or suspected child abuse or neglect.

===

“Toll-free, Statewide Child Abuse and Neglect Hotline” is the telephone number that is advertised to the public as a place for reporting known or suspected child abuse and/or neglect.

===

(12 CCR 2509-2)

7.102 ~~(Reserved for Future Use)~~ HOTLINE REQUIREMENTS

The establishment of a statewide child abuse and neglect reporting hotline system is intended to provide an additional resource for the public to make an initial report of suspected or known abuse and/or neglect.

7.102.1 COUNTY HOTLINE RESPONSIBILITIES

- A. County departments shall establish a dedicated child abuse and neglect reporting telephone line to receive calls from the statewide child abuse and neglect reporting hotline system.
- B. County departments shall ensure that all calls received through the statewide child abuse and neglect reporting hotline system will be answered by a live person designated by the county, which may include county staff, local law enforcement, the Hotline County Connection Center, and/or an answering service.
- C. County departments shall ensure that any county department staff that responds to inquiries regarding child abuse and/or neglect or gathers information for reports of child abuse and/or neglect are trained and annually certified according to the requirements outlined in Section 7.603 (12 CCR 2509-7).
- D. County departments shall ensure that all reports and inquiries received through the toll-free, statewide child abuse and neglect hotline are documented in the state automated case management system as defined in Section 7.103.9.
- E. When county departments select a routing method in the statewide child abuse and neglect reporting hotline system that prevents call data from being collected by the hotline system, county departments shall provide the State department with designated monthly reports.
 - 1. County Departments shall use a uniform template, provided by the State department, to report the following:
 - a. Call volume,
 - b. Average call duration; and,
 - c. Average wait time.
 - 2. The monthly reports shall be due to the State department on the first business day of the following month.

7.102.2 HOTLINE COUNTY CONNECTION CENTER RESPONSIBILITIES

- A. Hotline County Connection Center staff will be continuously available twenty-four (24) hours a day, seven (7) days a week to receive and immediately route hotline calls to the appropriate county department.
- B. All Hotline County Connection Center staff shall be trained and annually certified according to the requirements outlined in Section 7.603 (12 CCR 2509-7).
- C. Hotline County Connection Center staff will ensure that all hotline calls are documented in the state automated case management system.
 - 1. When requested by a county department and approved by the Executive Director, Hotline County Connection Center staff shall gather and document all information concerning

intrafamilial, institutional, and third party reports of abuse and/or neglect as defined in Sections 7.101, 7.103.1, and 7.103.2.

2. Hotline County Connection Center staff shall determine the appropriate county department for reports concerning intrafamilial, institutional, and third party abuse and/or neglect as defined in Sections 7.103.11 and 7.103.21.

7.102.3 TRANSFER OF HOTLINE RESPONSIBILITIES

- A. County departments may request the Hotline County Connection Center to receive reports and inquiries from the child abuse and neglect reporting hotline on behalf of the county department subject to the Board of County Commissioners' approval and subsequent approval by the State Department's Executive Director. The request must be submitted in writing and approved by the State Department prior to implementation.
- B. In the event of a natural disaster or other emergency situation in which county departments cannot receive reports or inquiries from the statewide child abuse and neglect reporting hotline system, county departments may request that the Hotline County Connection Center receive their reports or inquiries, until they are able to resume normal operations, by contacting the State Department's Executive Director or his/her designee.
- C. County departments may request another county department to receive reports and inquiries from the statewide child abuse and neglect reporting hotline system on behalf of the county department subject to the Board of County Commissioners' approval. Documentation of agreement from both county departments must be submitted to the State Department's Executive Director or his/her designee prior to implementation.

Reports and inquiries taken by a county department or the Hotline County Connection Center on behalf of another county department must follow the requirements defined in Sections 7.101, 7.101.1, 7.103.1, and 7.103.2.

- D. When the Hotline County Connection Center or another county department enters a report or inquiry into the state automated case management system on behalf of another county department, it shall transfer the report or inquiry to the appropriate county department through personal contact and the state automated case management system within one hour after the call is completed.

The appropriate county department shall be determined by the following criteria in order of priority:

1. Residence of the child;
 2. Current location of the child; or,
 3. Incident location.
- E. When a county department receives referrals of child abuse and/or neglect from the Hotline County Connection Center or another county department, the county department shall confirm receipt of the referral within one hour through personal contact or the state automated case management system.
 - F. When the Hotline County Connection Center or another county department enters an inquiry into the state automated case management system on behalf of another county department, they shall transfer the inquiry to the appropriate county department as follows:
 1. Inquiries regarding child abuse and/or neglect or inquiries regarding families involved in an open child welfare case shall be transferred to the appropriate county department through personal contact and the state automated case management system within one hour after the call is completed.

2. All other inquiries shall be transferred to the appropriate county department through the state automated case management system within one hour after the call is completed.
- G. When a county department receives an inquiry from the Hotline County Connection Center or another county department, the county department shall confirm receipt of the inquiry as follows:
1. Inquiries regarding child abuse and/or neglect or inquiries regarding families involved in an open child welfare case shall be confirmed through personal contact or the state automated case management system within one hour of receipt.
 2. All other inquiries shall be confirmed through the state automated case management system within twenty-four (24) hours of receipt.

Notice of Rulemaking Hearing

Tracking number

2014-01003

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 2509-7

Rule title

RULE MANUAL VOLUME 7 COUNTY RESPONSIBILITIES, STAFF TRAINING AND QUALIFICATIONS, CLIENT RIGHTS, CONFIDENTIALITY

Rulemaking Hearing

Date

11/07/2014

Time

10:00 AM

Location

Colorado Department of Human Services, Conference Room 4A/B, 1575 Sherman Street, Denver, CO 80203

Subjects and issues involved

#14-9-9-1: Child Welfare Training Rules, Including Hotline Employees

Statutory authority

26-1-107; 26-1-109; 26-1-111; 26-5-111(1)(a)(II), (4), C.R.S. (2013)

Contact information

Name

Ann (Mimi) Scheuermann

Title

Division of Child Welfare

Telephone

303-866-5794

Email

ann.scheuermann@state.co.us

Title of Proposed Rule: Child Welfare Training Rules, Including Hotline Employees

Rule-making#: 14-9-9-1

Office/Division or Program:
Office of Children, Youth and
Families/ Division of Child
Welfare

Rule Author: Ann (Mimi) Scheuermann

Phone: 303-866-5794

E-Mail:
ann.scheuermann@state.co.us

STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for the rule or rule change. *(State what the rule says or does, explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule.)*

Statute requires the implementation of the Statewide Hotline by January 1, 2015, and with that mandate the State Department is required to create rules regarding the training and certification of hotline staff.

Since revisions are necessary in the training section of the rules to include hotline staff, revisions to the entire training section are being proposed to streamline the rules and increase clarity.

An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

☐
☐

to comply with state/federal law and/or

to preserve public health, safety and welfare

Explain:

Authority for Rule:

State Board Authority: 26-1-107, C.R.S. (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:

26-5-111(1)(a)(II), C.R.S. (2013) – state board is authorized to promulgate rules to ensure that there are standards for hotline system;

26-5-111(4), C.R.S. (2013) – state board is authorized to adopt rules, based upon recommendations of the child abuse hotline steering committee, and may revise rules, as necessary, including but not limited to the following:

(g) Standardized training and certification standards for all staff prior to taking reports and inquiries;

(h) A consistent screening process with criteria and steps for the county department to follow in responding to a report or inquiry

Initial Review 10/03/2014

Proposed Effective Date 01/01/2015

Final Adoption

11/07/2014

EMERGENCY Adoption

N/A

[Note: "Strikethrough" indicates deletion from existing rules and "all caps" indicates addition of new rules.]

Title of Proposed Rule: Child Welfare Training Rules, Including Hotline Employees

Rule-making#: 14-9-9-1

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ann.scheuermann@state.co.us

STATEMENT OF BASIS AND PURPOSE (continued)

Does the rule incorporate material by reference?

☐	Yes	☒	No

Does this rule repeat language found in statute?

☐	Yes	☒	No

If yes, please explain.

The program has sent this proposed rule-making package to which stakeholders?

Policy Advisory Committee (PAC), Child Welfare Sub-PAC, Hotline Steering Committee, Training Steering Committee, Child Protection Task Group, Office of the Child's Representative, and the Child Welfare Executive Leadership Council (CWELC)

Attachments:

Regulatory Analysis

Overview of Proposed Rule

Stakeholder Comment Summary

Title of Proposed Rule: Child Welfare Training Rules, Including Hotline Employees

Rule-making#: 14-9-9-1

Office/Division or Program:
Office of Children, Youth and
Families/ Division of Child
Welfare

Rule Author: Ann (Mimi) Scheuermann

Phone: 303-866-5794

REGULATORY ANALYSIS

(complete each question; answers may take more than the space provided)

1. List of groups impacted by this rule:

Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?

The Division of Child Welfare and County Departments of Human Services will both benefit from and bear the burden of these rules. Children, families, the public, and mandated reporters will benefit from the implementation of a hotline.

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 staff who take hotline calls and who do not qualify for a certification without training will be impacted. To date, this number is approximately 200. Trainings are currently taking place and will continue to take place through December 2014.

3. Fiscal Impact:

For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources.

State Fiscal Impact *(Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)*

There is no fiscal impact as the Decision Item included dollars to develop and deliver the training.

County Fiscal Impact

There is no fiscal impact as the Decision Item included dollars to counties to assist with staff shortages while training is occurring.

Federal Fiscal Impact

None

Other Fiscal Impact *(such as providers, local governments, etc.)*

None

Title of Proposed Rule: Child Welfare Training Rules, Including Hotline Employees

Rule-making#: 14-9-9-1

Office/Division or Program:
Office of Children, Youth and
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Rule Author: Ann (Mimi) Scheuermann

Phone: 303-866-5794

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?

None

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 due to statutory requirements.

Title of Proposed Rule: Child Welfare Training Rules, Including Hotline Employees

Rule-making#: 14-9-9-1

Office/Division or Program:
Office of Children, Youth and
Families/ Division of Child
Welfare

Rule Author: Ann (Mimi) Scheuermann

Phone:

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>			
7.000.6, M, 1-5	Minimum Qualifications for staff	Moved to 7.603.1, J; revised to reflect current practice, add hotline staff, renumber	—	Yes	<u>X</u>	No
7.000.6, M, 6	Waiver Process for educational requirements	Moved to 7.603.1, K; revised to clarify “temporary educational waiver”, and clarified process to request	—	Yes	<u>X</u>	No
7.000.61, A-F	Training Requirements for Hotline staff, hotline supervisors, caseworkers, and casework supervisors	Moved to 7.603.1, A-I; changed language to reflect current practice, renumbered	—	Yes	<u>X</u>	No
7.000.61, G, 1-4	Minimum Qualifications for staff	Repeated, removed and combined with 7.603.1, J	—	Yes	<u>X</u>	No
7.000.61, G, 5	Waiver Process	Repeated and added to 7.603.1, K	—	Yes	<u>X</u>	No
7.000.61, H	Training certification for folks with prior training	Moved to 7.603.1, L, clarified what the requirements are	—	Yes	<u>X</u>	No
7.000.61, I	Job Titles	Moved to 7.603.1, M; removed duties and added them in at 7.603.1, N; simplified to reflect the title and general description; removed majority of content and re-worked entire section	—	Yes	<u>X</u>	No
7.000.61, J	Competencies for job titles	Moved to 7.603.1, O; updated competencies to reflect current competencies; added hotline worker/supervisor competencies	—	Yes	<u>X</u>	No

Title of Proposed Rule: Child Welfare Training Rules, Including Hotline Employees

Rule-making#: 14-9-9-1

Office/Division or Program:
Office of Children, Youth and
Families/ Division of Child
Welfare

Rule Author: Ann (Mimi) Scheuermann

Phone: 303-866-5794

STAKEHOLDER COMMENT SUMMARY

DEVELOPMENT

The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):

Child Welfare Sub-PAC, Training Steering Committee, Hotline Steering Committee, Office of the Child's Representative, Rocky Mountain Children's Law Center

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:

Policy Advisory Committee, Child Welfare Sub-PAC, Training Steering Committee, Hotline Steering Committee, Office of the Child's Representative, Child Protection Task Group, Child Welfare Executive Leadership Council (CWELC), and Rocky Mountain Children's Law Center

Are other State Agencies (such as Colorado Department of Health Care Policy and Financing) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

☐ Yes ☒ No

Have these rules been reviewed by the appropriate Sub-PAC Committee?

☒ Yes ☐ No

Date presented 9/4/14. 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.

(12 CCR 2509-1)

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.

- M. Ø.** 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.

7.000.61 Child Welfare Training Academy Requirements [Eff. 3/2/10]

- A.** ~~The county department shall ensure that newly hired social caseworkers whose job titles are identified in Section 7.000.61, I, or any staff performing the duties and responsibilities assigned to these job titles complete the Child Welfare Training Academy, as a condition of their continued employment. Successful completion of the competencies identified in Section 7.000.61, J, will be determined by pre and post tests, a demonstration of competence through structured on-the-job activities as defined in the on-the-job trainers manual, and trainer observation as defined by the trainer observation guide. This training must be completed and certification received prior to assuming their primary duties on an independent basis as prescribed by the state (Section 26-5-109, C.R.S.).~~
- B.** ~~The county department shall ensure that newly hired or promoted social services supervisors, whose job titles are identified in Section 7.000.61, K, or any staff performing the duties and responsibilities assigned to these job titles complete the Child Welfare Training Academy supervisory training, as a condition of their continued employment. Successful completion of the competencies identified in Section 7.000.61, L, will be determined by pre and post tests, a demonstration of competence through structured on-the-job activities as defined in the on-the-job trainers manual, and trainer observation as defined by the trainer observation guide. This training must be completed and certification received prior to assuming their primary duties on an independent basis as prescribed by the state (Section 26-5-109, C.R.S.).~~

- C. ~~The county department shall ensure that newly hired social caseworkers and newly hired or promoted social services supervisors successfully complete the child welfare academy structured on the job training.~~
- D. ~~The county department shall appoint a staff person to conduct the child welfare academy structured on the job training with newly hired social caseworkers and newly hired or promoted social services supervisors.~~
- E. ~~The county department shall ensure that all experienced social caseworkers whose job titles are identified in Section 7.000.61, K, or any staff performing the duties and responsibilities assigned to these job titles complete at least forty (40) hours of ongoing in-service training per year. The in-service training is to be focused in content areas such as, but not limited to:~~
- ~~1. Assessment;~~
 - ~~2. Interviewing;~~
 - ~~3. Family engagement;~~
 - ~~4. Legal issues;~~
 - ~~5. Foster care and adoption;~~
 - ~~6. Effects of child abuse/neglect on development;~~
 - ~~7. Principles of strength based family centered culturally relevant case planning and case management;~~
 - ~~8. Sexual abuse issues;~~
 - ~~9. Behavioral health issues;~~
 - ~~10. Domestic violence issues; and,~~
 - ~~11. Cultural disparity.~~
- ~~At a minimum, sixteen (16) of the in-service training hours are to be focused in the area of the caseworker's primary job responsibilities.~~
- F. ~~The county department shall ensure that all experienced social services supervisors whose job titles are identified in Section 7.000.61, K, or any staff performing the duties and responsibilities assigned to these job titles complete at least forty (40) hours of ongoing in-service training per year. The in-service training is to be focused on the supervisor's role in content areas such as, but not limited to:~~
- ~~1. Leadership and management;~~
 - ~~2. Worker safety;~~
 - ~~3. Assessment;~~
 - ~~4. Interviewing;~~
 - ~~5. Family engagement;~~
 - ~~6. Legal issues;~~
 - ~~7. Foster care and adoption;~~

8. ——— Effects of child abuse/neglect on development;
9. ——— Principles of strength based family centered culturally relevant case planning and case management;
10. ——— Sexual abuse issues;
11. ——— Behavioral health issues;
12. ——— Domestic violence issues; and,
13. ——— Cultural disparity.

At a minimum, sixteen (16) of the in-service training hours are to be focused in the area of the social services supervisor primary job responsibilities.

G. ——— The county department shall ensure that all personnel whose job titles are identified in Section 7.000.61, K, and 7.000.61, M, or any staff performing the duties and responsibilities assigned to these job titles 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 Bachelors 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 services; or,
- c. ——— A Master's degree in social work or human behavioral sciences field.

3. ——— 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.

4. ——— 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.

5. ——— Waiver process

If proven recruitment difficulty exists, county departments may request a waiver of these requirements by submitting a request to the Colorado Department of Human Services, Division of Child Welfare Services, and the Division of Children and Family Training.

a. — For Initial Hiring:

- 1) — Documenting the recruiting effort;
- 2) — Identifying specific services to be provided by the position (such as core services or case management) where alternative qualifications are being proposed;
- 3) — Identifying the specific position concerned by position number, title, and name of incumbent, if position is filled;
- 4) — Justifying why the candidate would be acceptable for the position; and,
- 5) — Including a plan on how and when the candidate will meet the requirements contained in these rules.

b. — For County Directors:

County directors who also provide direct supervision of child welfare services and who do not meet the minimum qualifications for the casework supervisor position must apply for a waiver to provide these services.

H. — Training academy certification for newly hired persons with previous experience who have successfully completed comparable child welfare training as outlined in Sections 7.000.61, L and N.

1. — Documentation of previous child welfare training with description of the training and documentation of training completion;
2. — Documentation of previous child welfare experience;
3. — Completion of the initial Colorado computer based training and demonstration of proficiency in minimum competencies defined by Training Academy
4. — Identification of how the candidate will assume supervisory or caseworker responsibilities for the county child welfare operation that reflect practice in Colorado.

I. — Child Welfare Professional Social Services Job Titles

The following job titles shall receive training through the Training Academy:

1. — Social Caseworker I, II (General)

a. — General Statement of Duties

Positions provide intake and/or ongoing social casework services for a variety of Title XX program areas such as child abuse and neglect cases, youth in conflict cases; may also provide for the provision of ancillary services such as recruitment and supervision of foster care homes and the placement of clients into foster care, group homes, and institutions.

b. — Duties

Conducts investigations of alleged physical abuse, neglect and parent conflicts; determines if situation warrants placing children outside the home.

~~Assesses any new child abuse or re-abuse complaints and provides crisis intervention in these situations with the community.~~

~~Determines the need for recommending placement of clients into foster care; locates placement appropriate to client's needs; monitors client's progress in placement.~~

~~Makes home visits with clients, organizes services such as homemaker, day care, financial assistance, health (physical and mental), legal and provides information on available services.~~

~~Provides other ancillary social casework services such as recruiting new foster home parents and conducting foster care home studies and certifications; monitors quality of care provided in foster homes.~~

~~Testifies in court on a variety of ongoing cases, makes recommendations to the courts on abuse and neglect cases, placement of children, and on custody investigations.~~

~~Develops and writes reports for appropriate documentation of case plans, recommendations, contacts, assessments, etc.; develops case file information; completes forms and writes correspondence.~~

c. ~~Job Requirements~~

~~Level I: These are professional training level positions in which assignments are planned and devised to develop and teach professional social casework techniques and concepts appropriate to the assigned program areas; basic foundations of casework practice related to the assigned program areas. Incumbents are not expected to know professional theories, concepts, and principles are required.~~

~~Level II: These are journey level positions which require a working knowledge of established theories, principles, and concepts; utilize extensive assessment and diagnostic oriented skills as are required at the higher levels. Employees continue to develop knowledge and utilize professional techniques and concepts beyond the mere application of detailed rules and procedures.~~

2. ~~Social Caseworker III (General)~~

a. ~~General Statement of Duties~~

~~Performs senior level work providing a full range of intake and/or ongoing social casework services for a variety of Title XX program areas such as child abuse and neglect cases, youth in conflict cases.~~

~~May also provide for the provision of ancillary services such as recruitment and supervision of foster care homes and the placement of clients into foster care, group homes and institutions.~~

b. ~~Duties~~

~~Conducts investigations of alleged physical abuse, neglect and parent conflicts; determines if situation warrants placing children outside the home; supervises placement of children in foster care and coordinates parent/child visits; and determines when and if to recommend that children return to the home.~~

~~Develops effective case plans and provides counseling services to families regarding parenting skills, family problems, parent-child relationships and~~

problems with the community; assesses any new child abuse or re-abuse complaints and provides crisis intervention in these situations; provides intake assessment and evaluation, ongoing counseling services, and case planning to a variety of other cases including family conflict and youth in conflict cases.

Determines the need for recommending placement of clients into foster care; locates placement appropriate to client's needs; monitors client's progress in placement.

Makes home visits with clients, organizes services such as homemaker, day care, financial assistance, health (physical and mental), legal; and, provides information on available services.

May provide other ancillary social casework services such as recruiting new foster home parents and conducting home studies and certifications.

Monitors quality of care provided in foster homes; testifies in court on a variety of ongoing cases; makes recommendations to the courts on abuse and neglect cases, placement of children, guardianship of adults, and on custody investigations; develops and writes reports for appropriate documentation of case plans, recommendations, contacts, assessments, etc.; develops case file information; completes forms and writes correspondence.

c. — Job Requirements

These are senior level positions which require thorough knowledge of the theories, principles, and concepts of social casework practice (assessment and treatment oriented) related to all of the assigned program areas; knowledge of social group work principles and methods; knowledge of medical symptoms related to injuries or failure to thrive in children; knowledge of the battered child syndrome, and the laws dealing with child abuse, neglect and other dependency conditions; knowledge of the problems of the developmental disabled, emotionally disturbed, alcoholics, and drug addicts; knowledge and skill in interviewing techniques, crisis intervention methods, and relevant treatment modalities; knowledge of community resources, agency rules, regulations and procedures related to assigned program areas; ability to establish support with multi-problem, dysfunctional clients; ability to independently analyze complex situations, formulate plans and make quick decisions as needed; ability to clearly and concisely express oneself both verbally and in written format; ability to establish and maintain harmonious professional relationships with other employers, outside agencies, and the public; ability to testify effectively in court hearings.

3. — Social Caseworker IV (General)

a. — General Statement of Duties

Position provides intake and/or ongoing social casework services to families where child abuse or neglect is present or suspected. Assignments include the provision of extensive assessment and situational evaluation, counseling, crisis intervention, resource mobilization and information and referral around all areas of child protection.

b. — Duties

Conducts investigations of alleged physical abuse, sexual abuse, and neglect; determines if situation warrants the recommendation of placing children outside the home; supervises placement of children and coordinates parent/child visits; determines when and if a child should be recommended to return to their home; makes evaluation and assessment of need for services; provides crisis intake

and/or develops long-term case plans appropriate to the child(ren) and family; monitors progress of clients and modifies case plans as needed; provides individual or family counseling on an ongoing or crisis basis to children and their parents who are experiencing severe problems in the parent-child relationships; makes collateral contacts with such community resources, such as law enforcement and medical personnel, to obtain additional information, coordinate services, or secure their assistance; gathers and consolidates background information to present as documentation for court hearings, as progress reports in judicial reviews or as summaries in facilitating appropriate placements; participates in staffings with school, mental health facilities, child protection review teams, and other professionals involved with the family members; attends court hearings; confers with lawyers, children, parents, witnesses and significant others in references to their respective roles; serves as information and referral resource to other employers and to the public; provides a variety of ancillary assignments as needed, including preparing and maintaining client records and completing required forms and reports.

c. — Job Requirements

Advanced knowledge of casework techniques which include in-depth therapeutic approaches, techniques of affecting changes in behavior, casework intervention skills, and human behavior related to all assigned program areas; advanced knowledge of diagnostic and assessment methods; specialized skills in employing various therapeutic modalities and counseling techniques; advanced skills in interviewing and in verbal and written communication; ability to make critical decisions regarding case planning, treatment, and need for placement of clients; ability to train new workers and critique the work of other professional social caseworkers, provide consultation, and assist in the evaluation of job performance.

4. — Social Caseworker I, II (Child Protection)

a. — General Statement of Duties

Position provides intake and/or ongoing social casework services to families where child abuse or neglect is present or suspected. Assignments include the provision of extensive assessment and situational evaluation, counseling, crisis intervention, resource mobilization, and information and referral around all areas of child protection.

b. — Duties

Conducts investigations of alleged physical abuse, sexual abuse, and neglect; determines if situation warrants the recommendation of placing children outside the home; supervises placement of children and coordinates parent/child visits; determines when and if a child should be recommended to return to his/her home; makes evaluation and assessment of need for services; provides crisis intake and/or develops long-term case plans appropriate to the child(ren) and family; monitors progress of clients and modifies case plans as needed; provides individual or family counseling on an ongoing or crisis basis to children and their parents who are experiencing severe problems in the parent-child relationships; makes collateral contacts with such community resources as law enforcement and medical personnel to obtain additional information, coordinate services, or secure their assistance; gathers and consolidates background information to present as documentation for court hearings, as progress reports in judicial reviews, or as summaries in facilitating appropriate placements; participates in staffings with school, mental health facilities, child protection review teams, and other professionals involved with the family members.

Attends court hearings; confers with lawyers, children, parents, witnesses and significant others in references to their respective roles; serves as information and referral resource to other employers and to the public; provides a variety of ancillary assignments as needed including preparing and maintaining client records and completing required forms and reports.

c. — Job Requirements

Level I: These are professional training level positions in which assignments are planned and devised to develop and teach professional social casework techniques and concepts unique to child protection. Basic foundations of professional theories, concepts, and principles are required.

Level II: These are journey level positions which require a working knowledge of established theories, principles, and concepts of social casework practice related to child protection. Employees continue to develop knowledge and utilize professional techniques and concepts beyond the mere application of detailed rules and procedures.

5. — Social Caseworker III (Child Protection)

a. — General Statement of Duties

Performs senior level work providing intake and/or ongoing social casework services to families where child abuse or neglect is present or suspected. Assignments include the provision of extensive assessment and situational evaluation, counseling, crisis intervention, resource mobilization and information and referral around all areas of child protection.

b. — Duties

Conducts investigations of alleged physical abuse, sexual abuse, and neglect; determines if situation warrants the recommendation of placing children outside the home; supervises placement of children and coordinates parent/child visits; determines when and if a child should be recommended to return to his/her home; makes evaluation and assessment of need for services; provides crisis intake and/or develops long term case plans appropriate to the child(ren) and family; monitors progress of clients and modifies case plans as needed; provides individual or family counseling on an ongoing or crisis basis to children and their parents who are experiencing severe problems in the parent-child relationships; makes collateral contacts with such community resources as law enforcement and medical personnel to obtain additional information, coordinate services, or secure their assistance; gathers and consolidates background information to present as documentation for court hearings, as progress reports in judicial reviews, or as summaries in facilitating appropriate placements; participates in staffings with school, mental health facilities, child protection review teams, and other professionals involved with the family members; attends court hearings; confers with lawyers, children, parents, witnesses and significant others in references to their respective roles; serves as information and referral resource to other employers and to the public; provides a variety of ancillary assignments as needed including preparing and maintaining client records and completing required forms and reports.

c. — Job Requirements

These are senior level positions which require thorough knowledge of the theories, principles, and concepts of social casework practice related to child protection; knowledge of casework principles and methods of human needs and behavior pertaining to child development, parenting, attachment, and separation; knowledge of social group work principles and methods; knowledge of medical

symptoms related to injuries or failure to thrive in children; knowledge of the battered child syndrome, and the laws dealing with child abuse, neglect and other dependency conditions; knowledge and skill in interviewing techniques, crisis intervention methods, and relevant treatment modalities; knowledge of community resources, of agency rules, regulations and procedures related to child protection issues; ability to establish support with multi-problem, dysfunctional clients; ability to independently analyze complex situations, formulate plans and make quick decisions as needed; ability to clearly and concisely express oneself both verbally and in written format; ability to establish and maintain harmonious professional relationships with other employers, outside agencies, and the public; ability to testify effectively in court hearings.

6. Social Caseworker IV (Child Protection)

a. General Statement of Duties

These are specialized social casework positions in the area of child protection providing advanced services to the agency and clients. Positions at this level typically: 1) are assigned continuous lead work responsibilities over other journey and senior level social caseworkers; or, 2) are assigned specialized caseloads in which the incumbent is responsible for the provision of intensive family treatment on a regular basis (as an alternative to out of home placement of children). Incumbents are normally assigned small, high risk case loads.

b. Duties

In addition to many of the assignments found at the Social Caseworker III level, incumbents typically perform one or more of the following duties. (The assignment of these duties may not in and of itself warrant the classification of a position to this level. The county appointing authority may determine the functioning level of the employee based on the job requirements section of this profile and "underfill" the position at a lower level.)

Provides continuous lead work responsibilities over three or more lower level social casework positions; reviews case plans and case reports for technical judgment and appropriateness to assigned cases; assists the social workers in the unit with difficult and unusually complex cases; reviews progress and evaluates goals to help them develop, maintain and modify treatment plans; assists in training of new social caseworkers and acts as liaison between the supervisor and the workers; may provide administrative supervision in the absence of the social services supervisor; as an alternative to out of home placements and/or to reduce the length of placements, provides intensive treatment to battered, neglected, rejected, and sexually abused children; provides intensive, specialized treatment to dysfunctional families and/or adults with a wide range of pathologies contributing to child abuse and neglect; provides treatment to children with physical handicaps and developmental delays including failure to thrive and retardation; assesses and diagnoses child's disability, daily living skills, need or protection and evaluates problem to develop appropriate treatment plan; may develop specialized foster care in order to accommodate special needs placements; provides crisis intervention services to incest and sexual abuse victims and families; provides intensive individualized therapy with all family members which involves family therapy, individual treatment, group treatment for perpetrators, victims, parents and siblings; analyzes placement evaluation of victim; diagnosis family pathology, strengths and weaknesses and determines long term treatment plans.

c. Job Requirements

Advanced knowledge of casework techniques which include in-depth therapeutic approaches; techniques of affecting changes in behavior; casework intervention

skills; human behavior; normal child development; child abuse and neglect dynamics; advanced knowledge of sexual abuse dynamics and diagnostic assessment methods; specialized skills in employing various therapeutic modalities and counseling techniques; advanced skills in interviewing and in verbal and written communication; ability to make critical decisions regarding case planning, treatment, and placement of children; ability to train new workers and critique the work of other professional social caseworkers, provide consultation, and assist in the evaluation of job performance.

7. ——— Social Caseworker I,II (Youth in Conflict)

a. ——— General Statement of Duties

Position provides intake and/or ongoing social casework services to youth who are in conflict with family, peers or established institutions in order to resolve these circumstances or arranges for appropriate placement; intervenes in family situations to help reduce or prevent dependency or delinquency of adolescents through crisis intervention and long term case planning.

b. ——— Duties

Makes evaluation and assessment of need for services; provides crisis intake and/or develops long-term case plans appropriate to the affected adolescent and family; monitors progress of clients and modifies case plans as needed; evaluates the need for short term (crisis) and long term or permanent placement when appropriate; assesses available placement facilities and/or institutions such as foster care, Residential Child Care Facility (RCCF), or other shelter care for the most suitable alternate living situation; supervises the placement of adolescents to assure established needs, treatment, and case plans are met; provides counseling to adolescents and their families in crisis situations and/or on an ongoing basis to help maintain the adolescents in their own home, to effect reunion, or to accomplish emancipation from a placement situation; provides information and referral services to coordinate the utilization of agency or community resources with case plans; assesses agency or community resources for most effective utilization; makes collateral contacts; consults with attorneys, probation officers, judges, referees, etc.; writes court reports; may testify on behalf of the department of social services at juvenile hearings and court proceedings; may make recommendations to the courts as requested.

Develops and writes reports for appropriate documentation of case plans, recommendations, contacts, assessments, etc.; develops case file information; completes forms and writes correspondence; may provide additional services such as public information, serving on a crisis intervention hotline, or serving on a variety of teams or groups used for the overall coordination of a youth in conflict program; may also evaluate group homes and provide professional consultation to group home parents.

c. ——— Job Requirements

Level I: These are professional training level positions in which assignments are planned and devised to develop and teach professional social casework techniques and concepts unique to youth in conflict. Basic foundations of professional theories, concepts, and principles are required.

Level II: These are journey level positions which require a working level knowledge of established theories, principles, and concepts of social casework practice related to child protection. Employees continue to develop knowledge and utilize professional techniques and concepts beyond the mere application of detailed rules and procedures.

8.——— Social Caseworker III (Youth in Conflict)

a.——— General Statement of Duties

Performs senior level work providing intake and/or ongoing social casework services to youth who are in conflict with family, peers or established institutions in order to resolve these circumstances or arranges for appropriate placement; intervenes in family situations to help reduce or prevent dependency or delinquency of adolescents through crisis intervention and long term case planning.

b.——— Duties

Makes evaluation and assessment of need for services; provides crisis intake and/or develops long term case plans appropriate to the affected adolescent and family; monitors progress of clients and modifies case plans as needed; evaluates the need for short term (crisis) and long term or permanent placement when appropriate; assesses available placement facilities and/or institutions such as foster care, RCCF, or other shelter care for the most suitable alternate living situation; supervises the placement of adolescents to assure established needs, treatment, and case plans are met; provides counseling to adolescents and their families in crisis situations and/or on an ongoing basis to help maintain the adolescents in their own home, to effect reunion, or to accomplish emancipation from a placement situation; provides information and referral services to coordinate the utilization of agency or community resources with case plans; assesses agency or community resources for most effective utilization; makes collateral contacts; consults with attorneys, probation officers, judges, referees, etc.; writes court reports; may testify on behalf of the department of social services at juvenile hearings and court proceedings; may make recommendations to the courts as requested; develops and writes reports for appropriate documentation of case plans, recommendations, contacts, assessments, etc.; develops case file information; completes forms and writes correspondence; may provide additional services such as public information, serving on a crisis intervention hotline, or serving on a variety of teams or groups used for the overall coordination of a youth in conflict program; may also evaluate group homes and provide professional consultation to group home parents.

c.——— Job Requirements

These are senior level positions which require thorough knowledge of the theories, principles, and concepts of social casework practice related to youth in conflict; knowledge of casework principles and methods of human needs and behavior pertaining to adolescent development and needs; knowledge of social group work principles and methods; skill in interviewing techniques, crisis intervention methods, and therapeutic modalities appropriate to working with adolescents and their families; knowledge of the laws pertaining to child dependency and pre-delinquent behavior; knowledge of foster parent program and foster placement process; knowledge of community resources, of agency rules, regulations and procedures related to youth in conflict issues; ability to establish support with multi-problem, dysfunctional clients; ability to independently analyze complex situations, formulate plans and make quick decisions as needed; ability to clearly and concisely express oneself both verbally and in written format; ability to establish and maintain harmonious professional relationships with other employers, outside agencies, and the public; ability to testify effectively in court hearings.

9.——— Social Caseworker IV (Youth in Conflict)

a.——— General Statement of Duties

These are specialized social casework positions in the area of youth-in-conflict providing advanced services to the agency and clients. Positions at this level typically: 1) are assigned continuous lead work responsibilities over other journey and senior level social caseworkers; or, 2) are assigned specialized caseloads or assignments in which the incumbent is responsible for the provision of intensive individual or group treatment on a regular basis (as an alternative to out of home placement of juveniles). Incumbents are normally assigned small, high risk case loads.

b. ——— Duties

Note: in addition to many of the assignments found at the Social Caseworker III level, incumbents typically perform continuous specialized assignments in the area of youth-in-conflict as illustrated below. (The assignment of these duties may not in and of itself warrant the classification of a position to this level. The county appointing authority may determine the functioning level of the employee based on the job requirements section of this profile and “underfill” the position at a lower level.)

Provides continuous lead work responsibilities over three or more lower level social casework positions; reviews case plans and case reports for technical judgment and appropriateness to assigned cases; assists the social workers in the unit with difficult and unusually complex cases; reviews progress and evaluates goals to help them develop, maintain and modify case plans.

Assists in training of new social caseworkers and acts as liaison between the supervisor and the workers; may provide administrative supervision in the absence of the social services supervisor; as an alternative to out of home placements and/or to reunite families and reduce dependency or delinquency; provides intensive treatment to adolescents and their families; provides intensive, specialized treatment to dysfunctional families with a wide range of pathologies contributing to dependency and delinquency (this is normally accomplished with the assignment of small, specialized caseloads which allow the incumbent to spend extensive time with the youth and family members in the provision of intensive services); works with placement facilities in a variety of roles; secures appropriate placement based on needs of the family and youth; acts as advocate on behalf of the youth and family to ensure child's needs are effectively met and youth is prepared for emancipation or return home; performs post placement therapy for family; keeps court advised of treatment plans; explores new resources and trains staff in residential child care facilities on the provision of treatment; develops resources including placement facilities for special needs placements.

c. ——— Job Requirements

Advanced knowledge of casework techniques, which include in-depth therapeutic approaches; techniques of affecting changes in behavior; casework intervention skills; human behavior; adolescent developmental behavior and needs; advanced knowledge of community resources available for support of adolescent crisis services and diagnostic assessment methods; specialized skills in employing various therapeutic modalities and counseling techniques; advanced skills in interviewing and in verbal and written communication; ability to make critical decisions regarding case planning, treatment, and placement of youth; ability to train new workers and critique the work of other professional social caseworkers, provide consultation, and assist in the evaluation of job performance.

J. ——— Social Caseworker Competencies

1. ——— The Impact of Individual Culture on Child Welfare Practice and the Historical, Philosophical and Policy Basis for Child Welfare

Understand the fundamental concepts of culture; understand how one's own culture affects one's perceptions, behavior, and values; knows how cultural differences can affect the delivery of child welfare services; aware of the history of child welfare; aware of how research impacts trends and legislation which impacts practice; understand how federal rules impact child welfare work, including the CFSR focus on safety, permanency and well-being; understands the legal policy and best practice basis of child welfare practice.

2. ——— Community Collaboration

Understand the philosophy of family centered child welfare and how team plays a part in this; know the proper roles and responsibilities of key stakeholders in the child protective service process and know how to collaborate with these agencies and practitioners; have a working knowledge of collaboration within the child welfare agency to enhance services to clients.

3. ——— Integrating Casework and Protective Authority in Family-Centered Child Welfare

Demonstrate an understanding of the complex role of the child welfare caseworker to keep children safe and provide services that preserve and empower families and enable them to care for their children; know how to integrate casework methods with authority, when necessary, to simultaneously engage and empower families and assure protection of the children.

4. ——— Development of Relationship: the Foundation of Family-Centered Casework

Know strategies to engage family members into constructive and collaborative casework relationships that engage and empower families, and assist in information gathering in order to promote joint case assessment, planning, and service provision; understand the cause and dynamics of resistance and know caseworker strategies to overcome these dynamics; understand the potential effects of cultural differences on the development of the casework relationship and know strategies to establish relationships with families from cultural backgrounds different from one's own; know how social work values and principles apply to child welfare practice, including respecting the family's dignity, individuality, culture, and right to self-determination.

5. ——— Engaging the Family

Ability to effectively engage the family in the casework process; and employ strength-based engagement strategies when interviewing families to promote assessments and case management.

6. ——— Identification and Assessment of Child Abuse and Neglect

Ability to accurately identify physical, emotional, and behavioral indicators of abuse and neglect in child victims and their families; know the state's legal definitions of physical abuse, neglect, emotional maltreatment, sexual abuse; know the basic foundation of state law and policy that impacts child welfare work in Colorado including concepts of safety and risk; know resources to enhance work performance including state child welfare consultants and national resource centers; ability to accurately identify physical, emotional, and behavioral indicators of sexual abuse in child victims and their families; and, ability to identify individual, family, developmental, situational, and environmental factors that contribute to sexual abuse.

7. ——— Family Dynamics and Other Factors in Child Abuse and Neglect Competencies

Ability to identify individual, child, family, developmental, situational, and environmental factors that contribute to physical abuse and neglect, and are able to evaluate these factors; ability to identify risk and protective factors in families; understand how domestic violence, poverty, substance abuse and mental health issues contribute to abuse and neglect; ability to apply knowledge of indicators and family dynamics to case examples.

8. Initial Assessment

Know the responsibilities of the child protection agency and caseworker, including investigating reports of maltreatment, providing in-home services, temporary out-of-home care placements; ability to complete the safety assessment, safety plan and the risk assessment; ability to identify the factors that must be evaluated when assessing safety and the level of risk for an abused or neglected child in the family, and family protective capacities that can mitigate safety concerns and reduce risk; know how to identify sources of information, including data from informants, case records, and other sources to investigate and assess alleged abuse or neglect and is able to use this data to support or refute the allegation and assist the family; and, know the importance of conducting diligent searches.

9. Interviewing at Intake/Assessment

Ability to conduct investigative/assessment interviews with children, parents.

10. Applying principles of development to child welfare services

Know the physical, cognitive/language, and psychosocial developmental domains and can explain their importance to child welfare practice; know the impact of culture and other factors (quality of parenting, poverty, substance abuse and domestic violence) on child development; and, ability to identify typical developmental characteristics and behaviors (including developmental delays and disabilities) that put children at risk of maltreatment.

11. Normal development of infants and toddlers

Know the stages, processes and milestones of normal physical, cognitive/language, and psychosocial development of children from birth through toddler years.

12. The effects of abuse and neglect on infants and toddlers

Know the potential negative effects of child abuse and neglect on a child's development, and identify indicators of developmental delay or problems in abused and neglected infants and toddlers.

13. Normal Development of Preschool Children

Know the stages, processes and milestones of normal physical, cognitive/language, and psychosocial development of preschool children.

14. The Effects of Abuse and Neglect on Preschool Children

Know the potential negative effects of child abuse and neglect on a child's development, and identify indicators of developmental delay or problems in abused and neglected preschool children; know the importance of collaborating with family members and outside providers in providing for the treatment needs of preschool children who have been abused or neglected; understand how preschool age children's behavior problems may be symptoms of underlying developmental delays or emotional disturbance; ability to advise families and caregivers on age-appropriate expectations for preschool age children, and can assist in setting realistic expectations for children who demonstrate problems as a result of abuse or neglect.

15.—— Normal Development of School Age Children

Know the stages, processes and milestones of normal physical, cognitive/language, and psychosocial development of school-age children.

16.—— The Effects of Abuse and Neglect on School Age Children

Know the potential negative effects of child abuse and neglect on a child's development, and identify indicators of developmental delay or problems in abused and neglected school-age children; and ability to incorporate child development principles into identifying strategies to remediate a child's difficult or challenging behaviors.

17—— Normal Sexual Development

Ability to identify the stages and behaviors of normal child sexual development.

18.—— The Nature of Adolescence: A Developmental Transition

Know the stages, processes and milestones of normal physical, cognitive/language, and psychosocial development of adolescents; and understand the special issues of GLBT youth in the child welfare system.

19.—— The Effects of Abuse and Neglect on Adolescents

Know the potential negative effects of child abuse and neglect on an adolescent's development, and identify indicators of developmental delay or problems in abused and neglected adolescents; understands the risk factors that make foster youth more susceptible to unhealthy relationships; understand factors that help promote healthy relationships, as well as strategies for applying these factors to youth in foster care; and, understand the underlying conditions to adolescent acting out behavior.

20.—— Legal Preparation for Caseworkers

Understand the key legal concepts of a dependency and neglect action in Colorado; knowledge of the Indian Child Welfare Act and actions that must be taken in every case to pursue the possibility of Native American heritage within the families; ability to prepare for testimony; know how to prepare clients for court hearings; knowledge and skills regarding qualifying as an expert witness; understand the caseworker's role and responsibility in the courtroom and knows what constitutes effective testimony and cross-examination; understand the basic roles of the guardian-ad-litem, respondent parent counsel, and the county department of human services attorney; understand the role of foster parents at hearings, in particular that they have a right to be heard; demonstrate skill in delivering effective testimony and withstanding cross-examination; knowledge of delinquency cases; knowledge of trails confirmation appeals; knowledge of termination hearings; and, basic skills for testifying at a termination hearing.

21.—— Comprehensive Family Assessment

Understand the importance of effective case assessment and planning as the foundation of casework and family-centered interventions and know the proper sequence of steps in the case planning process; ability to complete a comprehensive social history; ability to apply the NCFAS to practice; ability to correctly use the NCFAS to assess family functioning for case planning and other case activities; understand underlying conditions of the maltreatment in order to do effective case planning; and, ability to effectively complete the family service plan to meet federal expectations and the needs of families.

22.—— Developing the Case Plan

Ability to link the assessment, especially the safety assessment, risk assessment and NCFAS into the case plan; know how to involve families in the development of an appropriate, time-limited case/treatment plan; know how to formulate measurable, behavioral objectives; and, know how to identify the most appropriate services and activities to achieve case objectives.

23.—— Parenting Time and Visitation

Know the necessity of regular and frequent visits to maintain the family members' relationships and other important relationships with the placed child; and, be able to use casework strategies that engage families in the planning of, and participation in, visits. Trainees understand how to use visitation to maintain connections with sibling and other family members.

24.—— Case Recording

Ability to document family and collateral contacts in a way that captures state and federal regulations and captures the essence of the interaction and discussion with the family or other collateral.

25.—— Ongoing assessment, Evaluation, and Case Closure

Understand the importance of conducting routine and timely case staffings with families; know how to reassess the outcomes of case plans and service interventions and make appropriate modifications in the case plan; ability to effectively utilize the Colorado assessment continuum to guide decision-making for case closure; and ability to use caseworker contact with a family to assess readiness for case closure.

26.—— The Philosophy of Permanence and Permanency Planning

Understand the necessity of permanency and reasonable efforts to prevent placement or promote timely reunification.

27.—— Psychological Crisis

Know that the separation and placement experience could lead to precipitation of psychological crisis for families and children and be able to apply concepts of crisis intervention theory to separation and placement of children.

28.—— Understanding Separation

Know the potentially traumatic outcomes of the separation and placement experience for children and their families, including serious disruption of family relationships, and disturbances in the child's cognitive, emotional, social, and physical development.

29.—— Children's Reactions to Loss: Common Behavior Patterns of the Grieving Process

Ability to recognize the physical, emotional, and behavioral indicators of placement-induced stress in children of various ages and identify strategies for alleviating stress.

30.—— Parent's Reactions to Loss

Ability to identify grieving reactions of parents resulting from the separation of their children and how this may affect behavior and interactions with the caseworker.

31.—— Placement

Know how to prepare the child and parent for placement of the child in foster care in a way that minimizes stress and provides emotional support to the child and his/her family;

know of disproportionality in out-of-home placement; know the difference between kinship care and foster care; aware of the importance of matching the needs of children with the strengths of foster parents or other care providers; know the rights and roles of foster parents; aware of the importance of developing lifebooks for children in care; aware of the special needs of GLBTQ youth in foster care; ability to assess the capacity of a caregiver to meet the cultural needs of a child whose culture is different from that of the caregiver; know how to advise caregivers regarding the provision of care that respects and supports the child's cultural identity; know the reasons for placement disruption and strategies to avoid it when children are in out-of-home care; and, aware of the importance of post-placement support for caregivers.

32. — Achieving Permanency

Understand the fragile process of reunifying families; ability to apply strategies to promote permanency; ability to apply strategies to promote reunification; understand how the Colorado assessment continuum guides decision making for permanency; understand the importance of permanency planning for youth in care; ability to describe permanency options for teens including independent living; know how to utilize post reunification supports to prevent return to placement; know how to match the needs of children with the abilities of parents when looking at reunification; ability to prepare children and families for termination.

33. — Pulling It All Together

Know the importance of safety, permanency and well-being as fundamental concepts in a child welfare case; ability to describe key decision points in a child welfare case; and, understand the impact of collaboration on successful and sustainable child welfare outcomes.

K. — Social Services Supervisor II, III

1. — General Statement of Duties

Position is responsible for the supervision of a full range of intake and/or ongoing social casework services for a variety of program areas including child welfare and other ancillary services, such as recruitment and supervision of foster care, group homes and the placement of clients into foster care, group homes and institutions.

This position provides direct supervision to a staff of professional social caseworkers and paraprofessionals.

2. — Supervisory Functions

Oversees staff scheduling; conducts individual and group conferences to set and monitor deadlines; establishes unit goals and timetables usually ranging from thirty (30) days to one year; meets with administration as needed to participate in program planning.

Organizes the work within the unit to assure coverage and efficiency in caseload handling based on the available knowledge and skills of the assigned workers; develops systematic methods of implementing programs, which includes developing controls and monitoring work flow.

Determines the resources required to achieve the goals of the unit and makes recommendations to higher level management which sets priorities and makes actual budgets.

Assigns specific tasks, usually work on hand, to immediate subordinates; provides guidance and consultation in the accomplishment of day-to-day tasks assigned to caseworkers.

Written and verbal instructions are given to subordinates on program issues; meets with workers individually and in groups to explain rules, policies, procedures and laws; works with staff on individual cases; reviews actions taken, counsels on effective resolution of problems in cases which are difficult for the worker and creates work situations which allow professional growth.

Professional standards are set primarily through state rules, statutes, and manual regulation. Unit rules for work performance on the job are made by this position; may establish workload and qualitative standards for the unit.

This may be done through individual conferences, through the case plans, the treatment plan, and the placement plan. Reviews occur before, during, and after the performance of tasks.

Training needs are established on an individual basis and carried out by this position, staff development, state department staff and outside facilitators when sufficient resources are available. At the higher skill level, assures that an effective training program is in place. This assurance includes the assessment of need, and the evaluation of training upon completion.

Checks with employees on missed deadlines, problems of tardiness, chronic absences, and interpersonal problems and other concerns that are individually focused. At the higher skill level, has responsibility for the resolution of problems and complaints involving the unit; participates in resolving grievances and has the final decision for disciplinary action taken against staff members in the unit.

Reviews the performance of workers on a periodic basis and completes the annual performance rating using the appropriate form, or establishes individual performance plans and objectives and evaluates based on the achievement of plans and objectives.

Interviews and participates in selection of employees for the unit with higher level manager(s) or has final authority in hiring and termination decisions for the unit.

3. — Job Requirements

Position requires a thorough knowledge of supervisory and management techniques, human behavior, the dynamics of child abuse and neglect; a thorough knowledge of casework principles and techniques as they are applied to developmental disability, mental illness, protective services; extensive skill in case planning and the handling of problem cases; ability to instruct and teach social casework techniques; ability to supervise professional casework staff; skill in writing and editing reports; skill in interpreting rules, regulations, laws and procedures; ability to deal with stress and emergencies; a knowledge of the court system and its workings with respect to child welfare; ability to resolve conflict; ability to evaluate staff and clients; knowledge of Colorado Children's Code and other rules, regulations and laws pertaining to child welfare.

L. — Social Services Supervisor Competencies

1. — Agency Mission and Vision

Knows and is able to communicate and model the agency mission, vision, and philosophy; able to describe the role of the supervisor in being a bridge between management and the unit work group; and, ability to articulate effective integration of agency procedures and protocols.

2. — Values, Philosophy and Culture

Aware of how supervisory power and influence are acquired and effectively utilized; able to distinguish between the concepts of power and authority; able to identify the sources of

power available to him/her; aware of his/her own values, attitudes, behaviors and cultural beliefs as they relate to supporting agency mission and vision and their impact on supervisory practice; ability to articulate how culturally competent and family-centered child welfare practice leads to better family, worker, and community/partner engagement and outcomes for children, youth and families; ability to explain the impact of individual culture and values on child welfare practice and supervision; able to utilize supervisory practices that facilitate a positive supervisory relationship and supervision climate with culturally diverse staff; able to describe the valuable contributions of other key stakeholders (e.g., foster parents, community providers, legal community members, etc.); and, know how to facilitate case worker engagement with stakeholders, in partnering to achieve better outcomes for children, youth and families.

3. ——— Administrative Resources: Interpreting and Utilizing Data and Information

Ability to apply a systemic approach for ensuring accountability to stakeholders for agency performance by understanding data, mandates and policy, as well as report functions; ability to identify the usefulness and location of key data sources (CFSR, PIP, ARD and other reports); demonstrate how to use key reports in prioritizing and facilitating the work of the department in meeting the outcomes of safety, permanency and well-being; able to describe the local budget process, including key timeframes, key budget personnel, and the impact of budget growth or restriction on agency operations.

4. ——— Supervisory Role and Use of Supervision

Knows and understands the challenges and problems in transitioning from worker to supervisor and can identify potential strategies to address or resolve them; knows the key reasons for establishing appropriate boundaries with staff and the potential impact of not doing so; ability to identify what the supervisor may have contributed to the problems that exist in the case situations; ability to identify steps to ease the transition from worker to supervisor.

5. ——— Supportive Supervision

Understands and can recognize diverse learning styles to help meet the learning and engagement needs of individual staff and maximize their performance; understands application of learning style principles to own learning style; knows how to apply learning styles to the development of staff learning plans and transfer of learning activities; able to describe supervision strategies for each stage of worker development; knows how to facilitate staff recognition of the diverse learning styles and information integration capacities of clients to help achieve strong client engagement and the goals and desired outcomes of a case.

6. ——— Supervisor as Practice Expert

Knows, teaches and models the necessary elements of statutes, rules and policies that support child welfare practice; able to identify pertinent best practice and best policy issues for the outcomes of safety, permanency, and well-being; knows the responsibilities of the child protection agency, supervisor and caseworker, including investigating reports of maltreatment, providing in-home services, temporary out-of-home care placements, and permanent homes for children; knows the philosophy, values, and characteristics of family-centered child welfare and understand how effective in-home family services can prevent the removal of children from their homes; understands the value of bringing and sharing other expertise into array of team capacity building opportunities and can access resources for this purpose (e.g., national resource centers); able to describe how statutes, rules and policies guide child welfare practice and supervisory focus; able to explain the responsibilities of the child protection agency, supervisor and caseworker in: investigating reports of maltreatment, providing in-home services, temporary out-of-home care placements, and permanent homes for children; ability to explain how family-centered/culturally responsive practices impact child safety, permanency and well-being at the case and macro levels; and, ability to identify internal and external expert

resources that are available to them and their team in for use in developing and delivering quality case practice.

7. Supervision at Intake/Assessment

Knows the responsibilities of the child protection agency, supervisor and caseworker, including investigating reports of maltreatment, providing in-home services, temporary out-of-home care placements, and permanent homes for children; knows the process for screening and case assignment; ability to identify the factors that must be evaluated when assessing the level of risk for an abused or neglected child in the family, and family strengths and safety factors that can mitigate and reduce risk in the investigation and initial assessment; knows, teaches, coaches and models assessment, decision-making, safety planning to facilitate the best possible case practice within the intake process (including items from the Colorado assessment continuum, Trails, agency letters); knows how to facilitate quality case transfer procedures; knows how to preserve client confidentiality; ability to describe the key elements of the Colorado assessment continuum; ability to describe the process for screening in and out case reports and making case assignments, including understanding staff expertise, workload issues, and other factors in determining assignments; ability to identify the presence or absence of factors that have been evaluated by a worker in a case scenario who is responsible for assessing the level of risk for an abused or neglected child in the family, family strengths and safety factors that can mitigate and reduce risk in the investigation and initial assessment; ability to describe how to use and integrate the intake available resources, practice guidance and data into actual case practice utilizing the Colorado assessment continuum, Trails, agency letters, CFSRs and State PIP; ability to describe the importance of a seamless case transfer process and can identify positive methods of effectively facilitating case transfer; knows how to describes the importance of preserving client confidentiality from a supervisory perspective.

8. Supervision for Ongoing or Other Services and Supports

Knows how to organize and provide case consultation to individual staff and in a group setting; knows how to supervise the interview process and provide useful feedback; knows, teaches, coaches and models assessment, decision-making, safety planning, case planning and case process to facilitate the best possible case outcomes in the ongoing case process; knows how to link assessments to case planning; knows and can utilize a variety of tools that enhance and support both the supervision structure and case consultation; knows the importance of documentation and how to evaluate the quality and depth of it; knows how to use ARD, Trails and other reports to evaluate and discuss case practice on the individual, unit and agency levels; knows, teaches, coaches and models decision-making, safety planning, case planning and case process to facilitate the best possible case outcomes on ongoing cases; knows the importance of quality visitation to the reunification process or other permanency alternative and can provide solid coaching and supervision to these activities; knows the importance of, and integrates and supervises the concepts of, concurrent planning to achieve permanence; knows how to facilitate quality case transfer or sharing procedures; knows how to supervise to appropriate and timely case closure; knows how to support case worker skill development and competence within the court process; able to describe the frequency and duration of individual supervision sessions to meet best practice standard; able to demonstrate and ability to organize individual and group supervision and case consultation agendas; ability to demonstrates and understanding of ongoing case practice and how to provide useful feedback to staff who are involved in the interview and engagement process; able to articulate key elements of assessment, decision-making, safety planning, case planning and case process to facilitate the best possible case outcomes in the ongoing case process; able to apply coaching and teaching concepts, and integrates the use of supervision and other tools, to case scenarios and staff feedback opportunities within them; able to identify the presence or absence of factors that have been evaluated by a worker in a case scenario who is responsible for assessing the level of risk for an abused or neglected child in the family, family strengths and safety factors that can mitigate and reduce risk in the investigation and initial

assessment; able to describe how to use and integrate the intake available resources, practice guidance and data into actual case practice utilizing the Colorado assessment continuum, trails, agency letters, Children and Family Services Review (CFSR) and state Program Improvement Plan (PIP); able to describe the importance of a seamless case transfer process and can identify positive methods of effectively facilitating case transfer; able to describe the importance of preserving client confidentiality from a supervisory perspective; able to describe and demonstrates how to use ARD, Trails and other reports to evaluate and discuss case practice on the individual, unit and agency levels; able to describe the importance of quality visitation and concurrent planning to the reunification process or other permanency alternative to supervisees through a case scenario review; able to identify supervision and case consultation methods that may facilitate increased staff comfort and capacity to address areas of concern that may confront a worker on both a personal and practice level (e.g., child removal, reunification challenges, GLBT issues, sexual abuse, child fatality, etc.); able to describe how to effectively and cooperatively assist staff in engaging in quality case transfer or sharing procedures; able to demonstrate an ability to help workers assess readiness for case closing and complete a timely closure.

9. — Supportive Supervision

Understands the value of supportive supervision and its impact on worker retention; understands and can utilize the interest paradigm as it relates to team formation and function; knows how to effectively engage diverse groups of people in working together towards a common goal; knows how to create a positive work climate and how to listen and respond to worker complaints; understands diverse conflict styles; knows how to manage conflict within a team; knows how to advocate for your workers within the system; knows how to establish and maintain professional boundaries; able to describe the three components of the interest paradigm and how to utilize it in a variety of contexts; able to articulate the role of the supervisor in creating a positive work climate and some of the key factors that support staff commitment and worker retention; able to identify personal conflict style; able to describe how diverse conflict styles impact team cohesion and relationships; knows the importance of supervisory boundaries and methods of maintaining them.

10. — Secondary Trauma and Burnout

Able to recognize secondary trauma in self and others and implement strategies to address it; knows the indicators, risk factors and possible causes of secondary trauma; knows how to help workers deal with fatality cases and other severe abuse cases; knows self-care strategies and how to encourage the identification of potential strategies and their use by staff; able to recognize burnout and recommend strategies to address it; knows the indicators, risk factors and possible causes of burnout; able to describe the supervisor's role in preventing burnout; knows methods of encouraging resiliency in workers.

11. — Supporting Worker Safety

Understands the need to support worker self awareness and safety in their everyday work; knows how to help workers assess potential safety risks and create strategies to enhance personal safety; knows how to develop collaborative relationships with others involved in safety issues (e.g., police, local trauma specialists, etc.); knows how to follow up and evaluate success of worker safety strategies; able to describe worker safety concepts and possible protocols; able to identify ways to help workers assess potential safety risks; able to list five worker safety strategies; able to explain the need to keep worker safety of paramount importance on an ongoing basis; able to describe the use of Memorandums of Understanding (MOUs) and need to develop a positive rapport with others involved in safety issues (e.g., police, local trauma specialists, etc.).

12.——Community and Intra-Agency Collaboration

Knows how to develop collaborative relationships and communicate with foster parents and other alternate care providers; knows how to develop collaborative relationships and communicate with internal agency partners (e.g., other units within the department); knows available internal resources, methods of accessing them and supervisor role in authorizing or facilitating their availability; knows how to develop collaborative relationships and communicate with external partners in the community (e.g., contract providers, community-based organizations and faith-based organizations, judicial partners); knows how to develop collaborative relationships with culturally diverse community providers and leadership representatives; able to describe methods of supervising to staff toward collaborative relationship development and communication with foster parents and other alternate care providers; able to describe supervisor role in developing collaborative relationships and communicate with internal agency partners (e.g., other units within the department) and external stakeholders and how to model that collaboration to staff; able to list ways to identify key community stakeholders; able to identify potential engagement and bridge-building strategies with external partners and stakeholders, including those in culturally diverse communities.

(12 CCR 2509-7)

7.603 CHILD WELFARE TRAINING ACADEMY REQUIREMENTS (Reserved for Future Use)

7.603.1 Child Welfare Training Academy Requirements

- A. THE COUNTY DEPARTMENT AND THE HOTLINE COUNTY CONNECTION CENTER SHALL ENSURE THAT NEWLY HIRED HOTLINE WORKERS WHOSE JOB TITLES ARE IDENTIFIED IN SECTION 7.603.1, M, OR ANY STAFF PERFORMING THE DUTIES AND RESPONSIBILITIES ASSIGNED TO THESE JOB TITLES, COMPLETE THE HOTLINE TRAINING FOR WORKERS AS A CONDITION OF THEIR CONTINUED EMPLOYMENT. SUCCESSFUL COMPLETION OF THE COMPETENCIES IDENTIFIED IN SECTION 7.603.1, O, WILL BE DETERMINED BY PRE- AND POST-TESTS, A DEMONSTRATION OF COMPETENCE THROUGH STRUCTURED ON-THE-JOB TRAINING ACTIVITIES, AND TRAINER OBSERVATION. THIS TRAINING MUST BE COMPLETED AND CERTIFICATION RECEIVED PRIOR TO ASSUMING THEIR PRIMARY DUTIES ON AN INDEPENDENT BASIS.
- B. THE COUNTY DEPARTMENT AND THE HOTLINE COUNTY CONNECTION CENTER SHALL ENSURE THAT NEWLY HIRED HOTLINE STAFF SUPERVISORS WHOSE JOB TITLES ARE IDENTIFIED IN SECTION 7.603.1, M, OR ANY STAFF PERFORMING THE DUTIES AND RESPONSIBILITIES ASSIGNED TO THESE JOB TITLES, COMPLETE THE HOTLINE TRAINING FOR SUPERVISORS AS A CONDITION OF THEIR CONTINUED EMPLOYMENT. SUCCESSFUL COMPLETION OF THE COMPETENCIES IDENTIFIED IN SECTION 7.603.1, O, WILL BE DETERMINED BY PRE- AND POST-TESTS, A DEMONSTRATION OF COMPETENCE THROUGH STRUCTURED ON-THE-JOB TRAINING ACTIVITIES, AND TRAINER OBSERVATION. THIS TRAINING MUST BE COMPLETED AND CERTIFICATION RECEIVED PRIOR TO ASSUMING THEIR PRIMARY DUTIES ON AN INDEPENDENT BASIS AS PRESCRIBED BY THE STATE (SECTION 26-5-109, C.R.S.).
- ~~7.000.61, A-C.~~ The county department shall ensure that newly hired social caseworkers whose job titles are identified in Section 7.603.1, M ~~7.000.61, I~~, or any staff performing the duties and responsibilities assigned to these job titles, complete the ~~Child Welfare Training Academy-NEW~~ CASEWORKER PRE-SERVICE TRAINING as a condition of their continued employment. Successful completion of the competencies identified in Section ~~7.000.61, J~~ 7.603.1, O, will be determined by pre- and post-tests, a demonstration of competence through structured on-the-job TRAINING activities ~~as defined in the on-the-job trainers manual~~, and trainer observation ~~as defined by the trainer observation guide~~. This training must be completed and certification received prior to assuming their primary duties on an independent basis as prescribed by the state (Section 26-5-109, C.R.S.).
- ~~B-D.~~ The county department shall ensure that newly hired or promoted ~~human services~~ SOCIAL CASEWORK Supervisors, whose job titles are identified in section ~~7.000.61, K~~ 7.603.1, M, or any staff performing the duties and responsibilities assigned to these job titles complete the NEW SUPERVISOR PRE-SERVICE TRAINING ~~Child Welfare Training Academy supervisory training~~, as a condition of their continued employment. Successful completion of the competencies identified in Section ~~7.000.61, L~~ 7.603.1, O, will be determined by pre- and post-tests, a demonstration of competence through structured on-the-job TRAINING activities ~~as defined in the on-the-job trainers manual~~, and trainer observation ~~as defined by the trainer observation guide~~. This training must be completed and certification received prior to assuming their primary duties on an independent basis as prescribed by the state (Section 26-5-109, C.R.S.).
- GE. The county department AND THE HOTLINE COUNTY CONNECTION CENTER shall ensure that newly hired HOTLINE WORKERS, HOTLINE STAFF SUPERVISORS, social caseworkers and newly hired or promoted ~~human services~~ SOCIAL CASEWORK Supervisors successfully complete the ~~child welfare academy~~ structured on-the-job training.
- DF. The county department AND THE HOTLINE COUNTY CONNECTION CENTER shall appoint a staff person to conduct the ~~child welfare academy~~ structured on-the-job training with newly hired

HOTLINE WORKERS, HOTLINE STAFF SUPERVISORS, ~~Social~~ Caseworkers and newly hired or promoted ~~human-services~~ SOCIAL CASEWORK Supervisors.

- G. THE COUNTY DEPARTMENT AND THE HOTLINE COUNTY CONNECTION CENTER SHALL ENSURE THAT ALL EXPERIENCED HOTLINE WORKERS AND HOTLINE STAFF SUPERVISORS WHOSE JOB TITLES ARE IDENTIFIED IN SECTION 7.603.1, M, OR ANY STAFF PERFORMING THE DUTIES AND RESPONSIBILITIES ASSIGNED TO THESE JOB TITLES, COMPLETE AT LEAST SIX (6) HOURS OF IN-SERVICE TRAINING PER YEAR. THE IN-SERVICE TRAINING INCLUDES QUALITY ASSURANCE EXERCISES BY THE SUPERVISOR, OBSERVATION AND/OR PARTICIPATION IN RED TEAMS, AND/OR IN-PERSON TRAINING FOCUSED IN THE AREA OF THE HOTLINE WORKER'S OR HOTLINE STAFF SUPERVISOR'S PRIMARY JOB RESPONSIBILITIES.
- EH. The county department shall ensure that all experienced social caseworkers whose job titles are identified in section ~~7.000.61, K~~ 7.603.1, M, or any staff performing the duties and responsibilities assigned to these job titles, complete at least forty (40) hours of ~~ongoing~~ in-service training per year. The in-service training is to be focused in content areas such as, but not limited to:
1. SAFETY;
 2. RISK;
 3. PERMANENCY;
 4. WELL-BEING;
 - ~~1~~ 5. Assessment;
 - ~~2~~ 6. Interviewing;
 - ~~3~~ 7. Family engagement;
 - ~~4~~ 8. Legal issues;
 9. INDIAN CHILD WELFARE ACT;
 - ~~5~~ 10. Foster care, KINSHIP CARE, and adoption;
 - ~~6~~ 11. Effects of child abuse/neglect on development;
 - ~~7~~ 12. Principles of strengthS based, family-FOCUSED, ~~centered~~, CHILD-CENTERED AND culturally RESPONSIVE ~~relevant~~ case planning and case management;
 - ~~8~~ 13. Sexual abuse issues;
 - ~~9~~ 14. Behavioral health issues;
 - ~~10~~ 15. Domestic violence issues; and,
 - ~~11~~ 16. Cultural disparity.

At a minimum, sixteen (16) of the in-service training hours are to be focused in the area of the caseworker's primary job responsibilities.

- ~~F-I.~~ The county department shall ensure that all experienced ~~human-services~~ SOCIAL CASEWORK Supervisors whose job titles are identified in section ~~7.000.61, K~~ 7.603.1, O, or any staff performing the duties and responsibilities assigned to these job titles complete at least forty (40) hours of ~~ongoing~~ in-service training per year. The in-service training is to be focused on the supervisor's role in content areas such as, but not limited to:

1. Leadership and management;
2. DATA INFORMED PRACTICE;
- 2-3. Worker safety;
- 3-4. Assessment;
- 4-5. Interviewing;
- 5-6. Family engagement;
- 6-7. Legal issues;
8. INDIAN CHILD WELFARE ACT;
- 7-9. Foster care, KINSHIP CARE and adoption;
- 8-10. Effects of child abuse/neglect on development;
- 9-11. Principles of strengthS based, family-FOCUSED, centered CHILD-CENTERED, AND culturally RESPONSIVE relevant case planning and case management;
- 10-12. Sexual abuse issues;
- 11-13. Behavioral health issues;
- 12 14. Domestic violence issues; and,
- 13 15. Cultural disparity.

At a minimum, sixteen (16) of the in-service training hours are to be focused in the area of the ~~human services~~ SOCIAL CASEWORK Supervisor'S primary job responsibilities.

G-J. The county department shall ensure that all personnel whose job titles are identified in section ~~7.000.61, K, and 7.000.61, M~~ 7.603.1, O, or any staff performing the duties and responsibilities assigned to these job titles, possess the following minimum qualifications:

1. LIFE SKILLS STAFF POSITION
 - a. THIS POSITION HAS 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.
 - b. 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.
2. HOTLINE WORKER

A HIGH SCHOOL DIPLOMA OR GED.
3. HOTLINE STAFF SUPERVISOR

A HIGH SCHOOL DIPLOMA OR GED AND THREE (3) YEARS OF PROFESSIONAL CHILD WELFARE EXPERIENCE IN A PUBLIC OR PRIVATE HUMAN SERVICES AGENCY.
- 1-4. SOCIAL CASEWORKER I ~~Professional Entry (Training) Level Position~~

A Bachelor's degree with a major in a human behavioral sciences field.

2-5. ~~SOCIAL CASEWORKER II, III, IV Professional Journey Level Position~~

- a. ~~This position has obtained~~ The skills, knowledge, and abilities to perform duties at the full independent working level through experience, PROPER SUPERVISION, and ON-GOING education AND TRAINING.
- b. 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 human services agency; or,
- c. 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 human services; or,
- d. A Master's degree in social work or human behavioral sciences field.

3 6. SOCIAL CASEWORK SUPERVISOR POSITION

- a. A Bachelor's degree with a major in a human behavioral sciences field (no substitution) and three (3) years professional casework experience at the SOCIAL CASEWORKER II, III, or IV LEVEL ~~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 SOCIAL CASEWORKER II, III, or IV ~~journey level obtained before or after the advanced degree~~.

~~4~~ 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 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 FROM AN ACCREDITED INSTITUTION.~~

K. TEMPORARY EDUCATIONAL Waiver Process

If proven recruitment difficulty exists, county departments may request a TEMPORARY waiver of these EDUCATIONAL requirements by submitting a request to the Colorado Department of Human Services, ~~and the Division of Children and Family Training~~ DIVISION OF CHILD WELFARE, WHICH INCLUDES THE FOLLOWING INFORMATION:

1. For Initial Hiring:

- a. DOCUMENTATION OF Documenting the recruiting effortS AND THE IDENTIFIED DIFFICULTIES;
- b. DESCRIPTION OF THE ~~Identifying~~ specific services to be provided by the position, THE TITLE OF THE POSITION, AND THE NAME OF THE CANDIDATE; ~~(such as core services or case management) where alternative qualifications are being proposed;~~
- c. JUSTIFICATION AS TO HOW THE CANDIDATE MEETS ALL OTHER QUALIFICATIONS FOR THE POSITION; ~~Identifying the specific position~~

~~concerned by position number, title, and name of incumbent, if position is filled;~~
~~AND~~

- d. A PLAN ON HOW AND WHEN THE CANDIDATE WILL MEET THE REQUIREMENTS CONTAINED IN THESE RULES. ~~Justifying why the candidate would be acceptable for the position; and,~~

~~Including a plan on how and when the candidate will meet the requirements contained in these rules.~~

- a. 2. For County Directors:

County directors who also provide direct supervision of child welfare services and who do not meet the minimum qualifications for the casework supervisor position must apply for a waiver to provide these services.

~~H.L.~~ TRAINING SUBSTITUTIONS

~~Training academy certification for IF A newly hired persons HAS with previous experience who have AND HAS successfully completed comparable child welfare training WITHIN THE PAST FOUR (4) YEARS as outlined in Sections- 7.603.1, O 7.000.61, L and N. THE COUNTY DEPARTMENT OF HUMAN SERVICES, DIVISION OF CHILD WELFARE TRAINING UNIT. THE FOLLOWING INFORMATION MUST BE SUBMITTED:~~

1. Documentation of previous child welfare training ~~with INCLUDING A description of the training and documentation of training completion;~~
2. Documentation of previous child welfare experience;
3. Completion of STATE AUTOMATED CASE MANAGEMENT SYSTEM NAVIGATION TRAINING (REQUIRED FOR OUT-OF-STATE CANDIDATES ONLY) ~~the initial Colorado computer based training and demonstration of proficiency in minimum competencies defined by Training Academy;~~
4. COMPLETION OF THE COLORADO SAFETY AND RISK ASSESSMENT TRAINING; ~~AND Identification of how the candidate will assume supervisory or caseworker responsibilities for the county child welfare operation that reflect practice in Colorado;~~
5. COMPLETION OF COUNTY-SPECIFIC ON-THE-JOB TRAINING DESIGNED TO PREPARE THE WORKER TO PERFORM REQUIRED JOB FUNCTIONS;
6. CERTIFICATION WILL BE AWARDED AFTER REQUIREMENTS OF SECTION 7.603.1, K, 1-5, HAVE BEEN SATISFIED.

~~H.M.~~ CHILD WELFARE PROFESSIONAL HUMAN SERVICES JOB TITLES

~~The following job titles shall receive PRE-SERVICE training through the Training Academy:~~

1. HOTLINE WORKER

THIS POSITION REQUIRES A WORKING KNOWLEDGE OF THE REFERRAL PROCESS INCLUDING CHILD WELFARE RULE REQUIREMENTS; FEDERAL, STATE, AND COUNTY CONFIDENTIALITY POLICIES; SAFETY AND RISK; AND RED TEAM PROCESS. THIS POSITION APPLIES UNDERSTANDING OF THE REFERRAL PROCESS TO ENGAGE CALLERS AND EXECUTE ALL COMPONENTS OF THE INFORMATION GATHERING PROCESS.

2. HOTLINE STAFF SUPERVISOR

THIS POSITION PROVIDES DIRECT SUPERVISION TO HOTLINE STAFF.

~~I, 1.~~ **3. SOCIAL CASEWORKER I ,II (General)**

a. ~~General Statement of Duties~~

~~Positions provide prevention, intake and/or ongoing social casework services for a variety of Title XX program areas such as child abuse and neglect cases, youth in conflict cases; may also provide for the provision of ancillary services such as recruitment and supervision of foster care homes and the placement of clients with kinship care, foster care, group homes and the placement of clients into foster care, group homes, residential settings, and/or institutions. THIS IS A PROFESSIONAL TRAINING LEVEL POSITION IN WHICH ASSIGNMENTS ARE PLANNED AND DEvised TO DEVELOP AND TEACH PROFESSIONAL SOCIAL CASEWORK TECHNIQUES, BASIC FOUNDATIONS, AND CONCEPTS APPROPRIATE TO THE ASSIGNED AREAS.~~

~~2.~~ **4. Social Caseworker II III (General)**

THIS IS A POSITION WHICH REQUIRES A WORKING KNOWLEDGE OF ESTABLISHED THEORIES, PRINCIPLES, AND CONCEPTS AND UTILIZES EXTENSIVE ASSESSMENT AND DIAGNOSTIC ORIENTED SKILLS AS ARE REQUIRED AT THE HIGHER LEVELS. EMPLOYEES CONTINUE TO DEVELOP KNOWLEDGE AND UTILIZE PROFESSIONAL TECHNIQUES AND CONCEPTS BEYOND THE MERE APPLICATION OF DETAILED RULES AND PROCEDURES.

~~3.~~ **5. Social Caseworker III IV (General)**

THIS IS A SENIOR LEVEL POSITION WHICH REQUIRES THOROUGH KNOWLEDGE OF THE THEORIES, PRINCIPLES, AND CONCEPTS OF SOCIAL CASEWORK PRACTICE RELATED TO THE ASSIGNED PROGRAM AREA. THIS POSITION MAY BE ASSIGNED LEAD WORKER RESPONSIBILITIES, AS DEFINED BY THE COUNTY DEPARTMENT.

~~4.~~ **6. Social Caseworker IV I, II (Child Protection)**

THIS POSITION DEMONSTRATES AN ADVANCED KNOWLEDGE AND PRACTICE OF CASEWORK TECHNIQUES AND/OR THERAPEUTIC SERVICES. POSITIONS AT THIS LEVEL ARE TYPICALLY ASSIGNED LEAD WORK RESPONSIBILITIES, AND MAY BE ASSIGNED SPECIALIZED CASELOADS IN WHICH THE WORKER IS RESPONSIBLE FOR THE PROVISION OF INTENSIVE FAMILY SERVICES, AS AN ALTERNATIVE TO OUT-OF-HOME PLACEMENT.

~~5.~~ **7. SOCIAL CASEWORK SUPERVISOR Social Caseworker III (Child Protection)**

THIS POSITION PROVIDES DIRECT SUPERVISION TO A STAFF OF PROFESSIONAL CASEWORKERS AND PARA-PROFESSIONALS.

N. GENERAL STATEMENT OF DUTIES

1. HOTLINE WORKER

THE FOLLOWING ARE DESCRIPTIONS OF DUTIES THAT MAY BE PERFORMED BY A HOTLINE WORKER. THIS IS NOT AN ALL-INCLUSIVE LIST, AND THE COUNTY APPOINTING AUTHORITY MAY DETERMINE THE DUTIES OF THE EMPLOYEE BASED ON THE INTERNAL STRUCTURE AND POLICIES OF THE COUNTY DEPARTMENT.

- a. ENGAGES CALLERS IN THE PHONE INTERVIEW PROCESS, RESPONDS TO INQUIRIES, AND/OR EXECUTES ALL COMPONENTS OF THE INFORMATION GATHERING PROCESS AS OUTLINED IN THE CHILD WELFARE RULES.
- b. ENSURES THAT ALL REPORTS AND INQUIRIES ARE DOCUMENTED IN THE STATE AUTOMATED CASE MANAGEMENT SYSTEM.

2. HOTLINE STAFF SUPERVISOR

THE FOLLOWING ARE DESCRIPTIONS OF DUTIES THAT MAY BE PERFORMED BY HOTLINE STAFF SUPERVISORS. THIS IS NOT AN ALL-INCLUSIVE LIST, AND THE COUNTY AND HOTLINE COUNTY CONNECTION CENTER APPOINTING AUTHORITIES MAY DETERMINE THE DUTIES OF THE EMPLOYEE BASED ON THE INTERNAL STRUCTURE AND POLICIES OF THE COUNTY DEPARTMENT.

- a. OVERSEES THE WORK OF HOTLINE WORKERS, ENSURES THAT ALL CALLS ARE RECEIVED AND INFORMATION IS GATHERED AND DOCUMENTED IN THE STATE AUTOMATED CASE MANAGEMENT SYSTEM, MAY MAKE INITIAL REVIEW DECISIONS REGARDING REFERRALS, AND MAY COORDINATE AND/OR PARTICIPATE IN THE RED TEAM PROCESS.
- b. DETERMINES JURISDICTION OF REFERRALS AND CHILD WELFARE INQUIRIES, COORDINATES THEIR TRANSFER TO THE APPROPRIATE COUNTY DEPARTMENTS, ENSURES DELIVERY OF REFERRALS TO LAW ENFORCEMENT AND/OR JUDICIAL PARTNERS AS NEEDED.
- c. MONITORS THE WORKLOAD OF HOTLINE WORKERS AND DATA ASSOCIATED WITH THE OPERATIONS OF THE COUNTY DEPARTMENT'S HOTLINE UNIT, DETERMINES RESOURCE NEEDS TO ACHIEVE THE GOALS OF THE HOTLINE UNIT, AND MAKES RECOMMENDATIONS TO HIGHER LEVEL MANAGEMENT.
- d. MEETS WITH HOTLINE WORKERS INDIVIDUALLY AND IN GROUPS TO COUNSEL STAFF REGARDING RULES, POLICIES, PROCEDURES, DATA TRENDS, AND LAWS; REVIEWS SPECIFIC CASES, ACTIONS TAKEN AND PROBLEMS ENCOUNTERED; AND CREATES AN ENVIRONMENT THAT ALLOWS FOR PROFESSIONAL GROWTH.
- e. ESTABLISHES INDIVIDUAL TRAINING NEEDS OF HOTLINE WORKERS AND ENSURES THAT AN EFFECTIVE TRAINING PLAN IS IN PLACE.
- f. ESTABLISHES INDIVIDUAL PERFORMANCE PLANS, REVIEWS THE PERFORMANCE OF HOTLINE WORKERS ON A PERIODIC BASIS INCLUDING REVIEW AND EVALUATION OF HOTLINE WORKERS' CALL RECORDINGS, AND COMPLETES AN ANNUAL PERFORMANCE EVALUATION.

3. SOCIAL CASEWORKER I, II, III, IV

THE FOLLOWING ARE DESCRIPTIONS OF DUTIES THAT MAY BE PERFORMED BY A SOCIAL CASEWORKER I, II, III, OR IV. THIS IS NOT AN ALL-INCLUSIVE LIST, AND THE COUNTY APPOINTING AUTHORITY MAY DETERMINE THE LEVEL OF THE EMPLOYEE BASED ON THE INTERNAL STRUCTURE AND POLICIES OF THE COUNTY DEPARTMENT.

- a. PROVIDE PREVENTION, ASSESSMENT, AND/OR ONGOING CASEWORK SERVICES FOR PROGRAM AREAS 4, 5, AND/OR 6.

- b. RECRUITS AND/OR SUPERVISES CERTIFIED FOSTER FAMILY CARE HOMES, CERTIFIED AND NON-CERTIFIED KINSHIP FAMILY CARE HOMES, AND ADOPTIVE FAMILY HOMES.
- c. CONDUCTS HOME STUDIES, GRANTS CERTIFICATIONS, AND MONITORS THE QUALITY OF CARE PROVIDED IN FOSTER FAMILY CARE HOMES, CERTIFIED AND NON-CERTIFIED KINSHIP CARE FAMILY HOMES, AND ADOPTIVE FAMILY HOMES.
- d. PROVIDES INDIVIDUAL OR FAMILY COUNSELING ON AN ONGOING OR CRISIS BASIS TO CHILDREN AND THEIR PARENTS OR CAREGIVERS.
- e. PROVIDES INDIVIDUAL, GROUP, AND/OR FAMILY COUNSELING TO ADOLESCENTS AND THEIR FAMILIES ON AN ONGOING OR CRISIS BASIS.
- f. PROVIDES TRAINING TO LOCAL COMMUNITY PARTNERS REGARDING THE REFERRAL, ASSESSMENT, AND SERVICE PROVISION PROCESSES.

1. 4. SOCIAL CASEWORK SUPERVISOR

THE FOLLOWING ARE DESCRIPTIONS OF DUTIES THAT MAY BE PERFORMED BY A SOCIAL CASEWORK SUPERVISOR. THIS IS NOT AN ALL-INCLUSIVE LIST, AND THE COUNTY APPOINTING AUTHORITY MAY DETERMINE THE DUTIES OF THE EMPLOYEE BASED ON THE INTERNAL STRUCTURE AND POLICIES OF THE COUNTY DEPARTMENT.

- a. OVERSEES THE WORK OF THE UNIT, MAY MAKE SCREENING DECISIONS REGARDING REFERRALS, AND ASSIGNS CASELOADS TO WORKERS BASED ON THE KNOWLEDGE AND SKILLS OF THE SOCIAL CASEWORKERS IN THAT UNIT.
- b. MONITORS THE WORKLOAD OF THE UNIT, DETERMINES RESOURCE NEEDS TO ACHIEVE THE GOAL OF THE UNIT, AND MAKES RECOMMENDATIONS TO HIGHER LEVEL MANAGEMENT.
- c. MEETS WITH SOCIAL CASEWORKERS INDIVIDUALLY AND IN GROUPS, AND COUNSELS REGARDING RULES, POLICIES, PROCEDURES, DATA AND LAWS; REVIEWS SPECIFIC CASES, ACTIONS TAKEN, PROBLEMS ENCOUNTERED; AND CREATES AN ENVIRONMENT THAT ALLOWS FOR PROFESSIONAL GROWTH.
- d. ESTABLISHES INDIVIDUAL TRAINING NEEDS OF SOCIAL CASEWORKERS, AND ENSURES THAT AN EFFECTIVE TRAINING PLAN IS IN PLACE.
- e. ESTABLISHES INDIVIDUAL PERFORMANCE PLANS, REVIEWS THE PERFORMANCE OF SOCIAL CASEWORKERS ON A PERIODIC BASIS, AND COMPLETES AN ANNUAL PERFORMANCE EVALUATION.

J. O. Social caseworker Competencies

1. HOTLINE WORKER

TO BE CERTIFIED AS A HOTLINE WORKER AND PERFORM THE DUTIES AS OUTLINED IN SECTION 7.603.1, M, 1, THE HOTLINE WORKER WILL DEMONSTRATE THE KNOWLEDGE AND SKILLS AS DESCRIBED IN THE FOLLOWING COMPETENCIES:

- a. FUNDAMENTALS OF FAMILY-FOCUSED, CHILD-CENTERED CHILD PROTECTIVE SERVICES

- 1) THE ABILITY TO APPRECIATE THE IMPORTANCE OF THE HOTLINE WORKER'S ROLE;
 - 2) THE ABILITY TO COMPREHEND SAFETY AND RISK, AND DESCRIBE HOW THESE INFORM THE REFERRAL PROCESS;
 - 3) THE ABILITY TO EXPLAIN THE IMPORTANCE OF MANAGING RESILIENCY AND MITIGATING SECONDARY TRAUMA.
- b. FUNDAMENTALS OF ENGAGING CALLERS
- 1) THE ABILITY TO ENGAGE CALLERS IN THE PHONE INTERVIEW PROCESS;
 - 2) THE ABILITY TO ACKNOWLEDGE AND APPRECIATE THE COMPLEX PERSPECTIVES OF REPORTING PARTIES
- c. FUNDAMENTALS OF REFERRAL PROCEDURES.
- 1) THE ABILITY TO DEMONSTRATE AN UNDERSTANDING OF CHILD WELFARE RULE REQUIREMENTS RELATED TO THE REFERRAL PROCESS, INCLUDING MANDATORY REPORTING;
 - 2) THE ABILITY TO DEMONSTRATE KNOWLEDGE OF FEDERAL, STATE, AND COUNTY POLICIES ON CONFIDENTIALITY;
 - 3) THE ABILITY TO DEMONSTRATE EFFECTIVE EXECUTION OF ALL COMPONENTS OF THE INFORMATION GATHERING PROCESS;
 - 4) THE ABILITY TO CONCEPTUALIZE RED TEAM, SHIFT FROM EXPERIENCE TO INFLUENCE BY UNDERSTANDING THE IMPACT OF HIS/HER WORK PRODUCT;
 - 5) THE ABILITY TO UNDERSTAND AND MONITOR FOR OUTCOMES.
- d. FUNDAMENTALS OF THE STATE AUTOMATED CASE MANAGEMENT SYSTEM
- 1) THE ABILITY TO NAVIGATE AND UNDERSTAND THE FUNCTIONALITY OF THE STATE AUTOMATED CASE MANAGEMENT SYSTEM;
 - 2) THE ABILITY TO DOCUMENT ALL REQUIRED AND CASE RELEVANT INFORMATION IN THE STATE AUTOMATED CASE MANAGEMENT SYSTEM AS OUTLINED IN THE CHILD WELFARE RULES.
2. HOTLINE STAFF SUPERVISOR

TO BE CERTIFIED AS A HOTLINE STAFF SUPERVISOR, AND PERFORM THE DUTIES AS OUTLINED IN SECTION 7.603.1, M, 2, THE HOTLINE STAFF SUPERVISOR WILL DEMONSTRATE THE KNOWLEDGE AND SKILLS AS DESCRIBED IN THE FOLLOWING COMPETENCIES:

- a. Fundamentals of Supervising Hotline Staff
- 1) THE ABILITY TO CREATE A SUPPORTIVE AND ENABLING UNIT ENVIRONMENT THAT PROMOTES EFFECTIVE AND EFFICIENT COMPLETION OF MISSION-CRITICAL CASEWORK ACTIVITIES;

- 2) THE ABILITY TO SELECT AND USE SUPERVISORY STYLES AND STRATEGIES IN WAYS THAT ENHANCE AND SUSTAIN EFFECTIVE JOB PERFORMANCE BY HOTLINE WORKERS;
 - 3) THE ABILITY TO PLAN, ORGANIZE, AND MONITOR TO ENSURE THAT HOTLINE ACTIVITIES ARE CONSISTENT WITH FEDERAL AND STATE LAW AND RULE, AGENCY POLICIES AND PROCEDURES, AGENCY AND UNIT OUTCOMES, AND STANDARDS OF BEST PRACTICE.
- b. FUNDAMENTALS OF LEADERSHIP IN CHILD WELFARE
- 1) THE ABILITY TO CREATE A WORK ENVIRONMENT THAT SUPPORTS ACHIEVEMENT OF THE AGENCY'S MISSION AND PROMOTES EXCELLENCE IN DIRECT PRACTICE;
 - 2) THE ABILITY TO USE A VARIETY OF LEADERSHIP SKILLS TO MAXIMIZE STAFF AND UNIT PERFORMANCE.
- c. FUNDAMENTALS OF COMMUNICATING WITH STAFF AND MANAGING CONFLICT AND CHANGE
- 1) THE ABILITY TO EFFECTIVELY COMMUNICATE WITH STAFF;
 - 2) THE ABILITY TO RESPOND TO CONFLICT IN A MANNER THAT PROMOTES GROWTH AND CONSTRUCTIVE CHANGE;
 - 3) THE ABILITY TO IMPLEMENT AND CONSTRUCTIVELY MANAGE CHANGE INITIATIVES.
- d. FUNDAMENTALS OF IMPROVING STAFF PERFORMANCE
- 1) THE ABILITY TO DEVELOP AND COMMUNICATE CLEAR, MEASURABLE, MISSION-CRITICAL PERFORMANCE EXPECTATIONS FOR STAFF;
 - 2) THE ABILITY TO IDENTIFY THE DEVELOPMENT LEVEL, CULTURE, PERSONAL STRENGTHS, AND LEARNING NEEDS OF INDIVIDUAL STAFF MEMBERS;
 - 3) THE ABILITY TO COMPLETE PERFORMANCE EVALUATIONS AND TO DEVELOP PERFORMANCE IMPROVEMENT PLANS WITH INDIVIDUAL STAFF.
- e. FUNDAMENTALS OF STAFF DEVELOPMENT
- 1) THE ABILITY TO FACILITATE INDIVIDUAL LEARNING;
 - 2) THE ABILITY TO CREATE AND SUSTAIN A CONSTRUCTIVE LEARNING ENVIRONMENT IN THE ORGANIZATION;
 - 3) THE ABILITY TO DESIGN INDIVIDUAL LEARNING PLANS.
- f. FUNDAMENTALS OF COLLABORATION AND TEAMWORK
- 1) THE ABILITY TO CREATE A COLLABORATIVE TEAM ENVIRONMENT THAT ENHANCES PRODUCTIVITY;

- 2) THE ABILITY TO IDENTIFY AND BUILD ON UNIT STRENGTHS TO PROMOTE TEAMWORK.
- g. FUNDAMENTALS OF THE STATE AUTOMATED CASE MANAGEMENT SYSTEM
 - 1) THE ABILITY TO NAVIGATE AND UNDERSTAND THE FUNCTIONALITY OF THE STATE AUTOMATED CASE MANAGEMENT SYSTEM;
 - 2) THE ABILITY TO DOCUMENT ALL REQUIRED AND CASE RELEVANT INFORMATION IN THE STATE AUTOMATED CASE MANAGEMENT SYSTEM AS OUTLINED IN THE CHILD WELFARE RULES.
3. SOCIAL CASEWORKER I, II, III, IV

TO BE CERTIFIED AS A SOCIAL CASEWORKER I, II, III, OR IV, AND PERFORM THE DUTIES AS OUTLINED IN 7.603.1, M, 3, THE SOCIAL CASEWORKER WILL DEMONSTRATE THE KNOWLEDGE AND SKILLS AS DESCRIBED IN THE FOLLOWING COMPETENCIES:

- a. FUNDAMENTALS OF FAMILY-FOCUSED, CHILD-CENTERED CHILD PROTECTIVE SERVICES
 - 1) THE ABILITY TO CONDUCT CHILD WELFARE PRACTICE IN A MANNER CONSISTENT WITH FUNDAMENTAL CHILD WELFARE VALUES AND PHILOSOPHY;
 - 2) THE ABILITY TO IDENTIFY CHILDREN WHO HAVE BEEN PHYSICALLY ABUSED, NEGLECTED, SEXUALLY ABUSED, OR EMOTIONALLY ABUSED;
 - 3) THE ABILITY TO APPROACH AND RELATE TO FAMILIES IN A CULTURALLY RESPECTFUL AND SENSITIVE MANNER;
 - 4) THE ABILITY TO WORK WITHIN A COMMUNITY-BASED SYSTEM OF CHILD PROTECTION AND FAMILY SUPPORT.
- b. FUNDAMENTALS OF ENGAGING FAMILIES
 - 1) THE ABILITY TO INTEGRATE CASEWORK METHODS WITH THE EXERCISE OF PROTECTIVE AUTHORITY WHEN NECESSARY TO ENSURE CHILDREN'S SAFETY;
 - 2) THE ABILITY TO USE CASEWORK METHODS TO ENGAGE AND EMPOWER FAMILIES TO COLLABORATE WITH THE AGENCY;
 - 3) THE ABILITY TO ENGAGE AND COMMUNICATE WITH FAMILIES WITHIN THEIR OWN CULTURAL CONTEXT;
 - 4) THE ABILITY TO CONDUCT INDIVIDUAL AND FAMILY/GROUP INTERVIEWS.
- c. LEGAL ASPECTS OF CHILD PROTECTION
 - 1) THE ABILITY TO ACCESS THE DEPENDENCY AND NEGLECT COURT TO PROTECT CHILDREN FROM MALTREATMENT AND TO ASSURE PERMANENCE WITHIN LEGALLY ESTABLISHED TIME FRAMES;

- 2) THE ABILITY TO GATHER, PREPARE, AND DOCUMENT CASE INFORMATION FOR COURT;
 - 3) THE ABILITY TO TESTIFY IN DEPENDENCY AND NEGLECT, AND DELINQUENCY COURT HEARINGS.
- d. FUNDAMENTALS OF DETERMINING THE SAFETY AND RISK FOR CHILDREN, YOUTH AND FAMILIES
- 1) THE ABILITY TO CONDUCT COMPREHENSIVE FAMILY ASSESSMENTS FOR PURPOSES OF DECISION MAKING FOR FUTURE INVOLVEMENT;
 - 2) THE ABILITY TO DETERMINE THE LEVEL OF CURRENT OR IMPENDING DANGER THROUGH THE USE OF THE SAFETY ASSESSMENT TOOL FOR IMMEDIATE SAFETY OF THE CHILDREN;
 - 3) THE ABILITY TO DESIGN AND IMPLEMENT SAFETY PLANS TO PROTECT CHILDREN FROM IMMEDIATE OR IMPENDING DANGER;
 - 4) THE ABILITY TO DETERMINE THE LEVEL OF FUTURE RISK OF ABUSE OR NEGLECT TO CHILDREN THROUGH THE USE OF THE RISK ASSESSMENT TOOL.
- e. FUNDAMENTALS OF REFERRAL PROCEDURES
- 1) THE ABILITY TO RECEIVE AND DOCUMENT INFORMATION FROM REPORTING PARTIES;
 - 2) THE ABILITY TO SCREEN REFERRALS TO DETERMINE THE LEVEL OF PRIORITY FOR AGENCY RESPONSE.
- f. FUNDAMENTALS OF ASSESSMENT PROCEDURES
- 1) THE ABILITY TO USE A FAMILY-FOCUSED, CHILD-CENTERED APPROACH WHEN CONDUCTING CHILD MALTREATMENT ASSESSMENTS;
 - 2) THE ABILITY TO PLAN, COORDINATE, AND CONDUCT ASSESSMENTS IN COLLABORATION WITH COMMUNITY PARTNERS.
- g. FUNDAMENTALS OF CASE PLANNING AND FAMILY-FOCUSED, CHILD-CENTERED CASEWORK
- 1) THE ABILITY TO HELP FAMILIES DEVELOP AND IMPLEMENT CASE PLANS THAT ADDRESS HIGH PRIORITY NEEDS, BUILD ON FAMILY STRENGTHS, AND REDUCE RECURRENCES OF MALTREATMENT;
 - 2) THE ABILITY FOR A SOCIAL CASEWORKER TO WORK COLLABORATIVELY WITH FAMILIES AND SERVICE PROVIDERS TO PLAN AND COORDINATE SERVICES;
 - 3) THE ABILITY TO USE PERMANENCY PLANNING ACTIVITIES, INCLUDING CONCURRENT PLANNING, TO ENSURE PLACEMENT STABILITY;
 - 4) THE ABILITY TO COMPLETE CASE DOCUMENTATION, AND ORGANIZE AND MAINTAIN FAMILY CASE RECORDS.

- h. FUNDAMENTALS OF CHILD DEVELOPMENT: IMPLICATIONS FOR FAMILY-FOCUSED, CHILD-CENTERED CHILD PROTECTIVE SERVICES
 - 1) THE ABILITY TO IDENTIFY INDICATORS OF AGE-APPROPRIATE DEVELOPMENT FOR CHILDREN AND YOUTH;
 - 2) THE ABILITY TO RECOGNIZE INDICATORS OF DEVELOPMENTAL DELAYS, PHYSICAL AND INTELLECTUAL DISABILITIES, ILLNESS AND OTHER CONDITIONS THAT CAN AFFECT CHILDREN AND YOUTH'S DEVELOPMENT;
 - 3) THE ABILITY TO HELP FAMILIES ACCESS APPROPRIATE COMMUNITY RESOURCES TO ADDRESS CHILDREN/YOUTH'S DELAYS, DISABILITIES AND BEHAVIORAL DISORDERS;
 - 4) THE ABILITY TO HELP PARENTS/CAREGIVERS USE PARENTING STRATEGIES THAT MEET THEIR CHILDREN'S NEEDS;
 - 5) THE ABILITY TO PROMOTE AND SUSTAIN HEALTHY ATTACHMENTS BETWEEN CHILDREN, YOUTH, AND THEIR FAMILIES OR CAREGIVERS.
- i. FUNDAMENTALS OF SEPARATION, PLACEMENT, AND REUNIFICATION
 - 1) THE ABILITY TO IDENTIFY CHILDREN AND FAMILIES EXPERIENCING TRAUMA DUE TO SEPARATION AND PLACEMENT;
 - 2) THE ABILITY TO PLAN AND IMPLEMENT PLACEMENTS THAT REDUCE STRESS AND TRAUMA, PROMOTE PLACEMENT STABILITY AND PERMANENCY FOR CHILDREN;
 - 3) THE ABILITY TO KEEP PARENTS AND OTHER FAMILY MEMBERS INVOLVED WITH THEIR CHILDREN IN PLACEMENT;
 - 4) THE ABILITY TO COLLABORATE WITH AND SUPPORT FOSTER AND RELATIVE CAREGIVERS;
 - 5) THE ABILITY TO WORK WITH FAMILIES TO PROMOTE REUNIFICATION;
 - 6) THE ABILITY TO USE CONCURRENT CASE PLANNING TO DEVELOP ALTERNATIVE PERMANENT HOMES FOR CHILDREN/YOUTH WHO CANNOT BE REUNIFIED WITH THEIR FAMILIES.
- j. FUNDAMENTALS OF THE STATE AUTOMATED CASE MANAGEMENT SYSTEM
 - 1) THE ABILITY TO NAVIGATE AND UNDERSTAND THE FUNCTIONALITY OF THE STATE AUTOMATED CASE MANAGEMENT SYSTEM;
 - 2) THE ABILITY TO DOCUMENT ALL REQUIRED AND CASE RELEVANT INFORMATION IN THE STATE AUTOMATED CASE MANAGEMENT SYSTEM AS OUTLINED IN THE CHILD WELFARE RULES.

2- 4. SOCIAL CASEWORK SUPERVISORS

TO BE CERTIFIED AS A SOCIAL CASEWORK SUPERVISOR, AND PERFORM THE DUTIES AS OUTLINED IN SECTION 7.603.1, M, 4, THE SOCIAL CASEWORK SUPERVISOR WILL DEMONSTRATE THE KNOWLEDGE AND SKILLS AS DESCRIBED IN THE FOLLOWING COMPETENCIES:

a. FUNDAMENTALS OF SUPERVISING CASEWORK STAFF

- 1) THE ABILITY TO CREATE A SUPPORTIVE AND ENABLING UNIT ENVIRONMENT THAT PROMOTES EFFECTIVE AND EFFICIENT COMPLETION OF MISSION-CRITICAL CASEWORK ACTIVITIES;
- 2) THE ABILITY TO SELECT AND USE SUPERVISORY STYLES AND STRATEGIES IN WAYS THAT ENHANCE AND SUSTAIN EFFECTIVE JOB PERFORMANCE BY SOCIAL CASEWORKERS;
- 3) THE ABILITY TO PLAN, ORGANIZE, AND MONITOR TO ENSURE THAT CASEWORK ACTIVITIES ARE CONSISTENT WITH FEDERAL AND STATE LAW AND RULES, AGENCY POLICIES AND PROCEDURES, AGENCY AND UNIT OUTCOMES, AND STANDARDS OF BEST PRACTICE.

b. FUNDAMENTALS OF LEADERSHIP IN CHILD WELFARE

- 1) THE ABILITY TO CREATE A WORK ENVIRONMENT THAT SUPPORTS ACHIEVEMENT OF THE AGENCY'S MISSION AND PROMOTES EXCELLENCE IN DIRECT PRACTICE;
- 2) THE ABILITY TO USE A VARIETY OF LEADERSHIP SKILLS TO MAXIMIZE STAFF AND UNIT PERFORMANCE.

c. FUNDAMENTALS OF COMMUNICATING WITH STAFF AND MANAGING CONFLICT AND CHANGE

- 1) THE ABILITY TO EFFECTIVELY COMMUNICATE WITH STAFF;
- 2) THE ABILITY TO RESPOND TO CONFLICT IN A MANNER THAT PROMOTES GROWTH AND CONSTRUCTIVE CHANGE;
- 3) THE ABILITY TO IMPLEMENT AND CONSTRUCTIVELY MANAGE CHANGE INITIATIVES.

d. FUNDAMENTALS OF IMPROVING STAFF PERFORMANCE

- 1) THE ABILITY TO DEVELOP AND COMMUNICATE CLEAR, MEASURABLE, MISSION-CRITICAL PERFORMANCE EXPECTATIONS FOR STAFF;
- 2) THE ABILITY TO IDENTIFY THE DEVELOPMENT LEVEL, CULTURE, PERSONAL STRENGTHS, AND LEARNING NEEDS OF INDIVIDUAL STAFF MEMBERS;
- 3) THE ABILITY TO COMPLETE PERFORMANCE EVALUATIONS AND TO DEVELOP PERFORMANCE IMPROVEMENT PLANS WITH INDIVIDUAL STAFF.

e. FUNDAMENTALS OF STAFF DEVELOPMENT

- 1) THE ABILITY TO FACILITATE INDIVIDUAL LEARNING;

- 2) THE ABILITY TO CREATE AND SUSTAIN A CONSTRUCTIVE LEARNING ENVIRONMENT IN THE ORGANIZATION;
- 3) THE ABILITY TO DESIGN INDIVIDUAL LEARNING PLANS.

f. FUNDAMENTALS OF COLLABORATION AND TEAMWORK

- 1) THE ABILITY TO CREATE A COLLABORATIVE TEAM ENVIRONMENT THAT ENHANCES PRODUCTIVITY;
- 2) THE ABILITY TO IDENTIFY AND BUILD ON UNIT STRENGTHS TO PROMOTE TEAMWORK.

g. FUNDAMENTALS OF THE STATE AUTOMATED CASE MANAGEMENT SYSTEM

- 1) THE ABILITY TO NAVIGATE AND UNDERSTAND THE FUNCTIONALITY OF THE STATE AUTOMATED CASE MANAGEMENT SYSTEM;
- 2) THE ABILITY TO DOCUMENT ALL REQUIRED AND CASE RELEVANT INFORMATION IN THE STATE AUTOMATED CASE MANAGEMENT SYSTEM IN THE CHILD WELFARE RULES.

Permanent Rules Adopted

Department

Department of Revenue

Agency

Taxpayer Service Division - Tax Group

CCR number

1 CCR 201-2

Rule title

1 CCR 201-2 INCOME TAX 1 - eff 10/30/2014

Effective date

10/30/2014

~~ALTERNATIVE FUEL VEHICLE CREDIT~~

~~REGULATION 39-22-516(2.5).~~

~~(1) Credit allowed. For income tax years beginning on or after July 1, 1998, but prior to January 1, 2012, Colorado income tax credit is allowed for the purchase of an alternative fuel vehicle, for a motor vehicle that is converted to use alternative fuel, or for the replacement of the power source with a power source that uses alternative fuel.~~

~~(2) Credit calculation. The credit is a percentage of:~~

~~(a) The difference between the cost of the vehicle and the cost of the same or most similar vehicle that uses a traditional fuel, or~~

~~(b) The cost incurred in converting the vehicle to an alternative fuel, or~~

~~(c) The difference between the cost of replacing the power source and the cost of the same or most similar power source that uses a traditional fuel.~~

~~In (a) and (c) above, if the cost of the traditional fuel option is greater than or equal to the cost of the alternative fuel option, then the credit will be equal to \$0.~~

~~(3) The basic percentage of the credit depends on the certification level of the vehicle and the year in which the expenditure is made, as follows:~~

~~Certification level~~	~~Tax year beginning prior to January 1, 2010~~	~~Tax year beginning prior to January 1, 2012~~
~~Low-emitting vehicle~~	~~50%~~	~~25%~~
~~Ultra-low-emitting vehicle or inherently low-emitting vehicle~~	~~75%~~	~~50%~~
~~Zero-emitting vehicle~~	~~85%~~	~~75%~~

~~These percentages are doubled, up to a maximum credit of 100%, if the vehicle or power source permanently displaces (will never be operated on Colorado highways in the future) a vehicle or power source that is ten years old or older.~~

~~(4) Vehicle requirements. To qualify for the credit:~~

~~(a) The vehicle must be titled and registered in Colorado, and~~

~~(b) The vehicle must meet the following business use requirements:~~

~~(i) For tax years beginning prior to July 1, 2000, the vehicle must be used in connection with a business. If a vehicle is used part of the time for business use-~~

and part of the time for personal use, the credit must be prorated in proportion to the percentage of time during the tax year that the motor vehicle was used for business purposes.

- (ii) For tax years beginning on or after July 1, 2000, the vehicle may be used for business or personal use.

(5) A vehicle can qualify for this credit one time. To claim the credit on the purchase of a used vehicle a taxpayer must:

- (a) Provide documentation that a previous owner did not claim this credit. This may include a list of the prior owners by name and address or other documentation of the history of the vehicle indicating that the credit has not been previously claimed.
- (b) Provide the cost difference used in computing the credit and the basis on which it is computed.
 - (i) The cost difference will usually decrease ratably with the decrease in the value of the vehicle. For example, if the price paid for the used vehicle is 40% of the original MSRP, then the credit allowed will be 40% of the credit available for that vehicle when new.
 - (ii) The condition of the comparison vehicle must be comparable to the alternative-fuel vehicle. For example, if a ten-year old vehicle had a new alternative fuel engine put in one year ago, then the vehicle must be compared to the most similar vehicle valued with a one year old gas engine, not a ten-year old engine.

(6) Low-emitting vehicle restriction.

- (a) For tax years beginning prior to January 1, 1999, if the expenditure qualifies at the low-emitting vehicle level, and the purchase is made in order to satisfy the minimum requirements of the clean fuel fleet program, the expenditure will not qualify for this credit.
- (b) For tax years beginning on or after January 1, 1999, the restriction in paragraph (6)(a) above, no longer applies to the credit.

(7) Lessees of vehicles.

- (a) Lessees of qualifying vehicles are eligible for the alternative fuel vehicle credit. The available credit is calculated by subtracting the value of the vehicle when the lease expires from the cost of the vehicle to the lessor at the time of the lease transaction (capitalized cost), and dividing that amount by the cost of the vehicle to the lessor at the time of the lease transaction. This percentage is then multiplied by the qualifying expenses to determine the amount of the expenditure that can be used in computing the amount of the credit.
- (b) Only the lessor or lessee of the vehicle may claim the credit. If the vehicle is converted at the factory, the lessor has the option of claiming the credit or passing the right to claim the credit to the lessee. If the lessee converts the vehicle, then only the lessee may claim the credit.

(8) Credit carryovers. If the credit allowed by this section exceeds the taxpayer's tax liability, such excess may be carried forward for up to five income tax years.

~~(9) — Limitation from other rebate programs. Any expenses reimbursed by a rebate issued by the Office of Energy Conservation or any other entity will not qualify for this credit.~~

~~(10) — Zero-emitting vehicles will include near-zero emitting vehicles.~~

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**State of Colorado
Department of Law
Office of the Attorney General**

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**Opinion of the Attorney General rendered in connection with the rules adopted by the
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on 09/01/2014

1 CCR 201-2

INCOME TAX

The above-referenced rules were submitted to this office on 09/05/2014 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 "DD", is written over a light blue rectangular background.

John W. Suthers

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by Daniel D. Domenico

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September 22, 2014 11:25:58

Permanent Rules Adopted

Department

Department of Revenue

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1 CCR 201-2

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1 CCR 201-2 INCOME TAX 1 - eff 10/30/2014

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~~LIMITATION ON INVESTMENT TAX CREDIT.~~

~~39-26-507.5(3).~~

~~For any given tax year, the total of the "old" investment tax credit and the enterprise zone investment credit (39-30-104, C.R.S.) claimed may not exceed the first \$5,000 of the taxpayer's tax liability plus 25% of the liability in excess of \$5,000.~~

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1 CCR 201-2

INCOME TAX

The above-referenced rules were submitted to this office on 09/05/2014 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.

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September 22, 2014 11:24:27

Permanent Rules Adopted

Department

Department of Revenue

Agency

Taxpayer Service Division - Tax Group

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1 CCR 201-2

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1 CCR 201-2 INCOME TAX 1 - eff 10/30/2014

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10/30/2014

~~INVESTMENT TAX CREDIT RECAPTURE.~~

~~39-26-507.5(9).~~

~~Any time there is a recomputation of the federal investment tax credit with respect to which an "old" Colorado investment tax credit was computed, the "old" Colorado investment tax credit must be recomputed in accordance with the provisions of Section 47 or Section 50 of the Internal Revenue Code, depending on the year involved. If such recomputation results in a decrease of investment tax credit previously claimed for Colorado income tax purposes, such decrease must be reported as an increase in Colorado tax for the year of the recomputation. Any credit carryovers or carrybacks must be recomputed as appropriate.~~

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1 CCR 201-2

INCOME TAX

The above-referenced rules were submitted to this office on 09/05/2014 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 "DD", is written over a light blue rectangular background.

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September 22, 2014 11:25:06

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Department

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Taxpayer Service Division - Tax Group

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1 CCR 201-2

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1 CCR 201-2 INCOME TAX 1 - eff 10/30/2014

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RESIDENT INDIVIDUAL

39-22-103(8)(A)

(1) **General Rule.** A natural person is a resident individual of Colorado if either.

- (a) The person is domiciled in Colorado, or
- (b) The person satisfies the six-month rule (statutory residency rule).

(2) **Domicile.**

(a) *General Rules regarding Domicile.*

- (i) A person's domicile is in Colorado if the person's place of abode is in Colorado and that person, whenever absent, has the present intention of returning after a departure or absence, regardless of the duration of the absence. A place of abode is not limited to a specific structure, but rather refers to a place or area to which the person expects to return.
- (ii) An intention to initially establish domicile without being physically present in the intended domicile is insufficient to establish a domicile in such place.
- (iii) A person can have only one domicile at any given instant, even if such person has homes in more than one state. See, paragraph (2)(d) regarding having more than one domicile during the same tax year.
- (iv) A person who is domiciled in a state remains a domiciliary of that state even if the person temporarily resides outside that state.
- (v) Once a person's domicile is established in a state, it will continue to be the person's domicile until the person establishes domicile in another state.
- (vi) A determination of residency or domicile by a Colorado state or local government agency for non-tax purposes is not a determination of domicile for purposes of Colorado income tax.

(b) *Intent to Establish Domicile.* The intent to establish a domicile is essential in the determination of a person's domicile.

- (i) Because a person's subjective intent is difficult to determine, a person's intention is determined only by objective, verifiable evidence. The indicia of domicile and presumptions set forth in paragraphs (2)(c) and (4), below, will determine a person's domicile, unless there is sufficient objective evidence to overcome the presumptions.
- (ii) A person's reason for changing domicile, including to take advantage of tax benefits of a place of abode, is irrelevant so long as the person has an absolute and fixed intention to abandon one domicile and acquire another. For example, a person can lawfully establish domicile in Nevada solely for the purpose of living in a state with no income tax, but whether that person truthfully has a present

intention to establish domicile in Nevada and abandon their domicile in Colorado is a matter of proof.

- (c) *Indicia of Domicile.* The Department will consider a number of factors to determine a person's domicile. These factors include, but are not limited to:
- (i) Place of domicile in prior years;
 - (ii) Length of time in a purported domicile. Although domicile can be established on the first day that a person is physically present in a state, the greater the length of time a person is present in a place tends to indicate that that place is the person's domicile;
 - (iii) Location of, and length of time residing in, a place of abode by a spouse or dependent children;
 - (iv) Jurisdiction that issued person's current driver's license;
 - (v) Jurisdiction where motor vehicle is registered;
 - (vi) Jurisdiction where person is registered to vote;
 - (vii) Employment status, including whether employment or employment duties in the state are permanent or temporary and the location where the person performs most of their employment duties.
 - (viii) In the case of a sole proprietorship or other entity under the control of the person, the location of business assets owned by the person or by an entity controlled by the person;
 - (ix) Receipt of government benefits, such as unemployment benefits, welfare, and other government benefits;
 - (x) Location of living accommodations;
 - (xi) Jurisdiction that issued a professional license;
 - (xii) Jurisdiction where person filed a resident or nonresident individual state income tax return;
 - (xiii) Statements of residency made publicly, to third parties, and in documents, including applications for insurance, federal income tax forms, or social media comments, particularly if such statements are contrary to the person's interests;
 - (xiv) Primary mailing address for financial documents and other important correspondence;
 - (xv) Business and social ties to the community, including child's school, location of family, business memberships, religious institution membership and social memberships;
 - (xvi) Location of primary care physician and dentist;
 - (xvii) Location of real property owned or controlled by the person and the attributes of such property, such as size, value, and purposes for which it is used;

- (xviii) Location of personal property and its attributes, such as monetary and sentimental value and whether it was located in prior place of domicile.

No one factor is determinative and not all factors may be relevant or equally weighted. For example, a person may register a vehicle where their vacation home is located and where the vehicle is primarily used, but that registration does not, by itself, create domicile. The amount of time spent in one place also does not always explain the difference between temporary home and domicile. A person may live in a temporary home or residence for months or years on a temporary work assignment or to attend school and maintain domicile in another state. The person's intent as shown by objective facts is the primary factor used to determine domicile.

(d) *Periodic and Seasonal Changes in Domicile.*

- (i) In limited cases, a person may periodically or seasonally abandon their domicile in one state and establish domicile in another. For example, a person who has a house in Colorado and Arizona and who seasonally moves from one home to another, may be a domiciliary of Colorado and Arizona for different parts of a tax year if the person treats both homes as their primary place of abode for the season.

- (ii) A person who lives in a motorized home and does not own or lease residential real property that they treat as their home in another state will be treated as a (full-year) domiciliary of Colorado if they have permanent ties to the state and spend, in the aggregate, more time in this state than in any other. However, a person who owns a home in another state but travels seasonally or periodically to Colorado will not, in the absence of other factors, be treated as a domiciliary of Colorado.

- (e) *Status as a student.* A student who moves to another state to attend college but who does not intend to remain in that state after graduation has not changed domicile. Moreover, a student who is being supported by a parent or parents does not establish a domicile separate from the parent(s) simply by attending school in another state regardless of whether the student takes such steps as acquiring a driver's license or registering to vote in the state in which he or she attends school.

- (f) *Resident Aliens.* A person who is not a citizen of the United States but is a permanent resident alien may establish a domicile in Colorado. A person on a temporary visa is not a domiciliary. However, he or she may be a resident under the six-month rule.

(3) **Six-Month Rule or Statutory Resident Rule.**

- (a) A person satisfies the six-month rule if:

- (i) The person maintains a permanent place of abode in Colorado, and
- (ii) Spends, in the aggregate, more than six months of the taxable year in Colorado.

- (b) This six month rule does not apply to:

- (i) A member of the armed forces who is stationed in Colorado pursuant to an order of the armed forces (see, Servicemembers Civil Relief Act of 2003 (50 USC App. § 501-597b));

- (ii) A Colorado domiciliary who abandons their Colorado domicile during the tax year and does not maintain a permanent place of abode in Colorado after abandoning their domicile;
 - (iii) A person who is domiciled outside Colorado and establishes their domicile in Colorado during the tax year, unless that person has a place of abode in Colorado while maintaining a domicile outside Colorado;
 - (iv) A student whose domicile is not Colorado and attends college in Colorado but does not have a permanent place of abode in Colorado.
- (c) A “permanent place of abode” means any place in which a person has a possessory right to live.
 - (i) The person need not own the permanent place of abode. For example, a lease of an apartment can constitute a permanent abode.
 - (ii) A recreational vehicle with sleeping and cooking accommodations can constitute a permanent place of abode.
 - (iii) A person need not be liable for the lease or mortgage obligation for the permanent place of abode. For example, a person, whose domicile is in another state and whose employer leases an apartment in Colorado for the person to reside while on a temporary assignment in Colorado, has a permanent place of abode in Colorado.
- (d) The six month rule applies even if the person is a domiciliary of another state. For example, a person who is not domiciled in Colorado is a resident individual of Colorado for Colorado income tax purposes if the person maintains a permanent place of abode in Colorado and lives during the tax year, in aggregate, more than six months in Colorado.
- (4) **Burden of Proof and Presumptions.** The burden of production and persuasion (collectively referred to in this rule as the burden of proof) is on the person asserting a change of domicile or rebutting a presumption. Whether the burden of proof has been met will be determined based only on objective evidence and cannot ordinarily be established by subjective evidence (e.g., self-serving statements of intent unless such statements are against one’s interest).
 - (a) The place where one currently lives is presumed to be the person’s current domicile.
 - (b) Once a domicile is established, it is presumed to continue in such place.
 - (c) Spouses are presumed to have the same domicile or permanent place of abode. This presumption does not apply after spouses are separated, even though no judgment or decree of separation or divorce has been rendered.
 - (d) A person in the armed forces does not, as a matter of law, abandon his or her domicile solely by reason of being absent from their state of domicile pursuant to orders of the armed services. However, such a person is not precluded from changing their domicile.
 - (e) A minor child and a dependent are presumed to have the same domicile or permanent place of abode as the custodial parent or custodial guardian. A minor child cannot, by their acts or intentions, change domicile.

- (f) A person who is domiciled in Colorado and who leaves this state to accept a job assignment in a foreign nation is presumed not to have abandoned their Colorado domicile.
- (g) The six-month rule does not create a presumption that a Colorado domiciliary not physically present in Colorado for more than six months has abandoned their Colorado domicile.
- (h) The domicile of a person in the armed forces will initially generally be determined by the facts existing immediately prior to becoming a member of the armed forces.
- (i) Presumptions regarding permanent place of abode.
 - (i) The mere ownership or leasing of real property in a jurisdiction is not presumed to be a place of abode in that jurisdiction.
 - (ii) A place of abode owned by an individual who leases it to others, not related to the owner or their spouse by blood or marriage where the individual has no right to occupy any portion of the premises and does not use such premises as their mailing address during the term of the lease is presumed not to be a permanent place of abode.
 - (iii) A recreational vehicle camp lot or camp ground without a hookup is presumed not to be a permanent place of abode.
 - (iv) A motel room or any construction which does not contain facilities ordinarily found in a place of abode, such as facilities for cooking, bathing, etc., is generally not deemed a permanent place of abode.
 - (v) A rented apartment, house, or condominium of an individual on a temporary work assignment in a state that returns to their state of domicile when they are not working (e.g. weekends) is generally not deemed a permanent place of abode.
 - (vi) An apartment, house, or condominium in a state paid for by an employer in a location that is not the person's domicile is not considered a permanent place of abode if the person is in the state on a temporary work assignment. For example, an individual domiciled in another state may reside in an apartment in Colorado while on temporary assignment for the employer, after which the person will return to their domicile. If the employer pays for an apartment in Colorado while the employee is on a temporary work assignment in Colorado, the apartment does not constitute a permanent place of abode. However, if the employee pays for an apartment while on a temporary work assignment in Colorado and remains in Colorado when not working, the employee's apartment is a permanent place of abode.

Cross References

1. See IRS Publication 555 "Community Property" regarding the definition of domicile.
2. See Department Rule 39-22-108(3)(b) for special rules relating to persons in the military and their spouses.

3. *People v. White* 242 P.3d 1121 (2010), (“The current principal-or-primary-home test for voting purposes, largely adopted by the legislature in 1979 and now expressly made applicable to motor vehicle and income tax matters as well, however, clearly resolves this ambiguity [pertaining to the meaning and proof of “residence”] in favor of an objectively determined “legal residence” or domicile.”)
4. §1-2-102(1)(a)(I), C.R.S.
5. *Texas v. Florida*, 307 U.S. 398 (1939)

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**State of Colorado
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**Opinion of the Attorney General rendered in connection with the rules adopted by the
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on 09/01/2014

1 CCR 201-2

INCOME TAX

The above-referenced rules were submitted to this office on 09/05/2014 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.

September 22, 2014 11:19:45

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 Revenue

Agency

Taxpayer Service Division - Tax Group

CCR number

1 CCR 201-2

Rule title

1 CCR 201-2 INCOME TAX 1 - eff 10/30/2014

Effective date

10/30/2014

GROSS RECEIPTS TAX

39-22-104(5)

- (1) The gross receipts tax election is available to nonresident corporations or nonresident individuals who are required to file a Colorado income tax return because they have Colorado-source income exclusively from sales in or into Colorado and whose annual gross sales do not exceed one hundred thousand dollars.
- (2) In order to qualify for this tax, the corporation or individual cannot own or lease any real property in Colorado.
- (3) In the case of a corporation that must file a combined return or a corporation included in a consolidated Colorado income tax return, the one-hundred thousand dollar limitation is calculated using the Colorado source income of all combined or consolidated corporations.
- (4) In the case of a pass-through entity, the one-hundred thousand dollar threshold is determined by the Colorado-source income earned by the pass-through entity and is not determined by reference only to the nonresident partner's, member's, or shareholder's distributive share of Colorado source income from such entity. The pass-through entity itself must make the election. A partner, member, or shareholder who is a nonresident cannot elect to pay the gross receipts tax because the pass-through entity, not the partner, member, or shareholder is the entity whose activity is the measure of whether the gross receipts tax applies.
- (5) This tax does not apply to such items as wages, salaries, and sales commissions.

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Tracking number: 2014-00364

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1 CCR 201-2

INCOME TAX

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A handwritten signature in black ink, appearing to read "DD", is written over a light blue rectangular background.

John W. Suthers

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by Daniel D. Domenico

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September 22, 2014 11:23:24

Permanent Rules Adopted

Department

Department of Revenue

Agency

Taxpayer Service Division - Tax Group

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1 CCR 201-2

Rule title

1 CCR 201-2 INCOME TAX 1 - eff 10/30/2014

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10/30/2014

MILITARY SERVICEMEMBER RESIDENT INDIVIDUAL

39-22-103(8)(B)

- (1) **Servicemember.** A servicemember whose domicile is Colorado and who spends at least 305 days of the tax year stationed outside of the fifty state boundary of the United States of America, the District of Columbia or a United States possession on active military may, but is not required to, elect for that tax year to be treated as a nonresident of Colorado for Colorado income tax purposes. The servicemember makes this election on their Colorado income tax return.
- (2) **Servicemember Spouse.** The spouse of a servicemember described in paragraph (1), above, - may also, but is not required to, elect to be treated as a nonresident of Colorado for purposes of Colorado income tax for the tax year if:
 - (a) the spouse spends at least 305 days of the tax year outside the United States and District of Columbia or a United States possession for the purpose of accompanying their spouse, and
 - (b) the servicemember elects, pursuant to paragraph (1), above, to be treated as a nonresident of Colorado.
- (3) The 305 days do not have to be consecutive days, but all 305 days must occur within the tax year for which the election is made.

Cross References

1. See, Department Rule 39-22-103(8)(a) for information on what constitutes a Colorado resident.
2. Servicemembers Civil Relief Act of 2003 (50 USC App. § 501-597b) and the Military Spouses Residency Relief Act (Public Law 111-97).

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State of Colorado
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1 CCR 201-2

INCOME TAX

The above-referenced rules were submitted to this office on 09/05/2014 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.

September 22, 2014 11:22:45

John W. Suthers
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Permanent Rules Adopted

Department

Department of Revenue

Agency

Taxpayer Service Division - Tax Group

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1 CCR 201-4

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1 CCR 201-4 SALES AND USE TAX 1 - eff 10/30/2014

Effective date

10/30/2014

~~39-26-102 .1.~~

~~Every auctioneer acting for an unknown or undisclosed principal, and who is entrusted with possession of any bill of lading, customhouse permit, or warehouseman's receipt for delivery of any tangible personal property, or who is entrusted with possession of any such personal property for the purpose of sale, shall be deemed to be the owner thereof and, upon the sale of such property, shall be required to collect the tax, file a return, and remit the tax thereon. (See C.R.S. 1973, 39-26-105(1)(a).)~~

~~A sale by an auctioneer when acting for a known or disclosed and properly licensed principal, shall be deemed to be a sale by the principal; the principal shall be responsible for collecting and remitting the tax and filing the return.~~

~~This regulation applies to lienholders, including storagemen, pawnbrokers, mechanics and artisans who sell at auctions.~~

~~Gross receipts from retail sales by an auctioneer at his established auction house, sales yard or other place of business are taxable, regardless of how the property may have been acquired or by whom it may be owned and the auctioneer is required to obtain a sales tax license.~~

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State of Colorado
Department of Law
Office of the Attorney General

Tracking number: 2014-00371

Opinion of the Attorney General rendered in connection with the rules adopted by the
Taxpayer Service Division - Tax Group

on 09/01/2014

1 CCR 201-4

SALES AND USE TAX

The above-referenced rules were submitted to this office on 09/05/2014 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.

September 22, 2014 11:26:24

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 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 10/30/2014

Effective date

10/30/2014

Basis and Purpose – M 207

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), and 12-43.3-202(2)(a)(XX) and sections, 12-43.3-310, 12-43.3-501, and 12-43.3-502, C.R.S. The purpose of this rule is to clarify the schedules of application fees for Medical Marijuana Business Applicants.

M 207 – Schedule of Application Fees: Medical Marijuana Businesses

- A. Medical Marijuana Center Application Fees
 - 1. Type 1 Center (1-300 patients) - \$6,000.00
 - 2. Type 2 Center (301-500 patients) - \$10,000.00
 - 3. Type 3 Center (501 or more patients) - \$14,000.00
- B. Vendor Registration Application Fee. \$300.00
- C. Medical Marijuana-Infused Products Manufacturer Application Fee. \$1,000.00
- D. Optional Premises Cultivation Location Application Fee. \$1,000.00
- E. Medical Marijuana Businesses Converting to Retail Marijuana Establishments. Medical Marijuana Center Applicants or Licensees that want to convert to Retail Marijuana Establishments should refer to 1 CCR 212-2, Rule R 207 – Schedule of Application Fees: Retail Marijuana Establishments.
- F. When Application Fees Are Due. All application fees are due at the time an application is submitted.

Basis and Purpose – M 208

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) and 12-43.3-302(5)(c), and sections 12-43.3-310, and 12-43.3-501, and 12-43.3-502, C.R.S. The purpose of this rule is to establish basic requirements for all Division applications and help the regulated community understand procedural licensing requirements.

M 208 – Schedule of Business License Fees: Medical Marijuana Businesses

- A. Medical Marijuana Center License Fees
 - 1. Type 1 Center (1-300 patients) - \$3,000.00
 - 2. Type 2 Center (301-500 patients) - \$7,000.00
 - 3. Type 3 Center (501 or more patients) - \$11,000.00
- B. Medical Marijuana-Infused Products Manufacturer License Fee. \$2,200.00
- C. Optional Premises Cultivation Location License Fee. \$2,200.00
- D. When License Fees Are Due. All license fees are due at the time an application is submitted.

- E. If Application is Denied. If an application is denied, an Applicant may request that the State Licensing Authority refund the license fee after the denial appeal period has lapsed or after the completion of the denial appeal process, whichever is later.

Basis and Purpose – M 209

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), and sections 12-43.3-310, 12-43.3-501, and 12-43.3-502, C.R.S. The purpose of this rule is to establish basic requirements for all Division applications and help the regulated community understand procedural licensing requirements.

M 209 – Schedule of Business Renewal License Fees: Medical Marijuana Businesses

- A. Renewal Fee Amount and Due Date. The renewal fee shall be \$300 for each renewal application. Renewal license and processing fees are due at the time the renewal application is submitted for each licensed premises.
- B. Renewal License Fees shall be the same amount as the initial license fee. See Rule M 208 - Schedule of Business License Fees: Medical Marijuana Businesses.
- C. Medical Marijuana Center License Renewal Fees.
1. Type 1 Center – \$3,000.00
 2. Type 2 Center – \$7,000.00
 3. Type 3 Center – \$11,000.00
 4. Medical Marijuana-Infused Products Manufacturer - \$2,200.00
 5. Optional Premises Cultivation - \$2,200.00
- D. If Renewal Application is Denied. If an application for renewal is denied, an Applicant may request that the State Licensing Authority refund the license fee after the denial appeal period has lapsed or after the completion of the denial appeal process, whichever is later.

Basis and Purpose – M 210

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), and 12-43.3-202(2)(a)(XX), and sections 12-43.3-310, 12-43.3-501, and 12-43.3-502, C.R.S. The purpose of this rule is to establish basic requirements for all Division applications and help the regulated community understand procedural licensing requirements.

M 210 – Schedule of Administrative Service Fees: All Licensees

- A. Administrative Service Fees The following administrative service fees apply:
1. Transfer of Ownership - New Owners - \$2,000.00
 2. Transfer of Ownership - Reallocation of Ownership - \$800.00
 3. Change of Corporation or LLC Structure - \$800.00/Person
 4. Change of Trade Name - \$40.00

5. Change of Location Application Fee - Same Local Jurisdiction Only - \$500.00
 6. Modification of License Premises - \$120.00
 7. Duplicate Business License - \$40.00
 8. Duplicate Occupational License - \$10.00
 9. Duplicate Vendor Registration - \$40.00
 10. Indirect Financial Interest Background Investigations - \$150.00
 11. Off Premises Storage Permit - \$2,200.00
 12. Subpoena Fee - \$200.00
- B. When Administrative Service Fees Are Due. All administrative service fees are due at the time each applicable request is made.

M 234 – Repealed (July 1, 2014)

Basis and Purpose – M 235

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), and 12-43.3-401(1)(d), and sections 12-43.3-310, 12-43.3-501, and 12-43.3-502, C.R.S. The purpose of this rule is to establish licensing fees for individuals.

M 235 – Schedule of License Fees: Individuals

- A. Individual License Fees
1. Occupational Key License - \$300.00
 2. Associated Key/Associated Person License Fee - \$1,300.00
 3. Occupational Support License - \$150.00
- B. When Fees Are Due. License fees are due at the time Applicant submits application.

Basis and Purpose – M 236

The statutory authority for this rule is found at subsections 12-43.3-202(1)(b)(I), 12-43.3-202(1)(e), 12-43.3-202(2)(a)(XVI), 12-43.3-202(2)(a)(XX), and 12-43.3-401(1)(d), and sections 12-43.3-310, 12-43.3-501, and 12-43.3-502, C.R.S. The purpose of this rule is to establish license renewal fees for individuals.

M 236 – Schedule of Renewal License Fees: Individuals

A. Individual Renewal License Fees

1. Occupational Key License Fee - \$200.00
2. Associated Key/Associated Person License Fee - \$200.00
3. Occupational Support License - \$75.00

B. When Fees Are Due. Renewal License fees are due at the time applicant submits application for renewal.

STATEMENT OF ADOPTION

To: Lewis Koski, Marijuana Enforcement Division Director

From: Barbara J. Brohl, Executive Director and State Licensing Authority

Re: Statement of Adoption

New, Revised, and Repealed Medical Marijuana Rules, 1 CCR 212-1

Pursuant to the state Administrative Procedure Act, Title 24, Article 4, C.R.S. (2014), I, Barbara J. Brohl, Executive Director of the Colorado Department of Revenue and State Licensing Authority, promulgate the following rules:

Permanent Rules, Medical Marijuana, 1 CCR 212-1

Filing Tracking Number 2014-00685

Rule M 207 (revised) – Schedule of Application Fees: Medical Marijuana Businesses

Rule M 208 (revised) – Schedule of Business License Fees: Medical Marijuana Businesses

Rule M 209 (revised and renamed) – Schedule of Business Renewal License Fees: Medical Marijuana Businesses

Rule M 210 (revised) – Schedule of Administrative Service Fees: All Licensees

Rule M 234 (repealed) – Schedule of Application Fees: Individuals

Rule M 235 (revised) – Schedule of License Fees: Individuals

Rule M 236 (revised) – Schedule of License Fees: Individuals

Filing Tracking Number 2014-00771

Rule M 103 (revised) – Definitions

Rule M 402 (revised) – Registration of a Primary Medical Marijuana Center

Rule M 403 (revised) – Medical Marijuana Sales: General Limitations or Prohibited Acts

Rule M 408 (new) – Medical Marijuana Center: Responsible Vendor Program

Rule M 605 (revised) – Medical Marijuana-Infused Products Manufacturer: Medical Marijuana Concentrate Production

Rule M 1001(revised) - Packaging Requirements: General Requirements

Rule M 1003 (revised) – Labeling Requirements: Specific Requirements, Medical Marijuana and Medical Marijuana-Infused Product

Rule M 1204 (new) – Assurance of Voluntary Compliance

In addition, upon the effective date of these rules, I repeal all remaining Medical Marijuana emergency rules that were promulgated and effective June 30, 2014 and all Medical Marijuana emergency rules that were promulgated and effective July 31, 2014.

The new rules are adopted this 24th day of September, 2014.

A handwritten signature in blue ink, reading "Barbara J. Brohl", is written over a horizontal line.

Barbara J. Brohl
Executive Director and State Licensing Authority

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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State of Colorado
Department of Law
Office of the Attorney General

Tracking number: 2014-00685

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

on 09/24/2014

1 CCR 212-1

RULES REGARDING THE SALES, MANUFACTURING AND DISPENSING OF MEDICAL
MARIJUANA

The above-referenced rules were submitted to this office on 09/30/2014 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.

September 30, 2014 14:31:41

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 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 10/30/2014

Effective date

10/30/2014

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.

"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). Note that this rule does not include any later amendments or editions to the Code of Federal Regulations. The Division has maintained a copy of the applicable federal regulation, which is 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.

"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 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 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.

"Industrial Hygienist" means an individual who has obtained a baccalaureate or graduate degree in industrial hygiene, biology, chemistry, engineering, physics, or a closely related physical or biological science from an accredited college or university.

- A. The special studies and training of such individuals shall be sufficient in the cognate sciences to provide the ability and competency to:
 - 1. Anticipate and recognize the environmental factors and stresses associated with work and work operations and to understand their effects on individuals and their well-being;
 - 2. Evaluate on the basis of training and experience and with the aid of quantitative measurement techniques the magnitude of such environmental factors and stresses in terms of their ability to impair human health and well-being;
 - 3. Prescribe methods to prevent, eliminate, control, or reduce such factors and stresses and their effects.
- B. Any individual who has practiced within the scope of the meaning of industrial hygiene for a period of not less than five years immediately prior to July 1, 1997, is exempt from the degree requirements set forth in the definition above.
- C. Any individual who has a two-year associate of applied science degree in environmental science from an accredited college or university and in addition not less than four years practice immediately prior to July 1, 1997, within the scope of the meaning of industrial hygiene is exempt from the degree requirements set forth in the definition above.

"Initial Decision" means a decision of a hearing officer in the Department following a licensing, disciplinary, or other administrative hearing.

"Inventory Tracking System" means the required seed-to-sale tracking system that tracks Medical Marijuana from either the seed or immature plant stage until the Medical Marijuana or Medical Marijuana Infused-Product is sold to a customer at a Medical Marijuana Center or is destroyed.

"Inventory Tracking System Trained Administrator" means an Owner or an Occupational Licensed Licensee of a Medical Marijuana Business who has attended and successfully completed Inventory Tracking System training and who has completed any additional training required by the Division.

"Inventory Tracking System User" means an Owner or an occupationally licensed Medical Marijuana Business employee who is granted Inventory Tracking System User account access for the purposes of conducting inventory tracking functions in the Inventory Tracking System, who has been successfully trained by Inventory Tracking System Trained Administrator(s) in the proper and lawful use Inventory Tracking System, and who has completed any additional training required by the Division.

"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.

"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 become a patient's primary center when the patient already had designated one or more other 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 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 408

The statutory authority for this rule is found at subsections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(X), 12-43.3-202(2)(a)(XIII), 12-43.3-202(2)(a)(XV) and 12-43.3-202(2)(a)(XX), 12-43.3-1101, and 12-43.3-1102, C.R.S. The purpose of this rule is to establish minimum standards for responsible vendor programs that provide training to personnel at Medical Marijuana Centers seeking designation as a "responsible vendor." It sets forth general standards and basic requirements for responsible vendor programs. This rule also establishes the timeframe for new staff to complete a responsible vendor program and the requirements for recertification. The State Licensing Authority intends this rule to help maintain the integrity of Colorado's Medical Marijuana Centers.

M 408 - Medical Marijuana Center: Responsible Vendor Program

A. General Standards.

1. To be designated a "responsible vendor" of Medical Marijuana, Medical Marijuana-Infused Product and Medical Marijuana Concentrate at any licensed Medical Marijuana Center, a Medical Marijuana Center licensee shall comply with this rule.
2. To be designated a "responsible vendor" all Owners, managers and employees involved in the handling and sale of Medical Marijuana, Medical Marijuana Infused-Product or

Medical Marijuana Concentrate shall attend and successfully complete a responsible vendor program.

3. Once a licensee is designated a “responsible vendor,” all new employees involved in the handling and sale of Medical Marijuana, Medical Marijuana Infused-Product or Medical Marijuana Concentrate shall successfully complete the training described in this rule within 90 days of hire.
4. After initial successful completion of a responsible vendor program, each Owner, manager and employee of a Medical Marijuana Center shall successfully complete the program once every two years thereafter to maintain designation as a “responsible vendor.”

B. Certification Training Program Standards.

1. No owner or employee of a responsible vendor program shall have an interest in a licensed Medical Marijuana Business or Retail Marijuana Establishment.
2. Program providers shall submit their programs to the Division for approval as a responsible vendor program.
3. Program providers shall submit their programs for approval every two years in order to maintain designation as a responsible vendor program.
4. The program shall include at least two hours of instruction time.
5. The program shall be taught in a real-time, interactive classroom setting where the instructor is able to verify the identification of each individual attending the program and certify completion of the program by the individual identified.
6. The program provider shall maintain its training records at its principal place of business during the applicable year and for the following three years. The provider shall make the records available for inspection by the licensing authority upon request during normal business hours.
7. The program shall provide written documentation of attendance and successful passage of a test on the knowledge of the required curriculum for each attendee.
 - a. Attendees who can speak and write English must successfully pass a written test with a score of 70% or better.
 - b. Attendees who cannot speak or write English may be offered a verbal test, provided that the same questions are given as are on the written test and the results of the verbal test are documented with a passing score of 70% or better.
8. Program providers shall solicit effectiveness evaluations from individuals who have completed their program.

C. Certification Training Class Core Curriculum.

1. Discussion concerning marijuana’s effect on the human body. Training shall include:
 - a. Marijuana’s physical effects based on type of marijuana product;
 - b. The amount of time to feel impairment;
 - c. Visible signs of impairment; and
 - d. Recognizing the signs of impairment.
2. Sales to minors. Training shall cover all pertinent Colorado law provisions.
3. Acceptable forms of Identification. Training shall include:
 - a. How to check identification;
 - b. Spotting false identification;
 - c. Patient Registry Cards issued by the department of public health and environment and equivalent patient verification documents;
 - d. Provisions for confiscating fraudulent identifications; and
 - e. Common mistakes made in verification.
4. Other key state laws and rules affecting owners, managers, and employees. Training shall include:
 - a. Local and state licensing and enforcement;

- b. Compliance with all Inventory Tracking System regulations;
- c. Administrative and criminal liability;
- d. License sanctions and court sanctions;
- e. Waste disposal;
- f. Health and safety standards;
- g. Patrons prohibited from bringing marijuana onto licensed premises;
- h. Permitted hours of sale;
- i. Conduct of establishment;
- j. Permitting inspections by state and local licensing and enforcement authorities;
- k. Licensee responsible for activities occurring within licensed premises;
- l. Maintenance of records;
- m. Privacy issues; and
- n. Prohibited purchases.

Basis and Purpose – M 605

The statutory authority for this rule is found at subsections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(XII), 12-43.3-202(2)(a)(XV) and 12-43.3-202(2)(a)(XX), C.R.S. The purpose of this rule is to establish the categories of Medical Marijuana Concentrate that may be produced at a Medical Marijuana-Infused Products Manufacturer and establish standards for the production of those concentrate.

M 605 – Medical Marijuana-Infused Products Manufacturer: Medical Marijuana Concentrate Production.

Paragraph B of this rule is not effective until March 1, 2014.

Paragraph C of this rule is not effective until April 1, 2014.

Paragraph D of this rule is not effective until July 1, 2014.

- A. Permitted Categories of Medical Marijuana Concentrate Production
 - 1. A Medical Marijuana-Infused Products Manufacturer may produce Water-Based Medical Marijuana Concentrate and Food-Based Medical Marijuana Concentrate.
 - 2. A Medical Marijuana-Infused Products Manufacturer may also produce Solvent-Based Medical Marijuana Concentrate using only the following solvents: butane, propane, CO₂, ethanol, isopropanol, acetone, and heptane. The use of any other solvent is expressly prohibited unless and until it is approved by the Division.
 - 3. Beginning on July 1, 2014, a Medical Marijuana-Infused Products Manufacturer may submit a request to the Division to consider the approval of solvents not permitted for use under this rule during the next formal rulemaking.
- B. General Applicability. A Medical Marijuana-Infused Products Manufacturer that engages in the production of Medical Marijuana Concentrate, regardless of the method of extraction or category of concentrate being produced, must:
 - 1. Ensure that the space in which any Medical Marijuana Concentrate is to be produced is a fully enclosed room and clearly designated on the current diagram of the Licensed Premises. See Rule M 901- Business Records Required.

2. Ensure that all applicable sanitary rules are followed. See M 604.
3. Ensure that the standard operating procedure for each method used to produce a Medical Marijuana Concentrate on its Licensed Premises includes, but need not be limited to, step-by-step instructions on how to safely and appropriately:
 - a. Conduct all necessary safety checks prior to commencing production;
 - b. Prepare Medical Marijuana for processing;
 - c. Extract cannabinoids and other essential components of Medical Marijuana;
 - d. Purge any solvent or other unwanted components from a Medical Marijuana Concentrate,
 - e. Clean all equipment, counters and surfaces thoroughly; and
 - f. Dispose of any waste produced during the processing of Medical Marijuana in accordance with all applicable local, state and federal laws, rules and regulations. See Rule M 307 – Waste Disposal.
4. Establish written and documentable quality control procedures designed to maximize safety for Owners and Occupational Licensees and minimize potential product contamination.
5. Establish written emergency procedures to be followed by Owners or Occupational Licensees in case of a fire, chemical spill or other emergency.
6. Have a comprehensive training manual that provides step-by-step instructions for each method used to produce a Medical Marijuana Concentrate on its Licensed Premises. The training manual must include, but need not be limited to, the following topics:
 - a. All standard operating procedures for each method of concentrate production used at that Licensed Premises;
 - b. The Medical Marijuana-Infused Products Manufacturer's quality control procedures;
 - c. The emergency procedures for that Licensed Premises;
 - d. The appropriate use of any necessary safety or sanitary equipment;
 - e. The hazards presented by all solvents used within the Licensed Premises as described in the material safety data sheet for each solvent;
 - f. Clear instructions on the safe use of all equipment involved in each process and in accordance with manufacturer's instructions, where applicable; and
 - g. Any additional periodic cleaning required to comply with all applicable sanitary rules.

7. Provide adequate training to every Owner or Occupational Licensee prior to that individual undertaking any step in the process of producing a Medical Marijuana Concentrate.
 - a. Adequate training must include, but need not be limited to, providing a copy of the training manual for that Licensed Premises and live, in-person instruction detailing at least all of the topics required to be included in the training manual.
 - b. The individual training an Owner or Occupational Licensee must sign and date a document attesting that all required aspects of training were conducted and that he or she is confident that the Owner or Occupational Licensee can safely produce a Medical Marijuana Concentrate. See Rule M 901- Business Records Required.
 - c. The Owner or Occupational Licensee that received the training must sign and date a document attesting that he or she can safely implement all standard operating procedures, quality control procedures, and emergency procedures, operate all closed-loop extraction systems, use all safety, sanitary and other equipment and understands all hazards presented by the solvents to be used within the Licensed Premises and any additional period cleaning required to maintain compliance with all applicable sanitary rules. See Rule M 901- Business Records Required.
8. Maintain clear and comprehensive records of the name, signature and Owner or Occupational License number of every individual who engaged in any step related to the creation of a Production Batch of Medical Marijuana Concentrate and the step that individual performed. See Rule M 901- Business Records Required.

C. Water-Based Medical Marijuana Concentrate and Food-Based Medical Marijuana Concentrate. Medical Marijuana-Infused Products Manufacturer that engages in the production of a Water-Based Medical Marijuana Concentrate or a Food-Based Medical Marijuana Concentrate must:

1. Ensure that all equipment, counters and surfaces used in the production of a Water-Based Medical Marijuana Concentrate or a Food-Based Medical Marijuana Concentrate is food-grade including ensuring that all counters and surface areas were constructed in such a manner that it reduces the potential for the development of microbials, molds and fungi and can be easily cleaned.
2. Ensure that all equipment, counters, and surfaces used in the production of a Water-Based Medical Marijuana Concentrate or a Food-Based Medical Marijuana Concentrate are thoroughly cleaned after the completion of each Production Batch.
3. Ensure that any room in which dry ice is stored or used in processing Medical Marijuana into a Medical Marijuana Concentrate is well ventilated to prevent against the accumulation of dangerous levels of CO₂.
4. Ensure that the appropriate safety or sanitary equipment, including personal protective equipment, is provided to, and appropriately used by, each Owner or Occupational Licensee engaged in the production of a Water-Based Medical Marijuana Concentrate or Food-Based Medical Marijuana Concentrate.

5. Ensure that only finished drinking water and ice made from finished drinking water is used in the production of a Water-Based Medical Marijuana Concentrate.
 6. Ensure that if propylene glycol or glycerin is used in the production of a Food-Based Medical Marijuana Concentrate, then the propylene glycol or glycerin to be used is food-grade.
 7. Follow all of the rules related to the production of a Solvent-Based Medical Marijuana Concentrate if a pressurized system is used in the production of a Water-Based Medical Marijuana Concentrate or a Food-Based Medical Marijuana Concentrate.
- D. Solvent-Based Medical Marijuana Concentrate. A Medical Marijuana-Infused Products Manufacturer that engages in the production of Solvent-Based Medical Marijuana Concentrate must:
1. Obtain a report from an Industrial Hygienist or a Professional Engineer that certifies that the equipment, Licensed Premises and standard operating procedures comply with these rules and all applicable local and state building codes, fire codes, electrical codes and other laws. If a local jurisdiction has not adopted a local building code or fire code or if local regulations do not address a specific issue, then the Industrial Hygienist or Professional Engineer shall certify compliance with the International Building Code of 2012 (<http://www.iccsafe.org>), the International Fire Code of 2012 (<http://www.iccsafe.org>) or the National Electric Code of 2014 (<http://www.nfpa.org>), as appropriate. Note that this rule does not include any later amendments or editions to each Code. The Division has maintained a copy of each code, which are available to the public;
 - a. Flammable Solvent Determinations. If a Flammable Solvent is to be used in the processing of Medical Marijuana into a Medical Marijuana Concentrate, then the Industrial Hygienist or Professional Engineer must:
 - i. Establish a maximum amount of Flammable Solvents and other flammable materials that may be stored within that Licensed Premises in accordance with applicable laws, rules and regulations.
 - ii. Determine what type of electrical equipment, which may include but need not be limited to outlets, lights, junction boxes, must be installed within the room in which Medical Marijuana Concentrate are to be produced or Flammable Solvents are to be stored in accordance with applicable laws, rules and regulations.
 - iii. Determine whether a gas monitoring system must be installed within the room in which Medical Marijuana Concentrate are to be produced or Flammable Solvents are to be stored, and if required the system's specifications, in accordance with applicable laws, rules and regulations.
 - iv. Determine whether fire suppression system must be installed within the room in which Medical Marijuana Concentrate are to be produced or Flammable Solvents are to be stored, and if

required the system's specifications, in accordance with applicable laws, rules and regulations.

- b. CO₂ Solvent Determination. If CO₂ is used as solvent at the Licensed Premises, then the Industrial Hygienist or Professional Engineer must determine whether a CO₂ gas monitoring system must be installed within the room in which Medical Marijuana Concentrate are to be produced or CO₂ is stored, and if required the system's specifications, in accordance with applicable laws, rules and regulations.
 - c. Exhaust System Determination. The Industrial Hygienist or Professional Engineer must determine whether a fume vent hood or exhaust system must be installed within the room in which Medical Marijuana Concentrate are to be produced, and if required the system's specifications, in accordance with applicable laws, rules and regulations.
 - d. Material Change. If a Medical Marijuana-Infused Products Manufacturer makes a Material Change to its Licensed Premises, equipment or a concentrate production procedure, in addition to all other requirements, it must obtain a report from an Industrial Hygienist or Professional Engineer re-certifying its standard operating procedures and, if changed, its Licensed Premises and equipment as well.
 - e. Manufacturer's Instructions. The Industrial Hygienist or Professional Engineer may review and consider any information provided to the Medical Marijuana-Infused Products Manufacturer by the designer or manufacturer of any equipment used in the processing of Medical Marijuana into a Medical Marijuana Concentrate.
 - f. Records Retention. A Medical Marijuana-Infused Products Manufacturer must maintain copy of all reports received from an Industrial Hygienist and Professional Engineer on its Licensed Premises. Notwithstanding any other law, rule or regulation, compliance with this rule is not satisfied by storing these reports outside of the Licensed Premises. Instead the reports must be maintained on the Licensed Premises until the Licensee ceases production of Medical Marijuana Concentrate on the Licensed Premises.
- 2. Ensure that all equipment, counters and surfaces used in the production of a Solvent-Based Medical Marijuana Concentrate must be food-grade and must not react adversely with any of the solvents to be used in the Licensed Premises. Additionally, all counters and surface areas must be constructed in a manner that reduces the potential development of microbials, molds and fungi and can be easily cleaned;
 - 3. Ensure that the room in which Solvent-Based Medical Marijuana Concentrate shall be produced must contain an emergency eye-wash station;
 - 4. Ensure that a professional grade, closed-loop extraction system capable of recovering the solvent is used to produce Solvent-Based Medical Marijuana Concentrate;
 - a. UL or ETL Listing

- i. If the system is UL or ETL listed, then a Medical Marijuana-Infused Products Manufacturer may use the system in accordance with the manufacturer's instructions.
 - ii. If the system is UL or ETL listed but the Medical Marijuana-Infused Products Manufacturer intends to use a solvent in the system that is not listed in the manufacturer's instructions for use in the system, then, prior to using the unlisted solvent within the system, the Medical Marijuana-Infused Products Manufacturer must obtain written approval for use of the non-listed solvent in the system from either the system's manufacturer or a Professional Engineer after the Professional Engineer has conducted a peer review of the system. In reviewing the system, the Professional Engineer shall review and consider any information provided by the system's designer or manufacturer.
 - iii. If the system is not UL or ETL listed, then there must a designer of record. If the designer of record is not a Professional Engineer, then the system must be peer reviewed by a Professional Engineer. In reviewing the system, the Professional Engineer shall review and consider any information provided by the system's designer or manufacturer.
 - b. Ethanol or Isopropanol. A Medical Marijuana-Infused Products Manufacturer Facility need not use a professional grade, closed-loop system extraction system capable of recovering the solvent for the production of a Solvent-Based Medical Marijuana Concentrate if ethanol or isopropanol are the only solvents being used in the production process.
5. Ensure that all solvents used in the extraction process are food-grade or at least 99% pure;
- a. A Medical Marijuana-Infused Products Manufacturer must obtain a material safety data sheet for each solvent used or stored on the Licensed Premises. A Medical Marijuana-Infused Products Manufacturer must maintain a current copy of the material safety data sheet and a receipt of purchase for all solvents used or to be used in an extraction process. See Rule M 901- Business Records Required.
 - b. A Medical Marijuana-Infused Products Manufacturer is prohibited from using denatured alcohol to produce a Medical Marijuana Concentrate.
6. Ensure that all Flammable Solvents or other flammable materials, chemicals and waste are stored in accordance with all applicable laws, rules and regulations. At no time may a Medical Marijuana-Infused Products Manufacturer store more Flammable Solvent on its Licensed Premises than the maximum amount established for that Licensed Premises by the Industrial Hygienist or Professional Engineer;
7. Ensure that the appropriate safety and sanitary equipment, including personal protective equipment, is provided to, and appropriately used by, each Owner or Occupational Licensee engaged in the production of a Solvent-Based Medical Marijuana Concentrate; and

8. Ensure that a trained Owner or Occupational Licensee is present at all times during the production of a Solvent-Based Medical Marijuana Concentrate whenever an extraction process requires the use of pressurized equipment.
- E. Ethanol and Isopropanol. If a Medical Marijuana-Infused Products Manufacturer only produces Solvent-Based Medical Marijuana Concentrate using ethanol or isopropanol at its Licensed Premises and no other solvent, then it shall be considered exempt from the requirements in paragraph D of this rule and instead must follow the requirements in paragraph C of this rule. Regardless of which rule is followed, the ethanol or isopropanol must be food grade or at least 99% pure and denatured alcohol cannot be used.
 - F. 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 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.

Basis and Purpose - M 1204

The statutory authority for this rule is found at subsections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(I), 12-43.3-202(2)(a)(II), 12-43.3-202(2)(a)(IV), and 12-43.3-202(2)(a)(XX), C.R.S. This rule explains that the Director of the Division may exercise discretion to accept an assurance of voluntary compliance. It also explains the evidentiary value of an assurance of voluntary compliance should a licensee not comply with the agreement.

M 1204 – Assurance of Voluntary Compliance

- A. The Director of the Division may accept an assurance of voluntary compliance regarding any act or practice alleged to violate the Medical Code, or the rules and regulations thereunder, from a person who has engaged in, is engaging in, or is about to engage in such acts or practices.
- B. The assurance must be in writing and may include a stipulation for the voluntary payment of the cost commensurate with the acts or practices and an amount necessary to restore money or property which may have been acquired by the alleged violator because of the acts or practices.
- C. An assurance of voluntary compliance may not be considered an admission of a violation for any purpose; however, proof of failure to comply with the assurance of voluntary compliance is prima facie evidence of a violation of the Medical Code, or the rules and regulation thereunder.
- D. The State Licensing Authority may approve or review an assurance of voluntary compliance.

STATEMENT OF ADOPTION

To: Lewis Koski, Marijuana Enforcement Division Director
From: Barbara J. Brohl, Executive Director and State Licensing Authority
Re: Statement of Adoption

New, Revised, and Repealed Medical Marijuana Rules, 1 CCR 212-1

Pursuant to the state Administrative Procedure Act, Title 24, Article 4, C.R.S. (2014), I, Barbara J. Brohl, Executive Director of the Colorado Department of Revenue and State Licensing Authority, promulgate the following rules:

Permanent Rules, Medical Marijuana, 1 CCR 212-1

Filing Tracking Number 2014-00685

Rule M 207 (revised) – Schedule of Application Fees: Medical Marijuana Businesses

Rule M 208 (revised) – Schedule of Business License Fees: Medical Marijuana Businesses

Rule M 209 (revised and renamed) – Schedule of Business Renewal License Fees: Medical Marijuana Businesses

Rule M 210 (revised) – Schedule of Administrative Service Fees: All Licensees

Rule M 234 (repealed) – Schedule of Application Fees: Individuals

Rule M 235 (revised) – Schedule of License Fees: Individuals

Rule M 236 (revised) – Schedule of License Fees: Individuals

Filing Tracking Number 2014-00771

Rule M 103 (revised) – Definitions

Rule M 402 (revised) – Registration of a Primary Medical Marijuana Center

Rule M 403 (revised) – Medical Marijuana Sales: General Limitations or Prohibited Acts

Rule M 408 (new) – Medical Marijuana Center: Responsible Vendor Program

Rule M 605 (revised) – Medical Marijuana-Infused Products Manufacturer: Medical Marijuana Concentrate Production

Rule M 1001(revised) - Packaging Requirements: General Requirements

Rule M 1003 (revised) – Labeling Requirements: Specific Requirements, Medical Marijuana and Medical Marijuana-Infused Product

Rule M 1204 (new) – Assurance of Voluntary Compliance

In addition, upon the effective date of these rules, I repeal all remaining Medical Marijuana emergency rules that were promulgated and effective June 30, 2014 and all Medical Marijuana emergency rules that were promulgated and effective July 31, 2014.

The new rules are adopted this 24th day of September, 2014.

A handwritten signature in blue ink, reading "Barbara J. Brohl", is written over a horizontal line.

Barbara J. Brohl
Executive Director and State Licensing Authority

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: 2014-00771

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

on 09/24/2014

1 CCR 212-1

RULES REGARDING THE SALES, MANUFACTURING AND DISPENSING OF MEDICAL
MARIJUANA

The above-referenced rules were submitted to this office on 09/30/2014 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

September 30, 2014 14:32:01

Permanent 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 10/30/2014

Effective date

10/30/2014

Basis and Purpose – R 207

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-104(1)(a)(I), and 12-43.4-202(3)(a)(II), and sections 12-43.3-501, 12-43.3-502 and 12-43.4-501, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(II). The purpose of this rule is to clarify the schedules of application fees for new retail business Licensees.

R 207 – Schedule of Application Fees: Retail Marijuana Establishments

- A. Application Fee for Existing Medical Marijuana Licensees in Good Standing and Qualified Applications
 - 1. A Person licensed pursuant to the Medical Code, section 12-43.3-401, and that meets the requirements of 12-43.4-104, C.R.S., shall pay a \$500 application fee, for each application submitted, to operate a Retail Marijuana Establishment if the following are met:
 - a. The Licensee is operating; and
 - b. The Licensee's license is in good standing. A license in good standing has complied consistently with the provisions of the Medical Code and the regulations adopted thereto.
- B. Application Fee for New Applicants - Retail Marijuana Store, Cultivation Facility, or Product Manufacturer. Applicants that do not meet the criteria in Part A. of this rule are required to pay a \$5000 application fee that must be submitted with each application before it will be considered.
- C. Application Fee for Retail Marijuana Testing Facilities - \$1,000.00
- D. When Application Fees Are Due. All application fees are due at the time an application is submitted. An Applicant must follow Division policies regarding payment to local jurisdictions.

Basis and Purpose – R 208

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(II), and 12-43.4-304(1), and sections 12-43.3-501, 12-43.3-502, 12-43.4-305, and 12-43.4-501, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(II). The purpose of this rule is to establish basic requirements for all Division applications and help the regulated community understand procedural licensing requirements.

R 208 – Schedule of Business License Fees: Retail Marijuana Establishments

- A. License Fees - Medical Marijuana Business Converting To or Adding a Retail Marijuana Establishment Pursuant to 12-43.4-104(1)(a)(I).
 - 1. Medical Marijuana Center Applying For A Retail Marijuana Store License – \$3,000.00
 - 2. Retail Marijuana Cultivation Facility License – \$2,200.00
 - 3. Extended Plant Count Fee for an Existing Medical Marijuana Center 2– \$4,000.00
 - 4. Extended Plant Count Fee for an Existing Medical Marijuana Center 3– \$8,000.00
 - 5. Retail Marijuana Products Manufacturing License – \$2,200.00

- B. License Fees - New Retail Marijuana Establishment Applicants That Have Applied Pursuant To 12-43.4-104(1)(b)(II).
1. Retail Marijuana Store License - \$3,000.00
 2. Retail Marijuana Cultivation Facility License - \$2,200.00
 3. Extended Plant Count Fee for Applicants that Meet Waiver Requirements of R R212(C) for 6,000 Plants - \$4,000.00
 4. Extended Plant Count Fee for Applicants that Meet Waiver Requirements of R R212(C) for 10,200 Plants - \$8,000.00
 5. Retail Marijuana Products Manufacturing License - \$2,200.00
 6. Retail Marijuana Testing Facility License - \$2,200.00
- C. When License Fees Are Due. All license fees are due at the time an application is submitted.
- D. If Application is Denied. If an application is denied, an Applicant may request that the State Licensing Authority refund the license fee after the denial appeal period has lapsed or after the completion of the denial appeal process, whichever is later.

Basis and Purpose – R 209

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(II), and 12-43.4-304(1), and sections 12-43.4-501, 12-43.3-502, 12-43.4-305, and section 12-43.4-501, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(II). The purpose of this rule is to establish basic requirements for all Division applications and help the regulated community understand procedural licensing requirements.

R 209 – Schedule of Business License Renewal Fees: Retail Marijuana Establishments

- A. Renewal Fee Amount and Due Date. The renewal fee shall be \$300 for each renewal application. Renewal license and processing fees are due at the time the renewal application is submitted for each licensed premise.
- B. Renewal License Fees shall be the same amount as the initial license fee. See Rule R 208 - Schedule of Business License Fees: Retail Marijuana Establishments.
- C. Renewal License Fees.
1. Retail Marijuana Store – \$3,000.00
 2. Extended Plant Count Renewal Fee – 6,000 Plants - \$4,000.00
 3. Extended Plant Count Renewal Fee – 10,200 Plants - \$8,000.00
 4. Retail Marijuana Cultivation Facility License – \$2,200.00
 5. Retail Marijuana Products Manufacturing License – \$2,200.00
 6. Retail Marijuana Testing Facility License – \$2,200.00

- D. If Renewal Application is Denied. If an application for renewal is denied, an Applicant may request that the State Licensing Authority refund the license fee after the denial appeal period has lapsed or after the completion of the denial appeal process, whichever is later.

Basis and Purpose – R 210

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(II), and 12-43.4-304(1), and sections 12-43.3-501, 12-43.3-502 and 12-43.4-501, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(II). The purpose of this rule is to establish basic requirements for all Division applications and help the regulated community understand procedural licensing requirements.

R 210 – Schedule of Administrative Service Fees: All Licensees

- A. Administrative Service Fees. Administrative service fees shall be as follows:
1. Transfer of Ownership - New Owners - \$2,000.00
 2. Transfer of Ownership - Reallocation of Ownership - \$800.00
 3. Change of Corporation or LLC Structure - \$800.00/Person
 4. Change of Trade Name - \$40.00
 5. Change of Location Application Fee - Same Local Jurisdiction Only - \$500.00
 6. Modification of License Premises - \$120.00
 7. Duplicate Business License - \$40.00
 8. Duplicate Occupational License - \$10.00
 9. Indirect Financial Interest Background Investigations - \$150.00
 10. Off Premise Storage Permit - \$2,200.00
 11. Subpoena Fee - \$200.00
- B. When Administrative Service Fees Are Due. All administrative service fees are due at the time each applicable request is made.

STATEMENT OF ADOPTION

To: Lewis Koski, Marijuana Enforcement Division Director
From: Barbara J. Brohl, Executive Director and State Licensing Authority
Re: Statement of Adoption
New and Revised Retail Marijuana Rules, 1 CCR 212-2

Pursuant to the state Administrative Procedure Act, Title 24, Article 4, C.R.S. (2014), I, Barbara J. Brohl, Executive Director of the Colorado Department of Revenue and State Licensing Authority, promulgate the following rules:

Permanent Rules, Retail Marijuana, 1 CCR 212-2

Filing Tracking Number 2014-00686

Rule R 207 (revised) – Schedule of Application Fees: Retail Marijuana Establishment
Rule R 208 (revised) – Schedule of Business License Fees: Retail Marijuana Establishments
Rule R 209 (revised) – Schedule of Business Renewal License Fees: Retail Marijuana Establishments
Rule R 210 (revised) – Schedule of Administrative Service Fees: All Licensees

Filing Tracking Number 2014-00687

Rule R 103 (revised) – Definitions
Rule R 211 (revised and renamed) – Conversion – Medical Marijuana Business to Retail Marijuana Establishment Pursuant to 12-43.4-104(1)(A)(I), C.R.S.
Rule R 212 (revised and renamed) – New Applicant Retail Marijuana Cultivation Facilities Licensed Pursuant to 12-43.4-104(1)(B)(II), C.R.S.

Filing Tracking Number 2014-00775

Rule R 103 (revised) – Definitions
Rule R 231 (revised) – Qualifications for Licensure: Individuals
Rule R 234 (revised) – Schedule of License Fees: Individuals
Rule R 235 (revised) – Schedule of Renewal
Rule R 407 (new) – Retail Marijuana Store: Responsible Vendor
Rule R 604 (revised and renamed) – Retail Marijuana Products Manufacturing Facility: Health and Safety Regulations
Rule R 605 (revised) – Retail Marijuana Products Manufacturing Facility: Retail Marijuana Concentrate Production
Rule R 712 (revised) – Retail Marijuana Testing Facility: Mandatory Sampling and Testing Program

Rule R 1004 (revised) – Packaging and Labeling Requirements of a Retail Marijuana Product by a Retail Marijuana Products Manufacturing Facility

Rule R 1004.5 (new) - Packaging and Labeling Requirements of a Retail Marijuana Product by a Retail Marijuana Products Manufacturing Facility

Rule R 1006 (revised) - Packaging and Labeling Requirements of a Retail Marijuana Product by a Retail Marijuana Store

Rule R 1006.5 (new) - Packaging and Labeling Requirements of a Retail Marijuana Product by a Retail Marijuana Store

Rule R 1204 (new) – Assurance of Voluntary Compliance

Rule R 1501 (revised and renamed) – Retail Marijuana Testing Program – Contaminant Testing

Rule R 1502 (revised) – Retail Marijuana Testing Program – Mandatory Testing

Rule R 1503 (revised) – Retail Marijuana Testing Program – Potency Testing

In addition, upon the effective date of these rules, I repeal all remaining Retail Marijuana emergency rules that were promulgated and effective June 30, 2014, all Retail Marijuana emergency rules that were promulgated and effective July 31, 2014, and all Retail Marijuana emergency rules that were promulgated and effective September 15, 2014.

The new rules are adopted this 24th day of September, 2014.



Barbara J. Brohl
Executive Director and State Licensing Authority

John W. Suthers

Attorney General

Cynthia H. Coffman

Chief Deputy Attorney General

Daniel D. Domenico

Solicitor General



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Phone 720-508-6000

State of Colorado

Department of Law

Office of the Attorney General

Tracking number: 2014-00686

**Opinion of the Attorney General rendered in connection with the rules adopted by the
Marijuana Enforcement Division**

on 09/24/2014

1 CCR 212-2

RETAIL MARIJUANA CODE

The above-referenced rules were submitted to this office on 09/30/2014 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 "DD", is written over a light blue rectangular background.

John W. Suthers

Attorney General

by Daniel D. Domenico

Solicitor General

September 30, 2014 14:29:58

Permanent 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 10/30/2014

Effective date

10/30/2014

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.

"Harvested Marijuana" means post-Flowering Retail Marijuana not including trim, concentrate or waste that remains on the premises of the Retail Marijuana Cultivation Facility or its off-premises storage location beyond 60 days from harvest.

"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. Plants meeting these requirements are not attributable to a licensee's maximum allowable plant count, but must be fully accounted for in the Inventory Tracking System.

"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.

"Inventory Tracking System" means the required seed-to-sale tracking system that tracks Retail Marijuana from either the seed or immature plant stage until the Retail Marijuana or Retail Marijuana Product is sold to a customer at a Retail Marijuana Store or is destroyed.

"Inventory Tracking System Trained Administrator" means an Owner or an occupationally licensed employee of a Retail Marijuana Establishment who has attended and successfully completed Inventory Tracking System training and who has completed any additional training required by the Division.

"Inventory Tracking System User" means an Owner or occupationally licensed Retail Marijuana Establishment employee who is granted Inventory Tracking System User account access for the purposes of conducting inventory tracking functions in the Inventory Tracking System and who has been successfully trained by an Inventory Tracking System Trained Administrator in the proper and lawful use of Inventory Tracking System.

"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.

"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 211

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a), 12-43.4-202(3)(b)(IX), and 12-43.4-202(4)(a) and (b) and sections 12-43.4-103, 12-43.4-104, and 12-43.4-501, C.R.S.. The purpose of this rule is to clarify that existing Medical Marijuana Businesses may apply to convert a Medical Marijuana Business License to a Retail Marijuana Establishment License or may apply to obtain one additional license to operate a Retail Marijuana Establishment. It is important to note that the State Licensing Authority considers each license issued as separate and distinct. Each license, whether it is in the same location or not, is fully responsible to maintain compliance with all statutes and rules promulgated regardless of whether or not they are located in a shared address.

A Medical Marijuana Business may only obtain one Retail Marijuana Establishment License, whether it converts the Medical Business License or obtains a Retail Marijuana Establishment License, for each Medical Marijuana Business License it holds. In order to ensure all Retail Marijuana and Retail Marijuana Product are tracked in the Inventory Tracking System and as a condition of licensure, a Medical Marijuana Business must declare in the Inventory Tracking System all Medical Marijuana and Medical Marijuana Infused-Product that are converted for sale as Retail Marijuana or Retail Marijuana Product prior to initiating or allowing any sales. This declaration may be made only once, in part, due to the excise tax issues that may be implicated if a Licensee makes multiple conversions from Medical Marijuana or Medical Marijuana-Infused Product to Retail Marijuana or Retail Marijuana Product.

The State Licensing Authority received several comments from stakeholders who requested lower fees for Medical Marijuana Businesses that were either converting a Medical Marijuana Business license to a Retail Marijuana Establishment license or obtaining an additional Retail Marijuana Establishment license while retaining the existing Medical Marijuana Business license. The adopted permanent regulations reflect changes to address this concern. Under the rules as adopted Medical Marijuana Businesses that apply to convert to a Retail Marijuana Establishment license will be required to pay an application fee, but no license fees will be charged until such time as the renewal fees would have been due under the Medical Marijuana Business license term. The Retail Marijuana Establishment license, if approved, would assume the balance of the license term from the Medical Marijuana Business license and have the same expiration date.

The rule establishes a means by which to manage the overall production of retail marijuana, and applies to all Medical Marijuana Businesses that are either converting to or adding a Retail Marijuana Establishment License pursuant to 12-43.4-104(1)(a)(I), C.R.S. This rule further clarifies that New Applicant Retail Marijuana Cultivation Facility Licenses granted after September 30, 2014 pursuant to 12-43.4-104(1)(b)(II) are subject to Rule R 212 – New Applicant Retail Marijuana Cultivation Facilities

Licensed Pursuant To 12-43.4-104(1)(b)(II), C.R.S. The establishment of production management is necessary to ensure there is not significant under or over production, either of which will increase incentives to engage in diversion and facilitate the continuation of the sale of illegal marijuana.

The State Licensing Authority intends to replace or revise this rule no later than December 31, 2015 with a long-term production management solution based on any one of the following methods or a combination thereof: plant count, output by weight, output by type of product, square footage, limiting available cultivation licenses, or other reasonable metrics. Existing and prospective licensees should be on notice that the new or revised regulations may impact the production limits provided for in this rule.

R 211 – Conversion - Medical Marijuana Business to Retail Marijuana Establishment Pursuant to 12-43.4-104(1)(a)(I), C.R.S.

- A. Medical Marijuana Business Applying for a Retail Marijuana Establishment License. A Medical Marijuana Business in good standing or who had a pending application as of December 10, 2012 that has not yet been denied, and who has paid all applicable fees may apply for a Retail Marijuana Establishment license in accordance with the Retail Code and these rules on or after October 1, 2013. A Medical Marijuana Business meeting these conditions may apply to convert a Medical Marijuana Business license to a Retail Marijuana Establishment license or may apply for a single Retail Marijuana Establishment of the requisite class of license in the Medical Marijuana Code for each Medical Marijuana Business License not converted.
- B. Retail Marijuana Establishment Expiration Date.
1. A Medical Marijuana Business converting its license to a Retail Marijuana Establishment license shall not be required to pay a license fee at the time of application for conversion.
 2. If a Medical Marijuana Business licensee is scheduled to renew its license during the processing of its conversion to a Retail Marijuana Establishment license, the Medical Marijuana Business must complete all renewal applications and pay the requisite renewal licensing fees.
 3. A Retail Marijuana Establishment license that was fully converted from a Medical Marijuana Business license will assume the balance of licensing term previously held by the surrendered Medical Marijuana Business license.
- C. Retail Marijuana Establishment Licenses Conditioned
1. It shall be unlawful for a Retail Marijuana Establishment to operate without being issued a Retail Marijuana Establishment license by the State Licensing Authority and receiving all relevant local jurisdiction approvals. Each Retail Marijuana Establishment license issued shall be conditioned on the Licensee's receipt of all required local jurisdiction approvals and licensing, if required.
 2. Each Retail Marijuana Establishment license issued shall be conditioned on the Medical Marijuana Business' declaration of the amount of Medical Marijuana or Medical Marijuana-Infused Product it intends to transfer from the requisite Medical Marijuana Business for sale as Retail Marijuana or Retail Marijuana Product. A Licensee that converts to a Retail Marijuana Establishment shall not exercise any of the rights or privileges of a Retail Marijuana Establishment until such time as all such Medical Marijuana and Medical Marijuana-Infused Product are fully transferred and declared in the Inventory Tracking System as Retail Marijuana and Retail Marijuana Product. See also, Rule R 309 –Inventory Tracking System.

- D. One-Time Transfer. Once a Retail Marijuana Establishment has declared Medical Marijuana and Medical Marijuana-Infused Product as Retail Marijuana or Retail Marijuana Product in the Inventory Tracking System and begun exercising the rights and privileges of the license, no additional Medical Marijuana or Medical Marijuana-Infused Product can be transferred from the Medical Marijuana Business to the relevant Retail Marijuana Establishment at any time.
- E. Production Management
1. Applicability. Paragraph E of this rule shall apply to all Medical Marijuana Businesses that are either converting to or adding a Retail Marijuana Establishment License pursuant to 12-43.4-104(1)(a)(I). Refer to Rule R 212 – New Applicant Retail Marijuana Cultivation Facilities Licensed Pursuant To 12-43.4-104(1)(b)(II), C.R.S. for the production management requirements of all New Applicant Retail Marijuana Cultivation Facility licenses granted after September 30, 2014 pursuant to 12-43.4-104(1)(b)(II).
 2. Additional Application Disclosures.
 - a. At the time of application for a Retail Marijuana Store license an Applicant must designate the Medical Marijuana Center license intended to be used to obtain the Retail Marijuana Store license, whether or not that license will be converted, by providing its business license number.
 - b. At the time of application for a Retail Marijuana Products Manufacturing Facility license an Applicant must designate the Medical Marijuana Infused-Products Manufacturing Business license intended to be used to obtain the Retail Marijuana Products Manufacturing license, whether or not that license will be converted, by providing its business license number.
 3. Production Management.
 - a. If the Medical Marijuana Center designated by an Applicant for a Retail Marijuana Store License was a Type 1 Center, then all of the Retail Marijuana Cultivation Facility Licenses associated with that Retail Marijuana Store may not cultivate more than 3,600 plants in aggregate at any one time.
 - b. If the Medical Marijuana Center designated by an Applicant for a Retail Marijuana Store License was a Type 2 Center, then all of the Retail Marijuana Cultivation Facility Licenses associated with that Retail Marijuana Store may not cultivate more than 6,000 plants in aggregate at any one time.
 - c. If the Medical Marijuana Center designated by an Applicant for a Retail Marijuana Store License was a Type 3 Center, then all of the Retail Marijuana Cultivation Facility Licenses associated with that Retail Marijuana Store may not cultivate more than 10,200 plants in aggregate at any one time.
 - d. If the Medical Marijuana Infused-Products Manufacturing Business designated by an Applicant for a Retail Marijuana Products Manufacturing License had an Optional Premises Cultivation associated with it, then all of the Retail Marijuana Cultivation Facility Licenses associated with that Retail Marijuana Products Manufacturing License may not cultivate more than 1,000 plants in aggregate at any one time.
 - e. In connection with the license renewal process for Retail Marijuana Cultivation Facilities with plant limits of 6,000 or 10,200 plants, the Division will review the purchases, sales, and cultivated plant count of the Retail Marijuana Cultivation

Facility Licensee during the preceding licensing term. The Division may reduce the Licensee's maximum allowed plant count at renewal if the Licensee transferred to another Retail Marijuana Establishment less than 85% of what it produced during the three months prior to the application for renewal.

- f. Inventory Management for Retail Cultivation Facilities that harvest more than twice a year. Beginning February 1, 2015, a Retail Marijuana Cultivation Facility that harvests more than twice a year may not accumulate Harvested Marijuana in excess of the total amount of inventory the Licensee produced that was transferred to another Retail Marijuana Establishment in the previous quarter.
 - g. Inventory Management for Retail Cultivation Facilities that harvest once or twice a year. Beginning February 1, 2015, a Retail Marijuana Cultivation Facility that harvests once or twice a year may not accumulate Harvested Marijuana in excess of the total amount of inventory the Licensee produced that was transferred to another Retail Marijuana Establishment in the previous year.
4. Industry-wide Adjustments. The State Licensing Authority, at its sole discretion, may adjust any of the plant limits described in paragraph E(3) of this rule on an industry-wide aggregate basis for all Retail Marijuana Establishments subject to that limitation.
5. Application for Additional Plants.
- a. A Retail Marijuana Products Manufacturing Facility may apply to the Division for a waiver of the plant limit described in paragraph E(3) of this rule if the associated Medical Marijuana Infused-Products Manufacturing Business had previously received a waiver from the Division to cultivate more than 1,000 medical marijuana plants. In its waiver application to the Division, the Retail Marijuana Products Manufacturing Facility must provide sufficient documentation evidencing its receipt of a waiver for its Medical Marijuana Infused-Products Manufacturing Business and must provide any other information requested to aid the Division in its evaluation of the waiver application. If granted, the Retail Marijuana Products Manufacturing Facility will be permitted to grow the same number of plants that the Medical Marijuana Infused-Products Manufacturing Business is permitted to grow.
 - b. A Retail Marijuana Products Manufacturing Facility may apply to the Division for a waiver of the plant limit described in paragraph E(3) of this rule based upon its demonstrated business needs. In its application to the Division, the Retail Marijuana Products Manufacturing Facility must provide sufficient documentation evidencing its business need for additional production capacity to meet the requirements of potential or existing contracts with licensed Retail Marijuana Stores for the purchase of Retail Marijuana Product and must provide any other information requested to aid the Division in its evaluation of the waiver application.
 - c. A Retail Marijuana Store may apply to the Division for a waiver of the plant limit described in paragraph E(3) of this rule after accruing at least two quarters of sales. The licensee shall provide documentation demonstrating that for at least three consecutive months prior to the waiver application, it has consistently cultivated an amount of plants that is at or near its maximum allowed plant count, and transferred at least 85% of the inventory it produced during that time period to another Retail Marijuana Establishment, and any other information requested to aid the Division in its evaluation of the waiver application. If a Retail Marijuana Store or Retail Marijuana Products Manufacturing Facility waiver application is approved by the Division, then the Retail Marijuana Store will:

1. Be permitted to cultivate no more than 6,000 plants in aggregate at any one time if it was previously permitted to cultivate 3,600 or fewer plants in aggregate at any one time, provided that it pays an extended plant fee of \$4,000.00.
2. Be permitted to cultivate no more than 10,200 plants in aggregate at any one time if it was previously permitted to cultivate between 3,600 and 6,000 plants in aggregate at any one time, provided that it pays an extended plant fee of \$8,000.00.

Basis and Purpose – R 212

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a), 12-43.4-202(3)(b)(IX), and 12-43.4-202(4)(a) and (b); and sections 12-43.4-103, 12-43.4-104, and 12-43.4-501, C.R.S. The purpose of this rule is to establish a means by which to manage the overall production of retail marijuana in tandem with Rule R 211. This rule is necessary to ensure there is not significant under or over production, either of which will increase incentives to engage in diversion and illegal sales of marijuana outside of the regulated environment.

The State Licensing Authority intends to replace or revise this rule no later than December 31, 2015 with a long-term production management solution based on any one of the following methods or a combination thereof: plant count, output by weight, output by type of product, square footage, limiting available cultivation licenses, or other reasonable metrics. Existing and prospective licensees should be on notice that the new or revised regulations may impact the production limits provided for in this rule.

Rule R 212 – New Applicant Retail Marijuana Cultivation Facilities Licensed Pursuant To 12-43.4-104(1)(b)(II), C.R.S.

- A. Applicability. This rule shall apply to all new applicant Retail Marijuana Cultivation Facility Licenses granted after September 30, 2014 pursuant to 12-43.4-104(1)(b)(II), C.R.S.
- B. Production Management.
 1. Any new applicant Retail Marijuana Cultivation Facility with a license granted after September 30, 2014 shall be authorized to cultivate 3,600 plants or less at any one time.
 2. Inventory Management for Retail Cultivation Facilities that harvest more than twice a year. Beginning February 1, 2015, a Retail Marijuana Cultivation Facility that harvests more than twice a year may not accumulate Harvested Marijuana in excess of the total amount of inventory the Licensee produced that was transferred to another Retail Marijuana Establishment in the previous quarter.
 3. Inventory Management for Retail Cultivation Facilities that harvest once or twice a year. Beginning February 1, 2015, a Retail Marijuana Cultivation Facility that harvests once or twice a year may not accumulate Harvested Marijuana in excess of the total amount of inventory the Licensee produced that was transferred to another Retail Marijuana Establishment in the previous year.
 4. In connection with the license renewal process for Retail Marijuana Cultivation Facilities with plant limits of 6,000 or 10,200 plants, the Division will review the purchases, sales, and cultivated plant count of the Retail Marijuana Cultivation Facility Licensee during the preceding licensing term. The Division may reduce the Licensee's maximum allowed plant count to no more than 3,600 plants, or no more than 6,000 plants, as appropriate under the circumstances if the Licensee sold less than 85% of what it produced during the three months prior to the application for renewal.

C. Application for Additional Plants.

1. A Retail Marijuana Cultivation Facility Licensee may apply to the Division for a waiver of the plant limit described in subparagraph (B)(1) of this rule after accruing at least two quarters of sales. The Licensee shall provide documentation demonstrating that for at least three consecutive months prior to the waiver application, it has consistently cultivated an amount of plants that is at or near its maximum allowed plant count, and has transferred at least 85% of the inventory it produced during that time period to another Retail Marijuana Establishment, and any other information requested to aid the Division in its evaluation of the waiver application. If a waiver application is approved by the Division, then the Retail Marijuana Cultivation Facility Licensee may:
 - a. Be permitted to cultivate no more than 6,000 plants at any one time at its Retail Marijuana Cultivation Facility if the Licensee was previously permitted to cultivate 3,600 or fewer plants at any one time, provided that it pays an extended plant fee of \$4,000.00.
 - b. Be permitted to cultivate no more than 10,200 plants at any one time at its Retail Marijuana Cultivation Facility if the Licensee was previously permitted to cultivate between 3,601 and 6,000 plants at any one time, provided that it pays an extended plant fee of \$8,000.00.

D. Application for Additional Retail Cultivation Facility Licenses. After accruing at least two quarters of sales, a Person who has any ownership interest in a licensed Retail Marijuana Cultivation Facility may apply to the Division for an additional Retail Marijuana Cultivation Facility license. The Person shall provide documentation demonstrating that for at least three consecutive months prior to the application, the related Retail Marijuana Cultivation Facility has consistently cultivated an amount of plants that is at or near its maximum allowed plant count, and has transferred at least 85% of the inventory it produced during that time period to another Retail Marijuana Establishment.

E. Industry-wide Adjustments. The State Licensing Authority, at its sole discretion, may adjust any of the plant limits described in this rule on an industry-wide aggregate basis for all Retail Marijuana Cultivation Facility Licensees subject to that limitation.

STATEMENT OF ADOPTION

To: Lewis Koski, Marijuana Enforcement Division Director
From: Barbara J. Brohl, Executive Director and State Licensing Authority
Re: Statement of Adoption
New and Revised Retail Marijuana Rules, 1 CCR 212-2

Pursuant to the state Administrative Procedure Act, Title 24, Article 4, C.R.S. (2014), I, Barbara J. Brohl, Executive Director of the Colorado Department of Revenue and State Licensing Authority, promulgate the following rules:

Permanent Rules, Retail Marijuana, 1 CCR 212-2

Filing Tracking Number 2014-00686

Rule R 207 (revised) – Schedule of Application Fees: Retail Marijuana Establishment
Rule R 208 (revised) – Schedule of Business License Fees: Retail Marijuana Establishments
Rule R 209 (revised) – Schedule of Business Renewal License Fees: Retail Marijuana Establishments
Rule R 210 (revised) – Schedule of Administrative Service Fees: All Licensees

Filing Tracking Number 2014-00687

Rule R 103 (revised) – Definitions
Rule R 211 (revised and renamed) – Conversion – Medical Marijuana Business to Retail Marijuana Establishment Pursuant to 12-43.4-104(1)(A)(I), C.R.S.
Rule R 212 (revised and renamed) – New Applicant Retail Marijuana Cultivation Facilities Licensed Pursuant to 12-43.4-104(1)(B)(II), C.R.S.

Filing Tracking Number 2014-00775

Rule R 103 (revised) – Definitions
Rule R 231 (revised) – Qualifications for Licensure: Individuals
Rule R 234 (revised) – Schedule of License Fees: Individuals
Rule R 235 (revised) – Schedule of Renewal
Rule R 407 (new) – Retail Marijuana Store: Responsible Vendor
Rule R 604 (revised and renamed) – Retail Marijuana Products Manufacturing Facility: Health and Safety Regulations
Rule R 605 (revised) – Retail Marijuana Products Manufacturing Facility: Retail Marijuana Concentrate Production
Rule R 712 (revised) – Retail Marijuana Testing Facility: Mandatory Sampling and Testing Program

Rule R 1004 (revised) – Packaging and Labeling Requirements of a Retail Marijuana Product by a Retail Marijuana Products Manufacturing Facility

Rule R 1004.5 (new) - Packaging and Labeling Requirements of a Retail Marijuana Product by a Retail Marijuana Products Manufacturing Facility

Rule R 1006 (revised) - Packaging and Labeling Requirements of a Retail Marijuana Product by a Retail Marijuana Store

Rule R 1006.5 (new) - Packaging and Labeling Requirements of a Retail Marijuana Product by a Retail Marijuana Store

Rule R 1204 (new) – Assurance of Voluntary Compliance

Rule R 1501 (revised and renamed) – Retail Marijuana Testing Program – Contaminant Testing

Rule R 1502 (revised) – Retail Marijuana Testing Program – Mandatory Testing

Rule R 1503 (revised) – Retail Marijuana Testing Program – Potency Testing

In addition, upon the effective date of these rules, I repeal all remaining Retail Marijuana emergency rules that were promulgated and effective June 30, 2014, all Retail Marijuana emergency rules that were promulgated and effective July 31, 2014, and all Retail Marijuana emergency rules that were promulgated and effective September 15, 2014.

The new rules are adopted this 24th day of September, 2014.



Barbara J. Brohl
Executive Director and State Licensing Authority

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: 2014-00687

**Opinion of the Attorney General rendered in connection with the rules adopted by the
Marijuana Enforcement Division**

on 09/24/2014

1 CCR 212-2

RETAIL MARIJUANA CODE

The above-referenced rules were submitted to this office on 09/24/2014 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

September 30, 2014 14:30:47

Permanent 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 10/30/2014

Effective date

10/30/2014

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.

"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). Note that this rule does not include any later amendments or editions to the Code of Federal Regulations. The Division has maintained a copy of the applicable federal regulation, which is 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.

"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.

"Industrial Hygienist" means an individual who has obtained a baccalaureate or graduate degree in industrial hygiene, biology, chemistry, engineering, physics, or a closely related physical or biological science from an accredited college or university.

- A. The special studies and training of such individuals shall be sufficient in the cognate sciences to provide the ability and competency to:
 - 1. Anticipate and recognize the environmental factors and stresses associated with work and work operations and to understand their effects on individuals and their well-being;
 - 2. Evaluate on the basis of training and experience and with the aid of quantitative measurement techniques the magnitude of such environmental factors and stresses in terms of their ability to impair human health and well-being;
 - 3. Prescribe methods to prevent, eliminate, control, or reduce such factors and stresses and their effects.
- B. Any individual who has practiced within the scope of the meaning of industrial hygiene for a period of not less than five years immediately prior to July 1, 1997, is exempt from the degree requirements set forth in the definition above.
- C. Any individual who has a two-year associate of applied science degree in environmental science from an accredited college or university and in addition not less than four years practice immediately prior to July 1, 1997, within the scope of the meaning of industrial hygiene is exempt from the degree requirements set forth in the definition above.

"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.

"Inventory Tracking System" means the required seed-to-sale tracking system that tracks Retail Marijuana from either the seed or immature plant stage until the Retail Marijuana or Retail Marijuana Product is sold to a customer at a Retail Marijuana Store or is destroyed.

"Inventory Tracking System Trained Administrator" means an Owner or an occupationally licensed employee of a Retail Marijuana Establishment who has attended and successfully completed Inventory Tracking System training and who has completed any additional training required by the Division.

"Inventory Tracking System User" means an Owner or occupationally licensed Retail Marijuana Establishment employee who is granted Inventory Tracking System User account access for the purposes of conducting inventory tracking functions in the Inventory Tracking System and who has been successfully trained by an Inventory Tracking System Trained Administrator in the proper and lawful use of Inventory Tracking System.

"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.

"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 231

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(III), 12-43.4-305, and 12-43.4-306 and section 24-76.5-101 *et. seq.*, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(III). The purpose of this rule is to clarify the qualifications for licensure, including, but not limited to, the requirement for a fingerprint-based criminal history record check for all Owners, officers managers, contractors, employees, and other support staff of licensed entities.

R 231 – Qualifications for Licensure: Individuals

A. General Requirements

1. All Applicants shall submit information to the Division in a full, faithful, truthful, and fair manner. The Division may recommend denial of an application where the Applicant made intentional misstatements, purposeful omissions, misrepresentations, or untruths in the application or in connection with the Applicant's background investigation. This type of conduct may be considered as the basis of additional administrative action against the Applicant and it may also be the basis for criminal charges against the Applicant.
2. The Division may deny the application of an Applicant who fails to provide the requested evidence or information by the Division deadline.

B. Other Licensing Requirements

1. Fingerprints Required

- a. All Applicants for initial licensure shall be fingerprinted for a fingerprint-based criminal history record check.
- b. A renewal Applicant shall be fingerprinted at the Director's discretion.
- c. An Applicant shall also be fingerprinted if the Director has required the Applicant to submit a new application. The Director may require a new application for the following non-exhaustive list of reasons:
 - i. An Applicant is re-applying after more than one year since the expiration of his or her most recent license;
 - ii. If an Applicant's previous license was denied or revoked by the State Licensing Authority; or
 - iii. When the Division needs additional information in order to proceed with a background investigation.

2. Other Documents May Be Required. Any Applicant may be required to establish his or her identity and age by any document required for a determination of lawful presence.

3. Maintaining Ongoing Suitability For Licensing: Duty to Report Offenses. An Applicant or Licensee shall notify the Division in writing of any felony criminal charge and felony conviction against such person within ten days of such person's arrest or felony summons, and within ten days of the disposition of any arrest or summons. Failure to make proper notification to the Division may be grounds for disciplinary action. Licensees shall cooperate in any investigation conducted by the Division. This duty to report includes, but is not limited to, deferred sentences or judgments that are not sealed. If the Division lawfully finds a disqualifying event and an Applicant asserts that the record was sealed, the Division may require the Applicant to provide proof from a court evidencing the sealing of the case.

4. Application Forms Accessible to Law Enforcement and Licensing Authorities. All application forms supplied by the Division and filed by an Applicant for license shall be accessible by the State Licensing Authority, local jurisdictions, and any state or local law enforcement agent.

C. Owners. An Owner Applicant must meet the following criteria before receiving a license:

- 1. The Applicant must pay the annual application and licensing fees;
- 2. The Applicant's criminal history must indicate that he or she is of Good Moral Character;
- 3. The Applicant is not employing, or financed in whole or in part, by any other Person whose criminal history indicates that he or she is not of Good Moral Character;
- 4. The Applicant is at least 21 years of age;

5. The Applicant has paid all taxes, interest, or penalties due the Department of Revenue relating to a Retail Marijuana Establishment;
6. The Applicant can prove that he or she has not discharged a sentence for a conviction of a felony in the five years immediately preceding his or her application date;
7. The Applicant can prove that he or she has not discharged a sentence for a conviction of a felony pursuant to any state or federal law regarding the possession, distribution, manufacturing, cultivation, or use of a controlled substance in the ten years immediately preceding his or her application date or five years from May 27, 2013, whichever is longer, except that the State Licensing Authority may grant a license to a Person if the Person has a state felony conviction based on possession or use of marijuana or marijuana concentrate that would not be a felony if the Person were convicted of the offense on the date he or she applied for a license;
8. The Applicant can establish that he or she does not employ another person who does not have a valid Occupational License issued pursuant to either the Retail Code or the Medical Code.
9. The Applicant can establish that he or she is not a sheriff, deputy sheriff, police officer, or prosecuting officer, or an officer or employee of the State Licensing Authority or a local jurisdiction;
10. The Applicant can establish that its premises proposed to be licensed is not currently licensed as a retail food establishment or wholesale food registrant;
11. The Applicant has been a resident of Colorado for at least two years prior to the date of the Application. See Rule R 232 – Factors Considered When Determining Residency: Individuals.

D. Occupational Licenses. An Occupational License Applicant must meet the following criteria before receiving a license:

1. The Applicant must pay the annual application and licensing fees;
2. The Applicant's criminal history must indicate that he or she is of Good Moral Character;
3. The Applicant is at least 21 years of age;
4. The Applicant can establish that he or she is currently a resident of Colorado.
5. The Applicant can prove that he or she has not discharged a sentence for a conviction of a felony in the five years immediately preceding his or her application date;
6. The Applicant can prove that he or she has not discharged a sentence for a conviction of a felony pursuant to any state or federal law regarding the possession, distribution, manufacturing, cultivation, or use of a controlled substance in the ten years immediately preceding his or her application date or five years from May 27, 2013, whichever is longer, except that the State Licensing Authority may grant a license to a person if the person has a state felony conviction based on possession or use of marijuana or marijuana

concentrate that would not be a felony if the person were convicted of the offense on the date he or she applied for a license;

7. The Applicant can establish that he or she is not a sheriff, deputy sheriff, police officer, or prosecuting officer, or an officer or employee of the State Licensing Authority or a local jurisdiction;

E. Current Medical Marijuana Occupational Licensees

1. An individual who holds a current, valid Occupational License issued pursuant to the Medical Code may also work in a Retail Marijuana Establishment; no separate Occupational License is required.
2. An individual who holds a current, valid Occupational License issued pursuant to the Retail Code and these rules shall only work at licensed premises that are exclusively a Retail Marijuana Establishment and shall not work at a Medical Marijuana Business unless he or she also holds a current, valid Occupational License issued pursuant to the Medical Code.

Basis and Purpose – R 234

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(2)(e), 12-43.4-202(3)(b)(VIII), 12-43.4-202(3)(b)(IX), 12-43.4-309(6), 12-43.4-401(1)(e), and 12-43.3-501(1), C.R.S. The purpose of this rule is to establish licensing fees for individuals.

R 234 – Schedule of License Fees: Individuals

A. Individual License Fees

1. Retail Owner License - \$1,300.00
2. Retail Occupational License - \$150.00

- B. When Fees Are Due. License fees are due at the time Applicant submits application.

Basis and Purpose – R 235

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(2)(e), 12-43.4-202(3)(b)(VIII), 12-43.4-202(3)(b)(IX), 12-43.4-309(6), 12-43.4-401(1)(e), and 12-43.3-501(1), C.R.S. The purpose of this rule is to establish renewal license fees for individuals.

R 235 – Schedule of Renewal Fees: Individuals

A. Individual Renewal License Fees

1. Retail Owner License - \$200.00
2. Retail Occupational License - \$75.00

B. When Fees Are Due. Renewal license fees are due at the time Applicant submits application for renewal.

Basis and Purpose - R 407

The statutory authority for this rule is found at section 12-43.3-1101, 12-43.3-1102, and subsections, 12-43.4-202(2)(b), 12-43.4-202(3)(a)(XII), 12-43.4-202(3)(b)(VII), and 12-43.4-202(3)(b)(IX), C.R.S. The purpose of this rule is to establish minimum standards for responsible vendor programs that provide training to personnel at Retail Marijuana Stores seeking designation as a “responsible vendor.” It sets forth general standards and basic requirements for responsible vendor programs. This rule also establishes the timeframe for new staff to complete a responsible vendor program and the requirements for recertification. The State Licensing Authority intends this rule to help maintain the integrity of Colorado’s Retail Marijuana Stores

R 407 - Retail Marijuana Store: Responsible Vendor Program

A. General Standards.

1. To be designated a “responsible vendor” of Retail Marijuana, Retail Marijuana Product and Retail Marijuana Concentrate at any licensed Retail Marijuana Store, a Retail Marijuana Store licensee shall comply with this rule.
2. To be designated a “responsible vendor” all Owners, managers and employees involved in the handling and sale of Retail Marijuana, Retail Marijuana Product and Retail Marijuana Concentrate shall attend and successfully complete a responsible vendor program.
3. Once a licensee is designated a “responsible vendor,” all new employees involved in the handling and sale of Retail Marijuana, Retail Marijuana Product and Retail Marijuana Concentrate shall successfully complete the training described in this rule within 90 days of hire.
4. After initial successful completion of a responsible vendor program, each Owner, manager and employee of a Retail Marijuana Store shall successfully complete the program once every two years thereafter to maintain designation as a “responsible vendor.”

B. Certification Training Program Standards.

1. No owner or employee of a responsible vendor program shall have an interest in a licensed Medical Marijuana Business or Retail Marijuana Establishment.
2. Program providers shall submit their programs to the division for approval as a responsible vendor program.
3. Program providers shall submit their programs for approval every two years in order to maintain designation as a responsible vendor program.
4. The program shall include at least two hours of instruction time.

5. The program shall be taught in a real-time, interactive classroom setting where the instructor is able to verify the identification of each individual attending the program and certify completion of the program by the individual identified.
 6. The program provider shall maintain its training records at its principal place of business during the applicable year and for the following three years. The provider shall make the records available for inspection by the licensing authority upon request during normal business hours.
 7. The program shall provide written documentation of attendance and successful passage of a test on the knowledge of the required curriculum for each attendee.
 - a. Attendees who can speak and write English must successfully pass a written test with a score of 70% or better.
 - b. Attendees who cannot speak or write English may be offered a verbal test, provided that the same questions are given as are on the written test and the results of the verbal test are documented with a passing score of 70% or better.
 8. Program providers shall solicit effectiveness evaluations from individuals who have completed their program.
- C. Certification Training Class Core Curriculum.

1. Discussion concerning marijuana's effect on the human body. Training shall include:
 - a. Marijuana's physical effects based on type of marijuana product;
 - b. The amount of time to feel impairment;
 - c. Visible signs of impairment; and
 - d. Recognizing the signs of impairment.
2. Sales to minors. Training shall cover all pertinent Colorado law provisions.
3. Acceptable forms of Identification. Training shall include:
 - a. How to check identification;
 - b. Spotting false identification;
 - c. Patient Registry Cards issued by the department of public health and environment and equivalent patient verification documents;
 - d. Provisions for confiscating fraudulent identifications; and
 - e. Common mistakes made in verification.
4. Other key state laws and rules affecting owners, managers, and employees. Training shall include:
 - a. Local and state licensing and enforcement;
 - b. Compliance with all Inventory Tracking System regulations;

- c. Administrative and criminal liability;
- d. License sanctions and court sanctions;
- e. Waste disposal
- f. Health and safety standards
- g. Patrons prohibited from bringing marijuana onto licensed premises;
- h. Permitted hours of sale;
- i. Conduct of establishment;
- j. Permitting inspections by state and local licensing and enforcement authorities;
- k. Licensee responsible for activities occurring within licensed premises;
- l. Maintenance of records;
- m. Privacy issues; and
- n. Prohibited purchases.

R 600 Series – Retail Marijuana Products Manufacturing Facilities

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 February 1, 2015.

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 605

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), and 12-43.4-2-2(3)(b)(IX), C.R.S. The purpose of this rule is to establish the categories of Retail Marijuana Concentrate that may be produced at a Retail Marijuana Products Manufacturing Facility and establish standards for the production of Retail Marijuana Concentrate.

R 605 –Retail Marijuana Products Manufacturing Facility: Retail Marijuana Concentrate Production.

Paragraph B of this rule is not effective until March 1, 2014.

Paragraph C of this rule is not effective until April 1, 2014.

Paragraph D of this rule is not effective until July 1, 2014.

A. Permitted Categories of Retail Marijuana Concentrate Production

1. A Retail Marijuana Products Manufacturing Facility may produce Water-Based Retail Marijuana Concentrate and Food-Based Retail Marijuana Concentrate.
2. A Retail Marijuana Products Manufacturing Facility may also produce Solvent-Based Retail Marijuana Concentrate using only the following solvents: butane, propane, CO₂, ethanol, isopropanol, acetone and heptane. The use of any other solvent is expressly prohibited unless and until it is approved by the Division.
3. Beginning on July 1, 2014, a Retail Marijuana Products Manufacturing Facility may submit a request to the Division to consider the approval of solvents not permitted for use under this rule during the next formal rulemaking.

B. General Applicability. A Retail Marijuana Products Manufacturing Facility that engages in the production of Retail Marijuana Concentrate, regardless of the method of extraction or category of concentrate being produced, must:

1. Ensure that the space in which any Retail Marijuana Concentrate is to be produced is a fully enclosed room and clearly designated on the current diagram of the Licensed Premises. See Rule R 901- Business Records Required.
2. Ensure that all applicable sanitary rules are followed. See R 604.
3. Ensure that the standard operating procedure for each method used to produce a Retail Marijuana Concentrate on its Licensed Premises includes, but need not be limited to, step-by-step instructions on how to safely and appropriately:
 - a. Conduct all necessary safety checks prior to commencing production;
 - b. Prepare Retail Marijuana for processing;
 - c. Extract cannabinoids and other essential components of Retail Marijuana;
 - d. Purge any solvent or other unwanted components from a Retail Marijuana Concentrate,
 - e. Clean all equipment, counters and surfaces thoroughly; and
 - f. Dispose of any waste produced during the processing of Retail Marijuana in accordance with all applicable local, state and federal laws, rules and regulations. See Rule R 307 – Waste Disposal.
4. Establish written and documentable quality control procedures designed to maximize safety for Owners and Occupational Licensees and minimize potential product contamination.
5. Establish written emergency procedures to be followed by Owners or Occupational Licensees in case of a fire, chemical spill or other emergency.
6. Have a comprehensive training manual that provides step-by-step instructions for each method used to produce a Retail Marijuana Concentrate on its Licensed Premises. The training manual must include, but need not be limited to, the following topics:

- a. All standard operating procedures for each method of concentrate production used at that Licensed Premises;
 - b. The Retail Marijuana Products Manufacturing Facility's quality control procedures;
 - c. The emergency procedures for that Licensed Premises;
 - d. The appropriate use of any necessary safety or sanitary equipment;
 - e. The hazards presented by all solvents used within the Licensed Premises as described in the material safety data sheet for each solvent;
 - f. Clear instructions on the safe use of all equipment involved in each process and in accordance with manufacturer's instructions, where applicable; and
 - g. Any additional periodic cleaning required to comply with all applicable sanitary rules.
7. Provide adequate training to every Owner or Occupational Licensee prior to that individual undertaking any step in the process of producing a Retail Marijuana Concentrate.
- a. Adequate training must include, but need not be limited to, providing a copy of the training manual for that Licensed Premises and live, in-person instruction detailing at least all of the topics required to be included in the training manual.
 - b. The individual training an Owner or Occupational Licensee must sign and date a document attesting that all required aspects of training were conducted and that he or she is confident that the Owner or Occupational Licensee can safely produce a Retail Marijuana Concentrate. See Rule R 901- Business Records Required.
 - c. The Owner or Occupational Licensee that received the training must sign and date a document attesting that he or she can safely implement all standard operating procedures, quality control procedures, and emergency procedures, operate all closed-loop extraction systems, use all safety, sanitary and other equipment and understands all hazards presented by the solvents to be used within the Licensed Premises and any additional period cleaning required to maintain compliance with all applicable sanitary rules. See Rule R 901- Business Records Required.
8. Maintain clear and comprehensive records of the name, signature and Owner or Occupational License number of every individual who engaged in any step related to the creation of a Production Batch of Retail Marijuana Concentrate and the step that individual performed. See Rule R 901- Business Records Required.
- C. Water-Based Retail Marijuana Concentrate and Food-Based Retail Marijuana Concentrate. A Retail Marijuana Products Manufacturing Facility that engages in the production of a Water-Based Retail Marijuana Concentrate or a Food-Based Retail Marijuana Concentrate must:

1. Ensure that all equipment, counters and surfaces used in the production of a Water-Based Retail Marijuana Concentrate or a Food-Based Retail Marijuana Concentrate is food-grade including ensuring that all counters and surface areas were constructed in such a manner that it reduces the potential for the development of microbials, molds and fungi and can be easily cleaned.
 2. Ensure that all equipment, counters, and surfaces used in the production of a Water-Based Retail Marijuana Concentrate or a Food-Based Retail Marijuana Concentrate are thoroughly cleaned after the completion of each Production Batch.
 3. Ensure that any room in which dry ice is stored or used in processing Retail Marijuana into a Retail Marijuana Concentrate is well ventilated to prevent against the accumulation of dangerous levels of CO₂.
 4. Ensure that the appropriate safety or sanitary equipment, including personal protective equipment, is provided to, and appropriately used by, each Owner or Occupational Licensee engaged in the production of a Water-Based Retail Marijuana Concentrate or Food-Based Retail Marijuana Concentrate.
 5. Ensure that only finished drinking water and ice made from finished drinking water is used in the production of a Water-Based Retail Marijuana Concentrate.
 6. Ensure that if propylene glycol or glycerin is used in the production of a Food-Based Retail Marijuana Concentrate, then the propylene glycol or glycerin to be used is food-grade.
 7. Follow all of the rules related to the production of a Solvent-Based Retail Marijuana Concentrate if a pressurized system is used in the production of a Water-Based Retail Marijuana Concentrate or a Food-Based Retail Marijuana Concentrate.
- D. Solvent-Based Retail Marijuana Concentrate. A Retail Marijuana Products Manufacturing Facility that engages in the production of Solvent-Based Retail Marijuana Concentrate must:
1. Obtain a report from an Industrial Hygienist or a Professional Engineer that certifies that the equipment, Licensed Premises and standard operating procedures comply with these rules and all applicable local and state building codes, fire codes, electrical codes and other laws. If a local jurisdiction has not adopted a local building code or fire code or if local regulations do not address a specific issue, then the Industrial Hygienist or Professional Engineer shall certify compliance with the International Building Code of 2012 (<http://www.iccsafe.org>), the International Fire Code of 2012 (<http://www.iccsafe.org>) or the National Electric Code of 2014 (<http://www.nfpa.org>), as appropriate. Note that this rule does not include any later amendments or editions to each Code. The Division has maintained a copy of each code, each of which is available to the public;
 - a. Flammable Solvent Determinations. If a Flammable Solvent is to be used in the processing of Retail Marijuana into a Retail Marijuana Concentrate, then the Industrial Hygienist or Professional Engineer must:
 - i. Establish a maximum amount of Flammable Solvents and other flammable materials that may be stored within that Licensed

Premises in accordance with applicable laws, rules and regulations;

- ii. Determine what type of electrical equipment, which may include but need not be limited to outlets, lights and junction boxes, must be installed within the room in which Retail Marijuana Concentrate is to be produced or Flammable Solvents are to be stored in accordance with applicable laws, rules and regulations;
 - iii. Determine whether a gas monitoring system must be installed within the room in which Retail Marijuana Concentrate is to be produced or Flammable Solvents are to be stored, and if required the system's specifications, in accordance with applicable laws, rules and regulations; and
 - iv. Determine whether fire suppression system must be installed within the room in which Retail Marijuana Concentrate is to be produced or Flammable Solvents are to be stored, and if required the system's specifications, in accordance with applicable laws, rules and regulations.
- b. CO2 Solvent Determination. If CO₂ is used as solvent at the Licensed Premises, then the Industrial Hygienist or Professional Engineer must determine whether a CO₂ gas monitoring system must be installed within the room in which Retail Marijuana Concentrate is to be produced or CO₂ is stored, and if required the system's specifications, in accordance with applicable laws, rules and regulations.
 - c. Exhaust System Determination. The Industrial Hygienist or Professional Engineer must determine whether a fume vent hood or exhaust system must be installed within the room in which Retail Marijuana Concentrate is to be produced, and if required the system's specifications, in accordance with applicable laws, rules and regulations.
 - d. Material Change. If a Retail Marijuana Products Manufacturing Facility makes a Material Change to its Licensed Premises, equipment or a concentrate production procedure, in addition to all other requirements, it must obtain a report from an Industrial Hygienist or Professional Engineer re-certifying its standard operating procedures and, if changed, its Licensed Premises and equipment as well.
 - e. Manufacturer's Instructions. The Industrial Hygienist or Professional Engineer may review and consider any information provided to the Retail Marijuana Products Manufacturing Facility by the designer or manufacturer of any equipment used in the processing of Retail Marijuana into a Retail Marijuana Concentrate.
 - f. Records Retention. A Retail Marijuana Products Manufacturing Facility must maintain copy of all reports received from an Industrial Hygienist and Professional Engineer on its Licensed Premises. Notwithstanding any other law, rule or regulation, compliance with this rule is not satisfied

by storing these reports outside of the Licensed Premises. Instead the reports must be maintained on the Licensed Premises until the Licensee ceases production of Retail Marijuana Concentrate on the Licensed Premises.

2. Ensure that all equipment, counters and surfaces used in the production of a Solvent-Based Retail Marijuana Concentrate are food-grade and do not react adversely with any of the solvents to be used in the Licensed Premises. Additionally, all counters and surface areas must be constructed in a manner that reduces the potential development of microbials, molds and fungi and can be easily cleaned;
3. Ensure that the room in which Solvent-Based Retail Marijuana Concentrate shall be produced must contain an emergency eye-wash station;
4. Ensure that only a professional grade, closed-loop extraction system capable of recovering the solvent is used to produce Solvent-Based Retail Marijuana Concentrate;
 - a. UL or ETL Listing.
 - i. If the system is UL or ETL listed, then a Retail Marijuana Products Manufacturing Facility may use the system in accordance with the manufacturer's instructions.
 - ii. If the system is UL or ETL listed but the Retail Marijuana Products Manufacturing Facility intends to use a solvent in the system that is not listed in the manufacturer's instructions for use in the system, then, prior to using the unlisted solvent within the system, the Retail Marijuana Products Manufacturing Facility must obtain written approval for use of the non-listed solvent in the system from either the system's manufacturer or a Professional Engineer after the Professional Engineer has conducted a peer review of the system. In reviewing the system, the Professional Engineer shall review and consider any information provided by the system's designer or manufacturer.
 - iii. If the system is not UL or ETL listed, then there must a designer of record. If the designer of record is not a Professional Engineer, then the system must be peer reviewed by a Professional Engineer. In reviewing the system, the Professional Engineer shall review and consider any information provided by the system's designer or manufacturer.
 - b. Ethanol or Isopropanol. A Retail Marijuana Products Manufacturing Facility need not use a professional grade, closed-loop system extraction system capable of recovering the solvent for the production of a Solvent-Based Retail Marijuana Concentrate if ethanol or isopropanol are the only solvents being used in the production process.
5. Ensure that all solvents used in the extraction process are food-grade or at least 99% pure;

- a. A Retail Marijuana Products Manufacturing Facility must obtain a material safety data sheet for each solvent used or stored on the Licensed Premises. A Retail Marijuana Products Manufacturing Facility must maintain a current copy of the material safety data sheet and a receipt of purchase for all solvents used or to be used in an extraction process. See Rule R 901- Business Records Required.
 - b. A Retail Marijuana Products Manufacturing Facility is prohibited from using denatured alcohol to produce a Retail Marijuana Concentrate.
- 6. Ensure that all Flammable Solvents or other flammable materials, chemicals and waste are stored in accordance with all applicable laws, rules and regulations. At no time may a Retail Marijuana Products Manufacturing Facility store more Flammable Solvent on its Licensed Premises than the maximum amount established for that Licensed Premises by the Industrial Hygienist or Professional Engineer;
- 7. Ensure that the appropriate safety and sanitary equipment, including personal protective equipment, is provided to, and appropriately used by, each Owner or Occupational Licensee engaged in the production of a Solvent-Based Retail Marijuana Concentrate; and
- 8. Ensure that a trained Owner or Occupational Licensee is present at all times during the production of a Solvent-Based Retail Marijuana Concentrate whenever an extraction process requires the use of pressurized equipment.
- E. Ethanol and Isopropanol. If a Retail Marijuana Products Manufacturing Facility only produces Solvent-Based Retail Marijuana Concentrate using ethanol or isopropanol at its Licensed Premises and no other solvent, then it shall be considered exempt from paragraph D of this rule and instead must follow the requirements in paragraph C of this rule. Regardless of which rule is followed, the ethanol or isopropanol must be food grade or at least 99% pure and denatured alcohol cannot be used.
- F. Violation Affecting Public Safety. Failure to comply with this rule may constitute a license violation affecting public safety.

R 700 Series – Retail Marijuana Testing Facilities

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 Inventory Tracking System 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)

Substance	Acceptable Limits Per Gram	Product to be Tested
–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 and Metals

Substance	Acceptable Limits Per Gram	Product to be Tested
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	None Detected	

pursuant to Rule R 605.		

** 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

Substance	Acceptable Limits Per Gram	Product to be Tested
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.
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.
Molds, Mildew, and Filth	If a Test Batch is found to contain levels of any mold, mildew, or filth that could be toxic if consumed, then that Test Batch shall be considered to have 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.

R 1000 Series – Labeling, Packaging, and Product Safety

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 February 1, 2015. Retail Marijuana Product Manufacturing Facilities shall refer to rule R 1004.5 for Retail Marijuana Product packaging and labeling requirements beginning February 1, 2015.
- 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.
- B. 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."**
- C. 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 February 1, 2015.
- 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 and labeled pursuant to Rule R 1006.5(C) into a larger package that does not need to be Child-Resistant 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.
 - i. 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; and
 - ii. 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; OR
 - iii. The Container shall include a device that allows a reasonable person to intuitively measure and serve a single serving of active THC.

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. A net weight statement.

- e. The Production Batch Number(s) assigned to the Retail Marijuana Product.
 - f. A statement about whether the Container is Child-Resistant.
 - g. A clear set of usage instructions for non-Edible Retail Marijuana Product.
 - h. 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;
 - i. The Universal Symbol, indicating that the Container holds marijuana, which must be no smaller than ¼ of an inch by ¼ of an inch;
 - j. 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.”**
 - vi. **“Do not drive a motor vehicle or operate heavy machinery while using marijuana.”**
 - 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 shall 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 Production Date. The date on which the Edible Retail Marijuana Product was produced.
 - e. 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.
 - f. A nutritional fact panel that must be based on the number of THC servings within the Container.
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.
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 February 1, 2015. Retail Marijuana Stores shall refer to rule R 1006.5 for Retail Marijuana Product packaging and labeling requirements beginning February 1, 2015.
- 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 February 1, 2015.
- B. Packaging Requirements for a Retail Marijuana Store.
 1. Beginning February 1, 2015, a Retail Marijuana Store shall not purchase, take possession of, or sell Edible Retail Marijuana Product that does not comply with rule R 1004.5.
 2. 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.
 3. 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.
- 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.

Basis and Purpose - R 1204

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(b)(I), and 12-43.4-202(3)(b)(III), 12-43.4-202(3)(b)(VIII), and 12-43.4-202(3)(b)(IX), C.R.S. This rule explains that the Director of the Division may exercise discretion to accept an assurance of voluntary compliance. It also explains the evidentiary value of an assurance of voluntary compliance should a licensee not comply with the agreement.

R 1204 - Assurance of Voluntary Compliance

- A. The Director of the Division may accept an assurance of voluntary compliance regarding any act or practice alleged to violate the Retail Code, or the rules and regulations thereunder, from a person who has engaged in, is engaging in, or is about to engage in such acts or practices.

- B. The assurance must be in writing and may include a stipulation for the voluntary payment of the cost commensurate with the acts or practices and an amount necessary to restore money or property which may have been acquired by the alleged violator because of the acts or practices.
- C. An assurance of voluntary compliance may not be considered an admission of a violation for any purpose; however, proof of failure to comply with the assurance of voluntary compliance is prima facie evidence of a violation of the Retail Code, or the rules and regulation thereunder.
- D. The State Licensing Authority may approve or review an assurance of voluntary compliance.

R 1500 Series – Retail Marijuana Testing Program

Basis and Purpose – R 1501

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. Mold and Mildew Contaminant Testing. Each Harvest Batch of Retail Marijuana and Production Batch of Retail Marijuana Concentrate and Retail Marijuana Product must be visually inspected for toxic amounts of mold and mildew contamination by a Retail Marijuana Testing Facility.
3. Filth Contaminant Testing. Each Harvest Batch of Retail Marijuana produced by a Retail Marijuana Cultivation Facility must be visually inspected for toxic amounts of filth by a Retail Marijuana Testing Facility.
4. 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. CO₂ 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 CO₂ 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, metals, 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.
 - 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.

STATEMENT OF ADOPTION

To: Lewis Koski, Marijuana Enforcement Division Director
From: Barbara J. Brohl, Executive Director and State Licensing Authority
Re: Statement of Adoption
New and Revised Retail Marijuana Rules, 1 CCR 212-2

Pursuant to the state Administrative Procedure Act, Title 24, Article 4, C.R.S. (2014), I, Barbara J. Brohl, Executive Director of the Colorado Department of Revenue and State Licensing Authority, promulgate the following rules:

Permanent Rules, Retail Marijuana, 1 CCR 212-2

Filing Tracking Number 2014-00686

Rule R 207 (revised) – Schedule of Application Fees: Retail Marijuana Establishment
Rule R 208 (revised) – Schedule of Business License Fees: Retail Marijuana Establishments
Rule R 209 (revised) – Schedule of Business Renewal License Fees: Retail Marijuana Establishments
Rule R 210 (revised) – Schedule of Administrative Service Fees: All Licensees

Filing Tracking Number 2014-00687

Rule R 103 (revised) – Definitions
Rule R 211 (revised and renamed) – Conversion – Medical Marijuana Business to Retail Marijuana Establishment Pursuant to 12-43.4-104(1)(A)(I), C.R.S.
Rule R 212 (revised and renamed) – New Applicant Retail Marijuana Cultivation Facilities Licensed Pursuant to 12-43.4-104(1)(B)(II), C.R.S.

Filing Tracking Number 2014-00775

Rule R 103 (revised) – Definitions
Rule R 231 (revised) – Qualifications for Licensure: Individuals
Rule R 234 (revised) – Schedule of License Fees: Individuals
Rule R 235 (revised) – Schedule of Renewal
Rule R 407 (new) – Retail Marijuana Store: Responsible Vendor
Rule R 604 (revised and renamed) – Retail Marijuana Products Manufacturing Facility: Health and Safety Regulations
Rule R 605 (revised) – Retail Marijuana Products Manufacturing Facility: Retail Marijuana Concentrate Production
Rule R 712 (revised) – Retail Marijuana Testing Facility: Mandatory Sampling and Testing Program

Rule R 1004 (revised) – Packaging and Labeling Requirements of a Retail Marijuana Product by a Retail Marijuana Products Manufacturing Facility

Rule R 1004.5 (new) - Packaging and Labeling Requirements of a Retail Marijuana Product by a Retail Marijuana Products Manufacturing Facility

Rule R 1006 (revised) - Packaging and Labeling Requirements of a Retail Marijuana Product by a Retail Marijuana Store

Rule R 1006.5 (new) - Packaging and Labeling Requirements of a Retail Marijuana Product by a Retail Marijuana Store

Rule R 1204 (new) – Assurance of Voluntary Compliance

Rule R 1501 (revised and renamed) – Retail Marijuana Testing Program – Contaminant Testing

Rule R 1502 (revised) – Retail Marijuana Testing Program – Mandatory Testing

Rule R 1503 (revised) – Retail Marijuana Testing Program – Potency Testing

In addition, upon the effective date of these rules, I repeal all remaining Retail Marijuana emergency rules that were promulgated and effective June 30, 2014, all Retail Marijuana emergency rules that were promulgated and effective July 31, 2014, and all Retail Marijuana emergency rules that were promulgated and effective September 15, 2014.

The new rules are adopted this 24th day of September, 2014.



Barbara J. Brohl
Executive Director and State Licensing Authority

John W. Suthers

Attorney General

Cynthia H. Coffman

Chief Deputy Attorney General

Daniel D. Domenico

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State of Colorado

Department of Law

Office of the Attorney General

Tracking number: 2014-00775

**Opinion of the Attorney General rendered in connection with the rules adopted by the
Marijuana Enforcement Division**

on 09/24/2014

1 CCR 212-2

RETAIL MARIJUANA CODE

The above-referenced rules were submitted to this office on 09/30/2014 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

September 30, 2014 14:31:08

Permanent Rules Adopted

Department

Department of Education

Agency

Colorado State Board of Education

CCR number

1 CCR 301-74

Rule title

1 CCR 301-74 ADMINISTRATION OF THE SCHOOL COUNSELOR CORPS GRANT
PROGRAM 1 - eff 10/30/2014

Effective date

10/30/2014

COLORADO STATE BOARD OF EDUCATION
Department of Education
1 COLORADO CODE OF REGULATION 301-74
RULES FOR THE ADMINISTRATION OF
THE SCHOOL COUNSELOR CORPS 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); 22-91-101 et seq. of the Colorado Revised Statutes (C.R.S.).

1.00 Statement of Basis and Purpose.

The statutory basis for these rules is found in 22-2-106(1)(a) and (c), State Board Duties; 22-2-107(1)(c), State Board Powers; and sections 22-91-101 through 22-91-105, the School Counselor Corps Grant Program, C.R.S.

The School Counselor Corps Grant Program, sections 22-91-101 through 22-91-105, C.R.S., requires the State Board of Education to promulgate rules which include, but are 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 22-91-104 (2), C.R.S. to be included in the application; any criteria for awarding grants in addition to those specified in section 22-91-104 (3), C.R.S.; and any information to be included in the Department's Program report in addition to that required in section 22-91-105, C.R.S.

These rules were updated in September 2014 to reflect changes to the program from the passage of SB14-150.

2.00 Definitions.

- 2.00 (1) **Advisory Board:** The Colorado School Counselor Corps Advisory Board provides recommendation to the Department for the Colorado Counselor Corps Grant Program.
- 2.00 (2) **Department:** The Department of Education created pursuant to section 24-1-115, C.R.S.

- 2.00 (3) 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 (4) Postsecondary Service Provider: An independent agency whose primary purpose is to provide career and college preparatory services to students.
- 2.00 (5) Program: The School Counselor Corps Grant Program created in section 22-91-103, C.R.S.
- 2.00 (6) Recipient Secondary School: A secondary school at which an Education Provider will use moneys received from the Program to either increase the number of School Counselors or otherwise raise the level of school counseling provided.
- 2.00 (7) School Counselor: A person who holds a special services provider license with a School Counselor endorsement issue pursuant to Article 60.5 of Title 22 or who is otherwise endorsed or accredited by a national association to provide school counseling services.
- 2.00 (8) Secondary School: A public school that is considered a middle, junior, or high school.
- 2.00 (9) State Board: The State Board of Education created pursuant to Section 1, Article IX of the State Constitution.

2.01 Implementation Procedures.

- 2.01 (1) **Application Timeline.** The Department will determine on an annual basis if resources may be available to fund a new cohort for the School Counselor Corps Grant Program and hold a grant funding competition accordingly. Applications will be due to the Department on behalf of the Colorado School Counselor Corps Advisory Board as determined by the funding cycle. The Department will notify grant recipients of funding no later than July 1, 2014 and every year thereafter, subject to available appropriations.
- 2.01 (2) **Application Procedures.** The Department will be the responsible agency for implementing the School Counselor Corps 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 sections 22-91-104, C.R.S. Each grant application, at a minimum, must specify:

- 2.01 (2) (a) How receipt of the grant will affect the culture of postsecondary planning at the applicant school, district or BOCES, and a vision for how the grant will transform the postsecondary expectations and options of students served;
- 2.01 (2) (b) The intended recipient Secondary Schools, the number of secondary School Counselors employed by the Education Provider prior to receipt of a grant, and the ratio of students to School Counselors in the Secondary Schools operated by or receiving services from the Education Provider;
- 2.01 (2) (c) Whether the Education Provider has agreed to use state guidelines and standards to implement a comprehensive counseling model for School Counselor responsibilities as specified by the Department to include a time and effort assessment, postsecondary workforce ready programming, and social emotional counseling work, and career and academic planning;
- 2.01 (2) (d) Utilization of state models for accountability;
- 2.01 (2) (e) The extent to which the Education Provider has developed and/or plans to develop partnerships, which may include but need not be limited to institutions of higher education or Postsecondary Service Providers, to support and increase the capacity and effectiveness of the school counseling and postsecondary preparation services provided to secondary school students enrolled in or receiving educational services from the Education Provider;
- 2.01 (2) (f) 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 Counselors at recipient Secondary Schools and to provide professional development for a team of School Counselors and professional development to enable other faculty members and administrators to provide school counseling and postsecondary preparation services at recipient Secondary Schools;
- 2.01 (2) (g) 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 school counseling and postsecondary preparation services provided to secondary school students enrolled in or receiving educational services from the Education Provider;
- 2.01 (2) (h) The extent to which the Education Provider has developed or plans to develop partnerships, whether within the school district, with

external education agencies and/or community and/or business/workforce partners, to serve the postsecondary needs for every secondary student enrolled in or receiving educational services from the Education Provider;

- 2.01 (2) (i) The extent to which the Education Provider has implemented or plans to implement Individual Career and Academic Plans for students;
- 2.01 (2) (j) The Education Provider's use of district-level, or school-level if the Education Provider is a charter school, needs assessments that use data to (1) identify challenging issues in the district or school in terms of student learning and success and barriers to learning and (2) identify programs, strategies, or services delivered by the Education Provider to secondary students that have helped to increase graduation rates and the level of postsecondary success among graduates and (3) Identify the strategies that will be used by the Education Provider to address the challenges identified in this self-assessment and strengthen, expand or improve existing programs to improve graduation rates, postsecondary enrollment and success rates;
- 2.01 (2) (k) The attendance, grade-retention and promotion, and grading policies implemented by the Education Provider, including an analysis of how the schools' and districts' current policies and practices in these areas contribute to success or act as obstacles to students graduating from high school, as well as a description of a plan for how these policies and practices will be improved or modified to increase the graduation rate, as well as college-going, and college-success rates of high school students;
- 2.01 (2) (l) Whether the Education Provider intends to provide matching funds to augment any grant moneys received from the Program and the anticipated amount and source of any matching funds;
- 2.01 (2) (m) The Education Provider's plan for continuing to fund the increases in school counseling services following expiration of the grant; and
- 2.01 (2) (n) The Education Provider's plan for using data over time to: (1) demonstrate outcomes and (2) revise and improve programs, policies, and practices to improve outcomes.
- 2.01 (3) **Application Review Criteria.** In reviewing applications and making recommendations, the Advisory Board will make recommendations to the Department and State Board as to whether or not a grant shall be awarded to the education provider and the recommended amount of the grant, and shall consider the following criteria:

- 2.01 (3) (a) The dropout rate at the intended Recipient Secondary School or schools and, if the Education Provider is a school district, at all of the Secondary Schools within the school district. Priority will be given to Education Providers that intend to use the grant moneys to assist Secondary Schools at which the dropout rate exceeds the statewide average;
- 2.01 (3) (b) The remediation rate at the intended recipient secondary school(s), at which remediation rates exceed the statewide average.
- 2.01 (3) (c) The percentage of students enrolled in the intended Recipient Secondary School or schools who are eligible for free or reduced-cost lunch or considered at-risk students. Priority will be given to Education Providers that identify intended Recipient Secondary Schools with a high percentage of said students;
- 2.01 (3) (d) The percentage of students enrolled in the intended Recipient Secondary School or schools, and if the Education Provider is a school district, in the school district, who graduate and enroll in postsecondary education within two years after graduating from high school;
- 2.01 (3) (e) The number of students enrolled in the secondary school, and if the Education Provider is a school district, in the school district, who are considered first-generation college students, whose biological parents do not hold a four-year postsecondary credential or greater;
- 2.01 (3) (f) Whether the Education Provider has adopted, or has demonstrated a commitment to adopting, state guidelines and standards for School Counselor responsibilities that meet or exceed those recommended by the Department;
- 2.01 (3) (g) Assurance that the Education Provider shall use the grant funding to increase the level of funding the Education Provider allocated to school-based counseling prior to receiving the grant and not to replace other funding sources allocated to school-based counseling;
- 2.01 (3) (h) The student-to-counselor ratios at recipient schools;
- 2.01 (3) (i) The overall quality of the plan, including but not limited to the quality of professional development, the quality of partnerships, how the ratio of students to counselors will be impacted, school-wide involvement in postsecondary and workforce readiness preparation, and the quality of the role of the School Counselor; and

- 2.01 (3) (j) Consideration of the geographic location of the Education Provider in providing preference to underserved areas of the state;
- 2.01 (3) (k) The likelihood that the Education Provider will continue to fund the increases in the level of school counseling services following expiration of the grant.
- 2.01 (4) **Professional Development.** The Department shall provide support to the secondary schools to train principals on the most effective use of the program.
- 2.01 (5) **Creation of Advisory Board.** The Advisory Board will be created within the Department. The Department shall consult with experts in the area of school counseling, including but not limited to School Counselors, persons who provide education and professional development in the areas of school counseling and career counseling, Postsecondary Service Providers and higher education admissions officers, in establishing any additional criteria for awarding grants and in reviewing applications and selecting grant recipients.
- 2.01 (5) (a) The Department will establish guidelines for the School Counselor Corps Advisory Board to include the duties, membership, and responsibilities of the Advisory Board;
- 2.01 (5) (b) The Advisory Board may include members who represent the Department, Higher Education, Labor and Employment, Community Colleges, school districts, or individuals with expertise in elementary, middle, and high school counseling; student retention; counselor education; career and technical education; student support services; career planning, pre-collegiate services; college admissions, or mental health and suicide prevention.
- 2.01 (6) **Duration and Amount of Grant Awards.** Subject to available appropriations, the State Board shall award grants to applying Education Providers pursuant to section 22-91-104, C.R.S. The State Board shall base the grant awards on the Department's recommendations. Each grant shall have a term of four years beginning in the 2014-15 budget year. In making the award, the State Board shall specify the amount of each grant.
- 2.01 (6) **Reporting.** 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 Counselors hired using grant moneys;

- 2.01 (6) (b) Any professional development programs provided using grant moneys;
- 2.01 (6) (c) Any other services provided using grant moneys;
- 2.01 (6) (d) The impact of school counseling on student achievement, attendance rates, and student behavior;
- 2.01 (6) (d) A comparison of the dropout rates, postsecondary and workforce readiness rates, and the college matriculation and remediation rates, if applicable, at the Recipient Secondary Schools for the years prior to the receipt of the grant and the years for which the Education Provider receives the grant; and
- 2.01 (6) (e) Information indicating an increase in the level of postsecondary preparation services provided to secondary students at Recipient Secondary Schools, such as the use of individual career and academic plans or enrollment in pre-collegiate preparation programs or postsecondary or vocational preparation programs.
- 2.01 (7) **Evaluation of Program.** On or before May 15, 2011, and on or before May 15 each year thereafter, the Department shall submit to the State Board of Education and 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 22-91-105, C.R.S. The Department shall also post the report to its website.
- 2.01 (7) (a) The Department shall work with the Department of Higher Education to obtain information necessary for the report submitted by the Department pursuant to subsection (2) of 22-91-105, C.R.S.

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: 2014-00588

**Opinion of the Attorney General rendered in connection with the rules adopted by the
Colorado State Board of Education**

on 09/11/2014

1 CCR 301-74

ADMINISTRATION OF THE SCHOOL COUNSELOR CORPS GRANT PROGRAM

The above-referenced rules were submitted to this office on 09/11/2014 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.

September 26, 2014 09:56:03

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 Natural Resources

Agency

Colorado Parks and Wildlife (405 Series, Parks)

CCR number

2 CCR 405-2

Rule title

2 CCR 405-2 CHAPTER P-2 - BOATING 1 - eff 11/01/2014

Effective date

11/01/2014

FINAL REGULATIONS - CHAPTER P-2 - BOATING

200 - REGISTRATION INFORMATION REQUIRED ON APPLICATION FOR VESSEL NUMBER

1. Persons applying to the Division for vessel number must provide the following registration information:
 - a. Name and address of owner, including zip code
 - b. Date of birth of owner
 - c. State in which the vessel is or will be principally used
 - d. Present registration number (if any)
 - e. If vessel is registered in another state, give previous registration number and state
 - f. Hull material: wood, metal, fiberglass, inflatable, or other
 - g. Type of propulsion: inboard, outboard, inboard- outdrive, sail, or other
 - h. Type of fuel: gasoline, diesel, electric, or other
 - i. Length of vessel
 - j. Make and model of vessel
 - k. State as to use: pleasure, rent, dealer, manufacturer, or commercial: carrying passengers for hire, fishing, or other
 - l. Proof of ownership or a valid transfer registration
 - m. Signature of owner
 - n. Hull identification number (if any)
 - o. Type of vessel: open, cabin, house, or other
 - p. Model year
2. Additional information set forth on registration certificate:
 - a. Number awarded to vessel
 - b. Expiration date of certificate

201 - DEALER LICENSES

The numbering requirements prescribed by law shall apply to motorboats and sailboats operated by manufacturers and dealers. The description of the motorboat or sailboat will be omitted from the certificate of number since the numbers and the certificate of number awarded may be transferred from one motorboat or sailboat to another. In lieu of the description, the word "manufacturer" or "dealer", as

appropriate, will be plainly marked on each certificate. Dealers and manufacturers shall display the numbers on a detachable plate as set forth in 33-13-104, C.R.S.

202 - EXPIRATION DATE DECAL

In addition to the identification number, there shall be issued an expiration date decal which shall be attached to each side of the bow or the forward half of the vessel two inches to the left of the letter C of the identification number.

203 - TEMPORARY BOAT PERMIT

Pending issuance of a number certificate, possession on the person of a dated bill of sale permits the operator of a newly purchased boat to operate the boat on the waters of the State of Colorado for a period not to exceed thirty (30) days from date of purchase.

204 - NON-RESIDENT RACING BOATS

Non-resident racing boats which are not required to be registered in their home state shall be exempt from the numbering requirements of Article 13 on the day before and the day of and at the site of a Division authorized race.

205 - CLASSIFICATION

1. Vessels subject to these provisions shall be divided into four classes as follows:
 - a. Class A - Vessels less than sixteen feet in length;
 - b. Class 1 - Vessels sixteen feet (4.87 meters) or over and less than twenty-six feet (7.92 meters) in length;
 - c. Class 2 - Vessels twenty-six feet (7.92 meters) or over and less than forty feet (12.19 meters) in length;
 - d. Class 3 - Vessels forty feet (12.19 meters) to not more than sixty-five feet (19.18 meters) in length.

206 - MEASURING FOR CLASSIFICATION

For determining "class", the length of a boat is from end to end over the deck excluding sheer. It means a straight line measurement of the overall length from the foremost part of the vessel measuring parallel to the centerline. Bowsprits, bumpkins, rudders, outboard motors and brackets, and similar fittings or attachments are not to be included in the measurement. Length shall be stated in feet and inches or meters.

207 - LIGHTS

1. Every vessel, except hand-propelled vessels when on whitewater, in all weather from sunset to sunrise shall carry and exhibit the lights required in this regulation when underway or moored in other than a designated mooring area. During such times, no other lights shall be exhibited, except such lights as cannot be mistaken for the lights specified in these regulations or do not impair their visibility or distinctive character, or interfere with the keeping of a proper lookout.

2. All vessels complying with the lighting requirements of the International Regulations for Preventing Collisions at Sea, 1972, or the Inland Navigational Rules Act of 1980 are considered in compliance with these regulations.
3. Every hand-propelled vessel, except when on whitewater, shall have a lantern or flashlight on hand to show one white light in time to prevent a collision.
4. Every vessel less than 20 meters (65' 8") in length must display one all-round white light when at anchor.
5. Flashing red or blue lights are prohibited on all vessels, except emergency or law enforcement vessels of the United States operating within federal authority, or of the State and its political subdivisions.
6. Terms used:
 - a. "Masthead light" means a white light placed over the fore and aft centerline of the vessel showing an unbroken light over an arc of the horizon of 225 degrees and so fixed as to show the light from right ahead to 22.5 degrees abaft the beam on either side of the vessel, except that on a vessel of less than 12 meters (39' 5") in length the masthead light shall be placed as nearly as practicable to the fore and aft centerline of the vessel.
 - b. "Sidelights" means a green light on the starboard side and a red light on the port side each showing an unbroken light over an arc of the horizon of 112.5 degrees and so fixed as to show the light from right ahead to 22.5 degrees abaft the beam on its respective side. On a vessel less than 20 meters (65' 8") in length, the side lights may be combined in one lantern carried on the fore and aft centerline of the vessel, except that on a vessel of less than 12 meters (39' 5") in length the sidelights when combined in one lantern shall be placed as nearly as practicable to the fore and aft centerline of the vessel.
 - c. "Sternlight" means a white light placed as nearly as practicable at the stern showing an unbroken light over an arc of the horizon of 135 degrees and so fixed as to show the light 67.5 degrees from right aft on each side of the vessel.
7. The lights prescribed in these regulations shall have an intensity so as to be visible at the following minimum ranges:
 - a. In a vessel of 12 meters (39' 5") or more in length:

A masthead light, 5 miles; except that where the length of the vessel is less than 20 meters (65' 8"), 3 miles;

A sidelight, 2 miles;

A sternlight, 2 miles;

A white, red, or green all-round light, 2 miles.
 - b. In a vessel of less than 12 meters (39' 5") in length:

A masthead light, 2 miles;

A sidelight, 1 mile;

A sternlight, 2 miles;

A white, red, or green all-round light, 2 miles.

- c. In an inconspicuous, partly submerged vessel or object being towed:

A white all-round light, 3 miles.

8.

- a. A motorboat underway shall exhibit:

- (1) A masthead light forward; except that a vessel of less than 20 meters (65' 8") in length need not exhibit this light forward of amidships but shall exhibit it as far forward as is practicable;
- (2) Sidelights; and
- (3) A sternlight.

- b. A motorboat of less than 12 meters (39' 5") in length may, in lieu of the lights prescribed in paragraph a. of this regulation, exhibit an all-round white light and sidelights.

9.

- a. A sailing vessel underway shall exhibit:

- (1) Sidelights; and
- (2) A sternlight.

- b. In a sailing vessel of less than 20 meters (65' 8") in length, the lights prescribed in paragraph a. of this regulation may be combined in one lantern carried at or near the top of the mast where it can best be seen.

- c. A sailing vessel underway may, in addition to the lights prescribed in paragraph a. of this regulation, exhibit at or near the top of the mast, where they can best be seen, two all-round lights in a vertical line, the upper being red and the lower green, but these lights shall not be exhibited in conjunction with the combined lantern permitted by paragraph b. of this regulation.

- d.

- (1) A sailing vessel of less than 7 meters (22' 9") in length shall, if practicable, exhibit the lights prescribed in paragraph a. or b. of this regulation, but if not, the operator shall have ready at hand a flashlight or lighted lantern showing a white light which shall be exhibited in sufficient time to prevent collision.
- (2) A vessel under oars may exhibit the lights prescribed in this regulation for sailing vessels, but if not, the operator shall have ready at hand a flashlight or lighted lantern showing a white light which shall be exhibited in sufficient time to prevent collision.

208 - SOUND-PRODUCING DEVICES

1. Every vessel, except hand-propelled vessels when on whitewater, of Class A, 1, or 2, must have on board a sound-producing device for signaling. Such device may be operated by mouth, hand, or power and it must be able to produce the navigational signals under rules of the road.
2. Every vessel of Class 3 must have on board a sound-producing device, which may be operated by mouth, hand, or power. Such device shall be audible for a distance of at least one-half mile.
3. Every motorboat of Class 2 must have on board a sound-producing device, which may be operated by hand or power. Such device shall be audible for a distance of at least one mile.
4. Every motorboat of Class 3 must have on board a power operated sound-producing device, which shall be audible for a distance of at least one mile.
5. Every motorboat of Class 2 or 3 must have on board a bell which, when struck, produces a clear, bell-like tone of full round characteristics.
6. Sirens, except those which produce a continuous pitch, are prohibited on all vessels, except emergency or law enforcement vessels of the United States operating within federal authority or of the State and its political subdivisions.

209 - VENTILATION - TANK AND ENGINE SPACES

1. All motorboats, using a fuel having a flashpoint of 110 degrees F or less, except those of open construction, shall have at least 2 ventilator ducts, fitted with cowls or their equivalent, for the efficient removal of explosive or flammable gases from the bilges of every engine and fuel tank compartment. There shall be at least one rear facing cowl, or its equivalent, with exhaust duct installed so as to extend from the open atmosphere to the lower portion of the bilge and at least one forward facing cowl or its equivalent with intake duct installed so as to extend to a point at least midway to the bilge or at least below the level of the carburetor air intake. The cowls or equivalent to cowls shall be located and trimmed for maximum effectiveness and in such a manner so as to prevent displaced fumes from being recirculated.
2. As used above, the term "open construction" means those motorboats wherein all engine and fuel tank compartments, along with other spaces to which explosive or flammable gases and vapors may flow, are open to the atmosphere and so arranged as to prevent the entrapment of such gases and vapors within the vessel.
3. Power ventilation systems are preferable over natural ventilation systems. Exhaust blowers shall be of the sealed or arcless type and if located within the compartment being ventilated be as high as possible. Blower fan blades or impellers shall be non-sparking and if installed on the exhaust duct of the natural system shall not interfere with the functioning of the ducts as natural ventilators.
4. Motorboats built after July 31, 1979, are exempt from the requirements of # 209 - 1 for fuel tank compartments that contain fuel tanks that vent to the outside of the vessel if the fuel tank compartment does not contain an electrical source of ignition.
5. Every motorboat built after July 31, 1980, that utilized gasoline engines for electrical or mechanical power as propulsion must comply with U.S. Coast Guard ventilation standards. The operator must maintain the ventilation system in working order.

210 - BACKFIRE FLAME CONTROL

1. Every gasoline engine installed in a motorboat shall be equipped with an acceptable means of backfire flame control. The following are acceptable means of backfire flame control:
 - a. A backfire flame arrester that is permanently and legibly marked or labeled by the manufacturer with the phrase "complies with UL 1111 per tests by (name of testing facility)" or the words "SAE J-1928, Marine" and the manufacturer's name, suitably secured to the air intake with a flame-tight connection.
 - b. An engine air and fuel induction system, that may include a reed valve assembly, that is permanently and legibly marked or labeled by the manufacturer with the words "SAE-J 1928, Marine" and the manufacturer's name.
 - c. Any attachment to the carburetor or location of the engine air induction system by means of which flame caused by engine backfire will be dispersed to the atmosphere outside the vessel in such a manner that the flame will not endanger the vessel, or persons on board. All attachments shall be of metallic construction with flame-tight connections and firmly secured to withstand vibration, shock, and engine backfire.
 - d. Gasoline engine installations consisting of backfire flame arresters bearing U.S. Coast Guard approval numbers 162.016 or 162.041 or engine air and fuel induction systems bearing U.S. Coast Guard approval numbers 162.015 or 162.042 may be used as long as they are serviceable and in good condition.

211 - FIRE EXTINGUISHERS

1. Each item of fire extinguishing equipment required by this section must be Coast Guard approved, be fully charged and in good and serviceable condition, stowed away from the potential hazard area and readily accessible. Dry chemical stored pressure types must be fitted with pressure gauges or indicating devices and vaporizing liquid types containing carbon tetrachloride, chlorobromomethane or other toxic vaporizing liquids are prohibited.
2. Extinguishers approved for use on motorboats are hand portable of either B-I or B-II classification. "B" type is for gasoline, oil, and grease fires. "I" and "II" denotes size as listed below:

Classification

Type-Size	Foam (Minimum Gallons)	Carbon Dioxide (Minimum Pounds)	Dry Chemical (Minimum Pounds)	Freon (Minimum Pounds)
B-I	1-1/4	4	2	2-1/2
B-II	2-1/2	15	10	.

Fire Extinguisher Required

Class	Number and Size
A	1 B-I
1	1 B-I
2	2 B-I or 1 B-II

3	3 B-I or 1 B-II & 1 B-I

3. When the engine compartment is equipped with a fixed extinguishing system of approved type, one less B-I extinguisher is required.
4. Outboard motorboats less than twenty-six feet in length, of open construction, not carrying passengers for hire, are exempt from these requirements, although one B-I fire extinguisher for personal fire protection and to assist other boaters is recommended.
5. The motorboat is not considered "of open construction" if any one or more of the following conditions exist:
 - a. Closed compartment under thwarts (motor well) and seats wherein portable fuel tanks may be stored.
 - b. Double bottoms not sealed to the hull or which are not completely filled with flotation material.
 - c. Closed living spaces.
 - d. Closed stowage compartments in which combustible or flammable materials are stored.
 - e. Permanently installed fuel tanks.

212 - PERSONAL FLOTATION DEVICES (PFD's)

1. No person may operate or give permission to operate a vessel less than sixteen feet in length unless at least one Type I Life Preserver, Type II Buoyant Vest, or Type III Special Purpose Water Safety Buoyant Device is on board for each person. For sailboards, an operator may elect to wear a wet suit in lieu of carrying any type of personal flotation device, so long as the wetsuit meets the requirements of paragraph 6, of this regulation. For vessels used in river running activities, no person may operate or give permission to operate a vessel for the purpose of river running unless at least one Type I Life Preserver, Type II Buoyant Vest, Type III Special Purpose Water Safety Buoyant Device, or Type V Whitewater River Running Buoyant Vest is on board for each person.
2. No person may operate or give permission to operate a vessel sixteen feet or more in length unless at least one Type I Life Preserver, Type II Buoyant Vest or Type III Special Purpose Water Safety Buoyant Device is on board for each person, plus at least one Type IV Buoyant Cushion or Ring Life Buoy, which is immediately available as a throwable device. For vessels used in river running activities, that portion of this regulation requiring a Type IV throwable device does not apply. No person may operate or give permission to operate a vessel for the purpose of river running unless at least one Type I Life Preserver, Type II Buoyant Vest, Type III Special Purpose Water Safety Buoyant Device, or Type V Whitewater River Running Buoyant Vest is on board for each person.
3. No person may operate or give permission to operate a vessel carrying passengers for hire on any reservoir or lake unless at least one Type I Life Preserver is on board for each person and they are being worn when required. For vessels used during commercial river running trips conducted by river outfitters, the personal flotation device requirements are contained in regulation # 305.

4. The operator shall require each person who is surfing or being towed on water skis, aquaplane, inner tube or similar device, to wear a properly fitting flotation device. A Type I Life Preserver, Type II Buoyant Vest or Type III Special Purpose Water Safety Buoyant Device is recommended, but a ski belt (preferably with at least 2 straps and buckles), water sports jacket or foam wetsuit jacket will be accepted if there is an extra personal flotation device aboard for each person as required above.
5. No person may operate or give permission to operate a recreational vessel unless each Type I, II, III, IV, or V (only for river running) personal flotation device required is readily accessible and is legibly marked with the U.S. Coast Guard approval number and is of appropriate size for the person wearing it or for whom it is intended.
6. Sailboard operators may elect to wear, at their own risk, in lieu of carrying a U.S. Coast Guard approved personal flotation device, a wetsuit constructed of nylon covered neoprene or similar material that covers the full torso of the wearer. The wetsuit shall be capable of providing flotation to the wearer, when at rest on the surface of the water.
7. All equipment shall be in good and serviceable condition.

213 - DISPLAY OF CAPACITY INFORMATION AND MANUFACTURER CERTIFICATION OF COMPLIANCE

1. Every monohull vessel less than twenty feet in length, except sailboats, canoes, kayaks, and inflatable boats, the construction of which began after October 31, 1972, sold in the State of Colorado, shall have a permanent writing affixed to the vessel which sets forth:
 - a. For outboard boats:
 - (1) The maximum motor horsepower, the maximum persons capacity, and the maximum weight capacity in pounds.
 - b. For inboard and inboard-outdrive boats:
 - (1) The maximum persons capacity and the maximum weight capacity in pounds.
 - c. For boats rated for manual propulsion:
 - (1) The maximum persons capacity and the maximum weight capacity in pounds.
2. The required capacity information must be permanently displayed on a label or plate which is legible and clearly visible to the operator when getting underway.
3. Every vessel that is subject to U.S. Coast Guard manufacturing safety standards must have a permanently displayed certification label or plate. The certification label may be displayed anywhere on the boat.
4. The capacity information may be combined with the certification label or plate. The entire combined label must be permanently displayed where it is legible and clearly visible to the operator when getting underway.
5. It is unlawful for any person to remove, alter, or tamper with the required capacity information or certification label or plate.

6. Any monohull vessel which is home built for personal recreational use and not for the purposes of sale is exempt from capacity information and certification label or plate display requirements.

214 - MARINE SANITARY DEVICES

No person shall maintain or operate upon the waters of this state any vessel which is equipped with marine sanitary device unless such water closet is self-contained and incapable of discharging directly into the water. It is unlawful to deposit or discharge human waste or other refuse into the water.

215 - BUOYS

1. Any of the waters of this state limited to a specific use shall be marked by buoys which utilize the following uniform marking system:

- a. Regulatory Symbols - International orange on a white background.

An orange cross within an orange diamond (on end) means: "Boats Keep Out".

An orange circle means: "Controlled Area".

- b. Other Symbols.

An orange diamond (on end) without a cross means: "Danger".

An orange square or rectangle is informational.

Descriptive wording within or accompanying the symbols shall be black.

When the symbols are displayed on a buoy, an orange band should encircle the buoy near the water line and near the top.

- c. Channel Markers.

White buoys with black vertical stripes mark the center of a channel and may be lettered alphabetically from downstream to upstream.

Black can buoys (odd numbers) mark the left side, and red nun buoys (even numbers) mark the right side of a channel when proceeding upstream or returning from the main body of water.

A white buoy with a red top means pass to the south or west of the buoy.

A white buoy with a black top means pass to the north or east of the buoy.

- d. Obstruction Buoy

A white buoy with red vertical stripes indicates an obstruction between it and the nearest shore.

- e. Mooring Buoy

A mooring buoy is colored white and is designated with a blue band which is at least 3 inches wide and encircles the buoy halfway between the water line and the top.

2. No person shall operate a vessel in an area which has been marked by the use of buoys as a bathing, swimming, or otherwise access prohibited area. Every person operating a vessel in an area which has been marked by the use of buoys as a controlled area shall comply with the restrictions and requirements indicated on the buoys. The provisions of this regulation shall not apply to patrol boats or emergency vessels or in any emergency situation.
3. No person shall moor, attach, or hold in any manner, a vessel to any buoy, other than a mooring buoy, or any other aid to navigation placed in the water by proper authority as aids to navigation or to mark restricted areas. No person shall remove, destroy, or damage any marker or buoy.

216 - SCUBA DIVING

1. Every person in the water, outside a designated swimming area, using an underwater breathing device often known as scuba gear, shall display a diver's flag, having one diagonal white stripe on a red background and capable of being identified at a distance of not less than one hundred yards. Such flag shall be placed at or near the point of submergence, and shall constitute a warning that a diver is submerged and may be within a radius of one hundred feet from such a flag. Vessels shall keep a distance of one hundred feet from the diver's flag. Scuba divers shall keep a distance of one hundred feet from dam outlet structures.
2. If a vessel is engaged in diving operations and as a consequence is restricted in its ability to maneuver, a rigid replica of the international code flag "A" or Alpha Flag shall be displayed. The flag must be not less than one meter in height and the flag must be blue and white in color.
3. The requirement that the Alpha Flag be displayed from a vessel restricted in its ability to maneuver does not relieve the requirement that the diver's flag also be displayed at or near the point of submergence.

217 - RIVER USE RESTRICTIONS

1. As used in this regulation:
 - a. "Public Advisement" means a formal statement publicly issued or announced for the purpose of informing the public. A public advisement shall not prohibit the use of vessels, whitewater canoes, single-chambered air-inflated devices, or kayaks. A public advisement may include a recommendation that, in addition to any safety equipment required by law, additional items of safety equipment and additional safety precautions are recommended. Such additional safety precautions may include the recommendation that inexperienced or inadequately prepared individuals should postpone the river trip or seek the professional services of state licensed river outfitters.
 - b. "Partial Use Restriction" means any order issued prohibiting the operation of single-chambered air-inflated devices on any waters of the state. A partial use restriction shall not prohibit the use of vessels, whitewater canoes, or kayaks.
 - c. "Use Restriction" means any order issued prohibiting the operation of vessels and single-chambered air-inflated devices on any waters of the state and requiring the removal of vessels and single-chambered air-inflated devices from any waters when such operation constitutes, or may constitute, a hazard to human life or safety. A use restriction order shall apply to whitewater canoes or kayaks.
 - d. "Peace Officer" means a sheriff, undersheriff, deputy sheriff, police officer, Colorado State Patrol officer, or marshal, a district attorney, assistant district attorney, deputy district attorney, or special deputy district attorney, an authorized investigator of a district

attorney, an agent of the Colorado Bureau of Investigation, a district wildlife manager or special district wildlife manager, or a parks and recreation officer.

- e. "Single-Chambered Air-Inflated Device" means an air-inflated device that has only one air compartment, such as innertube and certain types of air mattresses and small inflatable rafts.
 - f. "Vessel" is defined in 33-13-102 (5) C.R.S.
- 2. A public advisement or partial use restriction order may be issued by a peace officer whenever the peace officer determines that normal or above average runoff or water levels or other circumstances or conditions may increase incidences of water recreation accidents or injuries within the peace officer's jurisdiction.
 - 3. A use restriction order shall be issued by a peace officer whenever the peace officer determines that a hazard to human life and safety exists within his jurisdiction.
 - a. For the purpose of issuing a use restriction order, a peace officer may deem a hazard to human life and safety to exist whenever one or more of the following circumstances or conditions exists:
 - (1) A state of disaster emergency has been declared to exist pursuant to 24-32-2104 or 24-32-2109, C.R.S.
 - (2) Disaster relief efforts, which may include debris removal, are underway.
 - (3) An accident or other emergency occurs in or immediately adjacent to the waterbody.
 - (4) Rescue efforts for victims are actively underway and such efforts would be hindered by additional waterway traffic, or
 - (5) Active construction or transportation projects authorized under state or federal law.
 - b. A hazard to human life and safety shall not be deemed to exist based solely upon the river's flow rate, which is usually measured in cubic feet per second.
 - c. The partial use restriction or use restriction order shall specify the beginning and ending sections of the water body closed, the proposed duration of the order, and the facts establishing the basis for the partial use restriction or use restriction order.
 - d. The use restriction order shall prohibit the operation of and order the removal of vessels and single-chambered air-inflated devices.
 - e. The law enforcement agency issuing the partial use restriction or use restriction order shall prominently post closure signs at all commonly used boating and floating access sites along the closed section.
 - 4. Following the issuance of a public advisement, a partial use restriction, or use restriction, the law enforcement agency issuing the advisement or order shall immediately contact the Division of Parks and Outdoor Recreation and advise the Division of the existence of the advisement or order. Further, the law enforcement agency issuing the advisement or order shall file with the Division a report. Such report shall be on forms furnished by the Division.

5. The penalty for operating a vessel, as defined in subsection 1.f. of this regulation, in violation of use restriction order is specified in 33-13-111(3), C.R.S. The penalty for operating or using a single-chambered air-inflated device, as defined in subsection 1.e. of this regulation, in violation of a use restriction order or partial use restriction order specifically prohibiting their use is specified in 33-13-110(2)(d), C.R.S.

218 - PROHIBITED OPERATION

1. The term "wake" means a movement of the water created by a boat underway, great enough to disturb a boat at rest, but under no circumstances shall a boat underway exceed five (5) miles per hour while in a posted wakeless area. The term "above a wakeless speed" means operating a vessel at such a speed as to create a wake. No person shall operate any vessel in such a manner as to create a wake when such waters or parts thereof are posted by signs or marked by buoys prohibiting a wake.
2. Persons operating vessels which pass within one hundred fifty feet of any swimming area, moored vessel, person on shore engaged in fishing, or person in a vessel engaged in servicing buoys or markings shall reduce the speed of the vessels in order to prevent the wash or wake of the vessel from causing damage or inconvenience.
3. No person shall operate a motorboat with any person riding or sitting on either the starboard or port gunwales thereof, or on the decking over the bow, or in any other unsafe position, except when the boat is being moored or anchored.
4. No person shall operate or offer for rent any vessel which is overloaded, or unseaworthy, taking into consideration rated capacities, weather, type of construction, and other existing conditions.
5. No person shall operate or anchor a vessel within one hundred fifty feet of any person on shore engaged in fishing, except where narrow passages or coves make such operation restrictions impractical.

219 - NAVIGATION AND RULES OF THE ROAD

1. These regulations apply to all vessel operators boating upon waters of Colorado, except they do not apply to hand-propelled vessels when on whitewater.
2. Nothing in these regulations shall exonerate any vessel, operator, or crew from the consequences of any neglect to comply with these regulations or of the neglect of any precaution which may be required by the ordinary practice of boaters, or by the special circumstances of the case.
3. In construing and complying with these regulations due regard shall be had to all dangers of navigation and collision and to any special circumstances, including the limitations of the vessels involved, which may make a departure from these regulations necessary to avoid immediate danger.
4. Terms used:
 - a. "Vessel not under command" means a vessel which through some exceptional circumstance is unable to maneuver as required by these regulations and is therefore unable to keep out of the way of another vessel;
 - b. "Vessel restricted in its ability to maneuver" means a vessel which from the nature of its work is restricted in its ability to maneuver as required by these regulations and is

therefore unable to keep out of the way of another vessel; vessels restricted in their ability to maneuver include, but are not limited to:

- (1) A vessel engaged in laying, servicing, or picking up a navigation mark;
- (2) A vessel engaged in underwater operations;
- (3) A vessel engaged in a towing operation such as severely restricts the towing vessel and its tow in their ability to deviate from their course.

- c. "Underway" means that a vessel is not at anchor, or made fast to the shore, or aground;
- d. Vessels shall be deemed to be in sight of one another only when one can be observed visually from the other;
- e. "Restricted visibility" means any condition in which visibility is restricted by fog, mist, falling snow, heavy rainstorms, sandstorms, or any other similar causes.

5. Look-out:

Every vessel shall at all times maintain a proper look-out by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision.

6. Safe speed:

- a. Every vessel shall at all times proceed at a safe speed so that proper and effective action can be taken to avoid collision and so that the vessel may be stopped within a distance appropriate to the prevailing circumstances and conditions.
- b. In determining a safe speed the following factors shall be among those taken into account by all vessels:
 - (1) The state of visibility;
 - (2) The traffic density including concentration of fishing vessels or any other vessels;
 - (3) The maneuverability of the vessel with special reference to stopping distance and turning ability in the prevailing conditions;
 - (4) At night the presence of background light such as from shores lights or from back scatter of its own lights;
 - (5) The state of wind, sea, and current, and the proximity of navigational hazards;
 - (6) The draft in relation to the available depth of water.
- c. No vessel shall, under any condition or in any manner, exceed forty (40) miles per hour, except during authorized race events and patrol vessels operating in emergencies.

7. Risk of collision:

- a. Every vessel shall use all available means appropriate to the prevailing circumstances and conditions to determine if risk of collision exists. If there is any doubt such risk shall be deemed to exist.
 - b. In determining if risk of collision exists the following considerations shall be among those taken into account:
 - (1) Such risk shall be deemed to exist if the compass bearing of an approaching vessel does not appreciably change; and
 - (2) Such risk may sometimes exist even when an appreciable bearing change is evident, particularly when approaching a very large vessel or a tow or when approaching a vessel at close range.
8. Action to avoid collision:
- a. Any action taken to avoid collision shall, if the circumstances of the case admit, be positive, made in ample time and with due regard to the observance of good boating.
 - b. Any alteration of course or speed to avoid collision shall, if the circumstances of the case admit, be large enough to be readily apparent to another vessel observing visually; a succession of small alterations of course or speed should be avoided.
 - c. If there is sufficient surface water space, alteration of course alone may be the most effective action to avoid a close-quarters situation provided that it is made in good time, is substantial and does not result in another close-quarters situation.
 - d. Action taken to avoid collision with another vessel shall be such as to result in passing at a safe distance. The effectiveness of the action shall be carefully checked until the other vessel is finally past and clear.
 - e. If necessary to avoid collision or allow more time to assess the situation, a vessel shall slacken speed or take all way off by stopping or reversing the means of propulsion.
9. Narrow passages:
- a. A vessel proceeding along the course of a narrow passage shall keep as near to the outer limit of the passage which lies on the starboard side as is safe and practicable.
 - b. A vessel engaged in fishing shall not impede the passage of any other vessel navigation within a narrow passage.
 - c. A vessel shall not cross a narrow passage if such crossing impedes a vessel which can safely navigate only within that passage. The latter vessel shall use the danger signal if in doubt as to the intention of the crossing vessel.
 - d. In a narrow passage when overtaking, the vessel intending to overtake shall indicate its intention by sounding the appropriate signal and take steps to permit safe passing. The overtaken vessel, if in agreement, shall sound the same signal. If in doubt the overtaken vessel shall sound the danger signal.
 - (1) This regulation does not relieve the overtaking vessel of its obligation.

- e. A vessel nearing a bend or an area of a narrow passage where other vessels may be obscured by an intervening obstruction shall navigate with particular alertness and caution and shall sound the appropriate signal.
- f. No vessel shall be anchored so as to block movement of other vessels through narrow passages.

10. Vessel traffic patterns:

Each vessel required by law to participate in a vessel traffic pattern shall comply with the applicable law.

The following regulations apply to vessels in sight of one another:

11. Sailing vessels:

- a. When two sailing vessels are approaching one another, so as to involve risk of collision, one of them shall keep out of the way of the other as follows:
 - (1) When each has the wind on a different side, the vessel which has the wind on the port side shall keep out of the way of the other;
 - (2) When both have the wind on the same side, the vessel which is to windward shall keep out of the way of the vessel which is to leeward; and
 - (3) If a vessel with the wind on the port side sees a vessel to windward and cannot determine with certainty whether the other vessel has the wind on the port or on the starboard side, it shall keep out of the way of the other.
- b. For the purpose of this regulation the windward side shall be deemed to be the side opposite to that on which the mainsail is carried.

12. Overtaking:

- a. Notwithstanding anything contained in these regulations, any vessel overtaking any other shall keep out of the way of the vessel being overtaken.
- b. A vessel shall be deemed to be overtaking when coming up with another vessel from a direction more than 22.5 degrees abaft the beam; that is, in such a position with reference to the vessel being overtaken that at night only the stern light, but neither of the side lights, of the vessel being overtaken would be visible.
- c. When in any doubt as to whether another vessel is being overtaken, the assumption shall be made that this is the case and the overtaking vessel shall act accordingly.
- d. Any subsequent alteration of the bearing between the two vessels shall not make the overtaking vessel a crossing vessel within the meaning of these regulations or relieve the overtaking vessel of the duty of keeping clear of the overtaken vessel until past and clear.

13. Head-on situation:

- a. When two motorboats are meeting on reciprocal or nearly reciprocal courses so as to involve risk of collision each shall alter course to starboard so that each shall pass on the port side of the other.

- b. Such a situation shall be deemed to exist when a vessel sees the other ahead or nearly ahead and by night sees the masthead lights of the other in a line or nearly in a line or both sidelights and by day observes the corresponding aspect of the other vessel.
 - c. When in any doubt as to whether a head-on situation exists, the assumption shall be made that it does exist and vessels shall act accordingly.
- 14. Crossing situation:
 - a. When two motorboats are crossing so as to involve risk of collision, the vessel which has the other on the starboard side shall keep out of the way and shall, if the circumstances of the case admit, avoid crossing ahead of the other vessel.
 - b. A vessel crossing a river shall keep out of the way of a motorboat ascending or descending the river.
- 15. Action by give-way vessel:

Every vessel which is directed to keep out of the way of another vessel shall, so far as possible, take early and substantial action to keep well clear.
- 16. Action by stand-on vessel:
 - a. Where one of two vessels is to keep out of the way, the other shall keep its course and speed.
 - b. The stand-on vessel may, however, take action to avoid collision by maneuver alone, as soon as it becomes apparent that the vessel required to keep out of the way is not taking appropriate action in compliance with these regulations.
 - c. When, from any cause, the vessel required to keep its course and speed finds itself so close that collision cannot be avoided by the action of the give-way vessel alone, the stand-on vessel shall take such action as will best aid to avoid collision.
 - d. A motorboat which takes action in a crossing situation in accordance with these regulations to avoid collision with another motorboat shall, if the circumstances of the case admit, not alter course to port for a vessel on its port side.
 - e. This regulation does not relieve the give-way vessel of the obligation to keep out of the way.
- 17. Responsibilities between vessels:

Except where regulations # 219 - 9, # 219 - 10 and # 219 - 12 otherwise require:

 - a. A motorboat underway shall keep out of the way of:
 - (1) A vessel not under command;
 - (2) A vessel restricted in its ability to maneuver; and
 - (3) A sailing vessel.
 - b. A sailing vessel underway shall keep out of the way of:

- (1) A vessel not under command; and
 - (2) A vessel restricted in its ability to maneuver.
- c. A seaplane on the water shall, in general, keep well clear of all vessels and avoid impeding their navigation. In circumstances, however, where risk of collision exists, seaplanes shall comply with these regulations.

The following regulation applies to vessels in restricted visibility:

18. Conduct of vessels in restricted visibility and not in sight of one another:
- a. Every vessel shall proceed at a safe speed adapted to prevailing circumstances and conditions of restricted visibility. A motorboat shall have the engines ready for immediate maneuver.
 - b. Every vessel shall have due regard to the prevailing circumstances and conditions of restricted visibility when complying with regulations # 219 - 5 through # 219 - 10.
 - c. Except where it has been determined that a risk of collision does not exist, every vessel which hears apparently forward of its beam another vessel, or which cannot avoid a close-quarters situation with another vessel forward of its beam, shall reduce speed to the minimum of which the vessel can be kept on course or shall take engines all the way off. In any event, vessels shall navigate with extreme caution until danger of collision is over.

220 - MUFFLING AND SOUND LEVEL

- 1. Except in case of a motorboat competing in a sanctioned race or regatta, it is unlawful to use a vessel propelled in whole or in part by gas, gasoline, or naphtha unless the vessel is provided with a stock factory muffler underwater or other device capable of adequately muffling the sounds of the exhaust of the engine. The phrase "adequate muffling" means that the motor's exhaust at all times is so muffled or suppressed as not to create excessive noise.
- 2. No person shall operate a vessel upon waters of this state under any condition or in any manner that the vessel emits a sound level in excess of 86 decibels on "A" weighted scale when measured from a distance of 50 feet or more from the vessel. The operator of such vessel may be ordered off the water upon failure to submit to sound level testing procedures.

221 - MANEUVERING AND WARNING SIGNALS

- 1. Terms used:
 - a. "Short blast" means a blast of about one second's duration sounded when motorboats are at a close quarters distance so as to involve the risk of collision.
 - b. "Prolonged blast" means a blast of four to six seconds' duration sounded when motorboats are at a close quarters distance so as to involve the risk of collision.
 - c. "Danger signal" means five or more short blasts.
- 2. When motorboats are in sight of one another and meeting or crossing at a close quarters distance so as to involve the risk of collision, each motorboat underway, when maneuvering as

authorized or required by the rules of the road shall indicate that maneuver by the following signals from the sound-producing device:

- a. One short blast to mean "I intend to leave you on my port side."
 - b. Two short blasts to mean "I intend to leave you on my starboard side."
 - c. Three short blasts to mean "I am operating astern propulsion."
 - d. Upon hearing the one or two blast signal, the other shall, if in agreement, sound the same signal and take the steps necessary to effect a safe passing. If, however, from any cause, the motorboat doubts the safety of the proposed maneuver, then the danger signal shall be sounded and each vessel shall take appropriate precautionary action until a safe passing agreement is made.
3. When motorboats are in sight of one another and one motorboat is intending to overtake another at a close quarters distance so as to involve the risk of collision, the overtaking vessel shall indicate intentions by the following signals from the sound-producing device:
- a. One short blast to mean "I intend to overtake you on your starboard side."
 - b. Two short blasts to mean "I intend to overtake you on your port side."
 - c. Upon hearing the one or two blast signal of the other, the motorboat this is being overtaken shall, if in agreement, sound the same signal. If in doubt, the vessel being overtaken shall sound the danger signal.
4. When vessels, other than hand-propelled vessels when on whitewater, are in sight of one another and are approaching each other and from any cause either vessel fails to understand the intentions or actions of the other, or is in doubt whether sufficient action is being taken by the other to avoid collision, the vessel in doubt shall immediately indicate such doubt by giving at least five short and rapid blasts from the sound-producing device. The danger signal may be supplemented by a light signal of at least five short and rapid flashes.
5. When a motorboat is leaving a dock or berth and vessel traffic is heavy, one prolonged blast may be sounded.
6. If necessary to attract the attention of another vessel, any vessel may light or sound signals that cannot be mistaken for any signal authorized elsewhere in these regulations, or may direct the beam of a light in the direction of danger.
7. When a vessel is in distress, the following signals used or exhibited either together or separately, indicate distress and need of assistance:
- a. A continuous sounding with any signaling device;
 - b. A signal made by any signaling method consisting of S.O.S. in the Morse Code;
 - c. Slowly and repeatedly raising and lowering arms outstretched to each side;
 - d. An orange distress flag with either a black square and circle or other appropriate symbol;
 - e. A high intensity white flashing light flashing at regular intervals from 50 to 70 times per minute.

- f. The use or exhibition of any of the foregoing signals except for the purpose of indicating distress and need of assistance is prohibited.

222 - COLLISIONS, ACCIDENTS, AND CASUALTIES

1. In the case of an accident involving a vessel, the operator thereof, shall file with the Division a full report concerning the accident. A vessel is considered to be involved in a boating accident whenever the occurrence results in damage, in excess of five hundred dollars, by or to the vessel or its equipment, in injury or loss of life to any person, or in the disappearance of any person from on board under circumstances which indicate the possibility of death or injury. Such boating accident includes, but is not limited to, capsizing, collision, foundering, flooding, fire, explosion, and the disappearance of a boat other than by theft. Accidents for the purpose of the report are only those which occur on the water.
2. Reports required under subsection 1 of this section shall contain the following information:
 - a. The number assigned to each vessel involved;
 - b. The locality, time and date of the accident;
 - c. The weather conditions existing at the time of the accident;
 - d. The name, address, and age of each operator of a vessel involved in the accident;
 - e. The name and address of the owner of each vessel involved in the accident;
 - f. the name and address of any person who is injured or killed as the result of the accident;
 - g. The nature and extent of injury to any person;
 - h. A description of any property damage;
 - i. A description of how the accident occurred;
 - j. The type of vessel that is the subject of the report;
 - k. The name and address, if known, of any witness to the accident.
3. All reports required to be submitted under this section shall be submitted to the Law Enforcement Unit at 13787 South Highway 85, Littleton, Colorado 80125 of the Division within five days after the date of the accident.

223 - WATER SKIS, AQUAPLANES, SURFBOARDS, INNERTUBE, AND SIMILAR DEVICES

1. No person shall operate a vessel on any waters of this state for towing any person on water skis, aquaplanes, surfboards, inner tubes, or any similar devices, unless there is in such vessel a person, in addition to the operator, in a position to observe the progress of the person being towed, and capable of relaying messages to the operator.
2. No person shall operate a vessel on any waters of this state towing any person on water skis, aquaplanes, surfboards, inner tubes, or any similar devices, nor shall any person engage in water skiing, surfboarding, or similar activity at any time between the hours from sunset to sunrise.

3. Any person on water skis, aquaplanes, surfboards, inner tubes, or similar devices, while being pulled or towed by a vessel, shall wear a flotation device as required in subsection 4 of section # 212 - Personal Flotation Devices.
4. All motorized vessels in designated water ski areas shall travel in a counter clockwise direction, except in picking up a downed skier the tow boat shall encircle the skier in such a manner as to keep him in view of the driver of the boat at all times.
5. No person shall engage in water skiing, surfboarding, or similar activity within one hundred fifty feet of any harbor, swimming beach, or mooring area or any areas which are designated by posting or otherwise as being closed to water skiing except in areas designated as a ski take-off or landing area.
6. Whenever a water skier, surfboarder, or person engaged in a similar activity or associated equipment is down in the water, the operator or observer of the tow boat shall display in a clearly visible manner an orange or red flag of a size not less than 12 inches square. When the towed person is actively being towed and is not down in the water, and the associated equipment has been retrieved, the flag shall not be displayed.

224 - HULL IDENTIFICATION NUMBER

1. After August 1, 1984, every person who builds or imports a monohull vessel for personal recreational use and not for the purposes of sale, must identify that boat with two hull identification numbers that meet the requirements of this regulation.
2. Following application for assignment of a Colorado hull identification number, a hull identification number may be assigned by the Division if the applicant declares on the application that Colorado will be the state of principal use.
3. Following assignment of a Colorado hull identification number, a person as described in # 224 - 1 must identify the boat with two hull identification numbers that meet the following requirements:
 - a. A primary hull identification number affixed as herein prescribed:
 - (1) On boats with transoms, to the starboard side of the transom within two inches of the top of the transom, gunwale, or hull/deck joint, whichever is lowest.
 - (2) On boats without transoms or on boats on which it would be impractical to use the transom, to the starboard outboard side of the hull, aft, within one foot of the stern and within two inches of the top of the hull side, gunwale, or hull/deck joint, whichever is lowest.
 - (3) On catamarans and pontoon boats which have readily replaceable hulls, to the aft crossbeam within one foot of the starboard hull attachment.
 - (4) If the hull identification number would not be visible, because of rails, fittings, or other accessories, the number must be affixed as near as possible to the location specified in regulation # 224 - 3 a (1).
 - b. A duplicate hull identification number must be affixed in an unexposed location on the interior of the boat or beneath a fitting or item of hardware.
 - c. Each hull identification number must be carved, burned, stamped, embossed, molded, bonded, or otherwise permanently affixed to the boat so that alteration, removal, or

replacement would be obvious. If the number is on a separate plate, the plate must be fastened in such a manner that its removal would normally cause some scarring of or damage to the surrounding hull area. A hull identification number must not be attached to parts of the boat that are removable.

- d. The characters of each hull identification number must be no less than one-fourth of an inch high.

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**State of Colorado
Department of Law**

Office of the Attorney General

Tracking number: 2014-00756

**Opinion of the Attorney General rendered in connection with the rules adopted by the
Colorado Parks and Wildlife (405 Series, Parks)**

on 09/12/2014

2 CCR 405-2

CHAPTER P-2 - BOATING

The above-referenced rules were submitted to this office on 09/17/2014 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.

September 22, 2014 13:51:37

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 Natural Resources

Agency

Colorado Parks and Wildlife (405 Series, Parks)

CCR number

2 CCR 405-3

Rule title

2 CCR 405-3 CHAPTER P-3 - RIVER OUTFITTERS 1 - eff 11/01/2014

Effective date

11/01/2014

FINAL REGULATIONS - CHAPTER P-3 - RIVER OUTFITTERS

300 - LICENSE APPLICATION AND ISSUANCE

1. An individual, sole proprietorship, partnership, corporation, nonprofit corporation or organization as defined in section 13-21-115.5 (3), C.R.S., limited liability company, firm, association, or other legal entity either located within or outside of this state may apply for a river outfitter license. The application shall bear notice to the effect that any false statements made therein are punishable by law. All application signatures shall be made under oath that all information furnished is true and correct. The position held by the individual who signs the application shall be stated on the application. All applications submitted shall bear an original signature.
 - a. If the applicant is a partnership, any general partner may sign the application.
 - b. Any unincorporated legal entity, other than a partnership, consisting of more than one individual shall designate one of its members to sign and submit an application.
 - c. If the applicant is a corporation, the president or other authorized executive officer of the corporation shall sign the application and the secretary of the corporation shall attest the signature.
2. A corporation shall be incorporated pursuant to the laws of this state or shall be duly qualified to do business in this state. To be duly qualified to do business in this state, an out-of-state corporation that transacts business in the State of Colorado must show evidence that it has procured a current and valid certificate of authority from the Colorado Department of State. A copy of a current and valid certificate of authority shall be submitted with the license application.
3. No person shall outfit under a business name until the licensee has notified the division of the business name. Such notice must be submitted in writing at least ten business days prior to soliciting for or providing river outfitting services under the business name.
4. Any licensee using a d/b/a (doing business as) must list any and all d/b/a's. Should new d/b/a's be formed, the licensee must notify the division, in writing, within ten days of the action.
5.
 - a. A copy of a current and valid certificate of liability insurance shall be submitted with the license application. A certificate of insurance shall be accepted by the division as evidence that the applicant has qualifying liability insurance if the certificate states:
 - (1) That the type of insurance is "CGL" , meaning either "comprehensive general liability" or "commercial general liability" business insurance; or that the type of insurance is "watercraft liability" . As used herein, "watercraft liability" policy means liability insurance covering commercial exposure for property damage and personal injury which may result from a river outfitter's use or operation of vessels, including shore-side activities such as passenger loading and unloading. Such liability insurance shall provide coverage for all vessels used by the insured for commercial purpose, to include newly acquired vessels and vessels borrowed from other persons for the insured's use.

- (2) A minimum amount of coverage of three hundred thousand dollars combined single limit per occurrence for any combination of property damage, death, and bodily injury;
- (3) That the insured's name and address stated on the certificate of insurance is the same as the primary business name used by the applicant on the license application;
- (4) The name, address, and phone number of the issuing insurance agent;
- (5) A policy number;
- (6) The beginning and ending dates of coverage and is currently in effect;
- (7) That the division is a certificate holder;
- (8) That the division will be given at least forty-five days written notice by certified mail prior to any modification, termination, or cancellation of the policy;
- (9) That every insurance company affording coverage is listed with an indication as to which company or companies is/are providing which insurance; and
- (10) That every insurance company affording coverage is licensed in the State of Colorado, or is currently listed on the approved surplus lines listing for Colorado and is offering coverage in compliance with the requirements of the Colorado Surplus Lines Insurance Act, Article 5 for Title 10, C.R.S., or is a risk retention group qualified under the Federal "Liability Risk Retention Act of 1986" , 15 U.S.C., Sections 3901 Et Seq., as amended in 1986. If coverage is provided by a purchasing group qualified under the Federal "Liability Risk Retention Act of 1986" , then the name and address of the group must be identified on the certificate.

b. A copy of a current and valid certificate of motor-vehicle liability insurance shall be submitted, prior to undertaking any licensed activity for a season, covering all "Commercial Vehicles" used in connection with the licensed activity. A certificate demonstrating motor vehicle liability insurance covering vehicles used in the licensed river outfitting activities shall be accepted by the division as evidence that the applicant has qualifying insurance if the certificate states:

- (1) That the type of insurance is commercial motor vehicle liability insurance. Motor vehicle liability means liability for bodily injury and property damage.
- (2) A minimum amount of coverage of one million five hundred thousand dollars combined single limit liability coverage for commercial vehicles with a seating capacity of 16 or more including the driver. A minimum amount of coverage of one million dollars combined single limit liability coverage for commercial vehicles with a seating capacity of 15 or less.
- (3) That the insured's name and address stated on the certificate of insurance is the same as the primary business name used by the applicant on the license application;
- (4) The name, address, and phone number of the issuing insurance agent;

- (5) A policy number;
 - (6) The beginning and ending dates of coverage and is currently in effect;
 - (7) That the division is a certificate holder;
 - (8) That the division will be given at least thirty-five days written notice by certified mail prior to any modification, termination, or cancellation of the policy;
 - (9) That every insurance company affording coverage is listed with an indication as to which company or companies is/are providing which insurance; and
 - (10) That every insurance company affording coverage is licensed in the State of Colorado, or is currently listed on the approved surplus lines listing for Colorado and is offering coverage in compliance with the requirements of the Colorado Surplus Lines Insurance Act, Article 5 for Title 10, C.R.S.
- c. The liability insurance policies shall insure the river outfitter against all claims occasioned by acts or omissions of the outfitter in carrying out the activities and operations authorized by the license.
 - d. The qualifying liability insurance policies shall be maintained so as to continue in full force and effect for the duration of time that the river outfitter is licensed. If any claims reduce the remaining annual aggregate amount below the required minimums, which must be written on an occurrence basis, then the licensee must purchase additional insurance such that a minimum amount of coverage is continued in full force and effect for the duration of time that the river outfitter is licensed. Any expiration, termination, or cancellation of the required policy or, if an annual aggregate amount is a condition of the coverage, any claims that reduce the amount of coverage below the required minimums shall cause the license to become invalid. The licensee shall ensure that current and valid certificates of insurance are on file with the division at all times.
 - e. For purposes of #300.5.d, "Commercial Vehicle" means any self-propelled or towed vehicle bearing an apportioned plate or having a manufacturer's gross vehicle weight rating or gross combination rating of ten thousand one pounds or more, which vehicle is used in commerce on the public highways of this state or is designed to transport sixteen or more passengers, including the driver, unless such vehicle is a school bus regulated pursuant to C.R.S. 42-4-1904 or any vehicle that does not have a gross vehicle weight rating of twenty-six thousand one or more pounds and that is owned or operated by a school district so long as such school district does not receive remuneration for the use of such vehicle, not including reimbursement for the use of such vehicle;
- 6. Licenses are not transferable. If a business is sold or transferred, a new license application shall be submitted by the new owner(s).
 - 7. All licenses shall be valid, unless suspended, revoked or otherwise invalidated, from the date of issue until the date of expiration as printed on the license, except that if a river outfitter has made timely and sufficient application for renewal, then the existing license shall not expire until the application has been finally acted upon by the board.
 - 8. A river outfitter shall maintain a regular place of business at which mail and phone calls can be received. The river outfitter's license shall be prominently displayed at the regular place of business. The address or physical location and the business telephone number shall be stated on the application. The address or physical location identified for the regular place of business will be

printed on the license. Any change of the mailing address, physical location, or telephone number shall be reported to the division in writing within ten days of such change. If the physical location has changed, then the division shall issue an amended license at no cost.

9. The division shall accept applications during the period from November 1 through December 31 of the year preceding the calendar year for which application is made and during the period of January 1 through January 31 of the calendar year for which application is made. An application filed after January 31 of the calendar year for which application is made shall be considered a late application and a late filing fee shall be charged in addition to the license fee.
10. Applications shall be accompanied by the full payment of the license fee. Incomplete applications will be returned and a refiling fee will be charged.
11. All licenses shall be issued within a reasonable time period, not to exceed ninety days, after the division receives an eligible and complete application. Licenses will be sent certified mail, return receipt requested, to the licensee's mailing address.
12. River outfitters who initiate regulated trips in Colorado on specified river segments are eligible for a limited use license, given that these trips are conducted primarily on the waters of an adjoining state. A limited use license shall entitle the holder to use only the following river segments in Colorado:
 - a. North Platte River - Northgate Canyon
 - b. Green River - Within Dinosaur National Monument
 - c. Yampa River - Within Dinosaur National Monument
 - d. Colorado River - Ruby Canyon
 - e. Dolores River - Gateway Canyon
13. Effective November 1, 1995, the river outfitter licensing fee schedule shall be as follows:
 - a. Original and renewal license application fee.....\$400.00
 - b. Late application filing fee.....\$100.00
 - c. Application refiling fee.....\$ 25.00
 - d. Limited use original and renewal license fee.....\$100.00

301 - REGULATED TRIPS, PASSENGER ORIENTATION, AND TRIP LOGS

1. A single regulated trip may include one or more vessels and one or more guides provided by a single river outfitter. All vessels participating in a regulated trip shall remain in reasonably close proximity with one another. "Reasonably close proximity" means that all vessels on the regulated trip will be close enough to one another to give assistance, whenever needed, without unnecessary delay.
2. A river trip's sole purpose that is to provide an educational or instructional voyage in order to teach canoeing or kayaking skills is not a regulated trip, so long as the trip is promoted and conducted only as a canoeing or kayaking class.

3. At least one qualified guide shall be aboard each vessel which carries, or is designed for and capable of carrying, three or more passengers.
4. A trip leader, assigned by the river outfitter, shall accompany every regulated trip. The trip leader shall ensure that a commercial passenger orientation is provided.
5. A commercial passenger orientation shall include basic orientation for all commercial passengers on a regulated trip. Topics that must be explained during orientation prior to embarking on a regulated trip are:
 - a. The conditions of weather, river, terrain, equipment, travel, housing and vessels that commercial passengers may expect to encounter;
 - b. The personal equipment, clothing and gear that commercial passengers should have for the trip;
 - c. The proper fit, wearing, and use of personal flotation devices;
 - d. Passenger riding and positioning in the vessel;
 - e. Safety procedures for swimming through river rapids and getting back into the vessel;
 - f. Instructions on what to do in the event of a vessel accident; and
 - g. Sanitation, litter prevention and human refuse disposal.
6.
 - a. A river outfitter shall maintain an accurate and complete trip log for every regulated trip. The trip log shall include:
 - (1) The name of the assigned trip leader;
 - (2) The names of all guides who operated or guided vessels carrying commercial passengers;
 - (3) The trip departure and completion dates and times; and
 - (4) The location of vessel launch and take-out.
 - (5) A river outfitter shall maintain the name, address, and telephone number for every passenger on a regulated trip, except in the case of groups. For groups, the river outfitter shall maintain, at a minimum, the name of each person in the group, and the address and telephone number for a contact person for the group. Release forms and booking lists will suffice so long as the required information is present.
 - b. A river outfitter shall maintain all trip logs and other records required by this regulation # 301-6. for a period of three years. These required records shall be maintained at the river outfitter's designated place of business. The river outfitter, or any employee having access to the trip logs and other required records, shall provide such trip logs and records at all reasonable times to any peace officer enforcing the provisions of Article 32 of Title 33, C.R.S., and these regulations, upon request.

302 - GUIDE, TRIP LEADER, AND GUIDE INSTRUCTOR TRAINING AND QUALIFICATION RECORDS

1.

- a. A guide shall have a minimum of fifty hours of on-river training utilizing paddles and/or oars, and any other equipment that the guide will be using on regulated trips. Of this fifty hours, thirty hours shall be with a qualified guide instructor aboard the same vessel with the trainee. The remaining twenty hours shall be with a qualified guide instructor on the same training trip. Twenty hours of training shall occur on the river on which the guide will be guiding regulated trips or on a river section of comparable difficulty.
- b. Minimum guide training shall include the following areas of instruction:
 - (1) Rigging and maneuvering the vessel;
 - (2) River currents, eddies, and waves;
 - (3) River hazards;
 - (4) Types and causes of river rapids;
 - (5) Scouting and running rapids;
 - (6) River rescue and emergency procedures;
 - (7) Minimizing outdoor recreation resource impacts; and
 - (8) Proper fit, wearing and use of personal flotation devices.
- c. Guides who have worked commercially out-of-state as a river guide must furnish the in-state river outfitter with written documentation that they have received this required minimum guide training, or its equivalent. The river outfitter shall ensure that the documented out-of-state training is adequate to meet the minimum guide training requirements.

2. Prior to guiding a regulated trip, each guide shall have:

- a. Completed the required training identified in # 302-1.; and
- b. Operated a commercial vessel at least once over the course of each section of river that will be guided.

3. During each guide's first regulated trip, a qualified guide instructor must be aboard the same vessel with the guide.

4. A river outfitter shall maintain a qualification record for each guide, including subcontractors, employed. Such record shall include:

- a. The guide's full legal name and date of birth;
- b. Evidence of successful completion of a standard first-aid course, which shall include training in cardiopulmonary resuscitation. The following documents shall be accepted by the division as evidence that the guide has qualifying emergency medical care training:

- (1) A photocopy of the front and back of the guide's valid standard first-aid card or certificate issued by any institution recognized as a provider of emergency medical care training, for example, the American Red Cross, the National Safety Council, or hospitals. If the first-aid course did not include training in cardiopulmonary resuscitation, then additionally required is a photocopy of the front and back of the guide's valid cardiopulmonary resuscitation card or certificate issued by any institution recognized as a provider of cardiopulmonary resuscitation training, for example, the American Red Cross or the American Heart Association; or
 - (2) In lieu of the required card(s) or certificate(s), a copy of a dated letter signed by the instructor(s) stating that the guide has successfully completed the emergency medical care training required, and stating the instructor's address and telephone number;
 - c. Written documentation that the guide is qualified by meeting the minimum training requirements established in this regulation. Such documentation shall include:
 - (1) Dates and beginning and ending times of training;
 - (2) Identification of the training site, including a description of beginning and ending locations for on-river training and a location description or address for classroom training;
 - (3) The name(s) of the guide instructor(s) who provided the instruction and training; and
 - (4) The signature(s) of the guide instructor(s) attesting that the minimum guide training requirements established in this regulation have been met.
5. A river outfitter shall maintain a qualification record for each trip leader and guide instructor, including subcontractors, employed. Such record shall include:
- a. The trip leader's or guide instructor's full legal name and date of birth;
 - b. Evidence of successful completion of a standard first-aid course, which shall include training in cardiopulmonary resuscitation, as specified in #302-4.b.(1) or (2);
 - c. For guide instructors, written documentation that the individual has logged a total of at least fifteen hundred river miles, of which at least seven hundred fifty of those river miles were logged while acting as a guide, and has served as a trip leader on at least five regulated trips. For trip leaders, written documentation that the individual has logged a total of at least five hundred river miles, of which at least two hundred fifty river miles shall have been logged while acting as a qualified guide and no more than two hundred fifty river miles shall have been logged while acting as a guide on non-regulated trips. Such documentation shall consist of a log that includes:
 - (1) Dates and beginning and ending locations of river trips;
 - (2) The total number of river miles covered during each recorded trip and for guide instructors, identification of the trip as either private or commercial; and
 - (3) Identification of all trips during which the individual served as a trip leader.

6. Guide qualification records, trip leader qualification records, and guide instructor qualification records shall be maintained by the primary employer at that river outfitter's designated place of business. In the case of a river outfitter who temporarily hires the services of a guide, trip leader, or guide instructor who is primarily employed by a different river outfitter, the following regulations apply.:
 - a. A river outfitter who temporarily uses the services of a guide or trip leader who is primarily employed by a different river outfitter shall identify in the applicable trip log(s) the river outfitter that maintains the guide qualification record for the guide or trip leader.
 - b. A river outfitter who temporarily uses the services of a guide instructor who is primarily employed by a different river outfitter shall identify, in each guide's qualification record for all guides trained by the instructor, the river outfitter that maintains the guide instructor qualification record.
 - c. River outfitters may only use the services of guides, trip leaders and guide instructors who are primarily employed by different river outfitters if the other river outfitters are licensed in the State of Colorado and maintain their place of business in the State of Colorado.
 - d. A river outfitter shall not provide any guide, trip leader, or guide instructor to another river outfitter unless the employee is qualified for the position requested.
7. A river outfitter shall maintain all guide, trip leader, and guide instructor qualification records during the period of such employees employment and for a period of three years after his/her termination. These required records shall be maintained at the river outfitter's designated place of business. The river outfitter, or any employee having access to such records, shall provide them at all reasonable times to any peace officer enforcing the provisions of Article 32 of Title 33, C.R.S., and these regulations, upon request.

303 - DRINKING WATER AND SANITATION

1. If a river outfitter provides drinking water during a regulated trip, the water containers shall have a closed top, be tightly sealed, and have a smooth, cleanable interior surface. If river water or water from an untreated, untested source is used, then a reliable method of treating the water must be used and the regulated trip shall be equipped in order to do so. Boiling, commercial filters, water purification tablets, chlorine bleach and a tester for chlorine residual, and tincture of iodine or an iodine purification kit are all acceptable methods for purifying drinking water if proper procedures are used.
2. In order to help ensure that there are no violations of the littering statute, 18-4-511, C.R.S., outfitters shall be required to provide sufficient containers for containment and removal of refuse, trash, ashes, garbage and solid human waste.

304 - PERSONAL FLOTATION DEVICES

1. A river outfitter shall ensure that each commercial passenger participating in a regulated trip is provided with a personal flotation device that is in good and serviceable condition and of the proper size for the intended wearer and is:
 - a. U.S. Coast Guard approved Type I, Type III, or Type V - whitewater non-inflatable, except that:

- (1) If the person weighs fifty pounds or less, a Type II- non-inflatable personal flotation device may be worn in lieu of a Type I, Type III, or Type V- whitewater non-inflatable device, provided it is a vest style designed with a crotch strap and an additional flotation collar.
 - b. All Type III personal flotation devices must have a minimum of 2 adjustable straps on the side, 1 adjustable waist strap and adjustable shoulder straps, capable of retaining the wearer in swift water conditions. Type III personal flotation devices must be intended for paddling or kayak use by the U.S. Coast Guard and labeled accordingly.
2. Each guide shall require that every commercial passenger wears and has tied or otherwise securely fastened his or her assigned personal flotation device at all times while on or in a river, except during regulated trips operating on designated flatwater where passengers thirteen years of age or older may be permitted to remove or loosen the personal flotation device at the discretion of the guide or trip leader.
3. Every river outfitter, guide, guide in training, guide instructor, and trip leader shall at all times while participating in a regulated trip or guide training trip, except on designated flatwater, wear a securely tied or fastened U.S. Coast Guard approved personal flotation device of Type I, III-non-inflatable, or V-whitewater non-inflatable. The personal flotation device shall be in good and serviceable condition and shall be of the proper size for the intended wearer.
4. Designated flatwater means:
 - a. The Colorado River- from the Loma boat launch in Mesa County to the Utah/Colorado state line; and
 - b. The Gunnison River in Delta County -from the Smith Fork to the North Fork.
 - c. The Yampa River from the Hayden Station Pump Station in Routt County to the Juniper Canyon Access Site in Mofatt County and from the Maybell Bridge at Highway 40 in Mofatt County to the Cross Mountain River Access Site in Mofatt County.
5. The trip leader shall ensure that at least one spare U.S. Coast Guard approved personal flotation device of the type required by # 304-1.a. is carried per regulated trip that includes one or more rafts, dories, or motorboats. All required spare personal flotation devices shall be in good and serviceable condition.

305 - VESSELS AND EQUIPMENT

1. A river outfitter shall provide all vessels and associated equipment required during all regulated trips. When equipment is lost, damaged, or used during a bona fide on-the-river emergency, then the river outfitter shall ensure that every vessel is reequipped as required prior to use of the vessel on any successive trip.
2. All vessels used during a regulated trip shall be marked with the vessel owner's name, current address, and telephone number in a legible, clearly visible and durable fashion.
3. The trip leader shall ensure that every regulated trip carries aboard at least one of the vessels a first-aid kit which shall be immediately available for emergency use. The first-aid kit shall contain, at a minimum, adhesive bandages, sterile pads, flexible gauze bandages, first-aid tape, antiseptic or soap and triangular bandages in quantities sufficient to meet the size and needs of the regulated trip. These supplies shall be maintained in a clean and dry condition in a durable container suitable for river use.

4. The trip leader shall ensure that every regulated trip carries aboard at least one of the vessels a throwbag containing a minimum of fifty feet of rope. The throwbag shall be in a serviceable condition and shall be stored so as to be readily accessible in an emergency.
5. River outfitters shall not provide, use, operate or permit the use or operation of innertubes, air mattresses, or any other single-chambered air-inflated devices during any regulated trip.
6. If an inflatable raft or dory is used during a regulated trip, then each such vessel shall:
 - a. Display the river outfitter's company name or logo or abbreviation, which shall read from left to right in characters of good proportion, a minimum of four inches in height above waterline, of a color which contrasts with the color of the background, and be maintained so as to be clearly visible and legible from a distance of one hundred and fifty feet.
 - b. Be equipped with a rope attached to the bow or stern, which shall be a minimum of ten feet long and suitable for tying up and securely holding the vessel to the shore of the waters being traveled. All loose ropes not in use shall be stored and secured so as not to present a danger of entanglement in case of an accident.
 - c. Be equipped with at least one suitable container of sufficient size for bailing water out of the vessel, except that self-bailing vessels are exempt from this requirement.
 - d. Be adequately equipped with durable and substantially undamaged oars or paddles and spares, taking into consideration the size of the vessel and river conditions.
 - (1) For oar-controlled and powered vessels or combination oar and paddle-controlled and powered vessels, there shall be a minimum of two oars and one spare oar aboard each such vessel.
 - (2) For paddle-controlled and powered vessels, there shall be a minimum of one spare paddle per vessel. The spare paddle(s) may be carried in another vessel on the same trip so long as the spare(s) is/are readily accessible. A spare paddle is one in addition to one paddle per participating adult.
7. If an inflatable raft, inflatable kayak, or other multi-chambered air inflated device is used during a regulated trip, then:
 - a. Every inflatable raft, inflatable kayak, or other inflated type vessel shall be multi-chambered, containing a minimum of two separate air chambers.
 - b. Every regulated trip including one or more inflatable rafts, inflatable kayaks, or other inflated vessel type shall have immediately available a minimum of one patch/repair kit and one air pump. Both the kit and the air pump must be adequate to meet the size and needs of the trip and they must be compatible with the vessel(s) in use. The kit shall be maintained in good and serviceable condition and stored in a durable container suitable for river use.
8. If a canoe, whitewater or decked canoe, hard shell kayak, inflatable kayak, or sit-on-top kayak is used during a regulated trip, then a minimum of one spare paddle per every five such vessels shall be readily accessible aboard one of the vessels on the trip. In addition:
 - a. For canoes, whitewater canoes, and hard shell kayaks, every such vessel shall be equipped with flotation bags securely fixed in the vessel so as to provide enough flotation that when the fully equipped vessel is full of water, it will remain afloat.

- b. Every river outfitter, guide, guide in training, guide instructor, trip leader, and commercial passenger aboard a whitewater or decked canoe or hard shell kayak shall wear a securely fastened crash helmet at all times while on the river.
- 9. If a motorboat, as defined in 33-13-102 (1), C.R.S., is used during a regulated trip, all State boating statutes and regulations pertaining to motorboat registration, use, operation and required equipment apply, except that the personal flotation device requirement shall be as stated in regulation # 304. In addition to the equipment otherwise required by law, each motorboat used during a regulated trip shall also:
 - a. Display the river outfitter's company name, logo, or abbreviation, as specified in # 305-6.a.;
 - b. Be equipped with one spare motor or adequate alternate means of propulsion and control;
 - c. Be equipped with a rope, a minimum of ten feet long, attached to the bow and stored when not in use as specified in # 305-6.b.;
 - d. Be equipped with a bailing device as specified in # 305-6.c., except that self-bailing vessels are exempt from this requirement; and
 - e. Be equipped with one suitable size ladder, capable of accommodating persons boarding from the water and stored so as to be readily accessible.

306 - VESSEL LOADING CAPACITY

- 1. No river outfitter, guide, or trip leader shall operate, or provide for the operation of any vessel which is overloaded, taking into consideration rated capacities, weather, type of construction, river conditions, weight and bulk of gear/load and any other existing conditions, except as may be required in emergency situations.
- 2. No river outfitter, guide, or trip leader shall operate, or provide for the operation of any inflatable raft which carries more than the maximum allowable number of individuals, including the river outfitter, guide or trip leader, as specified by the following formula:
 - a. The maximum allowable number of individuals/inflatable raft = $[(\text{length of vessel, rounded to the nearest foot}) \div (2)] + 2 + 1 \text{ guide}$.
 - b. The length of a vessel is a straight-line measurement from the foremost part of the bow to the aftmost part of the stern, measuring parallel to the centerline. The length shall exclude sheer and any attachment or fittings on either the bow or stern.
 - c. The maximum allowable number of individuals calculated by this formula is acceptable only for normal river conditions. The circumstances described in # 306-1 must be considered in calculating a prudent passenger load.

307 - BOAT ACCIDENTS

- 1. The guide of a vessel involved in a collision, casualty or other accident shall, so far as the guide can do so without serious danger to the guide's own vessel, crew, and passengers, render to other persons affected by the collision, casualty or other accident such assistance as may be practicable and necessary in order to save them from, or to minimize, any danger caused by the collision, casualty or other accident. The guide shall give his/her name, address, and identification

of the vessel he/she is guiding, including the name and address of the river outfitter for whom he/she is guiding, in writing to any person involved in the collision, casualty or other accident.

2. A river outfitter shall be responsible for reporting any boating accidents occurring during a regulated trip that directly involve the outfitter's vessels, passengers, guides, or trip leaders.
 - a. A vessel participating in a regulated trip is considered to be involved in a reportable boating accident whenever the occurrence results in unconsciousness, an injury requiring a physician's attention, or loss of life to any person; or the disappearance of any person from on-board under circumstances which indicate the possibility of death or injury. Boating accidents, for the purpose of the boat accident reporting requirement, are only those which occur on the river during regulated trips.
 - b. Any death, or injury or disappearance under circumstances which indicate the possibility of death, of any person from on-board a vessel during a regulated trip, shall be immediately reported by telephone or other means to the local law enforcement agency having jurisdiction. Such accident shall also be reported to the division by telephone or other means as soon as is practicable.
 - c. Blank boat accident report forms will be provided to all licensees by the division. Additional forms shall be available from the division, upon request.
 - d. A full and complete written boat accident report shall be submitted by the river outfitter to the division at the division's address identified on the form. In order for a report to be considered full and complete, all information requested on the form shall be disclosed and provided. If any information requested is unknown, it shall be so stated on the form.
 - (1) For any accident involving any death, or injury or disappearance under circumstances which indicate the possibility of death, of any person from on-board a vessel during a regulated trip, the river outfitter shall submit the report to the division within five days of the date of the accident. All such reports that are mailed to the division shall be postmarked within five days of the date of the accident.
 - (2) All other boat accident reports shall be submitted by the river outfitter to the division within ten days of the date of the accident.

FINAL REGULATIONS - CHAPTER P-3 - RIVER OUTFITTERS

300 - LICENSE APPLICATION AND ISSUANCE

1. An individual, sole proprietorship, partnership, corporation, nonprofit corporation or organization as defined in section 13-21-115.5 (3), C.R.S., limited liability company, firm, association, or other legal entity either located within or outside of this state may apply for a river outfitter license. The application shall bear notice to the effect that any false statements made therein are punishable by law. All application signatures shall be made under oath that all information furnished is true and correct. The position held by the individual who signs the application shall be stated on the application. All applications submitted shall bear an original signature.
 - a. If the applicant is a partnership, any general partner may sign the application.
 - b. Any unincorporated legal entity, other than a partnership, consisting of more than one individual shall designate one of its members to sign and submit an application.
 - c. If the applicant is a corporation, the president or other authorized executive officer of the corporation shall sign the application and the secretary of the corporation shall attest the signature.
2. A corporation shall be incorporated pursuant to the laws of this state or shall be duly qualified to do business in this state. To be duly qualified to do business in this state, an out-of-state corporation that transacts business in the State of Colorado must show evidence that it has procured a current and valid certificate of authority from the Colorado Department of State. A copy of a current and valid certificate of authority shall be submitted with the license application.
3. No person shall outfit under a business name until the licensee has notified the division of the business name. Such notice must be submitted in writing at least ten business days prior to soliciting for or providing river outfitting services under the business name.
4. Any licensee using a d/b/a (doing business as) must list any and all d/b/a's. Should new d/b/a's be formed, the licensee must notify the division, in writing, within ten days of the action.
5.
 - a. A copy of a current and valid certificate of liability insurance shall be submitted with the license application. A certificate of insurance shall be accepted by the division as evidence that the applicant has qualifying liability insurance if the certificate states:
 - (1) That the type of insurance is "CGL" , meaning either "comprehensive general liability" or "commercial general liability" business insurance; or that the type of insurance is "watercraft liability" . As used herein, "watercraft liability" policy means liability insurance covering commercial exposure for property damage and personal injury which may result from a river outfitter's use or operation of vessels, including shore-side activities such as passenger loading and unloading. Such liability insurance shall provide coverage for all vessels used by the insured for commercial purpose, to include newly acquired vessels and vessels borrowed from other persons for the insured's use.

- (2) A minimum amount of coverage of three hundred thousand dollars combined single limit per occurrence for any combination of property damage, death, and bodily injury;
- (3) That the insured's name and address stated on the certificate of insurance is the same as the primary business name used by the applicant on the license application;
- (4) The name, address, and phone number of the issuing insurance agent;
- (5) A policy number;
- (6) The beginning and ending dates of coverage and is currently in effect;
- (7) That the division is a certificate holder;
- (8) That the division will be given at least forty-five days written notice by certified mail prior to any modification, termination, or cancellation of the policy;
- (9) That every insurance company affording coverage is listed with an indication as to which company or companies is/are providing which insurance; and
- (10) That every insurance company affording coverage is licensed in the State of Colorado, or is currently listed on the approved surplus lines listing for Colorado and is offering coverage in compliance with the requirements of the Colorado Surplus Lines Insurance Act, Article 5 for Title 10, C.R.S., or is a risk retention group qualified under the Federal "Liability Risk Retention Act of 1986" , 15 U.S.C., Sections 3901 Et Seq., as amended in 1986. If coverage is provided by a purchasing group qualified under the Federal "Liability Risk Retention Act of 1986" , then the name and address of the group must be identified on the certificate.

b. A copy of a current and valid certificate of motor-vehicle liability insurance shall be submitted, prior to undertaking any licensed activity for a season, covering all "Commercial Vehicles" used in connection with the licensed activity. A certificate demonstrating motor vehicle liability insurance covering vehicles used in the licensed river outfitting activities shall be accepted by the division as evidence that the applicant has qualifying insurance if the certificate states:

- (1) That the type of insurance is commercial motor vehicle liability insurance. Motor vehicle liability means liability for bodily injury and property damage.
- (2) A minimum amount of coverage of one million five hundred thousand dollars combined single limit liability coverage for commercial vehicles with a seating capacity of 16 or more including the driver. A minimum amount of coverage of one million dollars combined single limit liability coverage for commercial vehicles with a seating capacity of 15 or less.
- (3) That the insured's name and address stated on the certificate of insurance is the same as the primary business name used by the applicant on the license application;
- (4) The name, address, and phone number of the issuing insurance agent;

- (5) A policy number;
 - (6) The beginning and ending dates of coverage and is currently in effect;
 - (7) That the division is a certificate holder;
 - (8) That the division will be given at least thirty-five days written notice by certified mail prior to any modification, termination, or cancellation of the policy;
 - (9) That every insurance company affording coverage is listed with an indication as to which company or companies is/are providing which insurance; and
 - (10) That every insurance company affording coverage is licensed in the State of Colorado, or is currently listed on the approved surplus lines listing for Colorado and is offering coverage in compliance with the requirements of the Colorado Surplus Lines Insurance Act, Article 5 for Title 10, C.R.S.
- c. The liability insurance policies shall insure the river outfitter against all claims occasioned by acts or omissions of the outfitter in carrying out the activities and operations authorized by the license.
 - d. The qualifying liability insurance policies shall be maintained so as to continue in full force and effect for the duration of time that the river outfitter is licensed. If any claims reduce the remaining annual aggregate amount below the required minimums, which must be written on an occurrence basis, then the licensee must purchase additional insurance such that a minimum amount of coverage is continued in full force and effect for the duration of time that the river outfitter is licensed. Any expiration, termination, or cancellation of the required policy or, if an annual aggregate amount is a condition of the coverage, any claims that reduce the amount of coverage below the required minimums shall cause the license to become invalid. The licensee shall ensure that current and valid certificates of insurance are on file with the division at all times.
 - e. For purposes of #300.5.d, "Commercial Vehicle" means any self-propelled or towed vehicle bearing an apportioned plate or having a manufacturer's gross vehicle weight rating or gross combination rating of ten thousand one pounds or more, which vehicle is used in commerce on the public highways of this state or is designed to transport sixteen or more passengers, including the driver, unless such vehicle is a school bus regulated pursuant to C.R.S. 42-4-1904 or any vehicle that does not have a gross vehicle weight rating of twenty-six thousand one or more pounds and that is owned or operated by a school district so long as such school district does not receive remuneration for the use of such vehicle, not including reimbursement for the use of such vehicle;
- 6. Licenses are not transferable. If a business is sold or transferred, a new license application shall be submitted by the new owner(s).
 - 7. All licenses shall be valid, unless suspended, revoked or otherwise invalidated, from the date of issue until the date of expiration as printed on the license, except that if a river outfitter has made timely and sufficient application for renewal, then the existing license shall not expire until the application has been finally acted upon by the board.
 - 8. A river outfitter shall maintain a regular place of business at which mail and phone calls can be received. The river outfitter's license shall be prominently displayed at the regular place of business. The address or physical location and the business telephone number shall be stated on the application. The address or physical location identified for the regular place of business will be

printed on the license. Any change of the mailing address, physical location, or telephone number shall be reported to the division in writing within ten days of such change. If the physical location has changed, then the division shall issue an amended license at no cost.

9. The division shall accept applications during the period from November 1 through December 31 of the year preceding the calendar year for which application is made and during the period of January 1 through January 31 of the calendar year for which application is made. An application filed after January 31 of the calendar year for which application is made shall be considered a late application and a late filing fee shall be charged in addition to the license fee.
10. Applications shall be accompanied by the full payment of the license fee. Incomplete applications will be returned and a refiling fee will be charged.
11. All licenses shall be issued within a reasonable time period, not to exceed ninety days, after the division receives an eligible and complete application. Licenses will be sent certified mail, return receipt requested, to the licensee's mailing address.
12. River outfitters who initiate regulated trips in Colorado on specified river segments are eligible for a limited use license, given that these trips are conducted primarily on the waters of an adjoining state. A limited use license shall entitle the holder to use only the following river segments in Colorado:
 - a. North Platte River - Northgate Canyon
 - b. Green River - Within Dinosaur National Monument
 - c. Yampa River - Within Dinosaur National Monument
 - d. Colorado River - Ruby Canyon
 - e. Dolores River - Gateway Canyon
13. Effective November 1, 1995, the river outfitter licensing fee schedule shall be as follows:
 - a. Original and renewal license application fee.....\$400.00
 - b. Late application filing fee.....\$100.00
 - c. Application refiling fee.....\$ 25.00
 - d. Limited use original and renewal license fee.....\$100.00

301 - REGULATED TRIPS, PASSENGER ORIENTATION, AND TRIP LOGS

1. A single regulated trip may include one or more vessels and one or more guides provided by a single river outfitter. All vessels participating in a regulated trip shall remain in reasonably close proximity with one another. "Reasonably close proximity" means that all vessels on the regulated trip will be close enough to one another to give assistance, whenever needed, without unnecessary delay.
2. A river trip's sole purpose that is to provide an educational or instructional voyage in order to teach canoeing or kayaking skills is not a regulated trip, so long as the trip is promoted and conducted only as a canoeing or kayaking class.

3. At least one qualified guide shall be aboard each vessel which carries, or is designed for and capable of carrying, three or more passengers.
4. A trip leader, assigned by the river outfitter, shall accompany every regulated trip. The trip leader shall ensure that a commercial passenger orientation is provided.
5. A commercial passenger orientation shall include basic orientation for all commercial passengers on a regulated trip. Topics that must be explained during orientation prior to embarking on a regulated trip are:
 - a. The conditions of weather, river, terrain, equipment, travel, housing and vessels that commercial passengers may expect to encounter;
 - b. The personal equipment, clothing and gear that commercial passengers should have for the trip;
 - c. The proper fit, wearing, and use of personal flotation devices;
 - d. Passenger riding and positioning in the vessel;
 - e. Safety procedures for swimming through river rapids and getting back into the vessel;
 - f. Instructions on what to do in the event of a vessel accident; and
 - g. Sanitation, litter prevention and human refuse disposal.
6.
 - a. A river outfitter shall maintain an accurate and complete trip log for every regulated trip. The trip log shall include:
 - (1) The name of the assigned trip leader;
 - (2) The names of all guides who operated or guided vessels carrying commercial passengers;
 - (3) The trip departure and completion dates and times; and
 - (4) The location of vessel launch and take-out.
 - (5) A river outfitter shall maintain the name, address, and telephone number for every passenger on a regulated trip, except in the case of groups. For groups, the river outfitter shall maintain, at a minimum, the name of each person in the group, and the address and telephone number for a contact person for the group. Release forms and booking lists will suffice so long as the required information is present.
 - b. A river outfitter shall maintain all trip logs and other records required by this regulation # 301-6. for a period of three years. These required records shall be maintained at the river outfitter's designated place of business. The river outfitter, or any employee having access to the trip logs and other required records, shall provide such trip logs and records at all reasonable times to any peace officer enforcing the provisions of Article 32 of Title 33, C.R.S., and these regulations, upon request.

302 - GUIDE, TRIP LEADER, AND GUIDE INSTRUCTOR TRAINING AND QUALIFICATION RECORDS

1.
 - a. A guide shall have a minimum of fifty hours of on-river training utilizing paddles and/or oars, and any other equipment that the guide will be using on regulated trips. Of this fifty hours, thirty hours shall be with a qualified guide instructor aboard the same vessel with the trainee. The remaining twenty hours shall be with a qualified guide instructor on the same training trip. Twenty hours of training shall occur on the river on which the guide will be guiding regulated trips or on a river section of comparable difficulty.
 - b. Minimum guide training shall include the following areas of instruction:
 - (1) Rigging and maneuvering the vessel;
 - (2) River currents, eddies, and waves;
 - (3) River hazards;
 - (4) Types and causes of river rapids;
 - (5) Scouting and running rapids;
 - (6) River rescue and emergency procedures;
 - (7) Minimizing outdoor recreation resource impacts; and
 - (8) Proper fit, wearing and use of personal flotation devices.
 - c. Guides who have worked commercially out-of-state as a river guide must furnish the in-state river outfitter with written documentation that they have received this required minimum guide training, or its equivalent. The river outfitter shall ensure that the documented out-of-state training is adequate to meet the minimum guide training requirements.
2. Prior to guiding a regulated trip, each guide shall have:
 - a. Completed the required training identified in # 302-1.; and
 - b. Operated a commercial vessel at least once over the course of each section of river that will be guided.
3. During each guide's first regulated trip, a qualified guide instructor must be aboard the same vessel with the guide.
4. A river outfitter shall maintain a qualification record for each guide, including subcontractors, employed. Such record shall include:
 - a. The guide's full legal name and date of birth;
 - b. Evidence of successful completion of a standard first-aid course, which shall include training in cardiopulmonary resuscitation. The following documents shall be accepted by the division as evidence that the guide has qualifying emergency medical care training:

- (1) A photocopy of the front and back of the guide's valid standard first-aid card or certificate issued by any institution recognized as a provider of emergency medical care training, for example, the American Red Cross, the National Safety Council, or hospitals. If the first-aid course did not include training in cardiopulmonary resuscitation, then additionally required is a photocopy of the front and back of the guide's valid cardiopulmonary resuscitation card or certificate issued by any institution recognized as a provider of cardiopulmonary resuscitation training, for example, the American Red Cross or the American Heart Association; or
 - (2) In lieu of the required card(s) or certificate(s), a copy of a dated letter signed by the instructor(s) stating that the guide has successfully completed the emergency medical care training required, and stating the instructor's address and telephone number;
 - c. Written documentation that the guide is qualified by meeting the minimum training requirements established in this regulation. Such documentation shall include:
 - (1) Dates and beginning and ending times of training;
 - (2) Identification of the training site, including a description of beginning and ending locations for on-river training and a location description or address for classroom training;
 - (3) The name(s) of the guide instructor(s) who provided the instruction and training; and
 - (4) The signature(s) of the guide instructor(s) attesting that the minimum guide training requirements established in this regulation have been met.
5. A river outfitter shall maintain a qualification record for each trip leader and guide instructor, including subcontractors, employed. Such record shall include:
- a. The trip leader's or guide instructor's full legal name and date of birth;
 - b. Evidence of successful completion of a standard first-aid course, which shall include training in cardiopulmonary resuscitation, as specified in #302-4.b.(1) or (2);
 - c. For guide instructors, written documentation that the individual has logged a total of at least fifteen hundred river miles, of which at least seven hundred fifty of those river miles were logged while acting as a guide, and has served as a trip leader on at least five regulated trips. For trip leaders, written documentation that the individual has logged a total of at least five hundred river miles, of which at least two hundred fifty river miles shall have been logged while acting as a qualified guide and no more than two hundred fifty river miles shall have been logged while acting as a guide on non-regulated trips. Such documentation shall consist of a log that includes:
 - (1) Dates and beginning and ending locations of river trips;
 - (2) The total number of river miles covered during each recorded trip and for guide instructors, identification of the trip as either private or commercial; and
 - (3) Identification of all trips during which the individual served as a trip leader.

6. Guide qualification records, trip leader qualification records, and guide instructor qualification records shall be maintained by the primary employer at that river outfitter's designated place of business. In the case of a river outfitter who temporarily hires the services of a guide, trip leader, or guide instructor who is primarily employed by a different river outfitter, the following regulations apply.:
 - a. A river outfitter who temporarily uses the services of a guide or trip leader who is primarily employed by a different river outfitter shall identify in the applicable trip log(s) the river outfitter that maintains the guide qualification record for the guide or trip leader.
 - b. A river outfitter who temporarily uses the services of a guide instructor who is primarily employed by a different river outfitter shall identify, in each guide's qualification record for all guides trained by the instructor, the river outfitter that maintains the guide instructor qualification record.
 - c. River outfitters may only use the services of guides, trip leaders and guide instructors who are primarily employed by different river outfitters if the other river outfitters are licensed in the State of Colorado and maintain their place of business in the State of Colorado.
 - d. A river outfitter shall not provide any guide, trip leader, or guide instructor to another river outfitter unless the employee is qualified for the position requested.
7. A river outfitter shall maintain all guide, trip leader, and guide instructor qualification records during the period of such employees employment and for a period of three years after his/her termination. These required records shall be maintained at the river outfitter's designated place of business. The river outfitter, or any employee having access to such records, shall provide them at all reasonable times to any peace officer enforcing the provisions of Article 32 of Title 33, C.R.S., and these regulations, upon request.

303 - DRINKING WATER AND SANITATION

1. If a river outfitter provides drinking water during a regulated trip, the water containers shall have a closed top, be tightly sealed, and have a smooth, cleanable interior surface. If river water or water from an untreated, untested source is used, then a reliable method of treating the water must be used and the regulated trip shall be equipped in order to do so. Boiling, commercial filters, water purification tablets, chlorine bleach and a tester for chlorine residual, and tincture of iodine or an iodine purification kit are all acceptable methods for purifying drinking water if proper procedures are used.
2. In order to help ensure that there are no violations of the littering statute, 18-4-511, C.R.S., outfitters shall be required to provide sufficient containers for containment and removal of refuse, trash, ashes, garbage and solid human waste.

304 - PERSONAL FLOTATION DEVICES

1. A river outfitter shall ensure that each commercial passenger participating in a regulated trip is provided with a personal flotation device that is in good and serviceable condition and of the proper size for the intended wearer and is:
 - a. U.S. Coast Guard approved Type I, Type III, or Type V - whitewater non-inflatable, except that:

- (1) If the person weighs fifty pounds or less, a Type II- non-inflatable personal flotation device may be worn in lieu of a Type I, Type III, or Type V- whitewater non-inflatable device, provided it is a vest style designed with a crotch strap and an additional flotation collar.
 - b. All Type III personal flotation devices must have a minimum of 2 adjustable straps on the side, 1 adjustable waist strap and adjustable shoulder straps, capable of retaining the wearer in swift water conditions. Type III personal flotation devices must be intended for paddling or kayak use by the U.S. Coast Guard and labeled accordingly.
2. Each guide shall require that every commercial passenger wears and has tied or otherwise securely fastened his or her assigned personal flotation device at all times while on or in a river, except during regulated trips operating on designated flatwater where passengers thirteen years of age or older may be permitted to remove or loosen the personal flotation device at the discretion of the guide or trip leader.
3. Every river outfitter, guide, guide in training, guide instructor, and trip leader shall at all times while participating in a regulated trip or guide training trip, except on designated flatwater, wear a securely tied or fastened U.S. Coast Guard approved personal flotation device of Type I, III-non-inflatable, or V-whitewater non-inflatable. The personal flotation device shall be in good and serviceable condition and shall be of the proper size for the intended wearer.
4. Designated flatwater means:
 - a. The Colorado River- from the Loma boat launch in Mesa County to the Utah/Colorado state line; and
 - b. The Gunnison River in Delta County -from the Smith Fork to the North Fork.
 - c. The Yampa River from the Hayden Station Pump Station in Routt County to the Juniper Canyon Access Site in Mofatt County and from the Maybell Bridge at Highway 40 in Mofatt County to the Cross Mountain River Access Site in Mofatt County.
5. The trip leader shall ensure that at least one spare U.S. Coast Guard approved personal flotation device of the type required by # 304-1.a. is carried per regulated trip that includes one or more rafts, dories, or motorboats. All required spare personal flotation devices shall be in good and serviceable condition.

305 - VESSELS AND EQUIPMENT

1. A river outfitter shall provide all vessels and associated equipment required during all regulated trips. When equipment is lost, damaged, or used during a bona fide on-the-river emergency, then the river outfitter shall ensure that every vessel is reequipped as required prior to use of the vessel on any successive trip.
2. All vessels used during a regulated trip shall be marked with the vessel owner's name, current address, and telephone number in a legible, clearly visible and durable fashion.
3. The trip leader shall ensure that every regulated trip carries aboard at least one of the vessels a first-aid kit which shall be immediately available for emergency use. The first-aid kit shall contain, at a minimum, adhesive bandages, sterile pads, flexible gauze bandages, first-aid tape, antiseptic or soap and triangular bandages in quantities sufficient to meet the size and needs of the regulated trip. These supplies shall be maintained in a clean and dry condition in a durable container suitable for river use.

4. The trip leader shall ensure that every regulated trip carries aboard at least one of the vessels a throwbag containing a minimum of fifty feet of rope. The throwbag shall be in a serviceable condition and shall be stored so as to be readily accessible in an emergency.
5. River outfitters shall not provide, use, operate or permit the use or operation of innertubes, air mattresses, or any other single-chambered air-inflated devices during any regulated trip.
6. If an inflatable raft or dory is used during a regulated trip, then each such vessel shall:
 - a. Display the river outfitter's company name or logo or abbreviation, which shall read from left to right in characters of good proportion, a minimum of four inches in height above waterline, of a color which contrasts with the color of the background, and be maintained so as to be clearly visible and legible from a distance of one hundred and fifty feet.
 - b. Be equipped with a rope attached to the bow or stern, which shall be a minimum of ten feet long and suitable for tying up and securely holding the vessel to the shore of the waters being traveled. All loose ropes not in use shall be stored and secured so as not to present a danger of entanglement in case of an accident.
 - c. Be equipped with at least one suitable container of sufficient size for bailing water out of the vessel, except that self-bailing vessels are exempt from this requirement.
 - d. Be adequately equipped with durable and substantially undamaged oars or paddles and spares, taking into consideration the size of the vessel and river conditions.
 - (1) For oar-controlled and powered vessels or combination oar and paddle-controlled and powered vessels, there shall be a minimum of two oars and one spare oar aboard each such vessel.
 - (2) For paddle-controlled and powered vessels, there shall be a minimum of one spare paddle per vessel. The spare paddle(s) may be carried in another vessel on the same trip so long as the spare(s) is/are readily accessible. A spare paddle is one in addition to one paddle per participating adult.
7. If an inflatable raft, inflatable kayak, or other multi-chambered air inflated device is used during a regulated trip, then:
 - a. Every inflatable raft, inflatable kayak, or other inflated type vessel shall be multi-chambered, containing a minimum of two separate air chambers.
 - b. Every regulated trip including one or more inflatable rafts, inflatable kayaks, or other inflated vessel type shall have immediately available a minimum of one patch/repair kit and one air pump. Both the kit and the air pump must be adequate to meet the size and needs of the trip and they must be compatible with the vessel(s) in use. The kit shall be maintained in good and serviceable condition and stored in a durable container suitable for river use.
8. If a canoe, whitewater or decked canoe, hard shell kayak, inflatable kayak, or sit-on-top kayak is used during a regulated trip, then a minimum of one spare paddle per every five such vessels shall be readily accessible aboard one of the vessels on the trip. In addition:
 - a. For canoes, whitewater canoes, and hard shell kayaks, every such vessel shall be equipped with flotation bags securely fixed in the vessel so as to provide enough flotation that when the fully equipped vessel is full of water, it will remain afloat.

- b. Every river outfitter, guide, guide in training, guide instructor, trip leader, and commercial passenger aboard a whitewater or decked canoe or hard shell kayak shall wear a securely fastened crash helmet at all times while on the river.
- 9. If a motorboat, as defined in 33-13-102 (1), C.R.S., is used during a regulated trip, all State boating statutes and regulations pertaining to motorboat registration, use, operation and required equipment apply, except that the personal flotation device requirement shall be as stated in regulation # 304. In addition to the equipment otherwise required by law, each motorboat used during a regulated trip shall also:
 - a. Display the river outfitter's company name, logo, or abbreviation, as specified in # 305-6.a.;
 - b. Be equipped with one spare motor or adequate alternate means of propulsion and control;
 - c. Be equipped with a rope, a minimum of ten feet long, attached to the bow and stored when not in use as specified in # 305-6.b.;
 - d. Be equipped with a bailing device as specified in # 305-6.c., except that self-bailing vessels are exempt from this requirement; and
 - e. Be equipped with one suitable size ladder, capable of accommodating persons boarding from the water and stored so as to be readily accessible.

306 - VESSEL LOADING CAPACITY

- 1. No river outfitter, guide, or trip leader shall operate, or provide for the operation of any vessel which is overloaded, taking into consideration rated capacities, weather, type of construction, river conditions, weight and bulk of gear/load and any other existing conditions, except as may be required in emergency situations.
- 2. No river outfitter, guide, or trip leader shall operate, or provide for the operation of any inflatable raft which carries more than the maximum allowable number of individuals, including the river outfitter, guide or trip leader, as specified by the following formula:
 - a. The maximum allowable number of individuals/inflatable raft = $[(\text{length of vessel, rounded to the nearest foot}) \div (2)] + 2 + 1 \text{ guide}$.
 - b. The length of a vessel is a straight-line measurement from the foremost part of the bow to the aftmost part of the stern, measuring parallel to the centerline. The length shall exclude sheer and any attachment or fittings on either the bow or stern.
 - c. The maximum allowable number of individuals calculated by this formula is acceptable only for normal river conditions. The circumstances described in # 306-1 must be considered in calculating a prudent passenger load.

307 - BOAT ACCIDENTS

- 1. The guide of a vessel involved in a collision, casualty or other accident shall, so far as the guide can do so without serious danger to the guide's own vessel, crew, and passengers, render to other persons affected by the collision, casualty or other accident such assistance as may be practicable and necessary in order to save them from, or to minimize, any danger caused by the collision, casualty or other accident. The guide shall give his/her name, address, and identification

of the vessel he/she is guiding, including the name and address of the river outfitter for whom he/she is guiding, in writing to any person involved in the collision, casualty or other accident.

2. A river outfitter shall be responsible for reporting any boating accidents occurring during a regulated trip that directly involve the outfitter's vessels, passengers, guides, or trip leaders.
 - a. A vessel participating in a regulated trip is considered to be involved in a reportable boating accident whenever the occurrence results in unconsciousness, an injury requiring a physician's attention, or loss of life to any person; or the disappearance of any person from on-board under circumstances which indicate the possibility of death or injury. Boating accidents, for the purpose of the boat accident reporting requirement, are only those which occur on the river during regulated trips.
 - b. Any death, or injury or disappearance under circumstances which indicate the possibility of death, of any person from on-board a vessel during a regulated trip, shall be immediately reported by telephone or other means to the local law enforcement agency having jurisdiction. Such accident shall also be reported to the division by telephone or other means as soon as is practicable.
 - c. Blank boat accident report forms will be provided to all licensees by the division. Additional forms shall be available from the division, upon request.
 - d. A full and complete written boat accident report shall be submitted by the river outfitter to the division at the division's address identified on the form. In order for a report to be considered full and complete, all information requested on the form shall be disclosed and provided. If any information requested is unknown, it shall be so stated on the form.
 - (1) For any accident involving any death, or injury or disappearance under circumstances which indicate the possibility of death, of any person from on-board a vessel during a regulated trip, the river outfitter shall submit the report to the division within five days of the date of the accident. All such reports that are mailed to the division shall be postmarked within five days of the date of the accident.
 - (2) All other boat accident reports shall be submitted by the river outfitter to the division within ten days of the date of the accident.

John W. Suthers

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**State of Colorado
Department of Law**

Office of the Attorney General

Tracking number: 2014-00757

**Opinion of the Attorney General rendered in connection with the rules adopted by the
Colorado Parks and Wildlife (405 Series, Parks)**

on 09/12/2014

2 CCR 405-3

CHAPTER P-3 - RIVER OUTFITTERS

The above-referenced rules were submitted to this office on 09/17/2014 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.

September 22, 2014 13:52:19

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 Natural Resources

Agency

Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-2

Rule title

2 CCR 406-2 CHAPTER W-2 - BIG GAME 1 - eff 11/01/2014

Effective date

11/01/2014

FINAL REGULATIONS - CHAPTER W-2 - BIG GAME

ARTICLE I - GENERAL PROVISIONS

#206 - APPLICATIONS AND DRAWINGS FOR LIMITED LICENSES

B. Application and Drawing Provisions and Restrictions.

4. Preference Systems

Note: see also §33-4-103, C.R.S.

- e. Youth Preference - a minimum of 15 percent of the number of the limited doe pronghorn licenses, limited either-sex and antlerless deer licenses and limited antlerless elk licenses established for each GMU shall be made available for purchase by qualified youth applicants. Licenses shall be available through application and computer selection from the Division headquarters, 6060 Broadway, Denver, CO 80216. Licenses not allocated to youth shall be made available to the general public in the remaining drawings.
 - 1. Any eligible hunter, ages 12-17 is entitled to youth hunt preference for all seasons and methods of take for the license types listed in the preceding paragraph, except that public Ranching for Wildlife and Air Force Academy licenses shall not be included in this preference. The applicant must submit an individual application for the desired, eligible license on forms provided by the Division. Group applications will not be accepted for youth preference. Where more than one (1) hunt code choice is shown on the application, all hunt codes must be youth preference-eligible hunt codes.
- j. Preference Points and Chances
 - 1. Preference will be given for qualifying applications for first choice hunt codes only and shall be subject to the following provisions:
 - aa. Deer, Elk, Pronghorn, and Bear: one preference point will be awarded to each person who qualifies for and fails to draw a limited license for deer, elk, pronghorn, or bear as a first choice in the regular drawing or who applies using a first choice hunt code established for the purpose of accumulating a preference point only. Preference points will be used in future drawings for the same species and will accumulate until the applicant obtains a first choice license. When an applicant obtains a first choice license, all accumulated preference points for that species become void. If an applicant both fails to apply for a species and has not purchased a license for that same species during any given 10-year period, all accumulated preference points for that species become void. If an applicant accepts a first choice license that has been returned and reissued, all accumulated preference points for that species become void. In those hunt codes requiring 10 or more resident preference points to draw, up to 20 percent of available licenses for deer, elk, pronghorn and bear shall be issued through a random drawing. The number of preference points required to draw shall be determined by

a three-year average for the 2007, 2008 and 2009 limited license draws. A minimum of five individual preference points is required for an applicant to participate in the random drawing. Group applications shall not be eligible to participate in the random drawing.

- bb. In addition to the \$3 application fee, an unsuccessful applicant (except youth as defined by 33-4-117 C.R.S., lifetime license holders, and Colorado resident military personnel on active duty outside Colorado), or one who applies using a first choice hunt code established for the purpose of accumulating a preference point only, for deer, elk, pronghorn or bear will be assessed a \$40 fee (\$30 for resident deer and pronghorn) to receive a preference point unless they have purchased one of the following: an annual license (fishing (including free senior annual), small game or resident combination small game/fishing license, furbearer) for the year previous to which they are seeking a preference point; any big game license for the previous year or a current draw license for the species for which they are seeking a preference point. The fee, per species, shall entitle the hunter to preference points for any unsuccessful deer, elk, pronghorn or bear application in that year.
- cc. Rocky Mountain Bighorn Sheep, Mountain Goat, and Moose: One preference point will be awarded to each person who qualifies for and fails to draw a first choice license, until three preference points have been accumulated. Each time an applicant with three (3) points qualifies for and fails to draw a first choice license for bighorn sheep, mountain goat or moose the applicant will be awarded one (1) additional chance in future drawings for that species. Applicants who have "X" number of chances will have "X" times the probability of drawing a license compared to those with one (1) chance (i.e. those who are using their three (3) points for the first time). For example, applicants with two (2) chances will have double the probability of drawing compared to applicants for the same hunt code having only one (1) chance. When an applicant obtains a first choice license, all accumulated preference points for that species become void. If an applicant both fails to apply for a species and has not purchased a license for that same species during any given 10-year period, all accumulated preference points for that species become void. If an applicant accepts a first choice license that has been returned and reissued, all accumulated preference points for that species become void.
- dd. Applications receiving preference points will be given priority over all applications with fewer points. Group applications will receive preference at the level of the group member with the fewest accumulated preference points, and, where applicable, the fewest accumulated chances, except that group applications will not be successful, regardless of preference point level or number of chances, when there are fewer licenses remaining in the hunt code quota than the number of applicants in the group.
- ee. In lieu of applying through the regular limited license draw, any active duty member of the United States Armed Forces who is stationed at any military facility in Colorado and actively deployed outside the United States, or any active duty member of the United States Armed Forces who is a Colorado resident and is deployed outside

the United States, shall, upon their return to the United States, be eligible to apply for preference points for any limited license draw that occurred during their absence. Applications for preference points shall be made on forms provided by the Division and filed within six months upon the member's return to the United States.

5. Drawing Processes

- a. Applications using landowner preference and youth preference shall be drawn, in that order, prior to drawing general public applications for the same species.
- b. Except as otherwise provided, applicants who applied properly for deer, elk, or pronghorn in the regular drawing and are unsuccessful will be given an option to: Apply for a leftover drawing. Request a refund. Donate that refund to the Division's nongame or Operation Game Thief fund. No such donation may be split between the two funds. Request an unlimited antlered elk license.
- c. Unsuccessful applicants for bear, bighorn sheep, mountain goat, or moose will receive a refund check.
- d. Unsuccessful applicants will be notified of their accumulated preference points and chances on their refund check stub, on their leftover drawing letter, or on their carcass tag, whichever is applicable.
- e. Nonresident hunter drawing limitations (first choice applications only)
 1. Nonresidents hunters shall receive no more than 10% of available moose, bighorn sheep and mountain goat licenses for all hunt codes. In the event there are an insufficient number of nonresident applications for the allocated number of moose, bighorn sheep or mountain goat licenses in any hunt code, the excess nonresident licenses will be issued to residents through the regular drawing process.
 2. Unless there is an insufficient number of resident applications, nonresident hunters shall receive no more than 35% of available deer and elk licenses for hunt codes requiring fewer than six preference points for resident hunters to draw in the regular drawing, and no more than 20% of available deer and elk licenses for hunt codes requiring six or more preference points for resident hunters to draw in the regular drawing as calculated using a three-year average for the 2007, 2008, and 2009 limited license draws. These drawing limitations do not apply to the issuance of Private Land Only and Ranching For Wildlife licenses.

6. Leftover Licenses, Drawing Provisions and Restrictions

- a. Elk, deer, pronghorn and bear licenses which are not issued through the regular drawing will be issued as "leftover" licenses, (through one "leftover" drawing process if the number of "leftover" licenses is sufficient to justify the administrative cost).
- b. Only persons who apply for a limited license and who are unsuccessful are eligible for the leftover license drawing. Applicants for the leftover drawing may only apply for the same species that they applied for in the initial drawing.

- c. Any eligible hunter, ages 12 – 17 shall receive preference for leftover deer and elk licenses.
- d. Any active duty member of the United States Armed Forces stationed at any military facility in Colorado and actively deployed outside the United States, or any active duty member of the United States Armed Forces who is a Colorado resident and is deployed outside the United States, shall be allowed a preference for the purchase of leftover licenses prior to their sale to the general public.
- e. Group applications are not accepted for leftover licenses.
- f. Applicants must respond on the forms provided to the individuals by the Division following the regular drawing.
- g. Applications must be postmarked no later than the first Tuesday in July, annually.
- h. Applications not postmarked by the first Tuesday in July, annually, will receive a refund.
- i. Leftover Wildlife Ranching licenses will not be available through the standard over-the-counter leftover process. For information regarding the availability of these licenses on a first-come, first-served basis, please refer to the big game drawing brochure or call the Division at (303) 297-1192.

ARTICLE VI - MOUNTAIN LION

#242 - RIFLE AND ASSOCIATED METHODS MOUNTAIN LION SEASONS

A. General and Extended Seasons

- 1. Dogs may be used to hunt mountain lion. However, the pack size shall be limited to no more than eight (8) dogs.
- 2. After a mountain lion has been pursued, treed, cornered or held at bay, a properly licensed person shall take or release the mountain lion. No person shall in any manner restrict or hinder the mountain lion's ability to escape for the purpose of allowing a person who was not a member of the hunting party to arrive and take the mountain lion.
- 3. Without regard to harvest limit quotas, unit boundaries or season dates, the director or his designee may authorize the taking of any problem lion by any lawful means designated, including but not limited to methods permitted under Article XVIII, Section 12b, of the Colorado Constitution, when such lion are causing damage to livestock or property or are frequenting areas of incompatibility with other users as may be necessary to protect public health, safety and welfare. The taking of lion under this section shall be by licensed hunters, houndsmen, or trappers who shall be bound by all other statutes and regulations regarding the taking and possession of mountain lion.
- 4. The director shall establish a statewide list of hunters, houndsmen, and trappers to take problem lions taking into consideration the ability to respond, skill, experience, location, and the ability of the hunters, houndsmen, or trappers who have applied to participate in removal operations; and, in selecting participants from that list for any particular removal operation shall further take into consideration the urgency dictated by the situation and the environment in which the removal will occur.
- 5. Research Area:

- a. The Research Area is defined as the area bounded on the east by Colo 348 at Delta, on the north by 25 Mesa Road and USFS 503 to Nucla, on the south and west by Colo 97 to Colo 141 and Colo 145 to Placerville and on the south by Colo 62 to Ridgway and on the east by US 550 to Montrose and by US 50 to Delta.
 - b. A free permit is required to hunt lions in the Research Area. Permits are valid for 14 consecutive days, and are unlimited, Permits are available at the Montrose Service Center at 2300 S. Townsend Ave., Montrose, CO 81401. Permits may be obtained beginning 14 days prior to the opening of the season through January 31 or filling of the Research Area harvest limit quota, whichever comes first.
6. Hunt Type, Dates, Units (as described in Chapter 0 of these regulations), and Harvest limit Quotas.
- a. Mountain Lion, Either-sex Season and Harvest Limit Quota – In Game Management Units, as follows, the day after the close of the final combined rifle season through March 31 annually (through January 31 for GMU 61, 62 and 70 within the Research Area):

Units	Lion Harvest Limit Quota
1, 2	5
3, 301	5
4 (north of Co Rd 27 and USFS 110), 5	8
4 (south of Co Rd 27 and USFS 110), 214, 441	5
6, 16, 17, 161, 171	4
7	1
8	4
9	3
10	10
11	12
12	16
13 (west of Hayden Divide Road)	12
13 (east of Hayden Divide Road), 131	5
15	5
18, 27, 28, 37, 181, 371	11
19	5
20	9
21	15
22	15
23	17
24	4
25, 26, 34	7
29	2
30	10
31	12
32	5
33	13
35, 36, 361	9
38	7
39, 391	7
40	7

Units	Lion Harvest Limit Quota
41	5
42	10
43	7
44	6
45	1
46	6
47	1
48, 49, 50, 481, 500	8
51	7
52, 411	10
53, 63	8
54, 55, 551	7
56, 561	8
57, 58, 581	20
59, 591	7
60	5
61 north of Delta-Nucla Rd	7
61, 62, 70 Research Area (subject to the limitations set forth in #242(A)(5))	5
62 north of Delta-Nucla Rd	7
64	5
65	5
66, 67	8
68, 681, 682	6
69, 84, 86, 691, 861	26
70 east of Colo 141 , except the area between Colo 145 and the San Miguel River north of the Norwood Bridge	10
70 west of Colo 141	6
71, 711	9
72	4
73	10
74, 741	6
75	4
76, 79, 791	5
77	6
78	5
80	5
81	4
82	6
83	10
85, 140, 851	24
87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 106, 107, 109, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 951	5
104, 105, 110	5
123, 124, 125, 126, 127, 128, 129, 130, 132, 133, 134, 135, 136, 137, 138, 139, 141, 142, 143, 144, 145, 146, 147	20
191	8
201	5
211	17
421	10

Units	Lion Harvest Limit Quota
444	7
461	7
501	8
511	4
521	6
751, 771	5
Total:	656

- b. Mountain Lion, Either-sex Season and Harvest Limit Quota – In Game Management Units, as follows, April 1 - April 30 annually:

Units	Lion Harvest Limit Quota
1, 2	2
3, 301	4
4 (north of Co Rd 27 and USFS 110), 5	3
4 (south of Co Rd 27 and USFS 110), 214, 441	2
7	1
8	3
9	2
10	6
11	3
12	1
13 (west of Hayden Divide Road)	4
13 (east of Hayden Divide Road), 131	2
19	2
20	6
22	1
24	2
29	2
31	5
32	1
33	5
38	5
39, 391	5
41	3
42	3
46	3
48, 49, 50, 481, 500	1
51	4
52, 411	6
56, 561	2
57, 58, 581	2
59, 591	3
68, 681, 682	2
70 east of Colo 141 , except the area between Colo 145 and the San Miguel River north of the Norwood Bridge	6
70 west of Colo 141	2
71, 711	1
72	3
73	2
81	2

Units	Lion Harvest Limit Quota
82	3
87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 106, 107, 109, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 951	5
104, 105, 110	4
123, 124, 125, 126, 127, 128, 129, 130, 132, 133, 134, 135, 136, 137, 138, 139, 141, 142, 143, 144, 145, 146, 147	8
191	6
201	2
211	12
421	2
461	6
501	4
511	1
521	1
Total:	166

B. Licenses and GMU Harvest Limit Quota Status

1. A valid mountain lion license is required to hunt any mountain lion.
2. Except as provided in 33-3-106 C.R.S., it is unlawful for any person to purchase or obtain a mountain lion hunting license or hunt mountain lions unless the person obtains a mountain lion education certificate issued by the Division attesting to the person's successful completion of the Division's certified mountain lion education and identification course. Any person required to obtain such a certificate shall have the certificate on his or her person while hunting or taking mountain lion.
3. Prior to each hunting trip in any game management unit, but not earlier than 5:00 p.m. of the day before hunting, lion hunters must contact 1-888-940-LION (1-888-940-5466), or any Division office and determine which game management units have not reached the unit harvest quota and are open to hunting. It shall be unlawful to hunt in a unit after it is closed.

C. Special Restrictions

1. Reporting and Sealing
 - a. The taking of mountain lions by licensed hunters shall be reported to the Division within 48 hours after the taking thereof, and except as provided in these regulations, the lion shall be personally presented by the hunter for inspection and sealing within five (5) days after the taking thereof. Mountain lion heads and hides must be unfrozen when presented for inspection. If not unfrozen, the Division may retain heads and hides as necessary for thawing sufficient to extract a premolar tooth. A mandatory check report shall be accurately completed by the hunter at the time of inspection, which shall include certification that all information provided is accurate
 - b. At the time of the mandatory check, the Division shall be authorized to extract and retain a premolar tooth.
2. The legal possession seal when attached to the mountain lion skull or hide shall authorize possession, transportation, tanning or mounting thereof. No fee shall be

required for the inspection and issuance of a legal possession seal which shall remain attached to the skull or hide until processed. Mountain lions shall not be transported, shipped or otherwise taken out of Colorado until the hide and skull are inspected and sealed.

3. All mountain lion taken or destroyed under Commission regulation #1702 or §33-3-106(3) C.R.S., as amended, shall remain the property of the state and shall be delivered to an officer of the Division within five (5) days. A report shall be given to an officer of the Division at the time of delivery which contains the following:
 - 1) Name(s) of person(s) who killed the animal(s).
 - 2) The county and the specific location of the kill.
 - 3) The species and number of animals killed.
 - 4) The reason for such action.
4. Lions With Kittens – No person shall kill a mountain lion accompanied by one or more kittens or kill a kitten.
5. “Kitten” shall mean a lion with spots.

John W. Suthers

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State of Colorado

Department of Law

Office of the Attorney General

Tracking number: 2014-00764

**Opinion of the Attorney General rendered in connection with the rules adopted by the
Colorado Parks and Wildlife (406 Series, Wildlife)**

on 09/11/2014

2 CCR 406-2

CHAPTER W-2 - BIG GAME

The above-referenced rules were submitted to this office on 09/17/2014 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 "DD", is written over a light blue rectangular background.

John W. Suthers

Attorney General

by Daniel D. Domenico

Solicitor General

September 22, 2014 13:52:55

Permanent Rules Adopted

Department

Department of Labor and Employment

Agency

Division of Workers' Compensation

CCR number

7 CCR 1101-3

Rule title

7 CCR 1101-3 WORKERS' COMPENSATION RULES OF PROCEDURE WITH
TREATMENT GUIDELINES 1 - eff 01/01/2015

Effective date

01/01/2015

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Workers' Compensation

7 CCR 1101-3

WORKERS' COMPENSATION RULES OF PROCEDURE

Rule 16 UTILIZATION STANDARDS

16-1 STATEMENT OF PURPOSE

In an effort to comply with its legislative charge to assure appropriate and timely medical care at a reasonable cost, the Director (Director) of the Division of Workers' Compensation (Division) has promulgated these utilization standards, effective January 1, 2015. This Rule defines the standard terminology, administrative procedures and dispute resolution procedures required to implement the Division's Medical Treatment Guidelines and Medical Fee Schedule. With respect to any matter arising under the Colorado Workers' Compensation Act and/or the Workers' Compensation Rules of Procedure and to the extent not otherwise precluded by the laws of this state, all providers and payers shall use and comply with the provisions of the "Medical Treatment Guidelines," Rule 17, and the "Medical Fee Schedule," Rule 18, as incorporated and defined in the Workers' Compensation Rules of Procedure, 7 CCR 1101-3.

16-2 STANDARD TERMINOLOGY FOR RULES 16 AND 18

- A) **Ambulatory Surgical Center (ASC)** – licensed as an ambulatory surgery center by the Colorado Department of Public Health and Environment.
- B) **Authorized Treating Provider (ATP)** – may be any of the following:
 - (1) The treating physician designated by the employer and selected by the injured worker;
 - (2) A health care provider to whom an authorized treating physician refers the injured worker for treatment, consultation, or impairment rating;
 - (3) A physician selected by the injured worker when the injured worker has the right to select a provider;
 - (4) A physician authorized by the employer when the employer has the right or obligation to make such an authorization;
 - (5) A health care provider determined by the Director or an administrative law judge to be an ATP;
 - (6) A provider who is designated by the agreement of the injured worker and the payer.
- C) **Billed Service(s)** – any billed service, procedure, equipment or supply provided to an injured worker by a provider.
- D) **Billing Party** – a service provider or an injured worker who has incurred authorized medical costs.

- E) **Certificate of Mailing** – a signed and dated statement containing the names and mailing addresses of all persons receiving copies of attached or referenced document(s), certifying the documents were placed in the U.S. Mail, postage pre-paid, to those persons.
- F) **Children's Hospital** – as identified and Medicare certified by the Colorado Department of Public Health and Environment.
- G) **Convalescent Center** – as licensed by the Colorado Department of Public Health and Environment.
- H) **Critical Access Hospital (CAH)** – as identified and Medicare certified by the Colorado Department of Public Health and Environment.
- I) **Day** – defined as a calendar day unless otherwise noted.
- J) **Free-Standing Facility** – an entity that furnishes healthcare services and is not integrated with any other entity as a main provider, a department of a provider, remote location of a hospital, satellite facility, or provider –based entity.
- K) **Hospital** – as identified and licensed by the Colorado Department of Public Health and Environment.
- L) **Long-Term Care Facility** – as identified and Medicare certified by the Colorado Department of Public Health and Environment
- M) **Medical Fee Schedule** – Division's Rule 18, its Exhibits, and the documents incorporated by reference in that Rule.
- N) **Medical Treatment Guidelines** – the medical treatment guidelines as incorporated into Rule 17, "Medical Treatment Guidelines."
- O) **Over-the-Counter Drugs** – Drugs that are safe and effective for use by the general public without a prescription.
- P) **Payer** – an insurer, employer, or their designated agent(s) who is responsible for payment of medical expenses.
- Q) **Prior Authorization** – assurance that appropriate reimbursement for a specific treatment will be paid in accordance with Rule 18, its' Exhibits, and the documents incorporated by reference in that Rule.
- R) **Private Psychiatric Facilities** – licensed as a psychiatric hospital by the Colorado Department of Public Health and Environment.
- S) **Provider** – a person or entity providing authorized health care service, whether involving treatment or not, to a worker in connection with work-related injury or occupational disease.
- T) **Rehabilitation Facilities** – licensed as a rehabilitation hospital by the Colorado Department of Public Health and Environment.
- U) **Rural Health Facility** – as identified and Medicare certified by the Colorado Department of Public Health and Environment.

- V) **Skilled Nursing Facility (SNF)** – licensed as a skilled nursing facility by the Colorado Department of Public Health and Environment
- W) **State Psychiatric Hospitals and State Mental Health Institutions** – licensed as a psychiatric facility and operated by the state.
- X) **“Supply et al.”** – any single supply, durable medical equipment (DME), orthotic, prosthesis, biologic item, or single drug dose, for which the billed amount exceeds \$500.00 and all implants.
- Y) **Telemedicine** – the use of medical information exchanged from one site to another via electronic communications to improve, maintain or assist patients’ health status.
- Z) **Veterans’ Administration Medical Facilities** – all medical facilities overseen by the Federal Veterans’ Administration.

16-3 **REQUIRED USE OF THE MEDICAL TREATMENT GUIDELINES AND PAYMENT FOR SERVICE**

When an injury or occupational disease falls within the purview of Rule 17, Medical Treatment Guidelines and the date of injury occurs on or after July 1, 1991, providers and payers shall use the medical treatment guidelines, in effect at the time of service, to prepare or review their treatment plan(s) for the injured worker. A payer may not dictate the type or duration of medical treatment. Nor may a payer rely solely on its’ own internal guidelines or other standards for medical determination. When treatment exceeds or is outside of the Medical Treatment Guidelines, prior authorization is required. In all instances of contest appropriate processes to deny are required. Refer to applicable sections of 16-9, 16-10 and/or 16-11.

16-4 **REQUIRED USE OF THE MEDICAL FEE SCHEDULE**

- (A) When services provided to an injured worker fall within the purview of the Medical Fee Schedule, all payers shall use the fee schedule to determine maximum allowable fees.
- (B) All providers are required to report services in accordance with codes, modifiers (both CPT and Level II HCPCS/National Modifiers as listed in RVP Introduction and or in Appendix A of CPT) and standards in Rule 18, Medical Fee Schedule that accurately represent the services provided. The Medical Fee Schedule sets the maximum allowable payment but the fee schedule does not limit the billing charges.
- (C) The provider may be subject to penalties under the Workers’ Compensation Act for inaccurate billing when the provider knew or should have known that the services billed were inaccurate, as determined by the Director or an administrative law judge.

16-5 **RECOGNIZED HEALTH CARE PROVIDERS**

- (A) **Physician and Non-Physician Providers**
 - (1) For the purpose of this Rule, recognized health care providers are divided into the major categories of "physician" and "non-physician". Recognized providers are defined as follows:
 - (a) "Physician providers" are those individuals who are licensed by the State of Colorado through one of the following state boards:
 - 1) Colorado State Board of Medical Examiners;

- 2) Colorado State Board of Chiropractic Examiners;
- 3) Colorado Podiatry Board; or
- 4) Colorado State Board of Dental Examiners.

(b) "Non-physician providers" are those individuals who are registered or licensed by the State of Colorado Department of Regulatory Agencies (DORA), the Colorado Secretary of State, or certified by a national entity recognized by the State of Colorado as follows:

- 1) Acupuncturist (LAc) – licensed by the Office of Acupuncturist Registration, Colorado Department of Regulatory Agencies;
- 2) Advanced Practice Nurse (APN) – licensed by the Colorado State Board of Nursing; Advanced Practice Nurse Registry;
- 3) Anesthesiologist Assistant (AA) – licensed by the Colorado Department of Regulatory Agencies;
- 4) Athletic Trainers (ATC) – certified by the Board of Certification, Inc.;
- 5) Audiologist (AU.D. CCC-A) – certified by the American Speech Language-Hearing Association or board certified in audiology from the American Board of Audiology;
- 6) Clinical Social Worker (LCSW) – licensed by the Colorado State Board of Social Work Examiners;
- 7) Durable Medical Equipment, Prosthetic, Orthotics and Supplies (DMEPOS) Supplier – licensed by the Colorado Secretary of State;
- 8) Marriage and Family Therapist (LMFT) – licensed by the Colorado State Board of Marriage and Family Therapist Examiners;
- 9) Massage Therapist (RMT) – registered as a massage therapist by the Colorado Department of Regulatory Agencies;
- 10) Occupational Therapist (OTR) – registered by the Colorado Department of Regulatory Agencies as an occupational therapist certified by the National Board for Certification of Occupational Therapy;
- 11) Optometrist (OD) – licensed by the Colorado State Board of Optometric Examiners;
- 12) Orthopedic Technologist (OTC) – certified by the Board for Certification of Orthopedic Technologists, National Association of Orthopedic Technologists;
- 13) Pharmacist – licensed by the Colorado State Board of Pharmacy;

- 14) Physical Therapist (PT) – licensed by the Colorado State Board of Physical Therapy;
- 15) Physical Therapist Assistant (PTA) – certified by the Colorado Board of Physical Therapy.
- 16) Physician Assistant (PA) – licensed by the Colorado State Board of Medical Examiners;
- 17) Practical Nurse (LPN) – licensed by the Colorado State Board of Nursing;
- 18) Professional Counselor (LPC) – licensed by the Colorado State Board of Professional Counselor Examiners;
- 19) Psychologist (PsyD, PhD, EdD) – licensed by the Colorado State Board of Psychologist Examiners;
- 20) Registered Nurse (RN) – licensed by the Colorado State Board of Nursing;
- 21) Respiratory Therapist (RTL) – certified by the National Board of Respiratory Care and licensed by the Colorado Department of Regulatory Agencies;
- 22) Speech Language Pathologist (CCC-SLP) – certified by DORA; and
- 23) Surgical Technologist (CST) – certified under direction of the Association of Surgical Technologists.

- (2) Upon request, health care providers must provide copies of license, registration, certification or evidence of health care training for billed services.
- (3) Any provider not listed in section 16-5(A)(1)(a) or (b) must comply with section 16-9, Prior Authorization when providing all services.
- (4) Referrals:
 - (a) A payer or employer shall not redirect or alter the scope of an authorized treating provider's referral to another provider for treatment or evaluation of a compensable injury. Any party who has concerns regarding a referral or its scope shall advise the other parties and providers involved.
 - (b) All non-physician providers must have a referral from an authorized treating physician. An authorized treating physician making the referral to any listed or unlisted non-physician provider is required to clarify any questions concerning the scope of the referral, prescription, or the reasonableness or necessity of the care.
 - (c) Any listed or non-listed non-physician provider is required to clarify any questions concerning the scope of the referral, prescription, or the reasonableness or necessity of the care with the referring authorized treating physician.

- (5) Rule 18, Medical Fee Schedule applies to authorized services provided in relation to a specific workers' compensation case.
- (B) Out-of-State Provider
 - (1) Injured Worker Relocated
 - (a) Upon receipt of the "Employer's First Report of Injury" or the "Worker's Claim for Compensation" form, the payer shall notify the injured worker that the procedures for change-of-provider, should s/he relocate out-of-state, can be obtained from the payer.
 - (b) A change of provider must be made:
 - 1) Through referral by the injured worker's authorized treating physician; or
 - 2) In accordance with § 8-43-404 (5)(a), C.R.S.
 - (2) Injured Worker Referred

In the event an injured worker has not relocated out-of-state but is referred to an out-of-state provider for treatment or services not available within Colorado, the referring provider shall obtain prior authorization from the payer as set forth in section 16-9, Prior Authorization. The referring provider's written request for out-of-state treatment shall include the following information:

 - (a) Medical justification prepared by the referring provider;
 - (b) Written explanation as to why the requested treatment/services cannot be obtained within Colorado;
 - (c) Name, complete mailing address and telephone number of the out-of-state provider;
 - (d) Description of the treatment/services requested, including the estimated length of time and frequency of the treatment/service, and all associated medical expenses; and
 - (e) Out-of-state provider's qualifications to provide the requested treatment or services.
 - (3) The Colorado fee schedule should govern reimbursement for out-of-state providers.

16-6 HANDLING, PROCESSING AND PAYMENT OF MEDICAL BILLS

- (A) Use of agents, including but not limited to Preferred Provider Organizations (PPO) networks, bill review companies, third party administrators (TPAs) and case management companies, shall not relieve the employer or insurer from their legal responsibilities for compliance with these Rules.
- (B) Payment for billed services identified in the Medical Fee Schedule shall not exceed those scheduled rates and fees, or the provider's actual billed charges, whichever is less.

- (C) Payment for billed services not identified or identified but without established value, by report (BR) and relativity not established (RNE), in the Medical Fee Schedule shall require prior authorization from the payer as set forth in section 16-9, Prior Authorization, except when the billed non-established valued service or procedure is an emergency or a payment mechanism under Rule 18 is identifiable, but not explicit. Examples of the prior authorization request exception(s) include ambulance bills or supply bills that are covered under Rule 18-6(H) with an identified payment mechanism.

Similar established code values from the Medical Fee Schedule, recommended by the requesting physician, shall govern the maximum fee value payment.

- (D) Any payer contesting a provider's treatment shall follow the procedures as outlined under section 16-10, Contest of a Request for Prior Authorization, or section 16-11, Payment of Medical Benefits.
- (E) The payer should note that the current in-effect International Classification of Diseases (ICD) codes, when submitted, shall not be used to establish the work relatedness of an injury or treatment.

16-7 REQUIRED BILLING FORMS AND ACCOMPANYING DOCUMENTATION

- (A) Providers may use electronic reproductions of any required form(s) referenced in this section; however, any such reproduction shall be an exact duplication of such form(s) in content and appearance. With the agreement of the payer, identifying information may be placed in the margin of the form.

(B) Required Billing Forms

All health care providers shall use only the following billing forms or electronically produced formats when billing for services:

- (1) CMS (Centers for Medicare & Medicaid Services) -1500 shall be used by all providers billing for professional services, durable medical equipment (DME) and ambulance services, with the exception of those providers billing for dental services or procedures; hospitals are required to use the CMS-1500 when billing for professional services. Health care providers shall provide their name and credentials in the appropriate box of the CMS-1500.
- (2) UB-04 - shall be used by all hospitals, hospital-based ambulance/air services, Children's Hospitals, CAHs, **Veterans' Administration Medical Facilities**, home health and facilities meeting the definitions found in section 16-2, when billing for hospital services or any facility fees billed by any other provider, such as ASCs, except for urgent care which may use the CMS-1500.
- (3) American Dental Association's Dental Claim Form, Version 2012 shall be used by all providers billing for dental services or procedures.
- (4) With the agreement of the payer, the ANSI ASC X12 (American National Standards Institute Accredited Standards Committee) or NCPDP (National Council For Prescription Drug Programs) electronic billing transaction containing the same information as in (1), (2) or (3) in this subsection may be used.

NCPDP Workers' Compensation/Property and Casualty (P&C) universal claim form, version 1.1, for prescription drug billed on paper shall be used by dispensing pharmacies and pharmacy benefit managers (PBM). Physicians may

use the CMS-1500 billing form as described in section 16-7(B)(1).

Physicians shall list the “repackaged” and the “original” NDC numbers in field 24 of the CMS-1500. List the “repackaged” NDC number first and the “original” NDC number second, with the prefix ‘ORIG’ appended.

(C) Required Billing Codes

All billed services shall be itemized on the appropriate billing form as set forth in sections 16-7(A) and (B), and shall include applicable billing codes and modifiers from the Medical Fee Schedule. National provider identification (NPI) numbers are required for workers’ compensation bills; providers who cannot obtain NPI numbers are exempt from this requirement. When billing on a CMS-1500, the NPI should be that of the rendering provider and should include the correct place of service codes at the line level whenever possible.

(D) Inaccurate Billing Forms or Codes

Payment for any services not billed on the forms identified in this Rule, and/or not itemized as instructed in sections 16-7(B) and (C), may be contested until the provider complies. However, when payment is contested, the payer shall comply with the applicable provisions set forth in section 16-11, Payment of Medical Benefits.

(E) Accompanying Documentation

- (1) Authorized treating physicians sign (or countersign) and submit to the payer, with their initial and final visit billings, a completed “Physician’s Report of Workers’ Compensation Injury” (Form WC 164) specifying:
 - (a) The report type as “initial” when the injured worker has their initial visit with the authorized treating physician managing the total workers’ compensation claim of the patient. Generally, this will be the designated or selected authorized treating physician. When applicable, the emergency room or urgent care authorized treating physician for this workers’ compensation injury may also create a WC 164 initial report. Unless requested or prior authorized by the payer in a specific workers’ compensation claim, no other authorized physician should complete and bill for the initial WC 164 form. This form shall include completion of items 1-7 and 10. Note that certain information in item 2 (such as Insurer Claim #) may be omitted if not known by the provider.
 - (b) The report type as “closing” when the authorized treating physician (generally the designated or selected physician) managing the total workers’ compensation claim of the patient determines the injured worker has reached maximum medical improvement (MMI) for all injuries or diseases covered under this workers’ compensation claim, with or without a permanent impairment. The form requires the completion of items 1-5, 6.B, C, 7, 8 and 10. If the injured worker has sustained a permanent impairment, then item 9 must also be completed and the following additional information shall be attached to the bill at the time MMI is determined:
 - 1) All necessary permanent impairment rating reports when the authorized treating physician (generally the designated or selected physician) managing the total workers’ compensation

claim of the patient is Level II Accredited; or

- 2) Referral to a Level II Accredited physician requested to perform the permanent impairment rating when a rating is necessary and the authorized treating physician (generally the designated or selected physician) managing the total workers' compensation claim of the patient is not determining the permanent impairment rating.
- (c) At no charge, the physician shall supply the injured worker with one legible copy of all completed "Physician's Report of Workers' Compensation Injury" (WC 164) forms at the time the form is completed.
- (d) The provider shall submit to the payer the completed WC 164 form as specified in section 16-7(E), no later than 14 days from the date of service.
- (2) Providers, other than hospitals, shall provide the payer with all supporting documentation at the time of submission of the bill unless other agreements have been made between the payer and provider. This shall include copies of the examination, surgical, and/or treatment records.
- (3) Hospital documentation shall be available to the payer upon request. Payers shall specify what portion of a hospital record is being requested. (For example, only the emergency room (ER) chart notes, in-patient physician orders and chart notes, x-rays, pathology reports, etc.)
- (4) In accordance with section 16-11, the payer may contest payment for billed services until the provider completes and submits the relevant required accompanying documentation as specified by section 16-7(E).
- (F) Providers shall submit their bills for services rendered within 120 days of the date of service or the bill may be denied unless extenuating circumstances exist. Extenuating circumstances may include, but are not limited to, delays in compensability being decided or the provider has not been informed where to send the bill.

16-8 REQUIRED MEDICAL RECORD DOCUMENTATION

- (A) A treating provider shall maintain medical records for each injured worker when the provider intends to bill for the provided services.
- (B) All medical records shall contain legible documentation substantiating the services billed. The documentation shall itemize each contact with the injured worker and shall detail at least the following information per contact or, at a minimum for cases where contact occurs more than once a week, be summarized once per week:
 - (1) Patient's name;
 - (2) Date of contact, office visit or treatment;
 - (3) Name and professional designation of person providing the billed service;
 - (4) Assessment or diagnosis of current condition with appropriate objective findings;
 - (5) Treatment status or patient's functional response to current treatment;

- (6) Treatment plan including specific therapy with time limits and measurable goals and detail of referrals;
- (7) Pain diagrams, where applicable;
- (8) If being completed by an authorized treating physician, all pertinent changes to work and/or activity restrictions which reflect lifting, standing, stooping, kneeling, hot or cold environment, repetitive motion or other appropriate physical considerations; and
- (9) All prior authorization(s) for payment received from the payer (i.e., who approved the prior authorization for payment, services authorized, dollar amount, length of time, etc.).

16-9 PRIOR AUTHORIZATION

- (A) Granting of prior authorization is a guarantee of payment when in accordance with Rule 18, RVP© and CPT© for those services/procedures requested by the provider per section 16-9 (F).
- (B) Prior authorization for payment shall be requested by the provider when:
 - (1) A prescribed service exceeds the recommended limitations set forth in the Medical Treatment Guidelines;
 - (2) The Medical Treatment Guidelines otherwise require prior authorization for that specific service;
 - (3) A prescribed service is identified within the Medical Fee Schedule as requiring prior authorization for payment; or
 - (4) A prescribed service is not identified in the Medical Fee Schedule as referenced in section 16-6(C).
- (C) Prior authorization for a prescribed service or procedure may be granted immediately and without medical review. However, the payer shall respond to all providers requesting prior authorization within seven (7) business days from receipt of the provider's completed request, as defined in section 16-9(F). The duty to respond to a provider's written request applies without regard for who transmitted the request.
- (D) The payer, upon receipt of the "Employer's First Report of Injury" or a "Worker's Claim for Compensation," shall give written notice to the injured worker stating that the requirements for obtaining prior authorization for payment are available from the payer.
- (E) The payer, unless they have previously notified said provider, shall give notice to the provider of these procedures for obtaining prior authorization for payment upon receipt of the initial bill from that provider.
- (F) To complete a prior authorization request, the provider shall concurrently explain the reasonableness and the medical necessity of the services requested, and shall provide relevant supporting medical documentation. Supporting medical documentation is defined as documents used in the provider's decision-making process to substantiate the need for the requested service or procedure.
 - (1) When the indicators of the Medical Treatment Guidelines are met, no

prior authorization is required. If the provider requests prior authorization for payment, the following documentation is recommended:

- (a) An adequate definition or description of the nature, extent, and necessity for the procedure;
 - (b) Identification of the appropriate Medical Treatment Guideline application to the requested service;
 - (c) Medical Treatment Guideline indications have been met; and
 - (d) Final diagnosis.
- (2) When the service/procedure does not fall within the Medical Treatment Guidelines and/or past treatment failed functional goals; or if the requested procedure is not identified in the Medical Fee Schedule or does not have an established value under the Medical Fee Schedule, such as any unlisted procedure/service with a BR value or an RNE value listed in the RVP®, authorization requests may be made using the “Authorized Treating Provider’s Request for Prior Authorization” (Form WC 188).
- (G) To contest a request for prior authorization, the payer is required to comply with the provisions outlined in section 16-10.
- (H) The Division recommends payers confirm in writing, to providers and all parties, when a request for prior authorization is approved.
- (I) If, after the service was provided, the payer agrees the service provided was reasonable and necessary, lack of prior authorization for payment does not warrant denial of payment. However, the provider is still required to provide, with the bill, the documentation required by section 16-9(F) for any unlisted valued service or procedure for payment.
- (J) All medical records should be signed by the rendering provider. Electronic signatures are accepted.

16-10 CONTEST OF A REQUEST FOR PRIOR AUTHORIZATION

- (A) If the payer contests a request for prior authorization for non-medical reasons as defined under section 16-11(B)(1), the payer shall notify the provider and parties, in writing, of the basis for the contest within seven (7) business days from receipt of the provider’s completed request as defined in section 16-9(F). A certificate of mailing of the written contest must be sent to the provider and parties.

If an ATP requests prior authorization and indicates in writing, including their reasoning and relevant documentation, that they believe the requested treatment is related to the admitted workers’ compensation claim, the insurer cannot deny based solely on relatedness without a medical review as required by section 16-10(B).

- (B) If the payer is contesting a request for prior authorization for medical reasons, the payer shall, within seven (7) business days of the completed request:
 - (1) Have all the submitted documentation under section 16-9(F) reviewed by a physician or other health care professional, as defined in section 16-5(A)(1)(a), who holds a license and is in the same or similar specialty as would typically

- manage the medical condition, procedures, or treatment under review; and
- (2) After reviewing all the submitted documentation, the reviewing provider may call the requesting provider to expedite communication and processing of prior authorization requests. However, the written contest or approval still needs to be completed within the specified seven (7) business days under section 16-10(B).
 - (3) Furnish the provider and the parties with a written contest that sets forth the following information:
 - (a) An explanation of the specific medical reasons for the contest, including the name and professional credentials of the person performing the medical review and a copy of the medical reviewer's opinion;
 - (b) The specific cite from the Medical Treatment Guidelines exhibits to Rule 17, when applicable;
 - (c) Identification of the information deemed most likely to influence the reconsideration of the contest when applicable; and
 - (d) A certificate of mailing to the provider and parties.
- (C) Prior Authorization Disputes
- (1) The requesting party or provider shall have seven (7) business days from the date of the certificate of mailing on the written contest to provide a written response to the payer, including a certificate of mailing. The response is not considered a "special report" when prepared by the provider of the requested service.
 - (2) The payer shall have seven (7) business days from the date of the certificate of mailing of the response to issue a final decision, including a certificate of mailing to the provider and parties.
 - (3) In the event of continued disagreement, the parties should follow dispute resolution and adjudication procedures available through the Division or Office of Administrative Courts.
- (D) An urgent need for prior authorization of health care services, as recommended in writing by an authorized treating provider, shall be deemed good cause for an expedited hearing.
- (E) Failure of the payer to timely comply in full with the requirements of section 16-10(A) or (B), shall be deemed authorization for payment of the requested treatment unless:
- (1) A hearing is requested within the time prescribed for responding as set forth in section 16-10(A) or (B); and
 - (2) The requesting provider is notified that the request is being contested and the matter is going to hearing.
- (F) Unreasonable delay or denial of prior authorization, as determined by the Director or an administrative law judge, may subject the payer to penalties under the Workers' Compensation Act.

(A) Payer Requirements for Processing Medical Service Bills

- (1) For every medical service bill submitted by a provider, the payer shall reply with a written notice or explanation of benefits. In those instances where the payer reimburses the exact billed amount, identification of the patient's name, the payer, the paid bill, the amount paid and the dates of service are required. If any adjustments are made then the payer's written notice shall include:
 - (a) Name of the injured worker or patient;
 - (b) Specific identifying information coordinating the notice with any payment instrument associated with the bill;
 - (c) Date(s) of service(s), if date(s) was (were) submitted on the bill;
 - (d) Payer's claim number and/or Division's workers' compensation claim number, if one has been created;
 - (e) Reference to the bill and each item of the bill;
 - (f) Notice that the billing party may resubmit the bill or corrected bill within 60 days;
 - (g) For compensable services for a work-related injury or occupational disease the payer shall notify the billing provider that the injured worker shall not be balance-billed for services related to the work-related injury or occupational disease;
 - (h) Name of insurer with admitted, ordered or contested liability for the workers' compensation claim, when known;
 - (i) Name, address, e-mail (if any), phone number and fax of a person who has responsibility and authority to discuss and resolve disputes on the bill;
 - (j) Name and address of the employer, when known; and
 - (k) Name and address of the Third Party Administrator (TPA) and name and address of the bill reviewer if separate company when known; and
 - (l) If applicable, a statement that the payment is being held in abeyance because a relevant issue is being brought to hearing.
- (2) The payer shall send the billing party written notice that complies with sections 16-11(A)(1) and (B) or (C) if contesting payment for non-medical or medical reasons within 30 days of receipt of the bill. Any notice that fails to include the required information set forth in sections 16-11(A)(1) and (B) or (C) if contesting payment for non-medical or medical reasons is defective and does not satisfy the payer's 30-day notice requirements set forth in this section.
- (3) Unless the payer provides timely and proper reasons as set forth by the provisions outlined in sections 16-11(B) - (D), all bills submitted by a provider are due and payable in accordance with the Medical Fee Schedule within 30 days after receipt of the bill by the payer.

- (4) If the payer discounts a bill and the provider requests clarification in writing, the payer shall furnish to the requester the specifics of the discount within 30 days including a copy of any contract relied on for the discount. If no response is forthcoming within 30 days, the payer must pay the maximum Medical Fee Schedule allowance or the billed charges, whichever is less.
- (5) Date of receipt of the bill may be established by the payer's date stamp or electronic acknowledgement date; otherwise, receipt is presumed to occur three (3) business days after the date the bill was mailed to the payer's correct address.
- (6) Unreasonable delay in processing payment or denial of payment of medical service bills, as determined by the Director or an administrative law judge, may subject the payer to penalties under the Workers' Compensation Act.
- (7) If the payer fails to make timely payment of uncontested billed services, the billing party may report the incident to the Division's Carrier Practices Unit who may use it during an audit.

(B) Process for Contesting Payment of Billed Services Based on Non-Medical Reasons

- (1) Non-medical reasons are administrative issues. Examples of non-medical reasons for contesting payment include the following: no claim has been filed with the payer; compensability has not been established; the billed services are not related to the admitted injury; the provider is not authorized to treat; the insurance coverage is at issue; typographic, gender or date errors are in the bill; failure to submit any medical documentation at all; unrecognized CPT® code.
- (2) If an ATP bills for medical services and indicates in writing, including their reasoning and relevant documentation that they believe the medical services are related to the admitted WC claim, the payer cannot deny based solely on relatedness without a medical review as required by section 16-11(C).
- (3) In all cases where a billed service is contested for non-medical reasons, the payer shall send the billing party written notice of the contest within 30 days of receipt of the bill. The written notice shall include all of the notice requirements set forth in section 16-11(A)(1) and shall also include:
 - (a) Date(s) of service(s) being contested, if date(s) was(were) submitted on the bill;
 - (b) If applicable, acknowledgement of specific uncontested and paid items submitted on the same bill as contested services;
 - (c) Reference to the bill and each item of the bill being contested; and
 - (d) Clear and persuasive reasons for contesting the payment of any item specific to that bill including the citing of appropriate statutes, rules and/or documents supporting the payer's reasons for contesting payment.

Any notice that fails to include the required information set forth in this section is defective. Such defective notice shall not satisfy the payer's 30 day notice requirement set forth in this section.

- (4) Prior to modifying a billed code, the payer must contact the billing provider and determine if the modified code is accurate.
 - (a) If the billing provider agrees with the payer, then the payer shall process the service with the agreed upon code and shall document on their explanation of benefits (EOB) the agreement with the provider. The EOB shall include the name of the person at the provider's office who made the agreement.
 - (b) If the provider is in disagreement, then the payer shall proceed according to section 16-11(B) or 16-11(C), as appropriate.
- (5) Lack of prior authorization for payment does not warrant denial of liability for payment.
- (6) When no established fee is given in the Medical Fee Schedule and the payer agrees the service or procedure is reasonable and necessary, the payer shall list on their written notice of contest (see section 16-11(A)(1)) one of the following payment options:
 - (a) A reasonable value based upon the similar established code value recommended by the requesting provider;
 - (b) The provider's requested payment based on an established similar code value as required by section 16-9(F); or
 - (c) The billed charges.

If the payer disagrees with the provider's recommended code value, the payer's notice of contest shall include an explanation of why the requested fee is not reasonable and what their recommendation is, based on the payment options.

If the payer is contesting the medical necessity of any non-valued procedure after a prior authorization was requested, the payer shall follow section 16-11(C).

(C) Process for Contesting Payment of Billed Services Based on Medical Reasons

When contesting payment of billed services based on medical reasons, the payer shall:

- (1) Have the bill and all supporting medical documentation under section 16-7(E) reviewed by a physician or other health care professional as defined in section 16-5(A)(1)(a), who holds a license and is in the same or similar specialty as would typically manage the medical condition, procedures, or treatment under review. After reviewing the supporting medical documentation, the reviewing provider may call the billing provider to expedite communication and timely processing of the contested or paid medical bill.
- (2) In all cases where a billed service is contested for medical reasons, the payer shall send the provider and the parties written notice of the contest within 30 days of receipt of the bill. The written notice shall include all of the notice requirements set forth in section 16-11(A)(1) and shall also include:
 - (a) Date(s) of service(s) being contested, if date(s) was (were) submitted on the bill;

- (b) If applicable, acknowledgement of specific uncontested and paid items submitted on the same bill as contested services;
 - (c) Reference to the bill and each item of the bill being contested;
 - (d) An explanation of the clear and persuasive medical reasons for the decision, including the name and professional credentials of the person performing the medical review and a copy of the medical reviewer's opinion;
 - (e) The specific cite from the Medical Treatment Guidelines exhibits to Rule 17, when applicable; and
 - (f) Identification of the information deemed most likely to influence the reconsideration of the contest, when applicable.
- (3) Any notice that fails to include the required information set forth in this section is defective. Such defective notice shall not satisfy the payer's 30-day notice requirement set forth in this section.
- (4) If the payer is contesting the medical necessity of any non-valued procedure provided without prior authorization, the payer shall follow the procedures given in sections 16-11(C)(1) and (2).
- (D) Process for Ongoing Contest of Billed Services
 - (1) The billing party shall have 60 days to respond to the payer's written notice under section 16-11(A) – (C). The billing party's timely response must include:
 - (a) A copy of the original or corrected bill;
 - (b) A copy of the written notice or EOB received;
 - (c) A statement of the specific item(s) contested;
 - (d) Clear and persuasive supporting documentation or clear and persuasive reasons for the appeal; and
 - (e) Any available additional information requested in the payer's written notice.
 - (2) If the billing party responds timely and in compliance with section 16-11(D)(1), the payer shall:
 - (a) When contesting for medical reasons, have the bill and all supporting medical documentation and reasoning under section 16-7(E) and, if applicable, section 16-11(D)(1) reviewed by a physician or other health care professional as defined in section 16-5(A)(1)(a), who holds a license and is in the same or similar specialty as would typically manage the medical condition, procedures, or treatment under review. After reviewing the provider's documentation and response, the reviewing provider may call the billing provider to expedite communication and timely processing of the contested or paid medical bill.
 - (b) When contesting for non-medical reasons, have the bill and all

supporting medical documentation and reasoning under section 16-7(E) and, if applicable, section 16-11(D)(1) reviewed by a person who has knowledge of the bill. After reviewing the provider's documentation and response, the reviewing person may call the billing provider to expedite communication and timely processing of the contested or paid medical bill.

- (3) If before or after conducting a review pursuant to section 16-11(D)(2), the payer agrees with the billing party's response, the billed service is due and payable in accordance with the Medical Fee Schedule within 30 days after receipt of the billing party's response. Date of receipt may be established by the payer's date stamp or electronic acknowledgement date; otherwise, receipt is presumed to occur three (3) business days after the date the response was mailed to the payer's correct address.
 - (4) After conducting a review pursuant to section 16-11(D)(2), if there is still a dispute regarding the billed services, the payer shall send the billing party written notice of contest within 30 days of receipt of the response. The written notice shall include all of the notice requirements set forth in section 16-11(A)(1) and shall also include:
 - (a) Date(s) of service(s) being contested, if date(s) was(were) submitted by the provider;
 - (b) If applicable, acknowledgement of specific uncontested and paid items submitted on the same bill as contested services;
 - (c) Reference to the bill and each item of the bill being contested;
 - (d) An explanation of the clear and persuasive medical or non-medical reasons for the decision, including the name and professional credentials of the person performing the medical or non-medical review and a copy of the medical reviewer's opinion when the contest is over a medical reason; and
 - (e) The explanation shall include the citing of appropriate statutes, rules and/or documents supporting the payer's reasons for contesting payment.
 - (5) Any notice that fails to include the required information set forth in this section is defective. Such defective notice shall not satisfy the payer's 30-day notice requirement set forth in this section.
 - (6) In the event of continued disagreement, and within 12 months of the date the original bill should have been processed in compliance with section 16-11, the parties should follow dispute resolution and adjudication procedures available through the Division or Office of Administrative Courts.
- (E) When seeking dispute resolution from the Division's Medical Policy Unit (MPU), the requesting party must complete the Division's "Medical Billing Dispute Resolution Intake Form" (Form WC 181) found on the Division's web page. The items listed on the bottom of the form must be provided at the time of submission. If necessary items are missing or if more information is required, the Division will forward a request for additional information and initiation of the process may be delayed.

When the request is properly made and the supporting documentation submitted, the Division will issue a confirmation of receipt. If after reviewing the materials the Division believes the dispute criteria have not been met, the Division will issue an explanation of those reasons. If the Division determines there is cause for facilitating the disputed items, the other party will be sent a request for a written response, allowing the other party ten (10) business days to respond.

The MPU will facilitate the dispute by reviewing the parties' compliance with Rules 16 and 18 within 30 days of receipt of the complete supporting documentation; or as soon thereafter as possible.

Upon review of all submitted documentation, disputes resulting from violation of Rules 16 and/or 18, as determined by the Director, may result in a Director's Order that cites the specific violation.

Evidence of compliance with the order shall be provided to the Director. If the party does not agree with the findings, it shall state with particularity and in writing its reasons for all disagreements by providing a response with all relevant legal authority, and/or other relevant proof upon which it relies in support of its position(s) concerning disagreements with the order.

Failure to respond or cure violations may result in penalties in accordance with § 8-43-304. Daily fines up to \$1000/day for each such offence will be assessed until the party complies with the Director's Order.

Resolution of disputes not pertaining to Rule violations will be facilitated by the MPU to the extent possible. In the event both parties cannot reach an agreement, the parties will be provided additional information on pursuing resolution and adjudication procedures available through the Office of Administrative Courts. Use of the dispute resolution process does not extend the 12 month application period for hearing.

(F) Retroactive review of Medical Bills

- (1) All medical bills paid by a payer shall be considered final at 12 months after the date of the original explanation of benefits unless the provider is notified that:
 - (a) A hearing is requested within the 12 month period, or
 - (b) A request for utilization review has been filed pursuant to § 8-43-501.
- (2) If the payer conducts a retroactive review to recover overpayments from a provider based on medical reasons, the payer shall have the bill and all supporting documentation reviewed by a physician or other health care professional as defined in section 16-5(A)(1)(a), who holds a license and is in the same or similar specialty as would typically manage the medical condition, procedures, or treatment under review. The payer shall send the billing party written notice that shall include all of the notice requirements set forth in section 16-11(A)(1) and shall also include:
 - (a) Reference to each item of the bill where payer seeks to recover overpayments;
 - (b) Clear and persuasive medical reason(s) for seeking recovery of overpayment(s). The explanation shall include the citing of appropriate statutes, rules, and/or other documents supporting the payer's reason for

seeking to recover overpayment; and

- (c) Evidence that these payments were in fact made to the provider.
- (3) If the payer conducts a retroactive review to recover overpayments from a provider based on non-medical reasons, the payer shall send the billing party written notice that shall include all of the notice requirements set forth in section 16-11(A)(1) and shall also include:
 - (a) Reference to each item of the bill where payer seeks to recover overpayments;
 - (b) Clear and persuasive reason(s) for seeking recovery of overpayment(s). The explanation shall include the citing of appropriate statutes, rules, and/or other documents supporting the payer's reason for seeking to recover overpayment; and
 - (c) Evidence that these payments were in fact made to the provider.
- (4) In the event of continued disagreement, the parties may follow dispute resolution and adjudication procedures available through the Division or Office of Administrative Courts.
- (G) An injured worker shall never be required to directly pay for admitted or ordered medical benefits covered under the Workers' Compensation Act. In the event the injured worker has directly paid for medical services that are then admitted or ordered as covered under the Workers' Compensation Act, the payer shall reimburse the injured worker for the amounts actually paid for authorized services within 30 days after receipt of the bill. If the actual costs exceed the maximum fee allowed by the Medical Fee Schedule, the payer may seek a refund from the medical provider for the difference between the amount charged to the injured worker and the maximum fee. Each request for a refund shall indicate the service provided and the date of service(s) involved.
- (H) To the extent not otherwise precluded by the laws of this state, contracts between providers, payers and any agents acting on behalf of providers or payers shall comply with section 16-11.

16-12 ONSITE REVIEW OF HOSPITAL OR OTHER MEDICAL CHARGES

- (A) The payer may conduct a review of billed and non-billed hospital or medical facility charges related to a specific workers' compensation claim.
- (B) The payer shall comply with the following procedures:

Within 30 days of receipt of the bill, notify the hospital or other medical facility of its intent to conduct a review. Notification shall be in writing and shall set forth the following information:

 - (1) Name of the injured worker;
 - (2) Claim and/or hospital or other medical facility I.D. number associated with the injured worker's bill;
 - (3) An outline of the items to be reviewed; and

- (4) If applicable, the name, address and telephone number of any person who has been designated by the payer to conduct the review (reviewer).
- (C) The hospital or other medical facility shall comply with the following procedures:
 - (1) Allow the review to begin within 30 days of the payer's notification;
 - (2) Upon receipt of the patient's signed release of information form, allow the reviewer access to all items identified on the injured worker's signed release of information form;
 - (3) Designate an individual(s) to serve as the primary liaison(s) between the hospital or other medical facility and the reviewer who will acquaint the reviewer with the documentation and charging practices of the hospital or other medical facility;
 - (4) Provide a written response to each of the preliminary review findings within ten (10) business days of receipt of those findings; and
 - (5) Participate in the exit conference in an effort to resolve discrepancies.
- (D) The reviewer shall comply with the following procedures:
 - (1) Obtain from the injured worker a signed information release form;
 - (2) Negotiate the starting date for the review;
 - (3) Assign staff members who are familiar with medical terminology, general hospital or other medical facility charging and medical records documentation procedures or have a level of knowledge equivalent at least to that of an LPN;
 - (4) Establish the schedule for the review which shall include, at a minimum, the dates for the delivery of preliminary findings to the hospital or other medical facility, a ten (10) business day response period for the hospital or other medical facility, and the delivery of an itemized listing of discrepancies at an exit conference upon the completion of the review; and
 - (5) Provide the payer and hospital or other medical facility with a written summary of the review within 20 business days of the exit conference.

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Workers' Compensation

7 CCR 1101-3

WORKERS' COMPENSATION RULES OF PROCEDURE

Rule 18 MEDICAL FEE SCHEDULE

18-1 STATEMENT OF PURPOSE

Pursuant to § 8-42-101(3)(a)(I) C.R.S. and § 8-47-107, C.R.S., the Director promulgates this Medical Fee Schedule to review and establish maximum allowable fees for health care services falling within the purview of the Act. The Director adopts and hereby incorporates by reference as modified herein the 2014 edition of the Relative Values for Physicians (RVP®), developed by Relative Value Studies, Inc., published by OPTUMINSIGHT (Ingenix®), the Current Procedural Terminology CPT® 2014, Professional Edition, published by the American Medical Association (AMA) and Medicare Severity Diagnosis Related Groups (MS-DRGs) Definitions Manual, Version 32.0 developed and published by 3M Health Information Systems using MS-DRGs effective after October 1, 2014. The incorporation is limited to the specific editions named and does not include later revisions or additions. For information about inspecting or obtaining copies of the incorporated materials, contact the Medical Policy Unit Supervisor, 633 17th Street, Suite 400, Denver, Colorado 80202-3626. These materials may be examined at any state publications depository library. All guidelines and instructions are adopted as set forth in the RVP®, CPT® and MS-DRGs, and all CPT® modifiers, unless otherwise specified in this Rule.

This Rule applies to all services rendered on or after January 1, 2015. All other bills shall be reimbursed in accordance with the fee schedule in effect at the time service was rendered.

18-2 STANDARD TERMINOLOGY FOR THIS RULE

- (A) CPT® - Current Procedural Terminology CPT® 2014, copyrighted and distributed by the AMA and incorporated by reference in 18-1.
- (B) DoWC Zxxxx – Colorado Division of Workers' Compensation created codes.
- (C) MS-DRGs – version 32.0 incorporated by reference in 18-1.
- (D) RVP® – the 2014 edition incorporated by reference in 18-1.
- (E) For other terms, see Rule 16, Utilization Standards.

18-3 HOW TO OBTAIN COPIES

All users are responsible for the timely purchase and use of Rule 18 and its supporting documentation as referenced herein. The Division shall make available for public review and inspection copies of all materials incorporated by reference in Rule 18. Copies of the RVP® may be purchased from Ingenix® OptumInsight, the Current Procedural Terminology, 2014 Edition may be purchased from the AMA, the MS-DRGs Definitions Manual may be purchased from 3M Health Information Systems, and the Colorado Workers' Compensation Rules of Procedures with Treatment Guidelines, 7 CCR 1101-3, may be purchased from LexisNexis Matthew Bender & Co., Inc., Albany, NY. Interpretive Bulletins and unofficial copies of all rules, including Rule 18, are available on the Colorado Department of Labor and Employment web site. An official copy of the rules is available on the Secretary of State's webpage.

18-4 CONVERSION FACTORS (CF)

The following CFs shall be used to determine the maximum allowed fee. The maximum fee is determined by multiplying the following section CFs by the established relative value unit(s) (RVU) found in the corresponding RVP© sections:

RVP© SECTION	CF
Anesthesia	\$ 53.73/RVU
Surgery	\$ 99.83/RVU
Radiology	\$ 18.41/RVU
Pathology	\$ 13.72/RVU
Medicine	\$ 8.33/RVU
Physical Medicine (Physical Medicine and Rehabilitation, Medical Nutrition Therapy and Acupuncture)	\$ 6.23/RVU
Evaluation & Management (E&M)	\$ 10.16/RVU

18-5 INSTRUCTIONS AND/OR MODIFICATIONS TO THE DOCUMENTS INCORPORATED BY REFERENCE IN RULE 18-1

- (A) Maximum allowance for all providers under Rule 16-5 is 100% of the RVP© value or as defined in this Rule.
- (B) Unless modified herein, the RVP© is adopted for RVUs and reimbursement. Interim relative value procedures (marked by an “I” in the left-hand margin of the RVP©) are accepted as a basis of payment for services; however deleted CPT® codes (marked by an “M” in the RVP©) are not, unless otherwise advised by this Rule. Division created codes (Zxxxx) and values supersede CPT® or RVP© codes and reimbursement levels. Those codes listed with RVUs of “BR” (by report) and “RNE” (relativity not established) require prior authorization as explained in Rule 16. The CPT® 2014 is adopted for codes, descriptions, parenthetical notes and coding guidelines, unless modified in this Rule.

Any billed CPT® code identified as a “separate procedure” in CPT® shall have an appropriate modifier appended to the code for the payer to allow separate payment (i.e., modifier -59).

No code listed in CPT® identified as an “add-on” code is payable unless an appropriate primary code is billed with the “add-on” code in the same episode of care.
- (C) CPT® Category III codes listed in the RVP© may be used for billing with agreement of the payer as to reimbursement. Payment shall be in compliance with Rule 16-6(C).
- (D) Surgery/Anesthesia

(1) Anesthesia Section:

- (a) All anesthesia base values shall be established by the use of the codes as set forth in the RVP®, Anesthesia Section. Anesthesia services are only reimbursable if the anesthesia is administered by a physician, a Certified Registered Nurse Anesthetist (CRNA), or an anesthesiologist assistant (AA) who remains in constant attendance during the procedure for the sole purpose of rendering anesthesia.

When anesthesia is administered by a CRNA or AA:

- 1) CRNAs not under the medical direction of an anesthesiologist, reimbursement shall be 90% of the maximum anesthesia value;
- 2) If billed separately, CRNAs and AAs, under the medical direction of an anesthesiologist, shall be reimbursed 50% of the maximum anesthesia value. The other 50% is payable to the anesthesiologist providing the medical direction to the CRNA or AA;
- 3) Medical direction for administering the anesthesia includes performing the following activities:
 - a) Performs a pre-anesthesia examination and evaluation,
 - b) Prescribes the anesthesia plan,
 - c) Personally participates in the most demanding procedures in the anesthesia plan including induction and emergence,
 - d) Ensures that any procedure in the anesthesia plan that s/he does not perform is performed by a qualified anesthetist,
 - e) Monitors the course of anesthesia administration at frequent intervals,
 - f) Remains physically present and available for immediate diagnosis and treatment of emergencies, and
 - g) Provides indicated post-anesthesia care.
- (b) Anesthesia physical status modifiers and qualifying circumstances are reimbursed using the anesthesia CF and unit values found in the RVP®, Anesthesia section's Guidelines XI "Physical Status Modifiers" and XII, "Qualifying Circumstances."
- (c) The following modifiers are to be used when billing for anesthesia services:

AA – anesthesia services performed personally by the anesthesiologist

AD – greater than four (4) concurrent (occurring at the same time)

anesthesia service cases being supervised by an anesthesiologist

QK – anesthesiologist providing direction to qualified individuals of two (2) to four (4) concurrent anesthesia cases

QX – CRNA or AA service; with medical direction by a physician

QZ – CRNA service; without medical direction by a physician

QY – Medical direction of one CRNA or AA by an anesthesiologist

QS – Monitored anesthesia care service (MAC)

G8 – Monitored anesthesia care (MAC) for deep complex complicated, or markedly invasive surgical procedure

G9 – Monitored anesthesia care (MAC) of a patient who has a history of severe cardiopulmonary disease

(d) The supervision of AAs shall be limited in accordance with the Medical Practice Act.

(e) Physical status modifiers are reimbursed as follows, using the anesthesia conversion factor:

P-1	Healthy patient	0 RVUs
P-2	Patient with mild systemic disease	0 RVUs
P-3	Patient with severe systemic disease	1 RVU
P-4	Patient with severe systemic disease that is a constant threat to life	2 RVUs
P-5	A moribund patient who is not expected to survive without the operation	3 RVUs
P-6	A declared brain-dead patient	0 RVUs

(f) Qualifying circumstance codes are reimbursed using the medicine conversion factor:

Anesthesia complicated by extreme age; under 1 year old or > 70 years old	1 RVU
Anesthesia complicated by utilization of total body hypothermia	5 RVUs
Anesthesia complicated by utilization of controlled hypotension	5 RVUs
Anesthesia complicated by emergency conditions (specify)	2 RVUs

(g) When more than one surgical procedure is performed during a single

episode, only the highest valued base anesthesia procedure value is billed with the total anesthesia time for all procedures.

- (h) Anesthesia time begins when the anesthesiologist prepares the patient for the induction of anesthesia and ends when the anesthesiologist is no longer in personal attendance and the patient is placed under postoperative supervision. Total minutes are reported for reimbursement. Each 15-minutes of anesthesia time equals 1 additional RVU. Five minutes or more is considered significant time and adds 1 RVU to the payment calculation.

- (i) Calculation of Maximum Fees for Anesthesia

Base Anesthesia value from the RVP© Anesthesia Guidelines

+1 Unit/15 minutes of anesthesia time
+Any physical status modifier units
Total Relative Value Anesthesia Units
Multiplied by the Anesthesia CF in section 18-4
Total Maximum Anesthesia Fees

"Qualifying circumstance" codes are reimbursed under section 18-5(D)(1)(f) of this Rule.

- (j) Non-time based Anesthesia Procedures

Modifier -47 shall be used by surgeons performing non-time based anesthesia.

The relative value units are located in the RVP© Anesthesia Guidelines, Paragraph XIV

- (2) Surgical Section:

- (a) The use of assistant surgeons shall be limited according to the American College Of Surgeons' Physicians as Assistants at Surgery: 2013 Study (January 2013), available from the American College of Surgeons, Chicago, IL, or from their web page. The incorporation is limited to the edition named and does not include later revisions or additions. Copies of the material incorporated by reference may be inspected at any State publications depository library. For information about inspecting or obtaining copies of the incorporated material, contact the Medical Policy Unit Supervisor, 633 17th Street, Suite 400, Denver, Colorado, 80202-3626.

Where the publication restricts use of such assistants to "almost never" or a procedure is not referenced in the publication, prior authorization for payment (see Rule 16-9) is required.

- (b) Incidental procedures are commonly performed as an integral part of a total service and do not warrant a separate benefit.
- (c) No payment shall be made for more than one (1) assistant surgeon or minimum assistant surgeon without prior authorization for payment (see

Rule 16-9) unless a trauma team was activated due to the emergency nature of the injury(ies).

- (d) The payer may use available billing information such as provider credential(s) and clinical record(s) to determine if an appropriate modifier should be used on the bill. To modify a billed code refer to Rule 16-11(B) (4).
- (e) When an operation requires two primary surgeons performing two distinct portions of the operation, modifier -62 is used with the procedure in question and reimbursement is increased to 125% of the value, apportioned in relation to the responsibilities and work of each surgeon or 50% of the total increased maximum fee to each surgeon.

Surgical team reimbursement requires prior authorization and the use of modifier - 66 on the surgical codes.

Assistant Surgeon, indicated by modifier -80 has a maximum allowance of 20 % of the surgeon's fees.

Assistant Surgeon (when qualified resident surgeon is not available), indicated by modifier -82, is also reimbursed at 20% of the surgeon's fees.

Minimum Assistant Surgeon, such as a physician's assistant, a nurse practitioner, or a clinical nurse specialist, is indicated by modifier -81 and reimbursed at 10% of the surgeon's fees.

- (f) Global Period

1) All surgical procedures include the following:

- a) Local infiltration, metacarpal/metatarsal/digital block or typical anesthesia;
- b) One related E&M encounter on the date immediately prior to or on the date of the procedure (including history and physical);
- c) Intraoperative services that are normally a usual and necessary part of a surgical procedure;
- d) Immediate postoperative care, including dictating operative notes, talking with the family and other physicians;
- e) Evaluating the patient in the post-anesthesia recovery room;
- f) Post-surgical pain management by the surgeon;
- g) Typical postoperative follow-up care during the global period of the surgery that is related to recovery from the surgery as identified in RVP© as global:
 - 000 –are endoscopies or some minor surgical procedures, typically a 0 day postoperative period. Visits on the same day of procedures are generally included in

the allowance for the procedure, unless a separately identifiable service is performed and billed with the appropriate modifier.

- 010 - are other minor procedures, 10 day postoperative period.
- 090 - are major surgeries, 90 day postoperative period.
- XXX – does not apply
- ZZZ – are covered under another procedure's global days
- MMM – global service day's concept does not apply. (See Medicare's Global Maternity Care reporting rule.)
- Global period, defined RVP©, begins the day after surgery and continues for the defined period.

h) Supplies – Except for those identified as exclusions;

i) Miscellaneous Services – Items such as dressing changes; local incisional care; removal of operative pack; removal of cutaneous sutures and staples, lines, wires, tubes, drains, casts and splints; insertion, irrigation and removal of urinary catheters, routine peripheral IV lines, nasogastric and rectal tubes; changes and removal of tracheostomy tubes;

j) Applicable Surgical Modifiers:

- 24 - Unrelated E&M service by the same physician during a postoperative period.
- 25 - Significant and separately identifiable E&M service on the same day of the procedure within the global period of minor surgical procedures (0 or 10 days).
- 54 - Surgical Care only. Fee is 60% of the billed surgery code Maximum Fee Schedule value.
- 55 - Postoperative management only. Fee is 30% of the billed surgery code Maximum Fee Schedule value.
- 56 - Preoperative management only. Fee is 10% of the billed surgery code Maximum Fee Schedule value.
- 57 - Decision for surgery.
- 58 - Staged or related procedure or service by the same physician during the postoperative period.
- 76 - Repeat procedure or service by the same physician.

- 78 - Unplanned Return to the Operating/Procedure Room by the same physician following initial procedure for a related procedure during the postoperative period.
 - 79 - Un-related procedure or service by the same physician during the postoperative period.
- 2) The following services performed during a global period would warrant separate billing if documentation demonstrates significant identifiable services were involved, such as:
- a) E&M services unrelated to the primary surgical procedure.
 - b) Services necessary to stabilize the patient for the primary surgical procedure.
 - c) Services not considered part of the surgical procedure, including an E&M visit by an authorized treating physician for disability management. The E&M service shall have an appropriate modifier appended to the E&M level of the service code when the surgeon is performing services during the global period. If at all possible, an appropriate identifying diagnosis code shall identify the E&M service as unrelated to the surgical global period. In addition, the reasonableness and necessity for an E&M service that is separate and identifiable from the surgical global period shall be clearly documented in the medical record.
 - d) Disability management of an injured worker for the same diagnosis requires the managing physician to clearly identify in the medical record the specific disability management detail that was performed during that visit. The definitions of what is considered disability counseling can be located under 18-5(l)(1) and in Exhibit #7 of this Rule.
 - e) Unusual circumstances, complications, exacerbations, or recurrences.
 - f) Unrelated diseases or injuries.
 - g) If a patient is seen for the first time or an established patient is seen for a new problem and the "decision for surgery" is made the day of the procedure or the day before the procedure is performed, then the surgeon can bill both the procedure code and an E&M code, using a --57 modifier or -25 modifier on the E&M code.
- 3) Separate identifiable services shall use an appropriate CPT®/RVP© modifier in conjunction with the billed service.
- (g) Multiple Procedures (modifier -51) and Bilateral Procedures (modifier -50)

Multiple procedure guidelines do not apply to codes specifically identified as add-on procedures or to those specifically identified as exempt from modifier -51.

Bilateral procedures shall be billed on one line with one (1) unit and the modifier -50 appended to the CPT® code. The maximum fee is calculated at 150% of the Maximum Fee Schedule value.

When multiple procedures are performed by the same surgeon during the same surgical setting, modifier -51 shall be appended to the lower valued procedure(s). When multiple surgical procedures are performed in a single surgical setting, the highest valued or primary procedure is allowed 100% of the maximum fee and all other valued procedures, appended with a modifier -51, are allowed at 50% of the maximum fee.

- (h) The “Services with Significant Direct Costs” section of the RVP© is not adopted. Supplies shall be reimbursed as set out in section 18-6(H).
- (i) If a surgical arthroscopic procedure is converted to the same surgical open procedure on the same joint, only the open procedure is payable. If an arthroscopic procedure and open procedure are performed on different joints, the two (2) procedures may be separately payable with anatomic modifiers or modifier -50.
- (j) Use code G0289 to report any combination of surgical knee arthroscopies for removal of loose body, foreign body, and/or debridement/shaving of articular cartilage. G0289 is 11.8 RVUs and is paid using the surgical conversion factor.

G0289 shall not be paid when reported in conjunction with other knee arthroscopy codes in the same compartment of the same knee.

G0289 shall be paid when reported in conjunction with other knee arthroscopy codes in a different compartment of the knee. G0289 is subject to the 50% multiple surgical reduction guidelines.

- (k) Relative value units listed in the 2014 RVP© Surgery Section listed below shall be replaced as follows:
 - 1) Epidural for blood or clot patch injection = 1.9
 - 2) Epidurals diagnostic or therapeutic injections substance(s) including anesthetic antispasmodic, opioid, steroid, other solutions (NOT neurolytic substances) for subarachnoid
 - a) Cervical or thoracic level = 2.0
 - b) Lumbar or sacral (caudal) = 1.65
 - 3) Epidurals (including indwelling catheter placement), for continuous infusion or intermittent bolus of diagnostic or therapeutic substance(s) including anesthetic, antispasmodic, opioid, steroid, other solutions (NOT neurolytic substances) for subarachnoid

- a) Cervical or thoracic level = 1.85
- b) Lumbar or sacral (caudal) = 1.77
- 4) Somatic nerve injections:
 - a) Greater occipital nerve = 1.5
 - b) Spinal accessory nerve = 1.5
 - c) Injection brachial plexus, continuous infusion by catheter (including catheter placement) = 1.0
 - d) Regional block (intercostal) = 1.7
 - e) Sciatic nerve, continuous infusion = 1.3
 - f) Femoral nerve, single = 1.5
 - g) Injection, femoral nerve, continuous infusion by catheter (including catheter placement) = 1.2
 - h) Lumbar plexus, posterior approach, continuous infusion = 2.0
 - i) Other peripheral nerve or branch = 1.25
- 5) Paravertebral facet joint injections:
 - a) Single level cervical/thoracic levels = 2.0
 - b) Second levels at cervical/thoracic = 1.25
 - c) Third and any additional levels at cervical/thoracic = 1.10
- 6) Paravertebral facet joint injections:
 - a) Single level lumbar/sacral levels = 1.75
 - b) Second levels at lumbar/sacral = 1.0
 - c) Third and any additional levels at lumbar/sacral = 1.0
- 7) Autonomic nerve injection
 - a) Anesthetic agent, superior hypogastric plexus = 1.3
 - b) Anesthetic agent, lumbar or thoracic (paravertebral sympathetic) = 2.0
- 8) Destruction of nerve by neurolytic agent:
 - a) Trigeminal nerve; supraorbital, infraorbital, mental, or inferior alveolar branch, second and third division branches at foramen ovale = 5.5

- b) Intercostal nerve = 3.0
 - c) Pudendal nerve = 3.0
 - d) Paravertebral facet joints at cervical and thoracic single level = 4.4
 - e) Paravertebral facet joints at cervical and thoracic each additional level = 2.0
 - f) Paravertebral facet joints at lumbar or sacral single level = 4.2
 - g) Paravertebral facet joints at lumbar or sacral single each additional level = 1.8
 - h) Other peripheral nerve or branch = 1.6
 - i) Celiac plexus = 2.9
- 9) Functional Assessments related to spinal or sacroiliac joint injections shall be reimbursed in accordance with 18-6(G)(6).
- 10) Tympanic Membrane surgery:
- a) Tympanic membrane repair, with or without site preparation of perforation for closure, with or without patch = 11.7
- (I) Venipuncture for clinical laboratory testing maximum fee allowance is covered under Exhibit #8 of this Rule.

(E) Radiology Section:

(1) General

- (a) The cost of dyes and contrast shall be reimbursed in accordance with 18-6(K)(2)c)4).
- (b) Copying charges for x-rays and MRIs shall be \$15.00/film regardless of the size of the film.
- (c) The payer may use available billing information such as provider credential(s) and clinical record(s) to determine if an appropriate RVP© modifier should have been used on the bill. To modify a billed code, refer to Rule 16-11(B)(4).
- (d) In billing radiology services, the applicable radiology procedure code shall be billed using the appropriate modifier to bill either the professional component (26) or the technical component (TC). If a physician bills the total or professional component, a separate written interpretive report is required.

If a physician interprets the same radiological image more than once, or if

multiple physicians interpret the same radiological image, only one (1) interpretation shall be reimbursed.

The time a physician spends reviewing and/or interpreting an existing radiological image is considered a part of the physician's evaluation and management service code.

(2) Thermography

- (a) The provider supervising and interpreting the thermographic evaluation shall be board certified by the examining board of one (1) of the following national organizations and follow their recognized protocols:

American Academy of Thermology;

American Chiropractic College of Infrared Imaging.-

- (b) Indications for diagnostic thermographic evaluation must be one (1) of the following:

Complex Regional Pain Syndrome/Reflex Sympathetic Dystrophy (CRPS/RSD);

Sympathetically Maintained Pain (SMP);

Autonomic neuropathy;

- (c) General Protocols for Stress Testing

Cold Water Autonomic Functional Stress Testing – Baseline infrared images are obtained in a 68° F +/- 1 degree steady state environment following equilibration for 15 minutes. After the quantitative and qualitative baseline images are captured, cold water autonomic functional stress testing is performed by submersing the asymptomatic extremity in 68° F +/- 1 degree cold water bath for 5 minutes while imaging and evaluating the autonomic response.

Whole Body Autonomic Stress Testing – Refer to the thermogram discussion section found in the Complex Regional Pain Syndrome Medical Treatment Guidelines.

- (d) Thermography Billing Codes:

DoWC Z0200 Upper body w/ Autonomic Stress Testing \$865.37

DoWC Z0201 Lower body w/Autonomic Stress Testing \$865.37

- (e) Prior authorization for payment (see Rule 16-9) is required for thermography services only if the requested study does not meet the indicators for thermography as outlined in this radiology section. The billing shall include a report supplying the thermographic evaluation and reflecting compliance with 18-5(E)(2).

(3) Urea breath test C-14 (Isotopic); acquisition for analysis and the analysis maximum fees are listed under Exhibit #8 of this Rule.

(F) Pathology Section:

Laboratories with a CLIA certificate of waiver may perform only those tests cleared by the Food and Drug Administration (FDA) as waived tests. Laboratories with a CLIA certificate of waiver shall bill using the QW modifier.

Laboratories with a CLIA certificate of compliance or accreditation may perform non-waived tests. Laboratories with a CLIA certificate of compliance or accreditation do not append the QW modifier to claim lines.

- (1) All clinical pathology laboratory tests, except as allowed by this rule, are reimbursed at the total component dollar value listed under Exhibit #8 of this Rule or billed charges, whichever is less. No separate technical or professional component maximum dollar split is separately payable by the payer. However the technical and professional component billing parties may agree upon a dollar value split of the total maximum fees listed in Exhibit #8 of this Rule.

When a physician clinical pathologist is required for consultation and interpretation, and a separate written report is created, the maximum fee is determined by using the RVP© values and the pathology conversion factors. Maximum Fee Schedule value is determined by the Pathology Conversion Factor when the Pathology CPT® code description includes "interpretation" and "report" or the following Pathology CPT® code description is from:

- physician blood bank services,
- cytopathology and cell marker study interpretations,
 - cytogenics or molecular cytogenics interpretation and report,
 - surgical pathology gross and microscopic and special stain groups 1 and 2 and histochemical stain, blood or bone marrow interpretations, and
 - Skin tests for "unlisted antigen each, coccidioidomycosis, histoplasmosis, TB intradermal.

When ordering automated laboratory tests, the ordering physician may seek verbal consultation with the pathologist in charge of the laboratory's policy, procedures and staff qualifications. The consultation with the ordering physician is not payable unless the ordering physician requested additional medical interpretation and judgment and requested a separate written report. Upon such a request, the pathologist may bill using the proper CPT® code and values from

the RVP©, not DoWC Z0755.

(2) Drug Testing Codes and Values

- (a) G0434 (Drug screen, other than chromatographic; any number of drug classes, by Clinical Laboratory Improvement Amendments (CLIA) waived test or moderate complexity test, per patient encounter) will be used to report very simple testing methods, such as dipsticks, cups, cassettes, and cards, that are interpreted visually, with the assistance of a scanner, or are read utilizing a moderately complex reader device outside the instrumented laboratory setting (i.e., non-instrumented devices). This code is also used to report any other type of drug screen testing using test(s) that are classified as CLIA moderate complexity test(s), keeping the following points in mind:

G0434 includes qualitative drug screen tests that are waived under CLIA as well as dipsticks, cups, cards, cassettes, etc. that are not CLIA waived.

- (b) Only one (1) unit of service for code G0434 can be billed per patient encounter regardless of the number of drug classes tested and irrespective of the use or presence of the QW modifier on claim lines.

- (c) G0431 (Drug screen, qualitative; multiple drug classes by high complexity test method (e.g., immunoassay, enzyme assay), per patient encounter) will be used to report more complex testing methods, such as multi-channel chemistry analyzers, where a more complex instrumented device is required to perform some or all of the screening tests for the patient. This code may only be reported if the drug screen test(s) is classified as CLIA high complexity test(s) with the following restrictions:

G0431 may only be reported when tests are performed using instrumented systems (i.e., durable systems capable of withstanding repeated use).

CLIA waived tests and comparable non-waived tests may not be reported under test code G0431; they must be reported under test code G0434.

CLIA moderate complexity tests should be reported under test code G0434 with one (1) Unit of Service (UOS).

G0431 may only be reported once per patient encounter.

Laboratories billing G0431 must not append the QW modifier to claim lines.

Maximum Fee Schedule values are listed under Exhibit #8 of this Rule.

- (d) Drug testing shall be done prior to the initial long-term drug prescription being implemented and randomly repeated at least annually.

While the injured worker is receiving chronic opioid management, additional drug screens with documented justification may be conducted. Examples of documented justification include the following:

- (1) Concern regarding the functional status of the patient
- (2) Abnormal results on previous testing
- (3) Change in management of dosage or pain
- (4) Chronic daily opioid dosage above 150 mg of morphine or equivalent
- (e) Qualitative testing must meet one of the following criteria before performing a quantitative review:
 - (1) The results of the qualitative screen are presumptively positive; or
 - (2) Results of the qualitative screen are negative and this negative finding is inconsistent with the patient's medical history.
- (f) Codes G0431 and G0434 in section 18-5(F)(2) are to be billed and used to determine Maximum Fee Schedule values instead of the codes listed under the "Drug Testing" subsection in the "Pathology and Laboratory Section" of CPT® and RVP©. Specific quantitative drug testing codes listed under other sections of the "Pathology and Laboratory Section" of CPT® and RVP© are still recognized.

(G) Medicine Section:

- (1) Medicine home therapy services in the RVP© are not adopted. For appropriate codes see section 18-6(L), Home Therapy.
- (2) Anesthesia qualifying circumstance values are reimbursed in accordance with the section 18-5(D)(1).
- (3) Biofeedback

Prior authorization for payment (see Rule 16-9) shall be required from the payer for any treatment exceeding the treatment guidelines. A licensed physician or psychologist shall prescribe all services and include the number of sessions. Session notes shall be periodically reviewed by the prescribing physician or psychologist to determine the continued need for the service. All services shall be provided or supervised by an appropriate recognized provider as listed under Rule 16-5. Supervision shall be as defined in Rule 17, Medical Treatment Guidelines. Persons providing biofeedback shall be certified by the Biofeedback Certification International Alliance (BCIA), or be a licensed physician or psychologist, as listed under Rule 16-5(A)(1)(a) and (b) with evidence of equivalent biofeedback training. Providers who are performing Individual Psychophysiological therapy that incorporates Biofeedback with psychotherapy must be appropriately licensed by DORA to perform psychotherapy.

Maximum Fee Schedule values for biofeedback services shall be consistent with the values published in the RVP Errata Quarter 2 2014 as follows:

Biofeedback training by any modality	0.3/min
Biofeedback peri/uro/rectal	0.3/min

- (4) Appendix J of the 2014 CPT® identifies mixed, motor and sensory nerve conduction studies and their appropriate billing.
- (5) Manipulation -- Chiropractic (DC), Medical (MD) and Osteopathic (DO):
 - (a) Prior authorization for payment (see Rule 16-9) shall be obtained before billing for more than four body regions in one (1) visit. Manipulative therapy is limited to the maximum allowed in Rule 17, Medical Treatment Guidelines. The provider's medical records shall reflect medical necessity and prior authorization for payment (see Rule 16-9) if treatment exceeds these limitations.
 - (b) An office visit may be billed on the same day as manipulation codes when the documentation meets the E&M requirement and an appropriate modifier is used.
- (6) Psychiatric/Psychological Services:
 - (a) A licensed psychologist (PsyD, PhD, EdD) is reimbursed a maximum of 100% of the medical fee listed in the RVP©. Other non-physician providers performing psychological/psychiatric services shall be paid at 75% of the fee allowed for physicians.
 - (b) Prior authorization for payment (see Rule 16-9) is required any time the following limitations are exceeded on a single day:

Psychiatric diagnostic evaluation, with or without medical services, per episode limit: 2 hours (bill the appropriate CPT® code for each hour.)

Central Nervous System (CNS) Assessments/Tests, (neuro-cognitive, mental status, speech) requiring more than six (6) hours require prior authorization.

Most initial evaluations for delayed recovery, exclusive of testing, can be completed in two (2) hours.
 - (c) Psychotherapy services limit: 60 min. per visit

Prior authorization for payment (see Rule 16-9) is required any time the 60 minutes per visit limitation is exceeded.

Psychotherapy for work-related conditions requiring more than 20 visits or continuing for more than three (3) months after the initiation of therapy, whichever comes first, requires prior authorization for payment (see Rule 16-9) except where specifically addressed in Rule 17, Medical Treatment Guidelines.
 - (d) When billing an evaluation and management (E&M) code in addition to psychotherapy:
 - (1) Both services must be separately identifiable;
 - (2) The level of E&M is based on history, exam and medical decision making;

- (3) Time may not be used as the basis for the E&M code selection; and
- (4) Add-on psychotherapy codes are to be used by psychiatrists to indicate both services were provided.

Non-medical disciplines cannot bill most E&M codes.

(7) Hyperbaric Oxygen Therapy Services

The maximum unit value shall be 24 units per session, instead of 14 units as listed in the RVP©.

(8) Qualified Non-Physician Provider Telephone or On-Line Services

Reimbursement to qualified non-physician providers for coordination of care with professionals shall be based upon the telephone codes for qualified non-physician providers found in the RVP© Medicine Section. Coordination of care reimbursement is limited to telephone calls made to professionals outside of the non-physician provider's employment facility(ies) and/or to the injured worker or their family.

(9) Quantitative Autonomic Testing Battery (ATB) and Autonomic Nervous System Testing.

- (a) Quantitative Sudomotor Axon Reflex Test (QSART) is a diagnostic test used to diagnose Complex Regional Pain Syndrome. This test is performed on a minimum of two (2) extremities, and encompasses the following components:
 - 1) Resting Sweat Test
 - 2) Stimulated Sweat Test
 - 3) Resting Skin Temperature Test
 - 4) Interpretation of clinical laboratory scores. Physician must evaluate the patient specific clinical information generated from the test and quantify it into a numerical scale. The data from the test and a separate report interpreting the results of the test must be documented.

- (b) Maximum fee when all of the services outlined in 18-5(G)(9)(a) are completed and documented.

QSART Billing Code

DoWC Z0401	QSART	\$1,007.00

Z0401 may only be billed once per workers' compensation claim, regardless of the number limbs tested.

(10) Intra-Operative Monitoring (IOM)

IOM is used to identify compromise to the nervous system during certain surgical procedures. Evoked responses are constantly monitored for changes that could imply damage to the nervous system.

(a) Clinical Services for IOM: Technical and Professional

- 1) Technical staff: A qualified specifically trained technician shall setup the monitoring equipment in the operating room and is expected to be in constant attendance in the operating room with the physical or electronic capacity for real-time communication with the supervising neurologist or other physician trained in neurophysiology. The technician shall be specifically trained/registered with:

The American Society of Neurophysiologic Monitoring; or

The American Society of Electrodiagnostic Technologists

- 2) Professional/Supervisory /Interpretive

A specifically neurophysiology trained Colorado licensed physician shall monitor the patient's nervous system throughout the surgical procedure. The monitoring physician's time is billed based upon the actual time the physician devotes to the individual patient, even if the monitoring physician is monitoring more than one (1) patient. The monitoring physician's time does not have to be continuous for each patient and may be cumulative. The monitoring physician shall not monitor more than three (3) surgical patients at one time. The monitoring physician shall provide constant neuromonitoring at critical points during the surgical procedure as indicated by the surgeon or any unanticipated testing responses. There must be a neurophysiology trained Colorado licensed physician backup available to continue monitoring the other two patients if one of the patients being monitored has complications and/or requires the monitoring physician's undivided attention for any reason. There is no additional payment for the back-up neuromonitoring physician, unless he/she is utilized in a specific case.

- 3) Technical Electronic Capacity for Real-time Communication requirements

The electronic communication equipment shall use a 16-channel monitoring and minimum real-time auditory system, with the possible addition of video connectivity between monitoring staff, operating surgeon and anesthesia. The equipment must also provide for all of the monitoring modalities that may be applied with the IOM procedure code.

(b) Procedures and Time Reporting

Physicians shall include an interpretive written report for all primary billed procedures.

(11) Speech Therapy/Evaluation and Treatment

Reimbursement shall be according to the unit values as listed in the RVP© multiplied by their section's respective CF.

(12) Vaccine and Toxoids

Shall be billed using the appropriate J code or CPT® code listed in the Medicare Part B Drug Average Sale Price (ASP), or at cost to the billing provider if no dollar value is listed in ASP.

(13) IV Infusions Performed in Physicians' Offices or Sent Home with Patient

IV infusion therapy performed in a physician's office shall be billed under the "Therapeutic, Prophylactic, and Diagnostic Injections and Infusions" and the "Chemotherapy and Other Highly Complex Drug or Highly Complex Biologic Agent Administration" in the Medicine Section of CPT®. The appropriate CPT®/RVP© code units multiplied by the Medicine conversion factor is the Maximum Fee Schedule value for the infusion service. The infused therapeutic drugs are payable at cost to the provider's office.

Maximum fees for supplies and medications provided by a physician's office for self-administered home care infusion therapy is covered under section 18-6(L) (1).

(H) Physical Medicine and Rehabilitation:

Restorative services are an integral part of the healing process for a variety of injured workers.

- (1) Prior authorization for payment (see Rule 16-9) is required for medical nutrition therapy.
- (2) For recommendations on the use of the physical medicine and rehabilitation procedures, modalities, and testing, see Rule 17, Medical Treatment Guidelines.
- (3) Special Note to All Physical Medicine and Rehabilitation Providers:

The authorized treating provider shall obtain prior authorization for payment (see Rule 16-9) from the payer for any physical medicine or rehabilitation treatment not listed in or exceeding the frequency or duration recommendations in Rule 17, Medical Treatment Guidelines.

The injured worker shall be re-evaluated by the prescribing physician within 30 calendar days from the initiation of the prescribed treatment and at least once every month while that treatment continues to establish achievement of functional goals. Prior authorization for payment (see Rule 16-9) shall be required for treatment of a condition not covered under Rule 17, Medical Treatment Guidelines and exceeding 60 calendar days from the initiation of treatment.

- (4) Interdisciplinary Rehabilitation Programs – Requires Prior Authorization for Payment (see Rule 16-9).

An interdisciplinary rehabilitation program is one that provides focused, coordinated, and goal-oriented services using a team of professionals from

varying disciplines to deliver care. These programs can benefit persons who have limitations that interfere with their physical, psychological, social, and/or vocational functioning. As defined in Rule 17, Medical Treatment Guidelines, interdisciplinary rehabilitation programs may include, but are not limited to: chronic pain, spinal cord, or brain injury programs.

Billing Restrictions: All billing providers shall detail to the payer the services, frequency of services, duration of the program and their proposed fees for the entire program and all professionals. The billing provider and payer shall attempt to mutually agree upon billing code(s) and fee(s) for each interdisciplinary rehabilitation program.

If there is a single billing provider for the entire interdisciplinary rehabilitation program and a daily per diem rate is mutually agreed upon, use billing code Z0500.

If the individual interdisciplinary rehabilitation professionals bill separately for their participation in an interdisciplinary rehabilitation program, the applicable CPT® codes shall be used to bill for their services. Demonstrated participation in an interdisciplinary rehabilitation program allows the use of the frequencies and durations listed in the relevant Medical Treatment Guideline's recommendations.

- (5) Procedures (therapeutic exercises, neuromuscular re-education, aquatic therapy, gait training, massage, acupuncture, dry needling of trigger points, manual therapy techniques, therapeutic activities, cognitive development, sensory integrative techniques and any unlisted physical medicine procedures.)

The provider's medical records shall reflect the medical necessity and the provider shall obtain prior authorization for payment (see Rule 16-9) if the procedures are not recommended or the frequency and duration exceeds the recommendations of the Rule 17, Medical Treatment Guidelines. The maximum amount of time allowed is one (1) hour of procedures per day, per discipline; unless medical necessity is documented and prior authorization is obtained from the payer.

Aquatic Therapy Services

The maximum unit value shall be 5 units per 15-minutes instead of the 4.5 units as listed in the RVP®.

Dry Needling of Trigger Points, Single or multiple needles,

DoWC Z0501 - initial 15 minutes of dry needling 5.4 RVUs

DoWC Z0502 - each add'l 15 minutes of dry needling 4.5 RVUs

- (6) Modalities

RVP® Timed and Non-timed Modalities

Billing Restrictions: There is a total limit of two (2) modalities (whether timed or non-timed) per visit, per discipline, per day.

NOTE: Instruction and application of a transcutaneous electric nerve stimulation (TENS) unit for the patient's independent use shall be billed using the education

code in the Medicine section of the RVP©. Rental or purchase of a TENS unit requires prior authorization for payment (see Rule 16-9). For Maximum Fee Schedule value, see 18-6(H).

- (7) Evaluation Services for Therapists: Physical Therapy (PT), Occupational Therapy (OT) and Athletic Trainers (ATC).
- (a) All evaluation services must be supported by the appropriate history, physical examination documentation, treatment goals and treatment plan or re-evaluation of the treatment plan. The provider shall clearly state the reason for the evaluation, the nature and results of the physical examination of the patient, and the reasoning for recommending the continuation or adjustment of the treatment protocol. Without appropriate supporting documentation, the payer may deny payment. The re-evaluation codes shall not be billed for routine pre-treatment patient assessment.
- If a new problem or abnormality is encountered that requires a new evaluation and treatment plan, the professional may perform and bill for another initial evaluation. A new problem or abnormality may be caused by a surgical procedure being performed after the initial evaluation has been completed.
- (b) Payers are only required to pay for evaluation services directly performed by a PT, OT, or ATC. All evaluation notes or reports must be written and signed by the PT, OT or ATC. Physicians shall bill the appropriate E&M code from the E&M section of the RVP©.
- (c) A patient may be seen by more than one (1) health care professional on the same day. An evaluation service with appropriate documentation may be charged by each professional per patient, per day.
- (d) Reimbursement to PTs, OTs, speech language pathologists and audiologists for coordination of care with professionals shall be based upon the telephone codes for qualified non-physician providers found in the RVP© Medicine Section. Coordination of care reimbursement is limited to telephone calls made to professionals outside of the therapist's/pathologist's/ audiologist's employment facility(ies) and/or to the injured worker or their family.
- (e) All interdisciplinary team conferences shall be billed in compliance with section 18-5(I)(5).

(8) Special Tests

The following respective tests are considered special tests:

- Job Site Evaluation
- Functional Capacity Evaluation
- Assistive Technology Assessment
- Speech

- Computer Enhanced Evaluation (DoWC Z0503)
- Work Tolerance Screening (DoWC Z0504)

(a) Billing Restrictions:

- 1) Job Site Evaluations require prior authorization for payment (see Rule 16-9) if exceeding two (2) hours. Computer-Enhanced Evaluations and Work Tolerance Screenings require prior authorization for payment for more than four (4) hours per test or more than three (3) tests per claim. Functional Capacity Evaluations require prior authorization for payment for more than four (4) hours per test or two (2) tests per claim.
- 2) The provider shall specify the time required to perform the test in 15-minute increments.
- 3) The value for the analysis and the written report is included in the code's value.
- 4) No E&M services or PT, OT, or acupuncture evaluations shall be charged separately for these tests.
- 5) Data from computerized equipment shall always include the supporting analysis developed by the physical medicine professional before it is payable as a special test.

- (b) Provider Restrictions: all special tests must be fully supervised by a physician, PT, OT, speech language pathologist/therapist or audiologist. Final reports must be written and signed by the physician, PT, OT, speech language pathologist/therapist or audiologist.

(9) Supplies

Physical medicine supplies are reimbursed in accordance with section 18-6(H).

(10) Unattended Treatment

When a patient uses a facility or its equipment for unattended procedures, in an individual or a group setting, bill:

DoWC Z0505	fixed fee per day	1.5 RVU

(11) Non-Medical Facility

Fees, such as gyms, pools, etc., and training or supervision by non-medical providers require prior authorization for payment (see Rule 16-9) and a written negotiated fee.

(12) Unlisted Service Physical Medicine

All unlisted services or procedures require a report.

(13) Work Conditioning, Work Hardening, Work Simulation

- a) Work conditioning is a non-interdisciplinary program that is focused on the individual needs of the patient to return to work. Usually one (1) discipline oversees the patient in meeting goals to return to work. Refer to Rule 17, Medical Treatment Guidelines.

Restriction: Maximum daily time is two (2) hours per day without additional prior authorization for payment (see Rule 16-9).

- b) Work Hardening is an interdisciplinary program that uses a team of disciplines to meet the goal of employability and return to work. This type of program entails a progressive increase in the number of hours a day that an individual completes work tasks until they can tolerate a full workday. In order to do this, the program must address the medical, psychological, behavioral, physical, functional and vocational components of employability and return to work. Refer to Rule 17, Medical Treatment Guidelines.

Restriction: Maximum daily time is six (6) hours per day without additional prior authorization for payment (see Rule 16-9).

- c) Work Simulation is a program where an individual completes specific work-related tasks for a particular job and return to work. Use of this program is appropriate when modified duty can only be partially accommodated in the work place, when modified duty in the work place is unavailable, or when the patient requires more structured supervision. The need for work simulation should be based upon the results of a functional capacity evaluation and/or job analysis. Refer to Rule 17, Medical Treatment Guidelines.

- d) For Work Conditioning, Work Hardening, or Work Simulation, the following apply:

- 1) The provider shall submit a treatment plan including expected frequency and duration of treatment. If requested by the provider, the payer will prior authorize payment for the treatment plan services or shall identify any concerns including those based on the reasonableness or necessity of care.
- 2) If the frequency and duration is expected to exceed the Medical Treatment Guidelines' recommendation, prior authorization for payment is required (see Rule 16-9).
- 3) Provider Restrictions: All procedures must be performed by or under the onsite supervision of a physician, psychologist, PT, OT, speech language pathologist or audiologist.

(I) Evaluation and Management Section (E&M)

- (1) Evaluation and management codes may be billed by medical providers as defined in Rule 16-5(A)(1)(a) as well as nurse practitioners (NP) and physician assistants (PA). Medical record documentation shall encompass the "E&M Documentation Guidelines" criteria as adopted in Exhibit #7 of this Rule, to justify

the billed level of E&M service. If 50% of the time spent for an E&M visit is shared decision making, disability counseling or coordination of care, then time can determine the level of E&M service. Documented telephonic or on-line communication time with the patient or other healthcare providers one (1) day prior or seven (7) days following the scheduled E&M visit, may be included in the calculation of total time.

Disability counseling should be an integral part of managing workers' compensation injuries. The counseling shall be completely documented in the medical records, including, but not limited to, the amount of time spent with the injured worker and the specifics of the discussion as it relates to the individual patient. Disability counseling shall include, but not be limited to, return to work, temporary and permanent work restrictions, self-management of symptoms while working, correct posture/mechanics to perform work functions, job task exercises for muscle strengthening and stretching, and appropriate tool and equipment use to prevent re-injury and/or worsening of the existing injury.

(2) New or Established Patients

An E&M visit shall be billed as a "new" patient service for each "new injury" even though the provider has seen the patient within the last three (3) years. Any subsequent E&M visits are to be billed as an "established patient" and reflect the level of service indicated by the documentation when addressing all of the current injuries.

(3) Number of Office Visits

All providers are limited to one (1) office visit per patient, per day, per workers' compensation claim, unless prior authorization for payment is obtained (see Rule 16-9). The E&M Guideline criteria as specified in the RVP© E&M Section shall be used in all office visits to determine the appropriate level.

(4) Treating Physician Telephone or On-line Services

Telephone or on-line services may be billed if:

- (a) The service is performed more than one (1) day prior to a related E&M office visit, or
- (b) The service is performed more than seven (7) days following a related E&M office visit, and
- (c) The medical records/documentation specifies all the following:
 - 1) The amount of time and date;
 - 2) The patient, family member, or healthcare provider talked to; and
 - 3) The specifics of the discussion and/or decision made during the communication.

(5) Face-to-Face or Telephonic Treating Physician or Qualified Non-physician Medical Team Conferences

A medical team conference can only be billed if all of the criteria are met under

CPT®. A medical team conference shall consist of medical professionals caring for the injured worker.

The billing statement shall be prepared in accordance with Rule 16, Utilization Standards.

- (6) Face -to-face or telephonic meeting by a non-treating physician with the employer, claim representatives or any attorney in order to provide a medical opinion on a specific workers' compensation case, which is not accompanied by a specific report or written record.

Billing Code DoWC Z0601: \$65.00 per 15 minutes billed to the requesting party.

- (7) Face-to-face or telephonic meeting by a non-treating physician with the employer, claim representatives or any attorney in order to provide a medical opinion on a specific workers' compensation case, which is accompanied by a report or written record, shall be billed as a special report (see section 18-6(G)(4)).
- (8) A consultation occurs when a treating physician seeks an opinion from another physician regarding a patient's diagnosis or treatment and meets the CPT® requirements for a consultation. An independent medical exam (IME) occurs when a physician is requested to evaluate a patient by any party or party's representative and is billed in accordance with section 18-6(G).
- (9) When billing for prolonged services, either face-to-face or non-face-to-face, the provider shall provide a report that documents time distinguishable from the E&M visit.

(J) Telehealth

- (1) Closely associated with telemedicine is the term "telehealth", which is often used to encompass a broader definition of remote health care that does not always involve clinical services. Videoconferencing, transmission of still images, e-health including patient portals, remote monitoring of vital signs and continuing medical education are all considered part of telemedicine and telehealth.

Telemental Health is a broad term that refers to providing mental healthcare from a distance. Video conferencing, transmission of still images, e-health including patient portals, remote monitoring of vital signs and continuing medical education are all considered part of telemental health.

Services provided via telecommunications technologies are not covered if the client has access to a comparable service within 30 miles of his/her place of residence.

- (2) Telehealth facilities can bill for the originating fee only if the patient's originating site is located in a:
 - (a) County outside of a Metropolitan Statistical Area (MSA), or
 - (b) A Health Professional Shortage Area, either located outside of an MSA or in a rural census tract, as determined by the office of Rural Health Policy

within the Health Resources and Services Administration (HRSA).

Telehealth originating site facility fee:

Q3014 \$35.00 /per 15 minutes

- (3) HIPAA privacy and electronic security standards are required for both the originating site and the rendering providers.
 - (a) Protecting patient health information, and patient / client decision making and consent are vital.
 - (b) Policies and procedures need to be in place to protect the electronic security of data, and the physical security of telehealth equipment so that patient health information is protected.
 - (c) Compliance with accreditation requirements, regulations, and relevant legislation is necessary.
 - (d) Health professionals providing telehealth services shall be fully licensed, registered, and credentialed by the appropriate governing agency.
- (4) All telehealth procedures are required to be at an originating site that is deemed appropriate with the appropriate HIPAA privacy and electronic security standards in place. Authorized originating sites are:
 - (a) The office of a physician or practitioner
 - (b) A hospital (inpatient or outpatient)
 - (c) A critical access hospital (CAH)
 - (d) A rural health clinic (RHC)
 - (e) A federally qualified health center (FQHC)
 - (f) A hospital based or critical access hospital based renal dialysis center (including satellites)
 - (g) A skilled nursing facility (SNF)
 - (h) A community mental health center (CMHC)
- (5) The physician-patient / psychologist-patient relationship needs to be established.
 - (a) This relationship is established through assessment, diagnosis and treatment of the patient. Two way live audio / video services is acceptable to 'establish' a patient relationship.
 - (b) Physicians / psychologists need to meet standard of care.
 - (c) The patient is required to provide the appropriate consent for treatment.
- (6) Communication Protocol

- (a) Video conferencing is an advanced communication technology that may be used for telehealth.
- (b) It is the originating site's required responsibility to establish provider and patient identity verification.

(7) Payment for telehealth services

- (a) Telehealth consultations, emergency department or initial inpatient; 30 minutes communicating via telehealth

G0425 \$187.95

- (b) Telehealth consultations, emergency department or initial inpatient; 50 minutes communicating via telehealth

G0426 \$256.69

- (c) Telehealth consultations, emergency department or initial inpatient; 70 minutes communicating via telehealth

G0427 \$375.88

- (d) Follow up inpatient telehealth consultations;

G0406 Follow up inpatient, limited (typically 15 min.) \$54.81

G0407 Follow up inpatient, intermediate (typically 25 min.) \$97.45

G0408 Follow up inpatient, complex (typically 35 min.) \$140.09

Subsequent inpatient hospital care services are limited to one telehealth visit every 3 days.

Subsequent nursing facility care services are limited to one telehealth visit every 30 days.

- (e) For all other physician / psychologist telehealth services, the physician / psychologist shall bill the appropriate RVP© CPT® code with the GT modifier. Reimbursement is the RVU value for the CPT® code times the appropriate CF + \$5.00 when modifier GT is appended to the appropriate CPT® code(s).

GT – Attached to the distance (rendering) physician / psychologist billed CPT® or HCPCS indicates the service was performed via interactive audio and video telecommunication systems. Using the modifier certifies that the patient was present at an eligible originating site when the telehealth service was furnished.

- A) Face-to-face or telephonic meeting by a treating physician with the employer, claim representatives, or any attorney, and with or without the injured worker. Claim representatives may include physicians or qualified medical personnel performing payer-initiated medical treatment reviews, but this code does not apply to requests initiated by a provider for prior authorization for payment (see Rule 16-9).

Before the meeting is separately payable, the following must be met:

- (1) Each meeting shall be at a minimum 15 minutes.
- (2) A report or written record signed by the physician is required and shall include the following:
 - (a) Who was present at the meeting and their role at the meeting;
 - (b) Purpose of the meeting;
 - (c) A brief statement of recommendations and actions at the conclusion of the meeting;
 - (d) Documented time (both start and end times); and
 - (e) Billing code DoWC Z0701.

\$75.00 per 15 minutes for time attending the meeting and preparing the report (no travel time or mileage is separately payable). The fee includes the cost of the report for all parties, including the injured worker.

B) Cancellation Fees for Payer Made Appointments

- (1) A cancellation fee is payable only when a payer schedules an appointment the injured worker fails to keep, and the payer has not canceled three (3) business days prior to the appointment. The payer shall pay:

One-half of the usual fee for the scheduled services, or \$150.00, whichever is less.

Cancellation Fee Billing Code: DoWC Z0720

- (2) Missed Appointments:

When claimants fail to keep scheduled appointments, the provider should contact the payer within two (2) business days. Upon reporting the missed appointment, the provider may request whether the payer wishes to reschedule the appointment for the claimant. If the claimant fails to keep the payer's rescheduled appointment, the provider may bill for a cancellation fee according to section 18-6(B).

C) Copying Fees

The payer, payer's representative, injured worker and injured worker's representative shall pay a reasonable fee for the reproduction of the injured worker's medical record. Reasonable cost for paper copies shall not exceed \$18.53 for the first 10 or fewer pages, \$0.85 per page for pages 11-40, and \$0.57 per page thereafter. Actual postage or shipping costs and applicable sales tax, if any, may also be charged. The per-page fee

for records copied from microfilm shall be \$1.50 per page.

If the requester and provider agree, the copy may be provided on a disc. The fee will not exceed \$14.00 per disc.

If the requester and provider agree and appropriate security is in place, including, but not limited to, compatible encryption, the copies may be submitted electronically. Requester and provider should attempt to agree on a reasonable fee. Absent an agreement to the contrary, the fee shall be \$0.10 per page.

Copying charges do not apply for the initial submission of records that are part of the required documentation for billing.

Copying Fee Billing Code: DoWC Z0721

(D) Deposition and Testimony Fees

- (1) When requesting deposition or testimony from physicians or any other type of provider, guidance should be obtained from the Interprofessional Code, as prepared by the Colorado Bar Association, the Denver Bar Association, the Colorado Medical Society and the Denver Medical Society. If the parties cannot agree upon lesser fees for the deposition or testimony services, or cancellation time frames and/or fees, the following deposition and testimony rules and fees shall be used.

If, in an individual case, a party can show good cause to an Administrative Law Judge (ALJ) for exceeding the Maximum Fee Schedule value, that ALJ may allow a greater fee than listed in section 18-6(D) for that case.

- (2) By prior agreement, the provider may charge for preparation time for a deposition, for reviewing and signing the deposition or for preparation time for testimony.

Preparation Time:

Treating or Non-treating Provider: DoWC Z0730 \$325.00 per hour

- (3) Deposition:

Payment for a treating or non-treating provider's testimony at a deposition shall not exceed \$325.00 per hour, billed in half-hour increments. Calculation of the provider's time shall be "portal to portal."

If requested, the provider is entitled to a full hour deposit in advance in order to schedule the deposition.

If the provider is notified of the cancellation of the deposition at least seven (7) business days prior to the scheduled deposition, the provider shall be paid the number of hours s/he has reasonably spent in preparation and shall refund to the deposing party any portion of an advance payment in excess of time actually spent preparing and/or testifying. Bill using code DoWC Z0731.

If the provider is notified of the cancellation of the deposition at least five (5) business days but less than seven (7) business days prior to the scheduled

deposition, the provider shall be paid the number of hours s/he has reasonably spent in preparation and one-half the time scheduled for the deposition. Bill using code DoWC Z0732.

If the provider is notified less than five (5) business days in advance of a cancellation, or the deposition is shorter than the time scheduled, the provider shall be paid the number of hours s/he has reasonably spent in preparation and has scheduled for the deposition. Bill using code DoWC Z0733.

Deposition:

Treating or Non-treating provider: DoWC Z0734 \$325.00 per hr.

Billed in half-hour increments

(4) Testimony:

Calculation of the provider's time shall be "portal to portal" (includes travel time and mileage in both directions).

For testifying at a hearing, if requested, the provider is entitled to a four (4) hour deposit in advance in order to schedule the testimony.

If the provider is notified of the cancellation of the testimony at least seven (7) business days prior to the scheduled testimony, the provider shall be paid the number of hours s/he has reasonably spent in preparation and shall refund any portion of an advance payment in excess of time actually spent preparing and/or testifying. Bill using code DoWC Z0735.

If the provider is notified of the cancellation of the testimony at least five (5) business days but less than seven (7) business days prior to the scheduled testimony, the provider shall be paid the number of hours s/he has reasonably spent in preparation and one-half the time scheduled for the testimony. Bill using code DoWC Z0736.

If the provider is notified of a cancellation less than five (5) business days prior to the date of the testimony or the testimony is shorter than the time scheduled, the provider shall be paid the number of hours s/he has reasonably spent in preparation and has scheduled for the testimony. Bill using code DoWC Z0737.

Testimony:

Treating or Non-treating provider: DoWC Z0738 \$450.00 per hour

(E) Injured Worker Travel Expenses

The payer shall pay an injured worker for reasonable and necessary expenses for travel to and from medical appointments and reasonable mileage to obtain prescribed medications. The rate for mileage shall be 53 cents per mile. The injured worker shall submit a request to the payer showing the date(s) of travel and mileage, with an explanation for any other reasonable and necessary travel expenses incurred or anticipated.

Mileage Expense Billing Code: DoWC Z0723

(F) Permanent Impairment Rating

- (1) The payer is only required to pay for one (1) combined whole-person permanent impairment rating per claim, except as otherwise provided in the Workers' Compensation Rules of Procedures. Exceptions that may require payment for an additional impairment rating include, but are not limited to, reopened cases, as ordered by the Director or an Administrative Law Judge, or a subsequent request to review apportionment. The authorized treating provider is required to submit in writing all permanent restrictions and future maintenance care related to the injury or occupational disease.

(2) Provider Restrictions

The permanent impairment rating shall be determined by the Level II Accredited Authorized Treating Physician (see Rule 5-5(D)).

(3) Maximum Medical Improvement (MMI) Determined Without any Permanent Impairment

When physicians determine the injured worker is at MMI and has no permanent impairment, the physicians should be reimbursed an appropriate level of E&M service. The authorized treating physician (generally the designated or selected physician) managing the total workers' compensation claim of the patient should complete the Physician's Report of Workers' Compensation Injury (Closing Report), WC164 (see section 18-6(G)(2)). Reimbursement for the appropriate level of E&M service is only applicable if the physician examines the injured worker and meets the criteria as defined in the RVP©.

(4) MMI Determined with a Calculated Permanent Impairment Rating

- (a) Calculated Impairment: The total fee includes the office visit, a complete physical examination, complete history, review of all medical records except when the amount of medical records is extensive (see below), determining MMI, completing all required measurements, referencing all tables used to determine the rating, using all report forms from the AMA's Guide to the Evaluation of Permanent Impairment, Third Edition (Revised), (AMA Guides), and completing the Division form, titled Physician's Report of Workers' Compensation Injury (Closing Report) WC164.

Extensive medical records take longer than one (1) hour to review and a separate report is created. The separate report must document each record reviewed, specific details of the record reviewed and the dates represented by the record(s) reviewed. The separate record review can be billed under special reports for written reports only and requires prior authorization and agreement from the payer for the separate record review fees.

- (b) Use the appropriate DoWC code:

- 1) Fee for the Level II Accredited Authorized Treating Physician Providing Primary Care:

Bill DoWC Z0759 \$355.00.

- 2) Fee for the Referral, Level II Accredited Authorized Physician:

Bill DoWC Z0760 \$575.00.

- (3) A return visit for a range of motion (ROM) validation shall be reimbursed using the appropriate separate procedure CPT® code in the medicine section of the RVP©.
- 4) Fee for a Multiple Impairment Evaluation Requiring More Than One (1) Level II Accredited Physician:

All physicians providing consulting services for the completion of a whole person impairment rating shall bill using the appropriate E&M consultation code and shall forward their portion of the rating to the authorized physician determining the combined whole person rating.

(G) Report Preparation

(1) Routine Reports

Providers shall submit routine reports free of charge as directed in Rule 16-7(E) and by statute. Requests for additional copies of routine reports and for reports not in Rule 16-7(E) or in statute are reimbursable under the copying fee section of this Rule. Routine reports include:

- Diagnostic testing
- Procedure reports
- Progress notes
- Office notes
- Operative reports
- Supply invoices, if requested by the payer

(2) Completion of the Physician's Report of Workers' Compensation Injury (WC164)

(a) Initial Report

The authorized treating physician (generally the designated or selected physician) managing the total workers' compensation claim of the patient completes the initial WC164 and submits it to the payer and to the injured worker after the first visit with the injured worker. When applicable, the emergency room or urgent care authorized treating physician for this workers' compensation injury may also create a WC164 initial report. Unless requested or prior authorized by the payer in a specific workers' compensation claim, no other authorized physician should complete and bill for the initial WC164 form. This form shall include completion of items 1-7 and 10. Note that certain information in Item 2 (such as Insurer Claim #) may be omitted if not known by the provider.

(b) Closing Report

The WC164 closing report is required from the authorized treating physician (generally the designated or selected physician) managing the

total workers' compensation claim of the patient when the injured worker is at maximum medical improvement for all injuries or diseases covered under this workers' compensation claim, with or without a permanent impairment. The form requires the completion of items 1-5, 6 b-c, 7, 8 and 10. If the injured worker has sustained a permanent impairment, then item 9 must be completed and the following additional information shall be attached to the bill at the time MMI is determined:

- 1) All necessary permanent impairment rating reports when the authorized treating physician (generally the designated or selected physician) managing the total workers' compensation claim of the patient is Level II Accredited, or
- 2) The name of the Level II Accredited Physician requested to perform the permanent impairment rating when a rating is necessary and the authorized treating physician (generally the designated or selected physician) managing the total workers' compensation claim of the patient is not determining the permanent impairment rating.

(c) Payer Requested WC164 Report

If the payer requests a provider complete the WC164 report, the payer shall pay the provider for the completion and submission of the completed WC164 report.

(d) Provider Initiated WC164 Report

If a provider wants to use the WC164 report as a progress report or for any purpose other than those designated in section 18-6(G)(2)(a), (b) or (c), and seeks reimbursement for completion of the form, the provider shall get prior approval from the payer.

(e) Billing Codes and Maximum Allowance for completion and submission of WC164 report

Maximum allowance for the completion and submission of the WC164 report is:

DoWC Z0750 \$47.00 Initial Report

DoWC Z0751 \$47.00 Progress Report (Payer Requested or Provider Initiated)

DoWC Z0752 \$47.00 Closing Report

DoWC Z0753 \$47.00 Initial and Closing Reports are completed on the same form for the same date of service

- (3) Request for physicians to complete additional forms sent to them by a payer or employer shall be paid by the requesting party. A form requiring 15 minutes or less of a physician's time shall be billed pursuant to (a) and (b) below. Forms requiring more than 15 minutes shall be paid as a special report.

- (a) Billing Code Z0754
- (b) Maximum fee is \$47.00 per form completion

(4) Special Reports

Description: The term special reports includes reports not otherwise addressed under Rule 16, Utilization Standards, Rule 17, Medical Treatment Guidelines and Rule 18, including any form, questionnaire or letter with variable content. This includes, but is not limited to, independent medical evaluations (Z0756) or reviews when the physician is requested to review files and examine the patient to provide an opinion for the requesting party, performed outside C.R.S. §8-42-107.2 (the Division IME process) and treating or non-treating medical reviewers or evaluators producing written reports pertaining to injured workers not otherwise addressed. Special reports also include payment for meeting, reviewing another's written record, and amending or signing that record (see section 18-5(l)(7)). Reimbursement for preparation of special reports or records shall require prior agreement with the requesting party.

Billable Hours: Because narrative reports may have variable content, the content and total payment shall be agreed upon by the provider and the report's requester before the provider begins the report.

Advance Payment: If requested, the provider is entitled to a two (2) hour deposit in advance in order to schedule any patient exam associated with a special report.

Cancellation:

Written Reports Only: In cases of cancellation for those special reports not requiring a scheduled patient exam, the provider shall be paid for the time s/he has reasonably spent in preparation up to the date of cancellation. Bill the cancellation using DoWC code Z0761.

IME/report with patient exam: In cases of special reports requiring a scheduled patient exam, if the provider is notified of a cancellation at least seven (7) business days prior to the scheduled patient exam, the provider shall be paid for the time s/he has reasonably spent in preparation and shall refund to the party requesting the special report any portion of an advance payment in excess of time actually spent preparing. Bill the cancellation using DoWC code Z0762.

In cases of special reports requiring a scheduled patient exam, if the provider is notified of a cancellation at least five (5) business days but less than seven (7) business days prior to the scheduled patient exam, the provider shall be paid for the time s/he has reasonably spent in preparation and one-half the time scheduled for the patient exam. Any portion of a deposit in excess of this amount shall be refunded. Bill the cancellation using DoWC code Z0763.

In cases of special reports requiring a scheduled patient exam, if the provider is notified of a cancellation less than five (5) business days prior to the scheduled patient exam, the provider shall be paid for the time s/he has reasonably spent in preparation and has scheduled for the patient exam. Bill the cancellation using DoWC code Z0764.

Billing Codes:

Written Report Only DoWC Code: Z0755

IME/Report with patient exam DoWC Code: Z0756

Lengthy Form Completion DoWC Code: Z0757

18-5(l)(7) meeting and report
with Non-treating Physician DoWC Code: Z0758

Special Report Maximum Fees: \$325.00 per hour billed in 15- minute increments.

CRS 8-43-404 IME Audio Recording DoWC Code: Z0766
\$30.00 per exam

CRS 8-43-404 IME Audio copying fee DoWC Code: Z0767
\$20.00 per copy

(5) Chronic Opioid Management Report

(a) When the authorized treating physician prescribes long-term opioid treatment, s/he shall use the Division of Workers' Compensation Chronic Pain Disorder Medical Treatment Guidelines and also review the Colorado State Board of Medical Examiners' Policy #10-14, "Guidelines for the Use of Controlled Substances for the Treatment of Pain." Urine drug tests for chronic opioid management shall employ testing methodologies that meet or exceed industry standards for sensitivity, specificity and accuracy. The test methodology must be capable of identifying and quantifying the parent compound and relevant metabolites of the opioid prescribed. In-office screening tests designed to screen for drugs of abuse are not appropriate for chronic opioid compliance monitoring.

- 1) Drug testing shall be done prior to the initial long-term drug prescription being implemented and randomly repeated at least annually.
- 2) When drug screen tests are ordered, the authorized treating physician shall utilize the Colorado Prescription Drug Monitoring Program (PDMP).
- 3) While the injured worker is receiving chronic opioid management, additional drug screens with documented justification may be conducted. Examples of documented justification include the following:
 - a) Concern regarding the functional status of the patient
 - b) Abnormal results on previous testing
 - c) Change in management of dosage or pain

d) Chronic daily opioid dosage above 150 mg of morphine or equivalent

- 4) The opioids prescribed for long-term treatment (opioids being prescribed for >30 days for non-surgical cases and >30 days post procedure for surgical cases) shall be provided through a pharmacy.
- 5) The prescribing authorized treating physician shall review and integrate the screening results, PDMP, and the injured worker's past and current functional status on the prescribed levels of medications. A written report will document the treating physician's assessment of the patient's past and current functional status of work, leisure activities and activities of daily living competencies.

(b) Codes and maximum fees for the authorized treating physician for a written report with all the following review services completed and documented:

- 1) Ordering and reviewing drug tests
- 2) Ordering and reviewing PDMP results
- 3) Reviewing the medical records
- 4) Reviewing the injured workers' current functional status
- 5) Determining what actions, if any, need to be taken
- 6) Appropriate chronic pain diagnostic code (International Classification of Diseases (ICD))

Bill using code DoWC Z0765 \$75.00 per 15 minutes
– maximum of 30 minutes per report

NOTE: This code is not to be used for acute or subacute pain management.

(6) Functional Assessments

(a) Pre-and post-injection assessments by a trained physician, nurse, physician's assistant, occupational therapist, physical therapist, or a medical assistant may be billed with spinal or sacroiliac (SI) joint injection codes. The following 3 elements are required:

- 1) A brief commentary on the procedures, including the anesthesia used in the injection and verification of the needle placement by fluoroscopy, CT or MRI.
- 2) Pre-and post-injection procedure shall have at least 3 objective, diagnostically appropriate, functional measures identified, measured and documented. These may include spinal range of motion; tolerance and time limits for sitting, walking and lifting; straight leg raises for herniated discs; a variety of provocative SI

joint maneuvers such as Patrick's sign, Gaeslen, distraction or gapping and compression tests. Objective descriptions, preferably with measurements, shall be provided initially and post procedure at the appropriate time for medication effect, usually 30 minutes post procedure.

- 3) There shall be a trained physician or trained non-physician health care professional detailed report with a pre- and post-procedure pain diagram, normally using a 0-10 point scale. The patient(s) should be instructed to keep a post injection pain diary that details the patient's pain level for all pertinent body parts, including any affected limbs. The patient pain diary should be kept for at least 8 hours post injection and preferably up to seven (7) days. The patient should be encouraged to also report any changes in activity level post injection.

- (b) If all three elements are documented, the billing code and maximum fee is as follows:

DoWC Z0770	\$91.44 per episode of care; pre-and post, functional assessment related to spinal or SI joint injections.

(H) Supplies, Durable Medical Equipment (DME), Orthotics and Prostheses

- (1) Supplies necessary to perform a service or procedure are considered inclusive and not separately reimbursable. Only supplies that are not an integral part of a service or procedure are considered to be over and above those usually included in the service or procedure.
- (2) Unless other limitations exist in this Rule, medical professionals shall bill supplies, including "Supply et al.," orthotics, prostheses, DME or drugs, including injectables, using Medicare's HCPCS Level II codes, when one exists, as established in the January 2014 Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) schedule or Medicare's Part B Drug Average Sale Price (ASP). Otherwise, the billing provider shall identify their cost by submitting a copy of their invoice with their bill. The DMEPOS schedule can be found at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/DMEPOSFeeSched/DMEPOS-Fee-Schedule.html> (last checked 08/14/14). The Medicare Part B Drug Average Sale Price (ASP) fees can be found at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Part-B-Drugs/McrPartBDrugAvgSalesPrice/index.html>.
- (3) Payers shall pay medical professionals using Medicare's January 2014 DMEPOS Colorado HCPCS Level II maximum fee values or Medicare's Part B Drug ASP values listed for the codes billed. If no code exists, the payer shall pay 120% of the cost for the item as indicated on the provider's invoice.
- (4) Unless other limitations exist in this Rule, DMEPOS suppliers shall be reimbursed using Medicare's HCPCS Level II codes, when one exists, as established in the January 2014 DMEPOS schedule. Otherwise, the supplier shall be reimbursed at 100% of Colorado Medicaid's July 2014 fee schedule. The Colorado Medicaid Fee Schedule can be found at: <https://www.colorado.gov/hcpf/provider-rates-fee-schedule>. If no Medicare or

Medicaid fee schedule value exists, payers shall reimburse Suppliers the published Manufacturer's Suggested Retail Price (MSRP), the item will be reimbursed at MSRP less 20%. If there is no established fee schedule value or MSRP, reimbursement shall be based on 120% of the cost of the item as indicated on the supplier's invoice.

- (5) Reimbursement of supplies to facilities shall be in compliance with sections 18-6 (I) – (N).
- (6) Payment for professional services associated with the fabrication and/or modification of orthotics, custom splints, adaptive equipment, and/or adaptation and programming of communication systems and devices shall be paid in accordance with the Colorado Medicare HCPCS Level II values.
- (7) Take home exercise supplies with a total cost of \$50 or less may be billed without an invoice at a maximum fee of actual billed charges; however, payers reserve the right to request an invoice, at any time, to validate the provider's cost. Home exercise supplies can include, but are not limited to the following items: therabands, theratubes, band/tube straps, theraputty, bow-tie tubing, fitness cables/trainers, overhead pulleys, exercise balls, cuff weights, dumbbells, ankle weight bands, wrist weight bands, hand squeeze balls, flexbars, digiflex hand exercisers, power webs, plyoballs, spring hand grippers, hand helper rubber band units, ankle stretchers, rocker boards, balance paws, and aqua weights.
- (8) Complex Rehabilitation Technology dispensed and billed by Non-Physician DMEPOS Suppliers
 - (a) Complex rehabilitation technology (CRT) items, including products such as complex rehabilitation power wheelchairs, highly configurable manual wheelchairs, adaptive seating and positioning systems, and other specialized equipment, such as standing frames and gait trainers, enable individuals to maximize their function and minimize the extent and costs of their medical care.
 - (b) Complex Rehabilitation Technology products must be provided by suppliers who are specifically accredited by a Center for Medicare and Medicaid Services (CMS) deemed accreditation organization as a supplier of CRT and licensed as a DMEPOS Supplier with the Colorado Secretary of State.
 - (c) The maximum fee schedule allowance for CRT is 100% of Medicare's January 2014 DMEPOS Colorado HCPCS Level II listed fee values. The DMEPOS schedule can be found at: <http://www.cms.gov/Medicare/Medicare-Fee-For-Service-Payment/DMEPOSFeeSched/DMEPOS-Fee-Schedule.html>
 - (d) If no Medicare fee schedule value exists for the billed CRT HCPCS code, the Maximum Fee Schedule value is the published Manufacturer's Suggested Retail Price (MSRP), less 20%.

(I) Inpatient Hospital Facility Fees

(1) Provider Restrictions

All non-emergency, inpatient admissions require prior authorization for payment

(see Rule 16-9).

(2) Bills for Services

- (a) Inpatient hospital facility fees shall be billed on the UB-04 and require summary level billing by revenue code. The provider must submit itemized bills along with the UB-04.
- (b) The maximum inpatient facility fee is determined by applying the Center for Medicare and Medicaid Services (CMS) "Medicare Severity Diagnosis Related Groups" (MS-DRGs) classification system in effect at the time of discharge. Exhibit #1 of this Rule shows the relative weights per MS-DRGs that are used in calculating the maximum allowance.

The hospital shall indicate the MS-DRG code number FL 71 of the UB-04 billing form and maintain documentation on file showing how the MS-DRG was determined. The hospital shall determine the MS-DRG using the MS-DRGs Definitions Manual in effect at the time of discharge. The attending physician shall not be required to certify this documentation unless a dispute arises between the hospital and the payer regarding MS-DRG assignment. The payer may deny payment for services until the appropriate MS-DRG code is supplied.

- (c) Exhibit #1 of this Rule establishes the maximum length of stay (LOS) using the "arithmetic mean LOS". However, no additional allowance for exceeding this LOS, other than through the cost outlier criteria under section 18-6(l)(3)(d) is allowed.
- (d) Any inpatient admission requiring the use of both an acute care hospital (admission/discharge) and its Medicare certified rehabilitation facility (admission/discharge) is considered as one (1) admission and MS-DRG. This does not apply to long term care and licensed rehabilitation facilities.

(3) Inpatient Facility Reimbursement:

- (a) The following types of inpatient facilities are reimbursed at 100% of billed inpatient charges:
 - 1) Children's hospitals
 - 2) Veterans' Administration hospitals
 - 3) State psychiatric hospitals
- (b) The following types of inpatient facilities are reimbursed at 80% of billed inpatient charges:
 - 1) Medicare certified Critical Access Hospitals (CAH) (listed in Exhibit #3 of this Rule)
 - 2) Medicare certified long-term care hospitals
 - 3) Colorado Department of Public Health and Environment (CDPHE) licensed rehabilitation facilities,

- 4) CDPHE licensed psychiatric facilities that are privately owned.
- 5) CDPHE licensed skilled nursing facilities (SNF).

(c) All other inpatient facilities are reimbursed as follows:

Retrieve the relative weights for the assigned MS-DRG from the MS-DRG table in effect at the time of discharge in Exhibit #1 of this Rule and locate the hospital's base rate in Exhibit #2 of this Rule.

The "Maximum Fee Allowance" is determined by calculating:

- 1) $(\text{MS-DRG Relative Wt} \times \text{Specific hospital base rate} \times 185\%) + (\text{trauma center activation allowance}) + (\text{organ acquisition, when appropriate}).$
- 2) For trauma center activation allowance, (revenue codes 680-685) see section 18-6(J)(6)(b)5).
- 3) For organ acquisition allowance, (revenue codes 810-819) see section 18-6(I)(3)(h).

(d) Outliers are admissions with extraordinary cost warranting additional reimbursement beyond the maximum allowance under section 18-6(I)(3)(c). To calculate the additional reimbursement, if any:

- 1) Determine the "Hospital's Cost":

Total billed charges (excluding any trauma center activation or organ acquisition billed charges) multiplied by the hospital's cost-to-charge ratio.

- 2) Each hospital's cost-to-charge ratio is given in Exhibit #2 of this Rule.
- 3) The "Difference" = "Hospital's Cost" – "Maximum Fee Allowance" excluding any trauma center activation or organ acquisition allowance (see (c) above).
- 4) If the "Difference" is greater than \$25,799.00, additional reimbursement is warranted. The additional reimbursement is determined by the following equation:

$\text{"Difference"} \times .80 = \text{additional fee allowance}$

(e) Inpatient combined with Emergency Room Department (ERD), Trauma Center or organ acquisition reimbursement

- 1) If an injured worker is admitted to the hospital, the ERD reimbursement is included in the inpatient reimbursement under section 18-6 (I)(3),
- 2) Trauma Center activation fees (see section 18-6(J)(6)(b)5)) and organ acquisition allowance (see section 18-6(I)(3)(h)) are paid in addition to inpatient fees (see sections 18-6(I)(3)(c-d)).

- (f) If an injured worker is admitted to one hospital and is subsequently transferred to another hospital, the payment to the transferring hospital will be based upon a per diem value of the MS-DRG maximum value. The per diem value is calculated based upon the transferring hospital's MS-DRG relative weight multiplied by the hospital's specific base rate (Exhibit #2 of this Rule) divided by the MS-DRG geometric mean length of stay (Exhibit #1 of this Rule). This per diem amount is multiplied by the actual LOS. If the patient is admitted and transferred on the same day, the actual LOS equals one (1). The receiving hospital shall receive the appropriate MS-DRG maximum value.
- (g) To comply with Rule 16-6(B), the payer shall compare each billed charge type:
- The MS-DRG adjusted billed charges to the MS-DRG allowance (including any outlier allowance);
 - The trauma center activation billed charge to the trauma center activation allowance; and
 - The organ acquisition charges to the organ acquisition maximum fees under section 18-6(l)(3)(h).

The MS-DRG adjusted billed charges are determined by subtracting the trauma center activation billed charges and the organ acquisition billed charges from the total billed charges. The final payment is the sum of the lesser of each of these comparisons.

- (h) The organ acquisition allowance will be calculated using the most recent filed computation of organ acquisition costs and charges for hospitals which are certified transplant centers (CMS Worksheet D-4 or subsequent form) plus 20%.

(J) Outpatient Hospital Facility Fees

(1) Provider Restrictions

- (a) All non-emergency outpatient surgeries require prior authorization for payment (see Rule 16-9).
- (b) A separate facility fee is only payable if the facility is licensed as a hospital by the Colorado Department of Public Health and Environment (CDPHE) or applicable out of state governing agency and statute.

(2) Types of Bills for Service

- (a) Outpatient facility fees shall be billed on the UB-04 and require summary level billing by revenue code. The provider must submit itemized bills along with the UB-04.
- (b) All professional charges (professional services include, but are not limited to, PT/OT, anesthesia, speech therapy, etc.) are subject to the RVP© and Dental Fee Schedules as incorporated by this Rule and applicable to all facilities regardless of whether the facility fees are based

upon Exhibit #4 of this Rule or a percentage of billed charges.

- (c) Outpatient hospital facility bills include all outpatient surgery, ERD, Clinics, Urgent Care (UC) and diagnostic testing in the Radiology, Pathology or Medicine section of CPT®/RVP®.

(3) Outpatient Facility Reimbursement:

- (a) The following types of outpatient facilities are reimbursed at 100% of billed outpatient charges, except for any associated professional fees (see (J)(2)(b) above):

- 1) Children's hospitals
- 2) Veterans' Administration hospitals
- 3) State psychiatric hospitals

- (b) The following types of outpatient facilities are reimbursed at 80% of billed outpatient clinic facility charges only, except for any associated professional fees:

- 1) CAH facilities listed in Exhibit #3 of this Rule.

- (c) Exhibit #4 to this Rule

Hospital reimbursement is based upon Medicare's 2014 Outpatient Prospective Payment System (OPPS) as modified in Exhibit #4 of this Rule. Exhibit #4 lists Medicare's Outpatient Hospital Ambulatory Prospective Payment (APC) Codes and the Division's established rates for hospitals and other types of providers as follows:

- Column 1 lists the APC code number.
- Column 2 lists APC code description.
- Column 3 is used to determine maximum fees for all Outpatient Hospital Emergency Room Departments (ERDs).
- Column 4 is used to determine maximum fees for all hospital facilities not listed under sections 18-6(J)(3)(a) and (b).
- Column 5 is used to determine maximum fees for all Ambulatory Surgery Centers (ASC) when outpatient surgery is performed in an ASC.

To identify which APC grouper is aligned with an Exhibit #4 APC code # and dollar value, use Medicare's 2014 Addendum B. Grouper code 210 in Exhibit #4 was created by the Division to reimburse RVP® spinal fusion codes not listed in Medicare's Hospital Outpatient Prospective Payment System, Addendum B.

- (4) The APC Exhibit #4 values include the following packaged revenue codes

inclusive of the following services and may not be billed separately (all surgically implanted items that remain in the body post-surgery are separately payable at cost to the facility):

- (a) nursing, technician, and related services;
- (b) use of the facility where the surgical procedure(s) was performed;
- (c) drugs and biologicals for which separate payment is not allowed;
- (d) medical and surgical supplies, durable medical equipment and orthotics not listed as a "pass through";
- (e) surgical dressings;
- (f) equipment;
- (g) splints, casts and related devices;
- (h) radiology services when not allowed under Exhibit #4;
- (i) administrative, record keeping and housekeeping items and services;
- (j) materials, including supplies and equipment for the administration and monitoring of anesthesia;
- (k) supervision of the services of an anesthetist by the operating surgeon; and
- (l) post-operative pain blocks.

Packaged Services	
Revenue Code	Description
0250	Pharmacy; General Classification
0251	Pharmacy; Generic Drugs
0252	Pharmacy; Non-Generic Drugs
0254	Pharmacy; Drugs Incident to Other Diagnostic Services
0255	Pharmacy; Drugs Incident to Radiology
0257	Pharmacy; Non-Prescription
0258	Pharmacy; IV Solutions

Packaged Services	
Revenue Code	Description
0250	Pharmacy; General Classification
0259	Pharmacy; Other Pharmacy
0260	IV Therapy; General Classification
0261	IV Therapy; Infusion Pump
0262	IV Therapy; IV Therapy/Pharmacy Services
0263	IV Therapy; IV Therapy/Drug/Supply Delivery
0264	IV Therapy; IV Therapy/Supplies
0269	IV Therapy; Other IV Therapy
0270	Medical/Surgical Supplies and Devices; General Classification
0271	Medical/Surgical Supplies and Devices; Non-sterile Supply
0272	Medical/Surgical Supplies and Devices; Sterile Supply
0275	Medical/Surgical Supplies and Devices; Pacemaker
0276	Medical/Surgical Supplies and Devices; Intraocular Lens
0278	Medical/Surgical Supplies and Devices; except surgically implanted items
0279	Medical/Surgical Supplies and Devices; except surgically implanted items
0280	Oncology; General Classification
0289	Oncology; Other Oncology
0343	Nuclear Medicine; Diagnostic Radiopharmaceuticals
0344	Nuclear Medicine; Therapeutic Radiopharmaceuticals
0370	Anesthesia; General Classification
0371	Anesthesia; Anesthesia Incident to Radiology
0372	Anesthesia; Anesthesia Incident to Other DX Services
0379	Anesthesia; Other Anesthesia
0390	Administration, Processing and Storage for Blood and Blood Components; General Classification
0392	Administration, Processing and Storage for Blood and Blood Components; Processing and Storage
0399	Administration, Processing and Storage for Blood and Blood Components; Other Blood Handling

Packaged Services	
Revenue Code	Description
0250	Pharmacy; General Classification
0621	Medical Surgical Supplies - Extension of 027X; Supplies Incident to Radiology
0622	Medical Surgical Supplies - Extension of 027X; Supplies Incident to Other DX Services
0623	Medical Supplies - Extension of 027X, Surgical Dressings
0624	Medical Surgical Supplies - Extension of 027X; FDA Investigational Devices
0630	Pharmacy - Extension of 025X; Reserved
0631	Pharmacy - Extension of 025X; Single Source Drug
0632	Pharmacy - Extension of 025X; Multiple Source Drug
0633	Pharmacy - Extension of 025X; Restrictive Prescription
0700	Cast Room; General Classification
0710	Recovery Room; General Classification
0720	Labor Room/Delivery; General Classification
0721	Labor Room/Delivery; Labor
0732	EKG/ECG (Electrocardiogram); Telemetry
0821	Hemodialysis-Outpatient or Home; Hemodialysis Composite or Other Rate
0824	Hemodialysis-Outpatient or Home; Maintenance - 100%
0825	Hemodialysis-Outpatient or Home; Support Services
0829	Hemodialysis-Outpatient or Home; Other OP Hemodialysis
0942	Other Therapeutic Services (also see 095X, an extension of 094x); Education/Training
0943	Other Therapeutic Services (also see 095X, an extension of 094X), Cardiac Rehabilitation
0948	Other Therapeutic Services (also see 095X, an extension of 094X), Pulmonary Rehabilitation

- (5) Recognized Status Indicators from Medicare's Addendum B are applied as follows:
- (a) "A" means use another fee schedule instead of Exhibit #4, i.e., 18-4 Conversion Factors or 18-6(Q) Ambulance Fee Schedule.
 - (b) "B" means it is not recognized by Medicare for Outpatient Hospital services Part B bill type (12x and 130x) and therefore is not separately

payable unless separate fees are applicable under another section of this Rule, such as home health.

- (c) "C" means recognized by Medicare as inpatient only procedures; however, the Division does recognize these procedures can be done outpatient if prior authorization is obtained per Rule 16-9.
 - (d) "F" means corneal tissue acquisition, certain CRNA services and Hepatitis A vaccines are allowed at a reasonable cost to the facility. The facility must provide a separate invoice identifying their cost.
 - (e) "G" means "Pass-Through Drugs and Biologicals" that are separately payable under Exhibit #4 as an APC.
 - (f) "H" means a "Pass-Through Device" that is separately payable under Exhibit #4 based upon cost to the facility. Any surgically implanted items are allowed at "cost" to the facility.
 - (g) "K" means a separately payable "Pass-Through Drug or Biological or Device," for therapeutic radiopharmaceuticals, brachytherapy sources, blood and blood products as listed under Exhibit #4.
 - (h) "L" represents Influenza Vaccine and therefore, is generally not considered workers' compensation related.
 - (i) Any "Packaged Codes" with Q1, Q2, Q3, or STVX combinations are not recognized unless the payer and provider make a prior agreement.
 - (j) "M" means not separately payable unless separate fees are applicable under another section of this Rule, such as home health.
 - (k) "N" means the service is bundled and is not separately payable.
 - (l) "P" means partial hospitalization and is paid based upon observation fees as outlined in section 18-6(J).
 - (m) "R" means separate payment for blood and blood products.
 - (n) "S" and "T" mean there are multiple procedures, the highest valued code allowed at 100% of the Exhibit #4 value and up to three (3) additional codes allowed at 50% of the Exhibit #4 value, per episode of care.
 - (o) "V" represents a clinic or ERD visit and is separately payable for hospitals as specified in section 18-6(J).
 - (p) "X" represents Ancillary Services and is separately payable.
 - (q) "Y" represents non-implantable Durable Medical Equipment and is paid according to Medicare's Durable Medical Equipment Regional Carrier (DMERC) fee schedule for Colorado.
- (6) Total maximum facility value for an outpatient hospital episode of care includes:
- (a) The highest valued CPT® code aligned to APC code per Exhibit #4 plus 50% of any lesser-valued CPT® code aligned APC code values.

Facility fee reimbursement is limited to a maximum of four (4) CPT® procedure codes per episode, with a maximum of only one (1) procedure reimbursed at 100% of the allowed Exhibit #4 value for the type of facility:

- Hospital Outpatient ERD bills are reimbursed based upon Column 3;
- Hospitals are reimbursed based upon Column 4.
- ASCs are reimbursed based upon Column 5.

(b) Fees in addition to section 18-6(J)(6) and requirements necessary to be reimbursed under Column 3 from Exhibit #4 for an Outpatient Hospital ERD Column:

- 1) Outpatient ERDs within Colorado must be physically located within a hospital licensed by the CDPHE as a general hospital; or
- 2) Free-standing ERD, must have equivalent operations as a licensed ERD; or
- 3) Meets the out-of-state facility's state's licensure requirements.
- 4) The ERD "Level of Care" is identified based upon one (1) of five (5) levels of care. The level of care is defined by CPT® E&M definitions and internal level of care guidelines developed by the hospital in compliance with Medicare regulations. The hospital's guidelines should establish an appropriate graduation of hospital resources (ERD staff and other resources) as the level of service increases. Upon request the provider shall supply a copy of their level of care guidelines to the payer. (Only the higher one (1) of any ERD levels or critical care codes shall be paid).
- 5) Trauma Center fees are not paid for alerts. Trauma activation fees are as follows:

• Revenue Code 681	\$3,000.00
• Revenue Code 682	\$2,500.00
• Revenue Code 683	\$1,000.00
• Revenue Code 684	\$0

 - a) These fees are in addition to ERD and inpatient fees.
 - b) Activation fees mean a trauma team has been activated, not just alerted.
 - c) The level of trauma activation shall be determined by CDPHE's assigned hospital trauma level designation.
- 6) The hospital shall be paid an outlier threshold payment if the

hospital's cost is greater than its maximum fee per billed line by \$500.00. The outlier calculation is as follows:

- "Cost" is calculated by taking the individual hospital's "CCR" rate listed in Exhibit #2 of this Rule and multiplying it by the hospital's line charge.
- "Difference" is equal to the Hospital's line cost subtracted from the line maximum fee.
- If the line "difference" is greater than \$500.00, then the maximum outlier dollar is 80% of the difference. If the difference is equal to or less than \$500.00 then no additional outlier dollars are warranted.

7) For the purposes of Rule 16-6 (B), the sum of all outpatient ERD fees charged, less any amounts charged for professional fees found on the same bill, is to be compared to the maximum reimbursement allowed by the calculated value of section 18-6(J)(6)(b). The lesser of the two (2) amounts shall be the maximum facility allowance for the ERD episode of care. A line by line comparison is not appropriate.

8) If an injured worker is admitted to the hospital through that hospital's ERD, the ERD reimbursement is included in the inpatient reimbursement under section 18-6(l)(3).

(c) Multiple APCs identified by multiple CPT® codes are to be indicated by the use of modifiers –51 and –50, respectively. The 50% reduction applies to all lower valued procedures, even if they are identified in the RVP® as modifier -51 exempt. The reduction also applies to the second "primary" procedure of bilateral procedures.

- 1) All surgical procedures performed in one (1) operating room, regardless of the number of surgeons, are considered one (1) outpatient surgical episode of care for purposes of facility fee reimbursement.
- 2) If an arthroscopic procedure is converted to an open procedure on the same joint, only the open procedure is payable. If an arthroscopic procedure and open procedure are performed on different joints, the two (2) procedures may be separately payable with anatomic modifiers.
- 3) When reported in conjunction with other knee arthroscopy codes, any combination of surgical knee arthroscopies for removal of loose body, foreign body, and/or debridement/shaving of articular cartilage shall be paid only if performed in a different compartment of the knee using G0289.
- 4) Discontinued surgeries require the use of modifier -73 (discontinued prior to administration of anesthesia) or modifier -74 (discontinued after administration of anesthesia). Modifier -73 results in a reimbursement of 50% of the APC value for the primary procedure only. Modifier -74 allows reimbursement of

100% of the primary procedure value only.

- 5) In compliance with Rule 16-6(B), the sum of section 18-6(J)(3)(c) Columns 1-5 is compared to the total facility fee billed charges. The lesser of the two amounts shall be the maximum facility allowance for the surgical episode of care. A line by line comparison of billed charges to the calculated maximum fee schedule allowance of section 18-6(J)(3)(c) is not appropriate.
- (d) Any diagnostic testing clinical labs or therapies with a status indicator (SI) of "A" may be reimbursed using Exhibit #8 of this Rule or the appropriate CF to the unit values for the specific CPT® code as listed in the RVP®.
- (e) Observation room Maximum Fee Schedule value is limited to six (6) hours without prior authorization for payment (see Rule 16-9). Documentation should support the medical necessity for observation or convalescent care. Observation time begins when the patient is placed in a bed for the purpose of initiating observation care in accordance with the physician's order. Observation or daily outpatient convalescence time ends when the patient is actually discharged from the hospital or ASC or admitted into a licensed facility for an inpatient stay. Observation time would not include the time patients remain in the observation area after treatment is finished for reasons such as waiting for transportation home. Hospital or convalescence licensure is required for billing observation or convalescence time beyond 23 hours.

Billing Codes:

G0378 Observation/Convalescence rate: \$45.00 per hour,
round to the nearest hour.

- (f) Professional fees are reimbursed according to the fee schedule times the appropriate conversion factor regardless of the facility type. Additional reimbursement is payable for the following services not included in the values found in Exhibit #4 of this Rule:
- ambulance services (Revenue Code 540), see section 18-6(Q)
 - blood, blood plasma, platelets (Revenue Codes 380X)
 - Physician or physician assistant services
 - Nurse practitioner services
 - Licensed clinical psychologist
 - Licensed social workers
 - Rehabilitation services (PT, OT, Respiratory or Speech/Language, Revenue Codes 420, 430, 440) are paid based upon the RVP® unit value multiplied by the applicable conversion factor.

(g) Any prescription for a drug supply to be used longer than a 24 hour period, filled at any clinic, shall fall under the requirements of and be reimbursed as a pharmacy fee, see section 18-6(M).

(h) Outpatient Hospital Clinic and Urgent Care (Form Locator (FL) 4 are 07xx and revenue codes 51x-53x) Facility Fees

Clinic Visit fees are limited for all facilities in accordance with the following:

- 1) No separate facility fees are allowed for follow-up care visits. Subsequent care for an initial diagnosis does not qualify for a separate facility fee. To receive another facility fee, any subsequent diagnosis shall be a new acute care situation entirely different from the initial diagnosis.
- 2) No facility fee is appropriate when the injured worker is sent to the employer's designated provider for a non-urgent episode of care during regular business hours of 8 am to 5 pm, Monday through Friday.
- 3) Any specialty care clinic (wound/infections) that require expensive drugs/supplies that are typically not provided by a physician's office may be allowed a separate clinic fee with prior approval from the payer as outlined in Exhibit #4.
- 4) Clinics designated as critical access hospitals (CAH) as listed in Exhibit #3 or rural health facilities as listed in Exhibit #5 (FL4 071x) of this Rule, may be reimbursed a separate clinic fee at 80% of billed charges regardless of whether the clinic is designated by the employer or the time of day or urgency of the episode of care.

Clinic fees are paid based upon Exhibit #4 and as outlined in this Rule.

(i) IV Infusions Performed in Outpatient Hospital Facilities

IV infusion therapy performed in an outpatient hospital facility is reimbursed per section 18-6(J).

(K) Freestanding (Not Affiliated with a Hospital) Outpatient Diagnostic Testing or Treatment Facilities

(1) Types of facilities

- (a) Ambulatory Surgery Centers licensed by the CDPHE
- (b) Physician offices
- (c) Freestanding Radiology Imaging Cardiovascular Testing and Procedure Centers
- (d) Freestanding Clinical Laboratory Centers
- (e) Urgent Care - facility fees are only payable if the facility qualifies as an

Urgent Care facility. Facilities licensed by the CDPHE as a Community Clinic (CC) or a Community Clinic and Emergency Center (CCEC) under 6 CCR 1011-1, Chapter IX should still provide evidence of these qualifications to be reimbursed as an Urgent Care facility. The facility shall meet all of the following criteria to be eligible for a separate Urgent Care facility fee:

- 1) Separate facility dedicated to providing initial walk-in urgent care;
- 2) Access without appointment during all operating hours;
- 3) State licensed physician on-site at all times exclusively to evaluate walk-in patients;
- 4) Support staff dedicated to urgent walk-in visits with certifications in Basic Life Support (BLS);
- 5) Advanced Cardiac Life Support (ACLS) certified life support capabilities to stabilize emergencies including, but not limited to, EKG, defibrillator, oxygen and respiratory support equipment (full crash cart), etc.;
- 6) Ambulance access;
- 7) Professional staff on-site at the facility certified in ACLS;
- 8) Extended hours including evening and some weekend hours;
- 9) Basic x-ray availability on-site during all operating hours;
- 10) Clinical Laboratory Improvement Amendments (CLIA) certified laboratory on-site for basic diagnostic labs or ability to obtain basic laboratory results within 1 hour;
- 11) Capabilities include, but are not limited to, suturing, minor procedures, splinting, IV medications and hydration; and
- 12) Written procedures exist for the facility's stabilization and transport processes.

(2) Billing and Maximum Fees

- (a) ASCs are reimbursed in accordance with section 18-6(J) and Column 5 from Exhibit #4 of this Rule.
- (b) Maximum reimbursement for physicians performing diagnostic testing in their offices during the course of their care shall be based upon the appropriate RVP® unit value multiplied by the applicable 18-4 conversion factor.
- (c) Maximum Fees for all Freestanding Diagnostic Testing Facilities:
 - 1) All providers should indicate whether they are billing for the professional component only (26 modifier) or technical

component only (TC modifier) for any diagnostic test or procedure by listing the appropriate RVP© modifier on the required billing form CMS-1500.

- 2) Shall be based upon the appropriate RVP© unit value multiplied by the applicable 18-4 conversion factor.
- 3) All radiology and cardiovascular codes are reimbursed at 90% of the modified or not modified RVP© unit value multiplied by the radiology 18-4 conversion factor. A maximum of four (4) radiology codes may be used in one (1) episode of outpatient diagnostic testing. The highest valued radiology code is allowed at 100% of the maximum value and the remaining three (3) lower valued codes are allowed at 50% of the maximum radiology value.
- 4) Diagnostic testing dyes, contrasts, supplies and drugs are not separately payable.
- 5) Fluoroscopy is generally considered incidental when used for guidance when performing higher valued radiology tests. Refer to CPT® for specific billing instructions.
- 6) The maximum fees for all clinical laboratory testing shall be reimbursed according the fees as outlined under Pathology, section 18-5(F).
- 7) All observation services must be prior approved by the payer if time is greater than three (3) hours.

G0378 Observation rate: \$45.00 per hour

(d) Urgent Care Facility Reimbursement

- 1) The total maximum value for an urgent care episode of care includes:
 - a) An Urgent Care facility fee maximum allowance of \$75.00; and
 - b) Prior agreement or authorization is recommended for all facilities billing a separate Urgent Care fee. Facilities must provide documentation of the required Urgent Care facility criteria as listed in section 18-6(K) if requested by the payer.
 - c) All other services/procedures provided in an Urgent Care facility are reimbursed according the appropriate CPT® code relative weight from RVP© multiplied by the appropriate 18-4 conversion factor.
 - d) The Observation Room allowance shall not exceed a rate of \$45.00 per hour and is limited to a maximum of three (3) hours without prior authorization for payment (see Rule 16-9).

G0378 Observation rate: \$45.00 per hour

- e) All supplies are included in the facility fee for Urgent Care facilities.
- g) Any prescription for a drug supply to be used longer than a 24 hour period, filled at any clinic, shall fall under the requirements of and be reimbursed as a pharmacy fee. See section 18-6(M).
- 2) No separate facility fees are allowed for follow-up care. Subsequent care for an initial diagnosis does not qualify for a separate facility fee. To receive another facility fee any subsequent diagnosis shall be a new acute care situation entirely different from the initial diagnosis.
- 3) No facility fee is appropriate when the injured worker is sent to the employer's designated provider for a non-urgent episode of care during regular business hours of 8 am to 5 pm, Monday through Friday.

(L) Home Care Services

Prior authorization for payment (see Rule 16-9) is required for all home care-services. All skilled home care service providers shall be licensed by the Colorado Department of Public Health and Environment (CDPHE) as Type A providers. The payer and the home health entity should agree in writing on the type of care, the type and skill level of provider, frequency of care and duration of care at each visit, and any financial arrangements to prevent disputes.

(1) Home Infusion Therapy

The per day or refill rates for home infusion therapy shall include all reasonable and necessary products, equipment, IV administration sets, supplies, supply management, and delivery services necessary to perform the infusion therapy. Per diem rates are only payable when licensed professionals (RNs) are providing "reasonable and necessary" skilled assessment and evaluation services in the patient's home.

Skilled Nursing fees are separately payable when the nurse travels to the injured workers home to perform initial and subsequent patient evaluation(s), education, and coordination of care. Skilled nursing fees are billed and payable as indicated under section 18-6(L)(2).

(a) Parenteral Nutrition:

S9364	<1 Liter	\$160.00/ day
S9365	1 liter	\$174.00/ day
S9366	1.1 - 2.0 liter	\$200.00/ day
S9367	2.1 - 3.0 liter	\$227.00/ day

S9368 > 3.0 liter \$254.00/ day

The per day rates include the standard total parenteral nutrition (TPN) formula. Lipids, specialty amino acid formulas, and drugs other than in standard formula are separately payable under section 18-6(M).

- (b) Antibiotic Therapy per day rate by professional + drug cost at Medicare's Average Sale Price (ASP). If ASP is not available, bill using the drug cost at Average Wholesale Price (AWP).

S9494 hourly \$158.00/ day

S9497 once every 3 hours \$152.00/ day

S9500 every 24 hours \$97.00/ day

S9501 once every 12 hours \$110.00/ day

S9502 once every 8 hours \$122.00/ day

S9503 once every 6 hours \$134.00/ day

S9504 once every 4 hours \$146.00/ day

- (c) Chemotherapy per day rate + drug cost at Medicare's Average Sale Price (ASP). If ASP is not available, bill using the drug cost at Average Wholesale Price (AWP).

S9329 Administrative Services \$ 0.00/ day

S9330 Continuous (24 hrs. or more) chemotherapy \$91.00/ day

S9331 Intermittent (less than 24 hrs.) \$103.00/ day

- (d) Enteral nutrition (enteral formula and nursing services separately billable):

S9341 Via Gravity \$44.09/ day

S9342 Via Pump \$24.23/ day

S9343 Via Bolus \$24.23/ day

- (e) Pain Management per day or refill + drug cost at Medicare's Average Sale Price (ASP). If ASP is not available, bill using the drug cost at Average Wholesale Price (AWP).

S9326 Continuous (24 hrs. or more) \$ 79.00/ day

S9327 Intermittent (less than 24 hrs.) \$103.00/ day

S9328 Implanted pump \$116.00/ refill
(No separate daily rate is applicable when the patient has an implanted pain pump.)

- (f) Fluid Replacement per day rate + drug cost at Medicare's Average Sale Price (ASP). If ASP is not available, bill using the drug cost at Average Wholesale Price (AWP).

S9373 < 1 liter per day \$61.00/ day

S9374 1 liter per day \$85.00/ day

S9375 >1 but <2 liters per day \$85.00/ day

S9376 >2 liters but <3 liters \$85.00/ day

S9377 >3 liters per day \$85.00/ day

- (g) Multiple Therapies:

Highest cost per day or refill only + drug cost at Medicare's Average Sale Price (ASP). If ASP is not available, bill using the drug cost at Average Wholesale Price (AWP).

Medication/Drug Restrictions - the payment for drugs may be based upon Medicare's Average Sale Price (ASP). If ASP is not available, bill using the drug cost at Average Wholesale Price (AWP).

AWP (see section 18-6(M)) of the drug is determined through the use of industry publications such as the monthly Price Alert, First Databank, Inc.

(2) Nursing Services

- (a) Skilled Nursing (LPN & RN)

S9123 RN \$111.00/hr.

S9124 LPN \$ 89.00/hr.

There is a limit of two (2) hours without prior authorization for payment (see Rule 16-9).

- (b) Certified Nurse Assistant (CNA):

S9122 CNA \$ 45.00/hr.

The amount of time spent with the injured worker must be specified in the medical records and on the bill.

(3) Physical Medicine

Physical medicine procedures are payable at the same rate as provided in section 185(H), Physical Medicine and Rehabilitation.

(4) Mileage

Travel allowances should be agreed upon with the payer and the mileage rate should not exceed \$0.53 per mile, portal to portal.

DoWC code: Z0772

(5) Travel Time

Travel is typically included in the fees listed. Travel time greater than one (1) hour one-way shall be reimbursed. The fee shall be agreed upon at the time of prior authorization for payment (see Rule 16-9) and shall not exceed \$30.00 per hour.

DoWC code: Z0773

(M) Drugs and Medications

(1) Drugs (brand name or generic) shall be reported on bills using the applicable identifier from the National Drug Code (NDC) Directory as published by the Food and Drug Administration (FDA)

(2) Average Wholesale Price (AWP)

(a) AWP for brand name and generic pharmaceuticals may be determined through the use of such monthly publications as Price Alert, Red Book, or Medispan. In case of a dispute on AWP values, the parties should take the average of their referenced published values.

(b) If published AWP data becomes unavailable, substitute Wholesale Acquisition Cost (WAC) + 20% for AWP everywhere it is found in this Rule.

(3) Reimbursement for Drugs & Medications

(a) For prescriptions, except compounded topical prescriptions, written within 30 days from the date of injury, reimbursement shall be AWP + \$4.00.

(b) For prescriptions, except compounded topical prescriptions, written after 30 days from the date of injury, reimbursement shall be AWP + \$4.00. If drugs have been repackaged, use the original AWP and NDC that was assigned by the source of the repackaged drugs to determine reimbursement.

(c) Drugs administered in the course of the provider's direct care (injectables) shall be reimbursed at the provider's actual cost incurred or Medicare's Part B Drug Average Sale Price (ASP).

(d) Over-the-counter medications, drugs that are safe and effective for use by the general public without a prescription, are reimbursed at NDC/AWP and are not eligible for dispensing fees.

(4) Compounded Drugs

All prescriptions shall be billed using the DoWC Z code corresponding with the applicable category for compounded topical products, including prepackaged compounded medications, as follows:

Category I Z0790 Fee \$ 75.00 per 30 day supply

Any anti-inflammatory medication or any local anesthetic single agent.

Category II Z0791 Fee \$150.00 per 30 day supply

Any anti-inflammatory agent or agents in combination with any local anesthetic agent or agents.

Category III Z0792 Fee \$250.00 per 30 day supply

Any single agent other than anti-inflammatory agent or local anesthetic, either alone, or in combination with anti-inflammatory or local anesthetic agents.

Category IV Z0793 Fee \$350.00 per 30 day supply

Two (2) or more agents that are not anti-inflammatory or local anesthetic agents, either alone or in combination with other anti-inflammatory or local anesthetic agents.

All ingredient materials must be listed by quantity used per prescription. Category fees include materials, shipping and handling, and time. Regardless of how many ingredients or what type, compounded drugs cannot be reimbursed higher than the Category IV fee. The 30 day Maximum Fee Schedule value shall be fractioned down to the prescribed and dispensed amount given to the injured worker.

(5) Injured Worker Reimbursement

In the event the injured worker has directly paid for authorized prescriptions, the payer shall reimburse the injured worker for the amounts actually paid for authorized prescriptions or authorized over-the-counter drugs within 30 days after submission of the injured worker's receipt. See Rule 16-11(G).

(6) Dietary Supplements, Vitamins and Herbal Medicines

Reimbursement for outpatient dietary supplements, vitamins and herbal medicines dispensed in conjunction with acupuncture and complementary alternative medicine are authorized only by prior agreement of the payer, except if specifically provided for in Rule 17, Medical Treatment Guidelines.

(7) Prescription Writing

- (a) Physicians shall indicate on the prescription form that the medication is related to a workers' compensation claim.
- (b) All prescriptions shall be filled with bio-equivalent generic drugs unless the physician indicates "Dispense As Written" (DAW) on the prescription.
- (c) The provider shall prescribe no more than a 60-day supply per prescription.

(8) Required Billing Forms

- (a) All parties shall use one (1) of the following forms:

- 1) CMS-1500 – the dispensing provider shall bill by using the metric quantity and NDC number of the drug being dispensed; or, if one does not exist, the RVP© supply code; or
- 2) WC-M4 form or equivalent – each item on the form shall be completed; or
- 3) With the agreement of the payer, the National Council for Prescription Drug Programs (NCPDP) or ANSI ASC 837 (American National Standards Institute Accredited Standards Committee) electronic billing transaction containing the same information as in (1) or (2) in this sub-section may be used for billing.

NCPDP Workers' Compensation/Property and Casualty (P&C) Universal Claim Form, version 1.1, for prescription drugs billed on paper shall be used by dispensing pharmacies and pharmacy benefit managers (PBMs). Physicians may use the CMS- 1500 billing form as described in Rule 16-7(B)(1).

Physicians shall list the “repackaged” and the “original” NDC numbers in field 24 of the CMS-1500. List the “repackaged” NDC number first and the “original” NDC number second, with the prefix ‘ORIG’ appended.

- (b) Items prescribed for the work-related injury that do not have an NDC code shall be billed as a supply, using the RVP© supply code (see section 18-6(H)).
 - (c) The payer may return any prescription billing form if the information is incomplete.
 - (d) A signature shall be kept on file indicating that the patient or his/her authorized representative has received the prescription.
- (9) A line-by-line itemization of each drug billed and the payment for that drug shall be made on the payment voucher by the payer.

(N) Complementary Alternative Medicine (CAM)

CAM is a term used to describe a broad range of treatment modalities, some of which are generally accepted in the medical community and others that remain outside the accepted practice of conventional western medicine. Non-physician providers of CAM may be both licensed and non-licensed health practitioners with training in one (1) or more forms of therapy and certified by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) in acupuncture and/or Chinese herbology. CAM requires prior authorization for payment (see Rule 16-9). Refer to Rule 17, Medical Treatment Guidelines for the specific types of CAM modalities.

(O) Acupuncture

Acupuncture is an accepted procedure for the relief of pain and tissue inflammation. While commonly used for treatment of pain, it may also be used as an adjunct to physical rehabilitation and/or surgery to hasten return of functional recovery. Acupuncture may be performed with or without the use of electrical current on the needles at the acupuncture

site.

(1) Provider Restrictions

All non-physician providers must be a Licensed Acupuncturist (LAc) by the Colorado Department of Regulatory Agencies as provided in Rule 16, Utilization Standards. All physician and non-physician providers must provide evidence of training, and licensure upon request of the payer.

(2) Billing Restrictions

- (a) For treatment frequencies exceeding the maximum allowed in Rule 17, Medical Treatment Guidelines, the provider must obtain prior authorization for payment (see Rule 16-9).
- (b) Unless the provider's medical records reflect medical necessity and the provider obtains prior authorization for payment (see Rule 16-9), the maximum amount of time allowed for acupuncture and procedures is one (1) hour of procedures, per day, per discipline.

(3) Billing Codes:

- (a) Reimburse acupuncture, including or not including electrical stimulation, as listed in the RVP©.
- (b) Non-Physician evaluation services
 - 1) New or established patient services are reimbursable only if the medical record specifies the appropriate history, physical examination, treatment plan or evaluation of the treatment plan. Payers are only required to pay for evaluation services directly performed by an LAc. All evaluation notes or reports must be written and signed by the LAc. Without appropriate supporting documentation, the payer may deny payment. (See Rule 16-11)
 - 2) LAc new patient visit: DOWC Z0800
Maximum value \$99.68
 - 3) LAc established patient visit: DOWC Z0801
Maximum value \$67.28
- (c) Herbs require prior authorization for payment (see Rule 16-9) and fee agreements as per section 18-6(M)(6).
- (d) See the appropriate Physical Medicine and Rehabilitation section of the RVP© for other billing codes and limitations (see also section 18-5(H)).
- (e) Acupuncture supplies are reimbursed in accordance with section 18-6(H).

(P) Use of an Interpreter

Rates and terms shall be negotiated. Prior authorization for payment (see Rule 16-9) is required except for emergency treatment. Use DoWC Z0722 to bill.

(Q) Ambulance Fee Schedule

(1) Billing Requirements:

Payment under the fee schedule for ambulance services is comprised of a base rate payment plus a payment for mileage. Both the transport of the injured worker to the nearest facility and all items and services associated with such transport are considered inclusive with the base rate and mileage rate.

(2) General Claims Submission:

- (a) All hospitals billing for ground or air ambulance services shall bill on the UB-04 and all other ambulance providers shall bill on the CMS-1500.
- (b) Use the appropriate HCPCS code plus the HCPCS origin/destination modifier.
- (c) The transporting supplier's name, complete address and provider number should be listed in Item 33 (CMS-1500).
- (d) The zip code for the origin (point of pickup) must be in Item 23 (CMS-1500). If billing on the UB-04 use FL 39-41 with an "AO" and the point of pick up zip code. If billing for multiple trips and the zip code for each origin is the same, services can be submitted on the same claim. If the zip codes are different, a separate claim must be submitted for each trip.

(3) Ground and Air Ambulance Vehicle and Crew Requirements

As required by the Colorado Department of Public Health and Environment.

(4) HCPCS Procedure Codes and Maximum Allowances for Ambulance Services:

(a) Ground (both water and land) Ambulance Base Rates and Mileage

The selection of the base code is based upon the condition of the injured worker at the time of transport, not the vehicle used and includes services and supplies used during the transport.

		Urban	Rural (R = Zip Code) First 17 miles or > if not a Super Rural	Super Rural (B = Zip code)
Ground Ambulance	HCPCS Code Description	Medicare Rate *250%	Medicare Rate *250%	Medicare Rate *250%
A0425	Ground mileage, per statute mile	\$ 17.90	\$ 18.08	\$ 18.08
A0426	Ambulance service, advanced life support, non-emergency transport, level 1 (ALS1-Non-Emergency)	\$ 671.89	\$ 678.48	\$ 831.82
A0427	Ambulance service, advanced life support,	\$1,063.83	\$1,074.26	\$1,317.04

		Urban	Rural (R = Zip Code) First 17 miles or > if not a Super Rural	Super Rural (B = Zip code)
Ground Ambulance	HCPCS Code Description	Medicare Rate *250%	Medicare Rate *250%	Medicare Rate *250%
	emergency transport, level 1 (ALS1-Emergency)			
A0428	Ambulance service, basic life support, non-emergency transport (BLS)	\$ 559.91	\$565.40	\$ 693.18
A0429	Ambulance service, basic life support, emergency transport (BLS-Emergency)	\$ 895.86	\$ 904.64	\$1,109.09
A0433	Advanced life support, level 2 (ALS2)	\$1,539.75	\$1,554.85	\$1,906.25
A0434	Specialty care transport (SCT)	\$1,819.71	\$1,837.55	\$2,252.84
A0432	Paramedic intercept (PI), rural area, transport furnished by a volunteer ambulance company which is prohibited by state law from billing third party payers.	\$ 979.84	\$ 989.45	\$ 989.45

The “urban” base rate(s) and mileage rate(s) as indicated in section 18-6(Q) shall be applied to all relevant/applicable ambulance services unless the zip code range area is “Rural” or “Super Rural.” Medicare MSA zip code grouping is listed on Medicare’s webpage with an “R” indicator for “Rural” and “B” indicator for “Super Rural.” See Medicare’s Zip Code to Carrier Locality File- Updated 08/27/2014.

(5) Modifiers

Modifiers identify place of origin and destination of the ambulance trip. The modifier is to be placed next to the HCPCS code billed. The following is a list of current ambulance modifiers. Each of the modifiers may be utilized to make up the first and/or second half of a two-letter modifier. The first letter must describe the origin of the transport, and the second letter must describe the destination (Example: if a patient is picked up at his/her home and transported to the hospital, the modifier to describe the origin and destination would be – RH).

Code Description

- D Diagnostic or therapeutic site other than “P” or “H”
- E Residential, domiciliary, custodial facility, nursing home other than SNF (other than 1819 facility)
- G Hospital-based dialysis facility (hospital or hospital-related) which includes:
 - Hospital administered/Hospital located
 - Non-Hospital administered/Hospital located
- H Hospital
- I Site of transfer (e.g., airport, ferry, or helicopter pad) between modes of ambulance transport

- J Non-hospital-based dialysis facility
 - Non-Hospital administered/Non-Hospital located
 - Hospital administered/Non-Hospital located
- N Skilled Nursing Facility (SNF) (1819 Facility)
- P Physician's Office (includes HMO non-hospital facility, clinic, etc.)
- R Residence
- S Scene of Accident or Acute Event
- X Destination Code Only (Intermediate stop at physician's office enroute to the hospital, includes HMO non-hospital facility, clinic, etc.)

(6) Mileage

Charges for mileage must be based on loaded mileage only, i.e., from the pickup of a patient to his/her arrival at the destination. Payment is allowed for all medically necessary mileage. If mileage is billed, the miles must be in whole numbers. If a trip has a fraction of a mile, round up to the nearest whole number. Use code "1" as the mileage for trips of less than a mile.

18-7 DENTAL FEE SCHEDULE

The dental fee schedule is adopted using the American Dental Association's Current Dental Terminology, 2014 (CDT-2014). However, surgical treatment for dental trauma and subsequent, related procedures may be billed using medical codes from the RVP©. If billed using medical codes as listed in the RVP©, reimbursement shall be in accordance with the Surgery/Anesthesia section of the RVP© and its corresponding conversion factor. All dental billing and reimbursement shall be in accordance with the Division's Rule 16, Utilization Standards, and Rule 17, Medical Treatment Guidelines. See Exhibit #6 of this Rule for the listing and Maximum Fee Schedule value for CDT-2014 dental codes.

Regarding prosthetic appliances, the provider may bill and be reimbursed for 50% of the allowed fee at the time the master casts are prepared for removable prosthodontics or the final impressions are taken for fixed prosthodontics. The remaining 50% may be billed on insertion of the final prosthesis.

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
2	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W/O MCC	15.6820	15.8	18.7
3	PRE	SURG	ECMO OR TRACH W MV 96+ HRS OR PDX EXC FACE, MOUTH & NECK W MAJ O.R.	17.6399	26.2	32.0
4	PRE	SURG	TRACH W MV 96+ HRS OR PDX EXC FACE, MOUTH & NECK W/O MAJ O.R.	10.8533	20.2	24.5
5	PRE	SURG	LIVER TRANSPLANT W MCC OR INTESTINAL TRANSPLANT	10.4973	15.1	20.5
6	PRE	SURG	LIVER TRANSPLANT W/O MCC	4.7461	7.9	8.8
7	PRE	SURG	LUNG TRANSPLANT	9.2986	15.8	18.3
8	PRE	SURG	SIMULTANEOUS PANCREAS/KIDNEY TRANSPLANT	5.3302	9.8	11.4
10	PRE	SURG	PANCREAS TRANSPLANT	4.0849	7.9	9.7
11	PRE	SURG	TRACHEOSTOMY FOR FACE,MOUTH & NECK DIAGNOSES W MCC	4.7380	11.3	14.1
12	PRE	SURG	TRACHEOSTOMY FOR FACE,MOUTH & NECK DIAGNOSES W CC	3.3293	8.3	10.0
13	PRE	SURG	TRACHEOSTOMY FOR FACE,MOUTH & NECK DIAGNOSES W/O CC/MCC	2.1357	5.8	6.6
14	PRE	SURG	ALLOGENEIC BONE MARROW TRANSPLANT	10.9883	19.7	24.8
16	PRE	SURG	AUTOLOGOUS BONE MARROW TRANSPLANT W CC/MCC	5.8780	17.5	19.1
17	PRE	SURG	AUTOLOGOUS BONE MARROW TRANSPLANT W/O CC/MCC	4.1603	8.8	12.3

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
20	1	SURG	INTRACRANIAL VASCULAR PROCEDURES W PDX HEMORRHAGE W MCC	9.4423	13.9	16.7
21	1	SURG	INTRACRANIAL VASCULAR PROCEDURES W PDX HEMORRHAGE W CC	7.1555	11.9	13.4
22	1	SURG	INTRACRANIAL VASCULAR PROCEDURES W PDX HEMORRHAGE W/O CC/MCC	4.4934	6.4	7.9
23	1	SURG	CRANIO W MAJOR DEV IMPL/ACUTE COMPLEX CNS PDX W MCC OR CHEMO IMPLANT	5.2939	7.9	11.0
24	1	SURG	CRANIO W MAJOR DEV IMPL/ACUTE COMPLEX CNS PDX W/O MCC	3.7461	4.4	6.3
25	1	SURG	CRANIOTOMY & ENDOVASCULAR INTRACRANIAL PROCEDURES W MCC	4.3374	7.4	9.7
26	1	SURG	CRANIOTOMY & ENDOVASCULAR INTRACRANIAL PROCEDURES W CC	3.0011	4.7	6.1
27	1	SURG	CRANIOTOMY & ENDOVASCULAR INTRACRANIAL PROCEDURES W/O CC/MCC	2.2824	2.5	3.3
28	1	SURG	SPINAL PROCEDURES W MCC	5.3968	9.5	12.2
29	1	SURG	SPINAL PROCEDURES W CC OR SPINAL NEUROSTIMULATORS	3.1573	4.8	6.4
30	1	SURG	SPINAL PROCEDURES W/O CC/MCC	1.7835	2.6	3.3
31	1	SURG	VENTRICULAR SHUNT PROCEDURES W MCC	4.1493	7.7	10.9
32	1	SURG	VENTRICULAR SHUNT PROCEDURES W CC	2.0325	3.3	4.6

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
33	1	SURG	VENTRICULAR SHUNT PROCEDURES W/O CC/MCC	1.5602	2.0	2.5
34	1	SURG	CAROTID ARTERY STENT PROCEDURE W MCC	3.7008	4.5	6.7
35	1	SURG	CAROTID ARTERY STENT PROCEDURE W CC	2.2109	2.0	2.9
36	1	SURG	CAROTID ARTERY STENT PROCEDURE W/O CC/MCC	1.7313	1.3	1.5
37	1	SURG	EXTRACRANIAL PROCEDURES W MCC	3.1459	5.5	8.0
38	1	SURG	EXTRACRANIAL PROCEDURES W CC	1.5870	2.3	3.4
39	1	SURG	EXTRACRANIAL PROCEDURES W/O CC/MCC	1.0582	1.3	1.6
40	1	SURG	PERIPH/CRANIAL NERVE & OTHER NERV SYST PROC W MCC	3.7960	8.1	11.0
41	1	SURG	PERIPH/CRANIAL NERVE & OTHER NERV SYST PROC W CC OR PERIPH NEUROSIM	2.1267	4.7	6.1
42	1	SURG	PERIPH/CRANIAL NERVE & OTHER NERV SYST PROC W/O CC/MCC	1.8586	2.5	3.3
52	1	MED	SPINAL DISORDERS & INJURIES W CC/MCC	1.5813	4.2	5.7
53	1	MED	SPINAL DISORDERS & INJURIES W/O CC/MCC	0.9294	2.7	3.5
54	1	MED	NERVOUS SYSTEM NEOPLASMS W MCC	1.3048	3.9	5.3
55	1	MED	NERVOUS SYSTEM NEOPLASMS W/O MCC	1.0191	3.0	4.1

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
56	1	MED	DEGENERATIVE NERVOUS SYSTEM DISORDERS W MCC	1.7615	5.2	7.0
57	1	MED	DEGENERATIVE NERVOUS SYSTEM DISORDERS W/O MCC	1.0099	3.5	4.8
58	1	MED	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA W MCC	1.6336	5.2	7.0
59	1	MED	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA W CC	1.0290	3.8	4.6
60	1	MED	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA W/O CC/MCC	0.7867	3.0	3.5
61	1	MED	ACUTE ISCHEMIC STROKE W USE OF THROMBOLYTIC AGENT W MCC	2.7571	5.7	7.4
62	1	MED	ACUTE ISCHEMIC STROKE W USE OF THROMBOLYTIC AGENT W CC	1.8555	4.1	4.8
63	1	MED	ACUTE ISCHEMIC STROKE W USE OF THROMBOLYTIC AGENT W/O CC/MCC	1.5098	3.0	3.4
64	1	MED	INTRACRANIAL HEMORRHAGE OR CEREBRAL INFARCTION W MCC	1.7381	4.6	6.2
65	1	MED	INTRACRANIAL HEMORRHAGE OR CEREBRAL INFARCTION W CC OR TPA IN 24 HRS	1.0643	3.4	4.2
66	1	MED	INTRACRANIAL HEMORRHAGE OR CEREBRAL INFARCTION W/O CC/MCC	0.7530	2.4	2.8
67	1	MED	NONSPECIFIC CVA & PRECEREBRAL OCCLUSION W/O INFARCT W MCC	1.4527	4.0	5.3
68	1	MED	NONSPECIFIC CVA & PRECEREBRAL OCCLUSION W/O INFARCT W/O MCC	0.8395	2.3	2.9

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
69	1	MED	TRANSIENT ISCHEMIA	0.6985	2.0	2.5
70	1	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W MCC	1.6438	4.8	6.5
71	1	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	0.9748	3.4	4.4
72	1	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC/MCC	0.6947	2.2	2.8
73	1	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W MCC	1.3290	3.9	5.3
74	1	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W/O MCC	0.8847	2.9	3.7
75	1	MED	VIRAL MENINGITIS W CC/MCC	1.6595	5.2	6.6
76	1	MED	VIRAL MENINGITIS W/O CC/MCC	0.8629	3.2	3.7
77	1	MED	HYPERTENSIVE ENCEPHALOPATHY W MCC	1.6245	4.6	5.9
78	1	MED	HYPERTENSIVE ENCEPHALOPATHY W CC	0.9361	3.2	4.0
79	1	MED	HYPERTENSIVE ENCEPHALOPATHY W/O CC/MCC	0.6677	2.2	2.7
80	1	MED	NONTRAUMATIC STUPOR & COMA W MCC	1.2790	3.7	5.1
81	1	MED	NONTRAUMATIC STUPOR & COMA W/O MCC	0.7850	2.6	3.5
82	1	MED	TRAUMATIC STUPOR & COMA, COMA >1 HR W MCC	1.9142	3.2	5.4
83	1	MED	TRAUMATIC STUPOR & COMA, COMA >1 HR W CC	1.2401	3.3	4.2

Exhibit #1						
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MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
84	1	MED	TRAUMATIC STUPOR & COMA, COMA >1 HR W/O CC/MCC	0.8592	2.1	2.6
85	1	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR W MCC	1.9770	4.7	6.5
86	1	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR W CC	1.1181	3.2	4.1
87	1	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR W/O CC/MCC	0.7460	2.1	2.6
88	1	MED	CONCUSSION W MCC	1.5708	3.7	5.2
89	1	MED	CONCUSSION W CC	0.9588	2.6	3.2
90	1	MED	CONCUSSION W/O CC/MCC	0.7353	1.8	2.2
91	1	MED	OTHER DISORDERS OF NERVOUS SYSTEM W MCC	1.5978	4.2	5.8
92	1	MED	OTHER DISORDERS OF NERVOUS SYSTEM W CC	0.8989	3.0	3.8
93	1	MED	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC/MCC	0.6783	2.1	2.6
94	1	MED	BACTERIAL & TUBERCULOUS INFECTIONS OF NERVOUS SYSTEM W MCC	3.3357	8.2	10.7
95	1	MED	BACTERIAL & TUBERCULOUS INFECTIONS OF NERVOUS SYSTEM W CC	2.3844	5.9	7.6
96	1	MED	BACTERIAL & TUBERCULOUS INFECTIONS OF NERVOUS SYSTEM W/O CC/MCC	2.0726	4.5	5.3
97	1	MED	NON-BACTERIAL INFECT OF NERVOUS SYS EXC VIRAL MENINGITIS W MCC	3.1625	8.5	10.9

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For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
98	1	MED	NON-BACTERIAL INFECT OF NERVOUS SYS EXC VIRAL MENINGITIS W CC	1.7189	5.4	6.9
99	1	MED	NON-BACTERIAL INFECT OF NERVOUS SYS EXC VIRAL MENINGITIS W/O CC/MCC	1.1609	3.8	4.7
100	1	MED	SEIZURES W MCC	1.5304	4.1	5.6
101	1	MED	SEIZURES W/O MCC	0.7567	2.5	3.2
102	1	MED	HEADACHES W MCC	1.0073	2.9	3.9
103	1	MED	HEADACHES W/O MCC	0.6915	2.2	2.8
113	2	SURG	ORBITAL PROCEDURES W CC/MCC	1.8611	3.7	5.1
114	2	SURG	ORBITAL PROCEDURES W/O CC/MCC	1.1568	2.2	2.9
115	2	SURG	EXTRAOCULAR PROCEDURES EXCEPT ORBIT	1.2780	3.3	4.4
116	2	SURG	INTRAOCULAR PROCEDURES W CC/MCC	1.4005	3.2	4.5
117	2	SURG	INTRAOCULAR PROCEDURES W/O CC/MCC	0.8239	1.7	2.1
121	2	MED	ACUTE MAJOR EYE INFECTIONS W CC/MCC	1.0635	3.9	5.0
122	2	MED	ACUTE MAJOR EYE INFECTIONS W/O CC/MCC	0.6352	3.1	3.8
123	2	MED	NEUROLOGICAL EYE DISORDERS	0.6732	2.0	2.4
124	2	MED	OTHER DISORDERS OF THE EYE W MCC	1.1432	3.4	4.6
125	2	MED	OTHER DISORDERS OF THE EYE	0.6852	2.4	3.1

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
			W/O MCC			
129	3	SURG	MAJOR HEAD & NECK PROCEDURES W CC/MCC OR MAJOR DEVICE	2.3284	3.8	5.3
130	3	SURG	MAJOR HEAD & NECK PROCEDURES W/O CC/MCC	1.2599	2.2	2.7
131	3	SURG	CRANIAL/FACIAL PROCEDURES W CC/MCC	2.3703	4.0	5.6
132	3	SURG	CRANIAL/FACIAL PROCEDURES W/O CC/MCC	1.4248	2.0	2.6
133	3	SURG	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES W CC/MCC	1.8644	3.6	5.3
134	3	SURG	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES W/O CC/MCC	1.0083	1.7	2.2
135	3	SURG	SINUS & MASTOID PROCEDURES W CC/MCC	1.9150	4.2	5.7
136	3	SURG	SINUS & MASTOID PROCEDURES W/O CC/MCC	1.0509	1.6	2.2
137	3	SURG	MOUTH PROCEDURES W CC/MCC	1.3735	3.6	4.8
138	3	SURG	MOUTH PROCEDURES W/O CC/MCC	0.7888	1.8	2.3
139	3	SURG	SALIVARY GLAND PROCEDURES	0.9856	1.4	1.8
146	3	MED	EAR, NOSE, MOUTH & THROAT MALIGNANCY W MCC	1.9749	5.8	8.2
147	3	MED	EAR, NOSE, MOUTH & THROAT MALIGNANCY W CC	1.2869	3.8	5.3
148	3	MED	EAR, NOSE, MOUTH & THROAT MALIGNANCY W/O CC/MCC	0.8205	2.2	2.9

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MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
149	3	MED	DYSEQUILIBRIUM	0.6342	2.0	2.4
150	3	MED	EPISTAXIS W MCC	1.2943	3.6	4.8
151	3	MED	EPISTAXIS W/O MCC	0.6690	2.2	2.7
152	3	MED	OTITIS MEDIA & URI W MCC	1.0162	3.5	4.4
153	3	MED	OTITIS MEDIA & URI W/O MCC	0.6884	2.6	3.2
154	3	MED	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES W MCC	1.3703	4.0	5.4
155	3	MED	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES W CC	0.8848	3.1	3.9
156	3	MED	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES W/O CC/MCC	0.6516	2.2	2.8
157	3	MED	DENTAL & ORAL DISEASES W MCC	1.5814	4.6	6.3
158	3	MED	DENTAL & ORAL DISEASES W CC	0.8519	2.9	3.8
159	3	MED	DENTAL & ORAL DISEASES W/O CC/MCC	0.5935	2.0	2.5
163	4	SURG	MAJOR CHEST PROCEDURES W MCC	5.0332	10.7	13.1
164	4	SURG	MAJOR CHEST PROCEDURES W CC	2.6010	5.4	6.6
165	4	SURG	MAJOR CHEST PROCEDURES W/O CC/MCC	1.8220	3.2	3.9
166	4	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W MCC	3.6610	8.7	11.1
167	4	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W CC	1.9818	5.1	6.5
168	4	SURG	OTHER RESP SYSTEM O.R.	1.3291	2.9	3.8

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
			PROCEDURES W/O CC/MCC			
175	4	MED	PULMONARY EMBOLISM W MCC	1.5271	5.2	6.3
176	4	MED	PULMONARY EMBOLISM W/O MCC	0.9670	3.5	4.2
177	4	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS W MCC	1.9492	6.2	7.7
178	4	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS W CC	1.3909	5.0	6.0
179	4	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS W/O CC/MCC	0.9693	3.6	4.4
180	4	MED	RESPIRATORY NEOPLASMS W MCC	1.6869	5.3	6.9
181	4	MED	RESPIRATORY NEOPLASMS W CC	1.1582	3.7	4.8
182	4	MED	RESPIRATORY NEOPLASMS W/O CC/MCC	0.8088	2.4	3.1
183	4	MED	MAJOR CHEST TRAUMA W MCC	1.5101	4.8	6.0
184	4	MED	MAJOR CHEST TRAUMA W CC	0.9889	3.3	4.0
185	4	MED	MAJOR CHEST TRAUMA W/O CC/MCC	0.6628	2.4	2.8
186	4	MED	PLEURAL EFFUSION W MCC	1.5452	4.8	6.2
187	4	MED	PLEURAL EFFUSION W CC	1.0691	3.5	4.5
188	4	MED	PLEURAL EFFUSION W/O CC/MCC	0.7609	2.5	3.2
189	4	MED	PULMONARY EDEMA & RESPIRATORY FAILURE	1.2136	3.9	5.0
190	4	MED	CHRONIC OBSTRUCTIVE PULMONARY DISEASE W MCC	1.1743	4.2	5.1
191	4	MED	CHRONIC OBSTRUCTIVE PULMONARY DISEASE W CC	0.9370	3.4	4.2

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
192	4	MED	CHRONIC OBSTRUCTIVE PULMONARY DISEASE W/O CC/MCC	0.7190	2.7	3.3
193	4	MED	SIMPLE PNEUMONIA & PLEURISY W MCC	1.4491	4.9	6.0
194	4	MED	SIMPLE PNEUMONIA & PLEURISY W CC	0.9688	3.8	4.5
195	4	MED	SIMPLE PNEUMONIA & PLEURISY W/O CC/MCC	0.7044	2.9	3.4
196	4	MED	INTERSTITIAL LUNG DISEASE W MCC	1.6635	5.4	6.9
197	4	MED	INTERSTITIAL LUNG DISEASE W CC	1.0615	3.7	4.6
198	4	MED	INTERSTITIAL LUNG DISEASE W/O CC/MCC	0.8054	2.7	3.3
199	4	MED	PNEUMOTHORAX W MCC	1.8345	5.8	7.5
200	4	MED	PNEUMOTHORAX W CC	1.0084	3.4	4.3
201	4	MED	PNEUMOTHORAX W/O CC/MCC	0.7096	2.5	3.2
202	4	MED	BRONCHITIS & ASTHMA W CC/MCC	0.8775	3.2	3.9
203	4	MED	BRONCHITIS & ASTHMA W/O CC/MCC	0.6535	2.5	3.0
204	4	MED	RESPIRATORY SIGNS & SYMPTOMS	0.7041	2.1	2.7
205	4	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W MCC	1.3999	4.0	5.3
206	4	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O MCC	0.7942	2.4	3.1
207	4	MED	RESPIRATORY SYSTEM DIAGNOSIS W VENTILATOR SUPPORT 96+ HOURS	5.3425	12.4	14.4

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
208	4	MED	RESPIRATORY SYSTEM DIAGNOSIS W VENTILATOR SUPPORT <96 HOURS	2.2969	5.0	6.9
215	5	SURG	OTHER HEART ASSIST SYSTEM IMPLANT	15.4348	11.3	17.3
216	5	SURG	CARDIAC VALVE & OTH MAJ CARDIOTHORACIC PROC W CARD CATH W MCC	9.5238	13.0	15.8
217	5	SURG	CARDIAC VALVE & OTH MAJ CARDIOTHORACIC PROC W CARD CATH W CC	6.3291	8.7	9.9
218	5	SURG	CARDIAC VALVE & OTH MAJ CARDIOTHORACIC PROC W CARD CATH W/O CC/MCC	5.5693	6.4	7.3
219	5	SURG	CARDIAC VALVE & OTH MAJ CARDIOTHORACIC PROC W/O CARD CATH W MCC	7.7067	9.8	11.9
220	5	SURG	CARDIAC VALVE & OTH MAJ CARDIOTHORACIC PROC W/O CARD CATH W CC	5.2056	6.6	7.3
221	5	SURG	CARDIAC VALVE & OTH MAJ CARDIOTHORACIC PROC W/O CARD CATH W/O CC/MCC	4.6347	4.9	5.4
222	5	SURG	CARDIAC DEFIB IMPLANT W CARDIAC CATH W AMI/HF/SHOCK W MCC	8.6570	9.9	11.9
223	5	SURG	CARDIAC DEFIB IMPLANT W CARDIAC CATH W AMI/HF/SHOCK W/O MCC	6.2924	4.4	6.0
224	5	SURG	CARDIAC DEFIB IMPLANT W CARDIAC CATH W/O AMI/HF/SHOCK W MCC	7.6733	7.9	9.8

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
225	5	SURG	CARDIAC DEFIB IMPLANT W CARDIAC CATH W/O AMI/HF/SHOCK W/O MCC	5.8610	4.1	4.9
226	5	SURG	CARDIAC DEFIBRILLATOR IMPLANT W/O CARDIAC CATH W MCC	6.9573	6.3	8.7
227	5	SURG	CARDIAC DEFIBRILLATOR IMPLANT W/O CARDIAC CATH W/O MCC	5.4493	2.2	3.3
228	5	SURG	OTHER CARDIOTHORACIC PROCEDURES W MCC	7.3113	11.2	13.5
229	5	SURG	OTHER CARDIOTHORACIC PROCEDURES W CC	4.4606	6.5	7.4
230	5	SURG	OTHER CARDIOTHORACIC PROCEDURES W/O CC/MCC	4.0755	4.3	4.9
231	5	SURG	CORONARY BYPASS W PTCA W MCC	7.7247	10.6	12.5
232	5	SURG	CORONARY BYPASS W PTCA W/O MCC	5.5976	7.9	8.6
233	5	SURG	CORONARY BYPASS W CARDIAC CATH W MCC	7.3493	11.8	13.3
234	5	SURG	CORONARY BYPASS W CARDIAC CATH W/O MCC	4.8816	8.0	8.6
235	5	SURG	CORONARY BYPASS W/O CARDIAC CATH W MCC	5.7089	9.0	10.3
236	5	SURG	CORONARY BYPASS W/O CARDIAC CATH W/O MCC	3.7952	6.0	6.5
237	5	SURG	MAJOR CARDIOVASC PROCEDURES W MCC	5.0843	6.7	9.6
238	5	SURG	MAJOR CARDIOVASC PROCEDURES W/O MCC	3.4241	2.6	3.7

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
239	5	SURG	AMPUTATION FOR CIRC SYS DISORDERS EXC UPPER LIMB & TOE W MCC	4.7590	10.6	13.5
240	5	SURG	AMPUTATION FOR CIRC SYS DISORDERS EXC UPPER LIMB & TOE W CC	2.7594	7.2	8.8
241	5	SURG	AMPUTATION FOR CIRC SYS DISORDERS EXC UPPER LIMB & TOE W/O CC/MCC	1.4111	4.4	5.2
242	5	SURG	PERMANENT CARDIAC PACEMAKER IMPLANT W MCC	3.7242	5.8	7.4
243	5	SURG	PERMANENT CARDIAC PACEMAKER IMPLANT W CC	2.6695	3.6	4.5
244	5	SURG	PERMANENT CARDIAC PACEMAKER IMPLANT W/O CC/MCC	2.1555	2.4	2.9
245	5	SURG	AICD GENERATOR PROCEDURES	4.6485	3.2	4.6
246	5	SURG	PERC CARDIOVASC PROC W DRUG-ELUTING STENT W MCC OR 4+ VESSELS/STENTS	3.2368	3.9	5.3
247	5	SURG	PERC CARDIOVASC PROC W DRUG-ELUTING STENT W/O MCC	2.0586	2.0	2.4
248	5	SURG	PERC CARDIOVASC PROC W NON-DRUG-ELUTING STENT W MCC OR 4+ VES/STENTS	3.0411	4.8	6.4
249	5	SURG	PERC CARDIOVASC PROC W NON-DRUG-ELUTING STENT W/O MCC	1.8808	2.4	2.9
250	5	SURG	PERC CARDIOVASC PROC W/O CORONARY ARTERY STENT W MCC	2.9885	5.0	6.9
251	5	SURG	PERC CARDIOVASC PROC W/O CORONARY ARTERY STENT W/O	2.0399	2.1	2.8

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
			MCC			
252	5	SURG	OTHER VASCULAR PROCEDURES W MCC	3.2646	5.3	7.8
253	5	SURG	OTHER VASCULAR PROCEDURES W CC	2.5532	3.9	5.4
254	5	SURG	OTHER VASCULAR PROCEDURES W/O CC/MCC	1.7304	2.1	2.7
255	5	SURG	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS W MCC	2.6051	6.5	8.4
256	5	SURG	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS W CC	1.6986	5.3	6.5
257	5	SURG	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS W/O CC/MCC	1.0558	3.0	3.9
258	5	SURG	CARDIAC PACEMAKER DEVICE REPLACEMENT W MCC	2.7613	4.9	6.2
259	5	SURG	CARDIAC PACEMAKER DEVICE REPLACEMENT W/O MCC	1.9924	2.6	3.4
260	5	SURG	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT W MCC	3.7456	7.9	10.6
261	5	SURG	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT W CC	1.8552	3.4	4.5
262	5	SURG	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT W/O CC/MCC	1.3978	2.3	2.9

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
263	5	SURG	VEIN LIGATION & STRIPPING	1.8664	3.4	5.3
264	5	SURG	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	2.8292	5.4	8.1
265	5	SURG	AICD LEAD PROCEDURES	2.8641	2.7	4.1
266	5	SURG	ENDOVASCULAR CARDIAC VALVE REPLACEMENT W MCC	8.9920	8.4	10.6
267	5	SURG	ENDOVASCULAR CARDIAC VALVE REPLACEMENT W/O MCC	6.7517	5.0	5.8
280	5	MED	ACUTE MYOCARDIAL INFARCTION, DISCHARGED ALIVE W MCC	1.7289	4.7	6.0
281	5	MED	ACUTE MYOCARDIAL INFARCTION, DISCHARGED ALIVE W CC	1.0247	3.0	3.7
282	5	MED	ACUTE MYOCARDIAL INFARCTION, DISCHARGED ALIVE W/O CC/MCC	0.7562	2.0	2.4
283	5	MED	ACUTE MYOCARDIAL INFARCTION, EXPIRED W MCC	1.6753	3.0	4.7
284	5	MED	ACUTE MYOCARDIAL INFARCTION, EXPIRED W CC	0.7703	1.8	2.4
285	5	MED	ACUTE MYOCARDIAL INFARCTION, EXPIRED W/O CC/MCC	0.5065	1.3	1.6
286	5	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W MCC	2.1240	5.0	6.7
287	5	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O MCC	1.1290	2.3	3.1
288	5	MED	ACUTE & SUBACUTE ENDOCARDITIS W MCC	2.7138	7.6	9.4
289	5	MED	ACUTE & SUBACUTE ENDOCARDITIS W CC	1.6991	5.8	7.0

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
290	5	MED	ACUTE & SUBACUTE ENDOCARDITIS W/O CC/MCC	1.2476	3.9	4.9
291	5	MED	HEART FAILURE & SHOCK W MCC	1.5097	4.6	5.9
292	5	MED	HEART FAILURE & SHOCK W CC	0.9824	3.6	4.4
293	5	MED	HEART FAILURE & SHOCK W/O CC/MCC	0.6762	2.6	3.1
294	5	MED	DEEP VEIN THROMBOPHLEBITIS W CC/MCC	1.0480	4.1	5.0
295	5	MED	DEEP VEIN THROMBOPHLEBITIS W/O CC/MCC	0.6926	3.1	3.7
296	5	MED	CARDIAC ARREST, UNEXPLAINED W MCC	1.2347	1.8	2.8
297	5	MED	CARDIAC ARREST, UNEXPLAINED W CC	0.6475	1.3	1.6
298	5	MED	CARDIAC ARREST, UNEXPLAINED W/O CC/MCC	0.4227	1.1	1.2
299	5	MED	PERIPHERAL VASCULAR DISORDERS W MCC	1.4094	4.4	5.7
300	5	MED	PERIPHERAL VASCULAR DISORDERS W CC	0.9770	3.5	4.4
301	5	MED	PERIPHERAL VASCULAR DISORDERS W/O CC/MCC	0.6776	2.6	3.2
302	5	MED	ATHEROSCLEROSIS W MCC	1.0311	2.8	3.9
303	5	MED	ATHEROSCLEROSIS W/O MCC	0.6101	1.8	2.3
304	5	MED	HYPERTENSION W MCC	1.0016	3.2	4.2
305	5	MED	HYPERTENSION W/O MCC	0.6272	2.1	2.5

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
306	5	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS W MCC	1.3687	3.9	5.1
307	5	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS W/O MCC	0.7698	2.4	3.1
308	5	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W MCC	1.2107	3.8	4.9
309	5	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	0.7865	2.6	3.3
310	5	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC/MCC	0.5493	1.9	2.2
311	5	MED	ANGINA PECTORIS	0.5662	1.8	2.2
312	5	MED	SYNCOPE & COLLAPSE	0.7423	2.3	2.8
313	5	MED	CHEST PAIN	0.6138	1.6	2.0
314	5	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W MCC	1.9195	4.9	6.7
315	5	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	0.9613	3.0	3.9
316	5	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC/MCC	0.6210	1.9	2.4
326	6	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROC W MCC	5.3847	11.2	14.5
327	6	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROC W CC	2.6532	5.8	7.7
328	6	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROC W/O CC/MCC	1.4949	2.4	3.2
329	6	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W MCC	5.0776	11.7	14.4

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
330	6	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	2.5491	7.1	8.4
331	6	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC/MCC	1.6580	4.3	4.8
332	6	SURG	RECTAL RESECTION W MCC	4.7048	10.5	12.8
333	6	SURG	RECTAL RESECTION W CC	2.4728	6.3	7.3
334	6	SURG	RECTAL RESECTION W/O CC/MCC	1.6032	3.6	4.2
335	6	SURG	PERITONEAL ADHESIOLYSIS W MCC	4.2881	10.9	13.1
336	6	SURG	PERITONEAL ADHESIOLYSIS W CC	2.3539	6.8	8.3
337	6	SURG	PERITONEAL ADHESIOLYSIS W/O CC/MCC	1.5596	3.9	4.8
338	6	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W MCC	3.0701	7.5	9.2
339	6	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	1.7340	5.0	5.9
340	6	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC/MCC	1.2137	2.9	3.4
341	6	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W MCC	2.2862	4.7	6.4
342	6	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	1.3112	2.6	3.4
343	6	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC/MCC	0.9404	1.6	1.8
344	6	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W MCC	3.3079	8.7	11.2
345	6	SURG	MINOR SMALL & LARGE BOWEL	1.7107	5.4	6.4

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
			PROCEDURES W CC			
346	6	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC/MCC	1.1991	3.8	4.3
347	6	SURG	ANAL & STOMAL PROCEDURES W MCC	2.6226	6.3	8.7
348	6	SURG	ANAL & STOMAL PROCEDURES W CC	1.3825	3.9	5.0
349	6	SURG	ANAL & STOMAL PROCEDURES W/O CC/MCC	0.9078	2.3	2.9
350	6	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES W MCC	2.4665	5.5	7.5
351	6	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES W CC	1.4024	3.4	4.3
352	6	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES W/O CC/MCC	0.9288	1.9	2.3
353	6	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL W MCC	2.9077	6.2	8.2
354	6	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL W CC	1.6915	3.9	4.8
355	6	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL W/O CC/MCC	1.2521	2.4	2.9
356	6	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W MCC	3.8573	8.4	11.3
357	6	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	2.1072	5.1	6.6
358	6	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC/MCC	1.3737	2.9	3.8
368	6	MED	MAJOR ESOPHAGEAL DISORDERS W MCC	1.8641	4.9	6.4

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
369	6	MED	MAJOR ESOPHAGEAL DISORDERS W CC	1.0703	3.4	4.1
370	6	MED	MAJOR ESOPHAGEAL DISORDERS W/O CC/MCC	0.7390	2.3	2.8
371	6	MED	MAJOR GASTROINTESTINAL DISORDERS & PERITONEAL INFECTIONS W MCC	1.8633	6.0	7.8
372	6	MED	MAJOR GASTROINTESTINAL DISORDERS & PERITONEAL INFECTIONS W CC	1.1343	4.6	5.6
373	6	MED	MAJOR GASTROINTESTINAL DISORDERS & PERITONEAL INFECTIONS W/O CC/MCC	0.8013	3.4	4.1
374	6	MED	DIGESTIVE MALIGNANCY W MCC	2.0182	6.0	7.9
375	6	MED	DIGESTIVE MALIGNANCY W CC	1.2429	4.1	5.2
376	6	MED	DIGESTIVE MALIGNANCY W/O CC/MCC	0.9021	2.7	3.4
377	6	MED	G.I. HEMORRHAGE W MCC	1.7775	4.7	6.1
378	6	MED	G.I. HEMORRHAGE W CC	1.0021	3.2	3.8
379	6	MED	G.I. HEMORRHAGE W/O CC/MCC	0.6776	2.3	2.7
380	6	MED	COMPLICATED PEPTIC ULCER W MCC	1.9265	5.4	7.0
381	6	MED	COMPLICATED PEPTIC ULCER W CC	1.0875	3.5	4.3
382	6	MED	COMPLICATED PEPTIC ULCER W/O CC/MCC	0.7591	2.6	3.1
383	6	MED	UNCOMPLICATED PEPTIC ULCER W MCC	1.3215	4.2	5.2

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
384	6	MED	UNCOMPLICATED PEPTIC ULCER W/O MCC	0.8510	2.8	3.4
385	6	MED	INFLAMMATORY BOWEL DISEASE W MCC	1.7649	5.9	7.8
386	6	MED	INFLAMMATORY BOWEL DISEASE W CC	1.0040	3.9	4.8
387	6	MED	INFLAMMATORY BOWEL DISEASE W/O CC/MCC	0.7449	2.9	3.6
388	6	MED	G.I. OBSTRUCTION W MCC	1.6100	5.3	6.9
389	6	MED	G.I. OBSTRUCTION W CC	0.8717	3.5	4.4
390	6	MED	G.I. OBSTRUCTION W/O CC/MCC	0.6034	2.6	3.1
391	6	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS W MCC	1.1976	3.7	5.0
392	6	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS W/O MCC	0.7388	2.7	3.3
393	6	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES W MCC	1.6893	4.6	6.5
394	6	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES W CC	0.9448	3.3	4.2
395	6	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES W/O CC/MCC	0.6574	2.3	2.9
405	7	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W MCC	5.5387	10.7	14.3
406	7	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W CC	2.8067	5.9	7.5
407	7	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC/MCC	1.9472	3.9	4.8

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
408	7	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W MCC	3.8967	10.0	12.2
409	7	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC	2.2218	6.3	7.5
410	7	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC/MCC	1.6206	4.4	5.1
411	7	SURG	CHOLECYSTECTOMY W C.D.E. W MCC	3.6261	9.4	11.6
412	7	SURG	CHOLECYSTECTOMY W C.D.E. W CC	2.4166	6.3	7.4
413	7	SURG	CHOLECYSTECTOMY W C.D.E. W/O CC/MCC	1.7708	4.2	5.1
414	7	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W MCC	3.5545	8.7	10.6
415	7	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC	2.0267	5.6	6.5
416	7	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC/MCC	1.3465	3.6	4.1
417	7	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W MCC	2.4353	5.8	7.3
418	7	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC	1.6600	3.9	4.7
419	7	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC/MCC	1.2316	2.4	2.9

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
420	7	SURG	HEPATOBIILIARY DIAGNOSTIC PROCEDURES W MCC	3.4621	8.0	11.3
421	7	SURG	HEPATOBIILIARY DIAGNOSTIC PROCEDURES W CC	1.7699	3.9	5.4
422	7	SURG	HEPATOBIILIARY DIAGNOSTIC PROCEDURES W/O CC/MCC	1.2352	2.7	3.2
423	7	SURG	OTHER HEPATOBIILIARY OR PANCREAS O.R. PROCEDURES W MCC	4.1961	9.8	13.1
424	7	SURG	OTHER HEPATOBIILIARY OR PANCREAS O.R. PROCEDURES W CC	2.2993	6.1	7.8
425	7	SURG	OTHER HEPATOBIILIARY OR PANCREAS O.R. PROCEDURES W/O CC/MCC	1.3793	3.7	4.4
432	7	MED	CIRRHOSIS & ALCOHOLIC HEPATITIS W MCC	1.6710	4.7	6.1
433	7	MED	CIRRHOSIS & ALCOHOLIC HEPATITIS W CC	0.9173	3.3	4.0
434	7	MED	CIRRHOSIS & ALCOHOLIC HEPATITIS W/O CC/MCC	0.6229	2.3	2.8
435	7	MED	MALIGNANCY OF HEPATOBIILIARY SYSTEM OR PANCREAS W MCC	1.7524	5.1	6.7
436	7	MED	MALIGNANCY OF HEPATOBIILIARY SYSTEM OR PANCREAS W CC	1.1640	3.8	4.9
437	7	MED	MALIGNANCY OF HEPATOBIILIARY SYSTEM OR PANCREAS W/O CC/MCC	0.8971	2.6	3.4
438	7	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY W MCC	1.7023	5.0	6.8

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
439	7	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY W CC	0.9071	3.5	4.4
440	7	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY W/O CC/MCC	0.6423	2.7	3.2
441	7	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W MCC	1.8835	4.9	6.8
442	7	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W CC	0.9266	3.3	4.2
443	7	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC/MCC	0.6512	2.5	3.0
444	7	MED	DISORDERS OF THE BILIARY TRACT W MCC	1.6212	4.6	6.1
445	7	MED	DISORDERS OF THE BILIARY TRACT W CC	1.0654	3.3	4.2
446	7	MED	DISORDERS OF THE BILIARY TRACT W/O CC/MCC	0.7569	2.3	2.8
453	8	SURG	COMBINED ANTERIOR/POSTERIOR SPINAL FUSION W MCC	11.1637	9.4	11.6
454	8	SURG	COMBINED ANTERIOR/POSTERIOR SPINAL FUSION W CC	8.0184	4.9	5.8
455	8	SURG	COMBINED ANTERIOR/POSTERIOR SPINAL FUSION W/O CC/MCC	6.2503	3.1	3.5
456	8	SURG	SPINAL FUS EXC CERV W SPINAL CURV/MALIG/INFECTION OR 9+ FUS W MCC	9.4039	9.9	12.0
457	8	SURG	SPINAL FUS EXC CERV W SPINAL CURV/MALIG/INFECTION OR 9+ FUS W CC	6.9074	5.5	6.5
458	8	SURG	SPINAL FUS EXC CERV W SPINAL	5.2637	3.4	3.8

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
			CURV/MALIG/INFEC OR 9+ FUS W/O CC/MCC			
459	8	SURG	SPINAL FUSION EXCEPT CERVICAL W MCC	6.6686	6.8	8.5
460	8	SURG	SPINAL FUSION EXCEPT CERVICAL W/O MCC	3.9998	3.0	3.5
461	8	SURG	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY W MCC	5.0202	6.3	7.6
462	8	SURG	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY W/O MCC	3.4905	3.4	3.7
463	8	SURG	WND DEBRID & SKN GRFT EXC HAND, FOR MUSCULO-CONN TISS DIS W MCC	5.3345	10.6	14.1
464	8	SURG	WND DEBRID & SKN GRFT EXC HAND, FOR MUSCULO-CONN TISS DIS W CC	3.0085	6.2	7.8
465	8	SURG	WND DEBRID & SKN GRFT EXC HAND, FOR MUSCULO-CONN TISS DIS W/O CC/MCC	1.9463	3.7	4.7
466	8	SURG	REVISION OF HIP OR KNEE REPLACEMENT W MCC	5.1513	6.7	8.2
467	8	SURG	REVISION OF HIP OR KNEE REPLACEMENT W CC	3.4231	3.8	4.3
468	8	SURG	REVISION OF HIP OR KNEE REPLACEMENT W/O CC/MCC	2.7652	2.9	3.1
469	8	SURG	MAJOR JOINT REPLACEMENT OR REATTACHMENT OF LOWER EXTREMITY W MCC	3.3905	6.1	7.2

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
470	8	SURG	MAJOR JOINT REPLACEMENT OR REATTACHMENT OF LOWER EXTREMITY W/O MCC	2.1137	3.0	3.2
471	8	SURG	CERVICAL SPINAL FUSION W MCC	4.8737	6.3	8.6
472	8	SURG	CERVICAL SPINAL FUSION W CC	2.9166	2.4	3.4
473	8	SURG	CERVICAL SPINAL FUSION W/O CC/MCC	2.2655	1.5	1.8
474	8	SURG	AMPUTATION FOR MUSCULOSKELETAL SYS & CONN TISSUE DIS W MCC	3.5943	8.5	10.9
475	8	SURG	AMPUTATION FOR MUSCULOSKELETAL SYS & CONN TISSUE DIS W CC	2.0504	5.8	7.2
476	8	SURG	AMPUTATION FOR MUSCULOSKELETAL SYS & CONN TISSUE DIS W/O CC/MCC	1.1187	3.1	3.9
477	8	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE W MCC	3.1638	8.5	10.4
478	8	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE W CC	2.2441	5.4	6.6
479	8	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE W/O CC/MCC	1.7312	3.2	4.0
480	8	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT W MCC	3.0052	6.9	8.0
481	8	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT W CC	1.9776	4.7	5.1

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
482	8	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT W/O CC/MCC	1.6243	3.8	4.1
483	8	SURG	MAJOR JOINT/LIMB REATTACHMENT PROCEDURE OF UPPER EXTREMITIES	2.4205	2.0	2.4
485	8	SURG	KNEE PROCEDURES W PDX OF INFECTION W MCC	3.0949	7.9	9.5
486	8	SURG	KNEE PROCEDURES W PDX OF INFECTION W CC	2.0656	5.5	6.2
487	8	SURG	KNEE PROCEDURES W PDX OF INFECTION W/O CC/MCC	1.5630	3.9	4.6
488	8	SURG	KNEE PROCEDURES W/O PDX OF INFECTION W CC/MCC	1.7225	3.4	4.1
489	8	SURG	KNEE PROCEDURES W/O PDX OF INFECTION W/O CC/MCC	1.3186	2.3	2.6
492	8	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR W MCC	3.1873	6.4	7.9
493	8	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR W CC	2.0354	3.9	4.6
494	8	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR W/O CC/MCC	1.5397	2.6	3.0
495	8	SURG	LOCAL EXCISION & REMOVAL INT FIX DEVICES EXC HIP & FEMUR W MCC	3.0476	7.2	9.5
496	8	SURG	LOCAL EXCISION & REMOVAL INT FIX DEVICES EXC HIP & FEMUR W CC	1.7289	3.9	5.0
497	8	SURG	LOCAL EXCISION & REMOVAL INT FIX DEVICES EXC HIP & FEMUR W/O CC/MCC	1.2230	2.0	2.5

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
498	8	SURG	LOCAL EXCISION & REMOVAL INT FIX DEVICES OF HIP & FEMUR W CC/MCC	2.1416	5.2	7.0
499	8	SURG	LOCAL EXCISION & REMOVAL INT FIX DEVICES OF HIP & FEMUR W/O CC/MCC	1.0753	2.0	2.5
500	8	SURG	SOFT TISSUE PROCEDURES W MCC	3.2420	7.6	10.1
501	8	SURG	SOFT TISSUE PROCEDURES W CC	1.6474	4.2	5.4
502	8	SURG	SOFT TISSUE PROCEDURES W/O CC/MCC	1.1597	2.3	2.8
503	8	SURG	FOOT PROCEDURES W MCC	2.3338	6.8	8.4
504	8	SURG	FOOT PROCEDURES W CC	1.5691	4.8	5.8
505	8	SURG	FOOT PROCEDURES W/O CC/MCC	1.2474	2.6	3.3
506	8	SURG	MAJOR THUMB OR JOINT PROCEDURES	1.2881	3.2	4.1
507	8	SURG	MAJOR SHOULDER OR ELBOW JOINT PROCEDURES W CC/MCC	1.9154	4.1	5.1
508	8	SURG	MAJOR SHOULDER OR ELBOW JOINT PROCEDURES W/O CC/MCC	1.5198	1.9	2.4
509	8	SURG	ARTHROSCOPY	1.5494	3.1	4.1
510	8	SURG	SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC W MCC	2.2857	4.7	5.8
511	8	SURG	SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC W CC	1.6509	3.2	3.8
512	8	SURG	SHOULDER,ELBOW OR FOREARM	1.2963	1.9	2.3

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
			PROC,EXC MAJOR JOINT PROC W/O CC/MCC			
513	8	SURG	HAND OR WRIST PROC, EXCEPT MAJOR THUMB OR JOINT PROC W CC/MCC	1.4462	3.5	4.7
514	8	SURG	HAND OR WRIST PROC, EXCEPT MAJOR THUMB OR JOINT PROC W/O CC/MCC	0.8996	2.1	2.6
515	8	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W MCC	3.2235	7.1	9.1
516	8	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC	2.0434	4.3	5.3
517	8	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC/MCC	1.7251	2.6	3.2
518	8	SURG	BACK & NECK PROC EXC SPINAL FUSION W MCC OR DISC DEVICE/NEUROSTIM	3.0628	4.2	6.5
519	8	SURG	BACK & NECK PROC EXC SPINAL FUSION W CC	1.6468	3.0	3.9
520	8	SURG	BACK & NECK PROC EXC SPINAL FUSION W/O CC/MCC	1.1396	1.7	2.1
533	8	MED	FRACTURES OF FEMUR W MCC	1.4495	4.3	5.7
534	8	MED	FRACTURES OF FEMUR W/O MCC	0.7594	2.9	3.5
535	8	MED	FRACTURES OF HIP & PELVIS W MCC	1.2410	4.1	5.2
536	8	MED	FRACTURES OF HIP & PELVIS W/O MCC	0.7201	3.0	3.5
537	8	MED	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS &	0.8975	3.3	4.0

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
			THIGH W CC/MCC			
538	8	MED	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH W/O CC/MCC	0.6917	2.5	3.0
539	8	MED	OSTEOMYELITIS W MCC	1.8276	6.1	8.1
540	8	MED	OSTEOMYELITIS W CC	1.2967	4.7	5.9
541	8	MED	OSTEOMYELITIS W/O CC/MCC	0.9218	3.5	4.4
542	8	MED	PATHOLOGICAL FRACTURES & MUSCULOSKELET & CONN TISS MALIG W MCC	1.9472	6.0	7.8
543	8	MED	PATHOLOGICAL FRACTURES & MUSCULOSKELET & CONN TISS MALIG W CC	1.1227	4.0	5.1
544	8	MED	PATHOLOGICAL FRACTURES & MUSCULOSKELET & CONN TISS MALIG W/O CC/MCC	0.7936	3.1	3.6
545	8	MED	CONNECTIVE TISSUE DISORDERS W MCC	2.5341	6.0	8.4
546	8	MED	CONNECTIVE TISSUE DISORDERS W CC	1.1711	3.9	4.9
547	8	MED	CONNECTIVE TISSUE DISORDERS W/O CC/MCC	0.7985	2.8	3.4
548	8	MED	SEPTIC ARTHRITIS W MCC	1.9123	6.1	7.7
549	8	MED	SEPTIC ARTHRITIS W CC	1.1514	4.4	5.5
550	8	MED	SEPTIC ARTHRITIS W/O CC/MCC	0.8390	3.1	3.8
551	8	MED	MEDICAL BACK PROBLEMS W MCC	1.5556	4.7	6.1

Exhibit #1**For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015**

MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
552	8	MED	MEDICAL BACK PROBLEMS W/O MCC	0.8698	3.0	3.7
553	8	MED	BONE DISEASES & ARTHROPATHIES W MCC	1.2187	4.1	5.3
554	8	MED	BONE DISEASES & ARTHROPATHIES W/O MCC	0.7274	2.8	3.4
555	8	MED	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE W MCC	1.2636	3.8	5.0
556	8	MED	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE W/O MCC	0.7183	2.5	3.1
557	8	MED	TENDONITIS, MYOSITIS & BURSITIS W MCC	1.4269	5.0	6.1
558	8	MED	TENDONITIS, MYOSITIS & BURSITIS W/O MCC	0.8522	3.4	4.0
559	8	MED	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE W MCC	1.8555	4.9	6.7
560	8	MED	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE W CC	1.0756	3.4	4.3
561	8	MED	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE W/O CC/MCC	0.6688	2.0	2.4
562	8	MED	FX, SPRN, STRN & DISL EXCEPT FEMUR, HIP, PELVIS & THIGH W MCC	1.3706	4.3	5.5
563	8	MED	FX, SPRN, STRN & DISL EXCEPT FEMUR, HIP, PELVIS & THIGH W/O MCC	0.7756	2.9	3.5
564	8	MED	OTHER MUSCULOSKELETAL SYS &	1.5036	4.7	6.2

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
			CONNECTIVE TISSUE DIAGNOSES W MCC			
565	8	MED	OTHER MUSCULOSKELETAL SYS & CONNECTIVE TISSUE DIAGNOSES W CC	0.9398	3.5	4.3
566	8	MED	OTHER MUSCULOSKELETAL SYS & CONNECTIVE TISSUE DIAGNOSES W/O CC/MCC	0.6871	2.4	3.0
570	9	SURG	SKIN DEBRIDEMENT W MCC	2.3952	7.1	9.2
571	9	SURG	SKIN DEBRIDEMENT W CC	1.4664	5.1	6.2
572	9	SURG	SKIN DEBRIDEMENT W/O CC/MCC	0.9919	3.7	4.3
573	9	SURG	SKIN GRAFT FOR SKIN ULCER OR CELLULITIS W MCC	3.7074	8.5	12.7
574	9	SURG	SKIN GRAFT FOR SKIN ULCER OR CELLULITIS W CC	2.6298	7.0	9.3
575	9	SURG	SKIN GRAFT FOR SKIN ULCER OR CELLULITIS W/O CC/MCC	1.4926	4.2	5.4
576	9	SURG	SKIN GRAFT EXC FOR SKIN ULCER OR CELLULITIS W MCC	4.1423	7.6	11.3
577	9	SURG	SKIN GRAFT EXC FOR SKIN ULCER OR CELLULITIS W CC	1.9812	3.7	5.4
578	9	SURG	SKIN GRAFT EXC FOR SKIN ULCER OR CELLULITIS W/O CC/MCC	1.3162	2.3	3.1
579	9	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W MCC	2.7263	6.9	9.1
580	9	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.5727	3.8	5.1

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
581	9	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC/MCC	1.1338	2.0	2.5
582	9	SURG	MASTECTOMY FOR MALIGNANCY W CC/MCC	1.3003	2.0	2.6
583	9	SURG	MASTECTOMY FOR MALIGNANCY W/O CC/MCC	1.0932	1.5	1.7
584	9	SURG	BREAST BIOPSY, LOCAL EXCISION & OTHER BREAST PROCEDURES W CC/MCC	1.7682	3.5	4.9
585	9	SURG	BREAST BIOPSY, LOCAL EXCISION & OTHER BREAST PROCEDURES W/O CC/MCC	1.3752	1.9	2.3
592	9	MED	SKIN ULCERS W MCC	1.4249	5.1	6.6
593	9	MED	SKIN ULCERS W CC	1.0196	4.2	5.1
594	9	MED	SKIN ULCERS W/O CC/MCC	0.7124	3.0	3.8
595	9	MED	MAJOR SKIN DISORDERS W MCC	1.9629	5.5	7.5
596	9	MED	MAJOR SKIN DISORDERS W/O MCC	0.9527	3.5	4.5
597	9	MED	MALIGNANT BREAST DISORDERS W MCC	1.6758	5.3	7.1
598	9	MED	MALIGNANT BREAST DISORDERS W CC	1.1235	3.7	5.1
599	9	MED	MALIGNANT BREAST DISORDERS W/O CC/MCC	0.7259	2.4	3.0
600	9	MED	NON-MALIGNANT BREAST DISORDERS W CC/MCC	0.9803	3.8	4.7
601	9	MED	NON-MALIGNANT BREAST DISORDERS W/O CC/MCC	0.6314	2.6	3.2

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
602	9	MED	CELLULITIS W MCC	1.4557	5.0	6.2
603	9	MED	CELLULITIS W/O MCC	0.8447	3.5	4.2
604	9	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST W MCC	1.2624	3.8	5.0
605	9	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST W/O MCC	0.7664	2.5	3.1
606	9	MED	MINOR SKIN DISORDERS W MCC	1.3664	4.1	5.7
607	9	MED	MINOR SKIN DISORDERS W/O MCC	0.7296	2.7	3.5
614	10	SURG	ADRENAL & PITUITARY PROCEDURES W CC/MCC	2.4642	4.1	5.6
615	10	SURG	ADRENAL & PITUITARY PROCEDURES W/O CC/MCC	1.4243	2.2	2.6
616	10	SURG	AMPUTAT OF LOWER LIMB FOR ENDOCRINE,NUTRIT,& METABOL DIS W MCC	4.1611	10.7	13.1
617	10	SURG	AMPUTAT OF LOWER LIMB FOR ENDOCRINE,NUTRIT,& METABOL DIS W CC	1.9956	6.0	7.1
618	10	SURG	AMPUTAT OF LOWER LIMB FOR ENDOCRINE,NUTRIT,& METABOL DIS W/O CC/MCC	1.3512	4.0	5.0
619	10	SURG	O.R. PROCEDURES FOR OBESITY W MCC	3.2890	4.2	6.4
620	10	SURG	O.R. PROCEDURES FOR OBESITY W CC	1.8470	2.5	3.1
621	10	SURG	O.R. PROCEDURES FOR OBESITY W/O CC/MCC	1.5434	1.8	2.0

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
622	10	SURG	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DIS W MCC	3.8047	9.1	12.5
623	10	SURG	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DIS W CC	1.8308	5.6	6.9
624	10	SURG	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DIS W/O CC/MCC	1.1314	3.6	4.3
625	10	SURG	THYROID, PARATHYROID & THYROGLOSSAL PROCEDURES W MCC	2.4896	4.5	7.1
626	10	SURG	THYROID, PARATHYROID & THYROGLOSSAL PROCEDURES W CC	1.3080	2.1	3.0
627	10	SURG	THYROID, PARATHYROID & THYROGLOSSAL PROCEDURES W/O CC/MCC	0.8663	1.3	1.4
628	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W MCC	3.2935	6.6	9.4
629	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC	2.2471	6.1	7.4
630	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC/MCC	1.4305	3.1	4.0
637	10	MED	DIABETES W MCC	1.3944	4.1	5.5
638	10	MED	DIABETES W CC	0.8261	3.0	3.7
639	10	MED	DIABETES W/O CC/MCC	0.6068	2.2	2.6
640	10	MED	MISC DISORDERS OF NUTRITION, METABOLISM, FLUIDS/EL ELECTROLYTES W MCC	1.1044	3.2	4.4

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
641	10	MED	MISC DISORDERS OF NUTRITION,METABOLISM,FLUIDS/ELCTROLYTES W/O MCC	0.7051	2.6	3.3
642	10	MED	INBORN AND OTHER DISORDERS OF METABOLISM	1.1429	3.3	4.6
643	10	MED	ENDOCRINE DISORDERS W MCC	1.6460	5.4	6.8
644	10	MED	ENDOCRINE DISORDERS W CC	1.0199	3.8	4.6
645	10	MED	ENDOCRINE DISORDERS W/O CC/MCC	0.7180	2.7	3.3
652	11	SURG	KIDNEY TRANSPLANT	3.1502	5.7	6.6
653	11	SURG	MAJOR BLADDER PROCEDURES W MCC	5.7958	12.1	15.0
654	11	SURG	MAJOR BLADDER PROCEDURES W CC	3.0973	7.6	8.7
655	11	SURG	MAJOR BLADDER PROCEDURES W/O CC/MCC	2.2590	4.8	5.5
656	11	SURG	KIDNEY & URETER PROCEDURES FOR NEOPLASM W MCC	3.4517	6.9	9.0
657	11	SURG	KIDNEY & URETER PROCEDURES FOR NEOPLASM W CC	2.0111	4.3	5.2
658	11	SURG	KIDNEY & URETER PROCEDURES FOR NEOPLASM W/O CC/MCC	1.5299	2.6	3.0
659	11	SURG	KIDNEY & URETER PROCEDURES FOR NON-NEOPLASM W MCC	3.3813	7.5	10.0
660	11	SURG	KIDNEY & URETER PROCEDURES FOR NON-NEOPLASM W CC	1.8888	4.1	5.4
661	11	SURG	KIDNEY & URETER PROCEDURES	1.3494	2.2	2.6

Exhibit #1**For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015**

MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
			FOR NON-NEOPLASM W/O CC/MCC			
662	11	SURG	MINOR BLADDER PROCEDURES W MCC	3.0042	7.7	10.2
663	11	SURG	MINOR BLADDER PROCEDURES W CC	1.5285	3.8	5.0
664	11	SURG	MINOR BLADDER PROCEDURES W/O CC/MCC	1.2406	1.8	2.3
665	11	SURG	PROSTATECTOMY W MCC	3.1585	9.1	11.7
666	11	SURG	PROSTATECTOMY W CC	1.7512	4.5	6.1
667	11	SURG	PROSTATECTOMY W/O CC/MCC	0.9690	2.0	2.6
668	11	SURG	TRANSURETHRAL PROCEDURES W MCC	2.4989	6.4	8.6
669	11	SURG	TRANSURETHRAL PROCEDURES W CC	1.2662	2.9	4.0
670	11	SURG	TRANSURETHRAL PROCEDURES W/O CC/MCC	0.8957	1.9	2.4
671	11	SURG	URETHRAL PROCEDURES W CC/MCC	1.6170	4.0	5.7
672	11	SURG	URETHRAL PROCEDURES W/O CC/MCC	0.8496	1.8	2.2
673	11	SURG	OTHER KIDNEY & URINARY TRACT PROCEDURES W MCC	3.5023	6.8	10.2
674	11	SURG	OTHER KIDNEY & URINARY TRACT PROCEDURES W CC	2.2600	5.1	6.9
675	11	SURG	OTHER KIDNEY & URINARY TRACT PROCEDURES W/O CC/MCC	1.4443	2.0	2.7
682	11	MED	RENAL FAILURE W MCC	1.5194	4.6	6.1

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
683	11	MED	RENAL FAILURE W CC	0.9512	3.5	4.4
684	11	MED	RENAL FAILURE W/O CC/MCC	0.6085	2.4	2.9
685	11	MED	ADMIT FOR RENAL DIALYSIS	1.0025	2.5	3.4
686	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W MCC	1.7637	5.2	7.0
687	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W CC	1.0054	3.5	4.5
688	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W/O CC/MCC	0.6911	2.0	2.5
689	11	MED	KIDNEY & URINARY TRACT INFECTIONS W MCC	1.1172	4.2	5.1
690	11	MED	KIDNEY & URINARY TRACT INFECTIONS W/O MCC	0.7794	3.1	3.8
691	11	MED	URINARY STONES W ESW LITHOTRIPSY W CC/MCC	1.6238	2.8	3.7
692	11	MED	URINARY STONES W ESW LITHOTRIPSY W/O CC/MCC	1.1286	1.6	2.0
693	11	MED	URINARY STONES W/O ESW LITHOTRIPSY W MCC	1.3433	3.8	5.1
694	11	MED	URINARY STONES W/O ESW LITHOTRIPSY W/O MCC	0.6859	1.9	2.3
695	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS W MCC	1.2450	4.0	5.3
696	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS W/O MCC	0.6619	2.4	3.0
697	11	MED	URETHRAL STRICTURE	0.9229	2.5	3.3

Exhibit #1

For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015

MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
698	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES W MCC	1.5625	5.1	6.4
699	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES W CC	1.0170	3.5	4.4
700	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES W/O CC/MCC	0.7110	2.6	3.2
707	12	SURG	MAJOR MALE PELVIC PROCEDURES W CC/MCC	1.8155	2.9	3.9
708	12	SURG	MAJOR MALE PELVIC PROCEDURES W/O CC/MCC	1.3262	1.4	1.6
709	12	SURG	PENIS PROCEDURES W CC/MCC	2.1341	4.0	6.7
710	12	SURG	PENIS PROCEDURES W/O CC/MCC	1.2949	1.5	1.8
711	12	SURG	TESTES PROCEDURES W CC/MCC	2.2547	5.7	8.1
712	12	SURG	TESTES PROCEDURES W/O CC/MCC	1.0632	2.3	3.4
713	12	SURG	TRANSURETHRAL PROSTATECTOMY W CC/MCC	1.4828	3.2	4.5
714	12	SURG	TRANSURETHRAL PROSTATECTOMY W/O CC/MCC	0.7933	1.6	1.9
715	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC FOR MALIGNANCY W CC/MCC	2.0051	4.6	6.4
716	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC FOR MALIGNANCY W/O CC/MCC	1.1857	1.5	1.7
717	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXC MALIGNANCY W CC/MCC	1.7717	4.6	6.5
718	12	SURG	OTHER MALE REPRODUCTIVE	1.0099	2.2	2.8

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
			SYSTEM O.R. PROC EXC MALIGNANCY W/O CC/MCC			
722	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM W MCC	1.7569	5.6	7.4
723	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM W CC	1.0635	3.8	4.9
724	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM W/O CC/MCC	0.6412	2.1	2.8
725	12	MED	BENIGN PROSTATIC HYPERTROPHY W MCC	1.1790	4.3	5.6
726	12	MED	BENIGN PROSTATIC HYPERTROPHY W/O MCC	0.7029	2.6	3.2
727	12	MED	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM W MCC	1.4195	4.9	6.2
728	12	MED	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM W/O MCC	0.8006	3.2	3.8
729	12	MED	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES W CC/MCC	1.0390	3.4	4.5
730	12	MED	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES W/O CC/MCC	0.6660	2.2	2.9
734	13	SURG	PELVIC EVISCERATION, RAD HYSTERECTOMY & RAD VULVECTOMY W CC/MCC	2.5704	4.5	6.5
735	13	SURG	PELVIC EVISCERATION, RAD HYSTERECTOMY & RAD VULVECTOMY W/O CC/MCC	1.2265	1.8	2.2
736	13	SURG	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY W MCC	4.4341	10.1	12.5

Exhibit #1**For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015**

MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
737	13	SURG	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY W CC	2.0198	5.2	6.1
738	13	SURG	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY W/O CC/MCC	1.2746	2.9	3.3
739	13	SURG	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W MCC	3.3133	6.6	9.1
740	13	SURG	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC	1.6069	3.0	3.9
741	13	SURG	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC/MCC	1.1846	1.7	2.0
742	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC/MCC	1.5436	2.9	3.9
743	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC/MCC	0.9954	1.7	1.9
744	13	SURG	D&C, CONIZATION, LAPAROSCOPY & TUBAL INTERRUPTION W CC/MCC	1.7484	4.1	5.7
745	13	SURG	D&C, CONIZATION, LAPAROSCOPY & TUBAL INTERRUPTION W/O CC/MCC	0.9553	1.8	2.3
746	13	SURG	VAGINA, CERVIX & VULVA PROCEDURES W CC/MCC	1.4219	3.1	4.5
747	13	SURG	VAGINA, CERVIX & VULVA PROCEDURES W/O CC/MCC	0.8892	1.5	1.8
748	13	SURG	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	1.0845	1.5	1.8
749	13	SURG	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES W CC/MCC	2.5541	6.0	8.3

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
750	13	SURG	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES W/O CC/MCC	1.1904	2.1	2.6
754	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W MCC	1.9626	5.9	8.2
755	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	1.1066	3.6	4.9
756	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC/MCC	0.6652	2.1	2.8
757	13	MED	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM W MCC	1.5397	5.7	7.1
758	13	MED	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM W CC	1.0518	4.3	5.3
759	13	MED	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM W/O CC/MCC	0.6931	3.0	3.7
760	13	MED	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS W CC/MCC	0.8399	2.7	3.5
761	13	MED	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS W/O CC/MCC	0.4988	1.7	2.1
765	14	SURG	CESAREAN SECTION W CC/MCC	1.0924	3.8	4.7
766	14	SURG	CESAREAN SECTION W/O CC/MCC	0.7562	2.9	3.0
767	14	SURG	VAGINAL DELIVERY W STERILIZATION &/OR D&C	0.8513	2.7	3.4
768	14	SURG	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	1.1184	4.7	5.8

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
769	14	SURG	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	1.8930	3.5	5.7
770	14	SURG	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	0.8029	1.7	2.2
774	14	MED	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	0.7168	2.6	3.1
775	14	MED	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	0.5643	2.1	2.3
776	14	MED	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	0.8117	2.7	3.6
777	14	MED	ECTOPIC PREGNANCY	1.0145	1.7	2.2
778	14	MED	THREATENED ABORTION	0.5638	2.1	3.2
779	14	MED	ABORTION W/O D&C	0.6389	1.5	2.0
780	14	MED	FALSE LABOR	0.2880	1.2	1.3
781	14	MED	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	0.7546	2.6	3.9
782	14	MED	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	0.4057	1.7	2.2
789	15	MED	NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	1.5547	1.8	1.8
790	15	MED	EXTREME IMMATUREITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE	5.1268	17.9	17.9
791	15	MED	PREMATURITY W MAJOR PROBLEMS	3.5015	13.3	13.3
792	15	MED	PREMATURITY W/O MAJOR PROBLEMS	2.1127	8.6	8.6
793	15	MED	FULL TERM NEONATE W MAJOR	3.5968	4.7	4.7

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For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
			PROBLEMS			
794	15	MED	NEONATE W OTHER SIGNIFICANT PROBLEMS	1.2731	3.4	3.4
795	15	MED	NORMAL NEWBORN	0.1724	3.1	3.1
799	16	SURG	SPLENECTOMY W MCC	5.0131	9.4	12.2
800	16	SURG	SPLENECTOMY W CC	2.6403	5.5	7.0
801	16	SURG	SPLENECTOMY W/O CC/MCC	1.5477	2.7	3.4
802	16	SURG	OTHER O.R. PROC OF THE BLOOD & BLOOD FORMING ORGANS W MCC	3.3601	7.9	10.8
803	16	SURG	OTHER O.R. PROC OF THE BLOOD & BLOOD FORMING ORGANS W CC	1.8440	4.4	5.9
804	16	SURG	OTHER O.R. PROC OF THE BLOOD & BLOOD FORMING ORGANS W/O CC/MCC	1.2265	2.3	3.0
808	16	MED	MAJOR HEMATOL/IMMUN DIAG EXC SICKLE CELL CRISIS & COAGUL W MCC	2.2260	6.0	8.0
809	16	MED	MAJOR HEMATOL/IMMUN DIAG EXC SICKLE CELL CRISIS & COAGUL W CC	1.2037	3.7	4.7
810	16	MED	MAJOR HEMATOL/IMMUN DIAG EXC SICKLE CELL CRISIS & COAGUL W/O CC/MCC	0.8409	2.6	3.2
811	16	MED	RED BLOOD CELL DISORDERS W MCC	1.2829	3.6	4.9
812	16	MED	RED BLOOD CELL DISORDERS W/O MCC	0.8162	2.6	3.4

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
813	16	MED	COAGULATION DISORDERS	1.6534	3.5	4.9
814	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W MCC	1.7048	4.9	6.8
815	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	0.9948	3.3	4.2
816	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC/MCC	0.6882	2.3	2.9
820	17	SURG	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE W MCC	5.5226	11.6	15.3
821	17	SURG	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE W CC	2.3064	4.5	6.3
822	17	SURG	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE W/O CC/MCC	1.2805	2.1	2.8
823	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W MCC	4.4622	11.4	14.6
824	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	2.2951	5.8	7.6
825	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC/MCC	1.3803	2.7	3.7
826	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R. PROC W MCC	5.0900	10.4	13.8
827	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R. PROC W CC	2.3214	5.1	6.7
828	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R. PROC W/O CC/MCC	1.5321	2.8	3.4
829	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R. PROC W	3.4231	6.7	10.3

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
			CC/MCC			
830	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R. PROC W/O CC/MCC	1.2523	2.2	2.9
834	17	MED	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE W MCC	5.2735	10.1	16.5
835	17	MED	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE W CC	2.1042	4.7	7.6
836	17	MED	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE W/O CC/MCC	1.1693	2.7	4.0
837	17	MED	CHEMO W ACUTE LEUKEMIA AS SDX OR W HIGH DOSE CHEMO AGENT W MCC	6.4631	16.3	22.2
838	17	MED	CHEMO W ACUTE LEUKEMIA AS SDX W CC OR HIGH DOSE CHEMO AGENT	2.7923	6.8	9.9
839	17	MED	CHEMO W ACUTE LEUKEMIA AS SDX W/O CC/MCC	1.2525	4.9	5.7
840	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W MCC	3.1058	7.6	10.5
841	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	1.6226	4.7	6.1
842	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC/MCC	1.0777	2.9	3.8
843	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W MCC	1.7902	5.5	7.4
844	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC	1.2058	4.1	5.4
845	17	MED	OTHER MYELOPROLIF DIS OR	0.8551	2.9	3.7

Exhibit #1

For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015

MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
			POORLY DIFF NEOPL DIAG W/O CC/MCC			
846	17	MED	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS W MCC	2.3264	5.5	7.7
847	17	MED	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS W CC	1.1569	2.9	3.5
848	17	MED	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS W/O CC/MCC	0.8454	2.4	2.9
849	17	MED	RADIOTHERAPY	1.4657	4.4	5.7
853	18	SURG	INFECTIOUS & PARASITIC DISEASES W O.R. PROCEDURE W MCC	5.2068	10.8	13.9
854	18	SURG	INFECTIOUS & PARASITIC DISEASES W O.R. PROCEDURE W CC	2.3877	6.7	8.1
855	18	SURG	INFECTIOUS & PARASITIC DISEASES W O.R. PROCEDURE W/O CC/MCC	1.7057	3.3	4.7
856	18	SURG	POSTOPERATIVE OR POST-TRAUMATIC INFECTIONS W O.R. PROC W MCC	4.8177	10.0	13.3
857	18	SURG	POSTOPERATIVE OR POST-TRAUMATIC INFECTIONS W O.R. PROC W CC	2.0500	5.6	7.0
858	18	SURG	POSTOPERATIVE OR POST-TRAUMATIC INFECTIONS W O.R. PROC W/O CC/MCC	1.3390	3.7	4.6
862	18	MED	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS W MCC	1.8506	5.5	7.2
863	18	MED	POSTOPERATIVE & POST-	0.9836	3.7	4.5

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
			TRAUMATIC INFECTIONS W/O MCC			
864	18	MED	FEVER	0.8419	2.8	3.5
865	18	MED	VIRAL ILLNESS W MCC	1.5131	4.2	5.8
866	18	MED	VIRAL ILLNESS W/O MCC	0.7425	2.7	3.4
867	18	MED	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES W MCC	2.7245	7.0	9.5
868	18	MED	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES W CC	1.0897	3.9	4.9
869	18	MED	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES W/O CC/MCC	0.6877	2.7	3.2
870	18	MED	SEPTICEMIA OR SEVERE SEPSIS W MV 96+ HOURS	5.8698	12.6	14.7
871	18	MED	SEPTICEMIA OR SEVERE SEPSIS W/O MV 96+ HOURS W MCC	1.8072	5.1	6.6
872	18	MED	SEPTICEMIA OR SEVERE SEPSIS W/O MV 96+ HOURS W/O MCC	1.0528	4.0	4.7
876	19	SURG	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS	3.3533	7.4	14.9
880	19	MED	ACUTE ADJUSTMENT REACTION & PSYCHOSOCIAL DYSFUNCTION	0.6704	2.2	3.0
881	19	MED	DEPRESSIVE NEUROSES	0.6464	3.3	4.4
882	19	MED	NEUROSES EXCEPT DEPRESSIVE	0.6935	3.2	4.5
883	19	MED	DISORDERS OF PERSONALITY & IMPULSE CONTROL	1.3062	4.4	8.2
884	19	MED	ORGANIC DISTURBANCES & MENTAL RETARDATION	1.0783	4.1	5.9

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
885	19	MED	PSYCHOSES	1.0217	5.4	7.4
886	19	MED	BEHAVIORAL & DEVELOPMENTAL DISORDERS	0.8288	3.8	6.1
887	19	MED	OTHER MENTAL DISORDER DIAGNOSES	0.9329	3.0	4.7
894	20	MED	ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	0.4450	2.1	2.9
895	20	MED	ALCOHOL/DRUG ABUSE OR DEPENDENCE W REHABILITATION THERAPY	1.2152	9.6	12.3
896	20	MED	ALCOHOL/DRUG ABUSE OR DEPENDENCE W/O REHABILITATION THERAPY W MCC	1.5244	4.7	6.5
897	20	MED	ALCOHOL/DRUG ABUSE OR DEPENDENCE W/O REHABILITATION THERAPY W/O MCC	0.6905	3.2	4.0
901	21	SURG	WOUND DEBRIDEMENTS FOR INJURIES W MCC	3.9929	8.9	13.2
902	21	SURG	WOUND DEBRIDEMENTS FOR INJURIES W CC	1.7433	4.9	6.8
903	21	SURG	WOUND DEBRIDEMENTS FOR INJURIES W/O CC/MCC	1.1280	3.0	4.1
904	21	SURG	SKIN GRAFTS FOR INJURIES W CC/MCC	3.3637	7.0	10.6
905	21	SURG	SKIN GRAFTS FOR INJURIES W/O CC/MCC	1.3889	3.3	4.4
906	21	SURG	HAND PROCEDURES FOR INJURIES	1.1789	2.3	3.3
907	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W MCC	3.7873	7.4	10.2

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
908	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W CC	1.9575	4.2	5.6
909	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W/O CC/MCC	1.2556	2.5	3.2
913	21	MED	TRAUMATIC INJURY W MCC	1.1410	3.4	4.7
914	21	MED	TRAUMATIC INJURY W/O MCC	0.7009	2.3	2.9
915	21	MED	ALLERGIC REACTIONS W MCC	1.5381	3.6	5.0
916	21	MED	ALLERGIC REACTIONS W/O MCC	0.5137	1.7	2.0
917	21	MED	POISONING & TOXIC EFFECTS OF DRUGS W MCC	1.4051	3.4	4.8
918	21	MED	POISONING & TOXIC EFFECTS OF DRUGS W/O MCC	0.6412	2.1	2.7
919	21	MED	COMPLICATIONS OF TREATMENT W MCC	1.6750	4.3	6.0
920	21	MED	COMPLICATIONS OF TREATMENT W CC	0.9850	3.0	3.9
921	21	MED	COMPLICATIONS OF TREATMENT W/O CC/MCC	0.6602	2.1	2.7
922	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W MCC	1.4953	3.8	5.6
923	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O MCC	0.7348	2.2	3.3
927	22	SURG	EXTENSIVE BURNS OR FULL THICKNESS BURNS W MV 96+ HRS W SKIN GRAFT	15.5499	23.0	29.0
928	22	SURG	FULL THICKNESS BURN W SKIN GRAFT OR INHAL INJ W CC/MCC	5.3820	11.0	15.0

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
929	22	SURG	FULL THICKNESS BURN W SKIN GRAFT OR INHAL INJ W/O CC/MCC	2.3344	5.4	7.1
933	22	MED	EXTENSIVE BURNS OR FULL THICKNESS BURNS W MV 96+ HRS W/O SKIN GRAFT	2.7557	2.3	5.5
934	22	MED	FULL THICKNESS BURN W/O SKIN GRFT OR INHAL INJ	1.5748	4.0	5.7
935	22	MED	NON-EXTENSIVE BURNS	1.4717	3.2	4.9
939	23	SURG	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES W MCC	2.7647	6.0	8.8
940	23	SURG	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES W CC	1.8274	3.5	5.0
941	23	SURG	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES W/O CC/MCC	1.3531	2.1	2.7
945	23	MED	REHABILITATION W CC/MCC	1.2709	8.5	10.4
946	23	MED	REHABILITATION W/O CC/MCC	1.0662	6.5	7.6
947	23	MED	SIGNS & SYMPTOMS W MCC	1.1368	3.5	4.7
948	23	MED	SIGNS & SYMPTOMS W/O MCC	0.7131	2.6	3.2
949	23	MED	AFTERCARE W CC/MCC	1.0525	2.9	4.4
950	23	MED	AFTERCARE W/O CC/MCC	0.5508	2.3	3.1
951	23	MED	OTHER FACTORS INFLUENCING HEALTH STATUS	0.9188	2.4	5.3
955	24	SURG	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	5.5727	8.0	11.6

Exhibit #1						
For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015						
MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
956	24	SURG	LIMB REATTACHMENT, HIP & FEMUR PROC FOR MULTIPLE SIGNIFICANT TRAUMA	3.6692	6.6	8.0
957	24	SURG	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA W MCC	6.8453	10.0	14.0
958	24	SURG	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA W CC	3.8602	7.3	8.9
959	24	SURG	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA W/O CC/MCC	2.5447	4.6	5.7
963	24	MED	OTHER MULTIPLE SIGNIFICANT TRAUMA W MCC	2.7071	5.6	8.3
964	24	MED	OTHER MULTIPLE SIGNIFICANT TRAUMA W CC	1.4769	4.2	5.2
965	24	MED	OTHER MULTIPLE SIGNIFICANT TRAUMA W/O CC/MCC	0.9418	2.9	3.6
969	25	SURG	HIV W EXTENSIVE O.R. PROCEDURE W MCC	6.0815	12.3	16.9
970	25	SURG	HIV W EXTENSIVE O.R. PROCEDURE W/O MCC	2.2085	5.4	7.1
974	25	MED	HIV W MAJOR RELATED CONDITION W MCC	2.6849	6.7	9.3
975	25	MED	HIV W MAJOR RELATED CONDITION W CC	1.3047	4.5	5.8
976	25	MED	HIV W MAJOR RELATED CONDITION W/O CC/MCC	0.8774	3.1	3.9
977	25	MED	HIV W OR W/O OTHER RELATED	1.1305	3.5	4.7

Exhibit #1**For Hospital Inpatient Discharges Dates of Service on and After 1/1/2015**

MS-DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric mean LOS	Arithmetic mean LOS
1	PRE	SURG	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	25.3920	28.2	36.1
			CONDITION			
981		SURG	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS W MCC	4.9968	9.9	13.1
982		SURG	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS W CC	2.8150	5.7	7.4
983		SURG	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS W/O CC/MCC	1.8039	2.7	3.6
984		SURG	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS W MCC	3.4344	9.4	12.9
985		SURG	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS W CC	1.8509	5.0	6.9
986		SURG	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS W/O CC/MCC	1.0453	2.4	3.2
987		SURG	NON-EXTENSIVE O.R. PROC UNRELATED TO PRINCIPAL DIAGNOSIS W MCC	3.3008	8.3	11.1
988		SURG	NON-EXTENSIVE O.R. PROC UNRELATED TO PRINCIPAL DIAGNOSIS W CC	1.7643	4.7	6.3
989		SURG	NON-EXTENSIVE O.R. PROC UNRELATED TO PRINCIPAL DIAGNOSIS W/O CC/MCC	1.0454	2.2	3.0
998		**	PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS			
999		**	UNGROUPABLE			

Exhibit #2			
Hospital Base Rates and Cost to Charge Ratio's (CCR)			
<i>Effective for In-Patient Hospital Discharges Occurring on and after January 1, 2015</i>			
Provider Number	Provider Name	Base Rate	CCR
60001	NORTH COLORADO MEDICAL CENTER	\$6,437.87	0.266
60003	LONGMONT UNITED HOSPITAL	\$5,986.39	0.343
60004	PLATTE VALLEY MEDICAL CENTER	\$6,126.47	0.392
60006	MONTROSE MEMORIAL HOSPITAL	\$5,798.58	0.412
60008	SAN LUIS VALLEY REGIONAL MEDICAL CENTER	\$5,809.45	0.426
60009	EXEMPLA LUTHERAN MEDICAL CENTER	\$6,116.57	0.229
60010	POUDRE VALLEY HOSPITAL	\$5,991.95	0.352
60011	DENVER HEALTH MEDICAL CENTER	\$7,848.87	0.309
60012	CENTURA HEALTH-ST MARY CORWIN MEDICAL CENTER	\$6,184.18	0.245
60013	MERCY REGIONAL MEDICAL CENTER	\$7,596.82	0.382
60014	PRESBYTERIAN ST LUKES MEDICAL CENTER	\$6,591.12	0.199
60015	CENTURA HEALTH-ST ANTHONY HOSPITAL	\$6,062.53	0.228
60016	CENTURA HEALTH-ST THOMAS MORE HOSPITAL	\$6,645.33	0.412
60020	PARKVIEW MEDICAL CENTER INC	\$5,857.10	0.186
60022	UNIVERSITY COLO HEALTH MEMORIAL HOSPITAL CENTRAL	\$5,829.41	0.291
60023	ST MARYS HOSPITAL AND MEDICAL CENTER	\$6,617.45	0.354

60024	UNIVERSITY OF COLORADO HOSPITAL ANSCHUTZ INPATIENT	\$8,288.06	0.197
60027	BOULDER COMMUNITY HOSPITAL	\$5,895.14	0.255
60028	EXEMPLA SAINT JOSEPH HOSPITAL	\$6,671.47	0.222
60030	MCKEE MEDICAL CENTER	\$5,756.16	0.349
60031	CENTURA HEALTH-PENROSE ST FRANCIS HEALTH SERVICES	\$6,004.53	0.242
60032	ROSE MEDICAL CENTER	\$6,508.14	0.18
60034	SWEDISH MEDICAL CENTER	\$6,204.04	0.173
60036	ARKANSAS VALLEY REGIONAL MEDICAL CENTER	\$5,809.45	0.477
60043	KEEFE MEMORIAL HOSPITAL	\$15,160.85	0.409
60044	COLORADO PLAINS MEDICAL CENTER	\$6,264.58	0.294
60049	YAMPA VALLEY MEDICAL CENTER	\$9,176.20	0.596
60054	COMMUNITY HOSPITAL	\$5,725.76	0.439
60064	CENTURA HEALTH-PORTER ADVENTIST HOSPITAL	\$5,972.04	0.215
60065	NORTH SUBURBAN MEDICAL CENTER	\$6,225.30	0.161
60071	DELTA COUNTY MEMORIAL HOSPITAL	\$5,714.48	0.474
60075	VALLEY VIEW HOSPITAL ASSOCIATION	\$7,852.40	0.491
60076	STERLING REGIONAL MEDCENTER	\$7,449.71	0.54
60096	VAIL VALLEY MEDICAL CENTER	\$11,497.98	0.475
60100	MEDICAL CENTER OF AURORA, THE	\$6,097.05	0.19

60103	CENTURA HEALTH-AVISTA ADVENTIST HOSPITAL	\$6,160.21	0.289
60104	CENTURA HEALTH-ST ANTHONY NORTH HOSPITAL	\$6,729.17	0.245
60107	NATIONAL JEWISH HEALTH	\$6,126.47	0.249
60112	SKY RIDGE MEDICAL CENTER	\$5,971.87	0.156
60113	CENTURA HEALTH- LITTLETON ADVENTIST HOSPITAL	\$5,970.33	0.198
60114	PARKER ADVENTIST HOSPITAL	\$5,972.14	0.216
60116	EXEMPLA GOOD SAMARITAN MEDICAL CENTER LLC	\$5,888.91	0.202
60117	ANIMAS SURGICAL HOSPITAL, LLC	\$5,652.38	0.392
60118	ST ANTHONY SUMMIT MEDICAL CENTER	\$5,992.00	0.329
60119	MEDICAL CENTER OF THE ROCKIES	\$5,671.58	0.331
60124	ORTHOCOLORADO HOSPITAL AT ST ANTHONY MED CAMPUS	\$5,960.88	0.235
60125	CASTLE ROCK ADVENTIST HOSPITAL	\$5,960.88	0.249
69999	Any New Hospital	\$5,884.64	0.29426

Exhibit #3	
Effective January 1, 2015	
Critical Access Hospitals	
<u>Name</u>	<u>Location in Colorado</u>
Aspen Valley Hospital	Aspen

East Morgan County Hospital	Brush
Estes Park Medical Center	Estes Park
Family Health West	Fruita
Grand River Hospital District	Rifle
Gunnison Valley Hospital	Gunnison
Haxtun Hospital District	Haxtun
Heart of the Rockies Regional Medical Center	Salida
Kit Carson County Memorial Hospital	Burlington
Lincoln Community Hospital	Hugo
Melissa Memorial Hospital	Holyoke
Middle Park Medical Center	Kremmling/Granby
Mt. San Rafael Hospital	Trinidad
Pagosa Springs Medical Center	Pagosa Springs
Pikes Peak Regional Hospital	Woodland Park
Pioneers Medical Center	Meeker
Prowers Medical Center	Lamar
Rangeley District Hospital	Rangely
Rio Grande Hospital	Del Norte
San Luis Valley Health	La Jara
Sedgwick County Health Center	Julesburg
Southeast Colorado Hospital District	Springfield
Southwest Memorial Hospital	Cortez
Spanish Peaks Regional Health Center	Walsenburg
St. Vincent General Hospital District	Leadville
The Memorial Hospital at Craig	Craig
Weisbrod Memorial County Hospital	Eads
Wray Community District Hospital	Wray
Yuma District Hospital	Yuma

Exhibit #4

Effective for Dates of Service on and After 1/1/2015

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
5	Level II Needle Biopsy/Aspiration Except Bone Marrow	\$ 1,825.41	\$ 1,142.21	\$ 970.88
6	Level I Incision & Drainage	\$ 415.12	\$ 270.17	\$ 229.65
7	Level II Incision & Drainage	\$ 2,195.83	\$ 1,421.81	\$ 1,208.54
8	Level III Incision and Drainage	\$ 4,080.65	\$ 2,650.51	\$ 2,252.93
12	Level I Debridement & Destruction	\$ 158.16	\$ 103.41	\$ 87.90
13	Level II Debridement & Destruction	\$ 217.70	\$ 142.34	\$ 120.99
15	Level III Debridement & Destruction	\$ 383.21	\$ 250.51	\$ 212.94
16	Level IV Debridement & Destruction	\$ 714.51	\$ 467.04	\$ 396.98
17	Level V Debridement & Destruction	\$ 3,928.81	\$ 2,561.90	\$ 2,177.62
19	Level I Excision/ Biopsy	\$ 828.85	\$ 541.62	\$ 460.38
20	Level II Excision/ Biopsy	\$ 1,666.37	\$ 1,086.28	\$ 923.34
21	Level III Excision/ Biopsy	\$ 2,980.48	\$ 1,941.76	\$ 1,650.50
22	Level IV Excision/ Biopsy	\$ 4,514.98	\$ 2,930.55	\$ 2,490.97
28	Level I Breast and Skin Surgery	\$ 5,133.08	\$ 3,345.17	\$ 2,843.39
29	Level II Breast and Skin Surgery	\$ 6,904.48	\$ 4,450.36	\$ 3,782.81
30	Level III Breast and Skin Surgery	\$ 9,325.65	\$ 5,741.45	\$ 4,880.23
31	Level I Health and Behavior Services	\$ 62.19	\$ 40.66	0
35	Vascular Puncture and Minor Diagnostic Procedures	\$ 57.49	\$ 37.59	\$ 31.95

Exhibit #4**Effective for Dates of Service on and After 1/1/2015**

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
37	Level IV Needle Biopsy/Aspiration Except Bone Marrow	\$ 3,180.45	\$ 1,978.88	\$ 1,682.04
39	Level I Implantation of Neurostimulator Generator	\$ 44,805.54	\$ 4,028.19	\$ 3,423.96
40	Level I Implantation/Revision/Replacement of Neurostimulator Electrodes	\$ 12,028.90	\$ 3,550.28	\$ 3,017.74
41	Level I Arthroscopy	\$ 5,604.74	\$ 3,652.91	\$ 3,104.98
42	Level II Arthroscopy	\$ 11,073.43	\$ 6,200.61	\$ 5,270.52
45	Bone/Joint Manipulation Under Anesthesia	\$ 3,001.57	\$ 1,957.85	\$ 1,664.18
47	Arthroplasty without Prosthesis	\$ 8,118.37	\$ 4,330.40	\$ 3,680.84
48	Level I Arthroplasty or Implantation with Prosthesis	\$ 12,061.11	\$ 4,512.43	\$ 3,835.57
49	Level I Musculoskeletal Procedures Except Hand and Foot	\$ 4,261.58	\$ 2,768.86	\$ 2,353.53
50	Level II Musculoskeletal Procedures Except Hand and Foot	\$ 6,697.34	\$ 3,939.81	\$ 3,348.84
51	Level III Musculoskeletal Procedures Except Hand and Foot	\$ 9,832.26	\$ 5,131.46	\$ 4,361.74
52	Level IV Musculoskeletal Procedures Except Hand and Foot	\$ 16,918.10	\$ 8,234.43	\$ 6,999.26
53	Level I Hand Musculoskeletal Procedures	\$ 3,251.59	\$ 2,118.38	\$ 1,800.63
54	Level II Hand Musculoskeletal Procedures	\$ 5,794.75	\$ 3,546.01	\$ 3,014.11
55	Level I Foot Musculoskeletal Procedures	\$ 4,377.75	\$ 2,774.50	\$ 2,358.33
56	Level II Foot Musculoskeletal Procedures	\$ 12,660.15	\$ 5,143.82	\$ 4,372.25
57	Bunion Procedures	\$ 6,796.74	\$ 3,727.64	\$ 3,168.50
58	Level I Cast Application	\$ 260.55	\$ 170.34	\$ 144.79
59	Level I Strapping	\$ 145.21	\$ 94.95	\$ 80.70
60	Manipulation Therapy	\$ 45.76	\$ 29.92	\$ 25.43

Exhibit #4**Effective for Dates of Service on and After 1/1/2015**

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
61	Level II Implantation/Revision/Replacement of Neurostimulator Electrodes	\$ 19,303.67	\$ 4,286.31	\$ 3,643.36
62	Level I Treatment Fracture/Dislocation	\$ 5,231.69	\$ 3,185.04	\$ 2,707.28
63	Level II Treatment Fracture/Dislocation	\$ 10,724.53	\$ 5,155.37	\$ 4,382.06
64	Level III Treatment Fracture/Dislocation	\$ 13,997.46	\$ 5,221.32	\$ 4,438.12
65	IORT, MRgFUS, and MEG	\$ 3,245.53	\$ 2,114.86	\$ 1,797.63
66	Level I Stereotactic Radiosurgery	\$ 4,995.38	\$ 3,266.21	\$ 2,776.28
67	Level II Stereotactic Radiosurgery	\$ 9,338.29	\$ 6,105.81	\$ 5,189.93
69	Thoracoscopy	\$ 6,864.31	\$ 4,463.97	\$ 3,794.37
70	Thoracentesis/Lavage Procedures	\$ 1,261.49	\$ 798.59	\$ 678.80
71	Level I Endoscopy Upper Airway	\$ 391.09	\$ 255.64	\$ 217.29
72	Level II Endoscopy Upper Airway	\$ 960.88	\$ 626.26	\$ 532.32
73	Level III Endoscopy Upper Airway	\$ 3,162.38	\$ 2,026.36	\$ 1,722.40
74	Level IV Endoscopy Upper Airway	\$ 4,889.12	\$ 3,127.04	\$ 2,657.99
75	Level V Endoscopy Upper Airway	\$ 7,934.58	\$ 4,751.16	\$ 4,038.49
76	Level I Endoscopy Lower Airway	\$ 2,474.21	\$ 1,614.68	\$ 1,372.48
77	Level I Pulmonary Treatment	\$ 102.31	\$ 66.90	\$ 56.86
78	Level III Pulmonary Treatment	\$ 352.04	\$ 230.13	\$ 195.61
79	Ventilation Initiation and Management	\$ 907.95	\$ 591.64	\$ 502.89
80	Diagnostic Cardiac Catheterization	\$ 6,726.15	\$ 3,870.12	\$ 3,289.60

Exhibit #4**Effective for Dates of Service on and After 1/1/2015**

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
82	Coronary or Non-Coronary Atherectomy	\$ 22,990.92	\$ 10,985.77	\$ 9,337.90
83	Coronary Angioplasty, Valvuloplasty, and Level I Endovascular Revascularization of the Lower Extremity	\$ 11,467.07	\$ 5,501.81	\$ 4,676.54
84	Level I Electrophysiologic Procedures	\$ 1,961.18	\$ 1,270.64	\$ 1,080.04
85	Level II Electrophysiologic Procedures	\$ 11,005.15	\$ 4,850.60	\$ 4,123.01
88	Thrombectomy	\$ 8,506.06	\$ 5,028.29	\$ 4,274.05
89	Insertion/Replacement of Permanent Pacemaker and Electrodes	\$ 22,854.78	\$ 4,616.05	\$ 3,923.64
90	Level I Insertion/Replacement of Permanent Pacemaker	\$ 19,118.09	\$ 4,117.59	\$ 3,499.96
93	Vascular Reconstruction/Fistula Repair	\$ 7,401.39	\$ 3,128.65	\$ 2,659.36
94	Level I Resuscitation and Cardioversion	\$ 415.09	\$ 271.30	\$ 230.60
95	Cardiac Rehabilitation	\$ 268.55	\$ 175.59	\$ 149.25
96	Level II Noninvasive Physiologic Studies	\$ 340.76	\$ 222.74	\$ 189.32
97	Level I Noninvasive Physiologic Studies	\$ 182.47	\$ 119.31	\$ 101.41
99	Electrocardiograms/Cardiography	\$ 70.51	\$ 46.10	\$ 39.19
100	Cardiac Stress Tests	\$ 634.95	\$ 415.16	\$ 352.88
101	Tilt Table Evaluation	\$ 844.17	\$ 551.79	0
102	Level II Pulmonary Treatment	\$ 203.29	\$ 132.80	\$ 112.88
103	Miscellaneous Vascular Procedures	\$ 3,962.74	\$ 2,504.48	\$ 2,128.81
104	Transcatheter Placement of Intracoronary Stents	\$ 16,545.75	\$ 5,330.21	\$ 4,530.68
105	Repair/Revision/Removal of Pacemakers, AICDs, or Vascular Devices	\$ 6,026.02	\$ 2,727.72	\$ 2,318.57

Exhibit #4**Effective for Dates of Service on and After 1/1/2015**

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
106	Insertion/Replacement/Repair of Pacemaker Generator, Leads, and/or Electrodes	\$ 11,965.15	\$ 4,133.08	\$ 3,513.12
107	Level I Implantation of Cardioverter-Defibrillators (ICDs)	\$ 65,047.27	\$ 8,114.90	\$ 6,897.66
108	Level II Implantation of Cardioverter-Defibrillators (ICDs)	\$ 83,576.87	\$ 9,666.95	\$ 8,216.91
110	Transfusion	\$ 741.44	\$ 484.64	\$ 411.95
111	Blood Product Exchange	\$ 2,821.94	\$ 1,844.93	\$ 1,568.19
112	Apheresis and Stem Cell Procedures	\$ 7,970.77	\$ 5,209.57	\$ 4,428.14
113	Excision Lymphatic System	\$ 5,270.07	\$ 3,433.41	\$ 2,918.40
114	Thyroid/Lymphadenectomy Procedures	\$ 10,330.92	\$ 6,702.14	\$ 5,696.82
115	Cannula/Access Device Procedures	\$ 7,390.16	\$ 3,766.08	\$ 3,201.17
121	Level I Tube or Catheter Changes or Repositioning	\$ 1,212.87	\$ 752.11	\$ 639.30
126	Level I Urinary and Anal Procedures	\$ 206.13	\$ 134.72	\$ 114.51
129	Level I Closed Treatment Fracture	\$ 281.24	\$ 183.83	\$ 156.26
130	Level I Laparoscopy	\$ 7,620.57	\$ 4,710.13	\$ 4,003.61
131	Level II Laparoscopy	\$ 9,486.07	\$ 5,995.89	\$ 5,096.51
132	Level III Laparoscopy	\$ 13,950.09	\$ 7,403.69	\$ 6,293.14
138	Level II Closed Treatment Fracture	\$ 451.00	\$ 294.35	\$ 250.20
139	Level III Closed Treatment Fracture	\$ 1,167.19	\$ 753.17	\$ 640.19
141	Level I Upper GI Procedures	\$ 1,743.22	\$ 1,136.04	\$ 965.63
142	Level I Small Intestine Endoscopy	\$ 2,176.67	\$ 1,396.31	\$ 1,186.86

Exhibit #4**Effective for Dates of Service on and After 1/1/2015**

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
143	Lower GI Endoscopy	\$ 1,915.78	\$ 1,250.75	\$ 1,063.14
146	Level I Sigmoidoscopy and Anoscopy	\$ 1,198.60	\$ 782.45	\$ 665.08
147	Level II Sigmoidoscopy and Anoscopy	\$ 2,026.31	\$ 1,289.79	\$ 1,096.32
148	Level I Anal/Rectal Procedures	\$ 1,229.44	\$ 800.73	\$ 680.62
149	Level III Anal/Rectal Procedures	\$ 4,963.97	\$ 3,231.39	\$ 2,746.68
150	Level IV Anal/Rectal Procedures	\$ 6,503.41	\$ 4,091.92	\$ 3,478.13
151	Endoscopic Retrograde Cholangio-Pancreatography (ERCP)	\$ 5,027.59	\$ 2,945.73	\$ 2,503.87
152	Level I Percutaneous Abdominal and Biliary Procedures	\$ 4,649.74	\$ 2,463.48	\$ 2,093.96
153	Peritoneal and Abdominal Procedures	\$ 4,774.61	\$ 3,045.38	\$ 2,588.57
154	Hernia/Hydrocele Procedures	\$ 6,759.06	\$ 3,857.68	\$ 3,279.03
155	Level II Anal/Rectal Procedures	\$ 3,691.82	\$ 2,408.33	\$ 2,047.08
156	Level III Urinary and Anal Procedures	\$ 1,089.82	\$ 706.37	\$ 600.42
157	Colorectal Cancer Screening: Barium Enema	\$ 753.90	\$ 492.93	\$ 418.99
158	Colorectal Cancer Screening: Colonoscopy	\$ 1,681.50	\$ 1,099.33	\$ 934.43
159	Colorectal Cancer Screening: Flexible Sigmoidoscopy	\$ 1,198.94	\$ 783.53	\$ 666.00
160	Level I Cystourethroscopy and other Genitourinary Procedures	\$ 1,401.43	\$ 913.29	\$ 776.30
161	Level II Cystourethroscopy and other Genitourinary Procedures	\$ 3,132.48	\$ 1,992.86	\$ 1,693.93
162	Level III Cystourethroscopy and other Genitourinary Procedures	\$ 5,219.03	\$ 3,250.35	\$ 2,762.80
163	Level IV Cystourethroscopy and other Genitourinary Procedures	\$ 7,553.03	\$ 4,830.36	\$ 4,105.81
164	Level II Urinary and Anal Procedures	\$ 548.86	\$ 355.14	\$ 301.87

Exhibit #4

Effective for Dates of Service on and After 1/1/2015

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
165	Level IV Urinary and Anal Procedures	\$ 3,689.43	\$ 2,243.45	\$ 1,906.94
166	Level I Urethral Procedures	\$ 3,975.89	\$ 2,587.14	\$ 2,199.07
168	Level II Urethral Procedures	\$ 6,592.09	\$ 2,792.59	\$ 2,373.70
169	Lithotripsy	\$ 7,776.96	\$ 5,073.24	\$ 4,312.26
170	Dialysis	\$ 1,586.68	\$ 1,034.12	\$ 879.00
174	Level IV Laparoscopy	\$ 22,342.84	\$ 11,692.87	\$ 9,938.94
177	Level I Echocardiogram with Contrast	\$ 1,301.48	\$ 850.54	\$ 722.96
178	Level II Echocardiogram with Contrast	\$ 1,701.05	\$ 1,112.11	\$ 945.30
181	Level II Male Genital Procedures	\$ 5,655.81	\$ 3,675.10	\$ 3,123.83
183	Level I Male Genital Procedures	\$ 4,511.75	\$ 2,943.80	\$ 2,502.23
184	Prostate Biopsy	\$ 2,761.17	\$ 1,801.59	\$ 1,531.35
188	Level II Female Reproductive Proc	\$ 329.34	\$ 214.91	\$ 182.67
189	Level III Female Reproductive Proc	\$ 492.52	\$ 321.77	\$ 273.51
190	Level I Hysteroscopy	\$ 4,584.76	\$ 2,978.54	\$ 2,531.76
191	Level I Female Reproductive Proc	\$ 26.86	\$ 17.56	\$ 14.93
192	Level IV Female Reproductive Proc	\$ 959.82	\$ 627.51	\$ 533.38
193	Level V Female Reproductive Proc	\$ 3,575.52	\$ 2,330.59	\$ 1,981.00
195	Level VI Female Reproductive Procedures	\$ 6,558.71	\$ 4,027.22	\$ 3,423.14
202	Level VII Female Reproductive Procedures	\$ 9,279.14	\$ 3,798.02	\$ 3,228.32

Exhibit #4**Effective for Dates of Service on and After 1/1/2015**

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
203	Level IV Nerve Injections	\$ 4,017.18	\$ 2,622.42	\$ 2,229.05
204	Level I Nerve Injections	\$ 525.75	\$ 343.72	\$ 292.16
205	Level III Male Genital Procedures	\$ 9,238.94	\$ 4,954.10	\$ 4,210.98
206	Level II Nerve Injections	\$ 920.37	\$ 601.42	\$ 511.21
207	Level III Nerve Injections	\$ 1,741.77	\$ 1,137.71	\$ 967.05
208	Laminotomies and Laminectomies	\$ 10,408.61	\$ 6,591.25	\$ 5,602.56
209	Level II Extended EEG, Sleep, and Cardiovascular Studies	\$ 1,144.31	\$ 748.20	\$ 635.97
210	Spinal Fusions	\$ 10,408.61	\$ 6,591.25	\$ 5,602.56
213	Level I Extended EEG, Sleep, and Cardiovascular Studies	\$ 472.16	\$ 308.69	\$ 262.39
215	Level I Nerve and Muscle Services	\$ 130.78	\$ 85.51	\$ 72.68
216	Level III Nerve and Muscle Services	\$ 563.65	\$ 367.55	\$ 312.42
218	Level II Nerve and Muscle Services	\$ 332.15	\$ 217.15	\$ 184.58
219	Vascular Ligation	\$ 5,561.63	\$ 3,307.72	\$ 2,811.56
220	Level I Nerve Procedures	\$ 3,598.11	\$ 2,346.50	\$ 1,994.52
221	Level II Nerve Procedures	\$ 7,445.80	\$ 4,246.23	\$ 3,609.29
224	Implantation of Catheter/Reservoir/Shunt	\$ 8,880.69	\$ 4,167.40	\$ 3,542.29
227	Implantation of Drug Infusion Device	\$ 38,089.40	\$ 4,679.58	\$ 3,977.64
229	Level II Endovascular Revascularization of the Lower Extremity	\$ 23,711.22	\$ 8,564.13	\$ 7,279.51
230	Level I Eye Tests & Treatments	\$ 134.03	\$ 87.64	\$ 74.49
231	Level III Eye Tests & Treatments	\$ 472.97	\$ 309.22	\$ 262.83

Exhibit #4**Effective for Dates of Service on and After 1/1/2015**

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
				\$ 55.01
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 592.88
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 248.99
232	Level I Anterior Segment Eye Procedures	\$ 448.19	\$ 292.93	\$ 1,687.05
233	Level III Anterior Segment Eye Procedures	\$ 3,102.22	\$ 1,984.76	\$ 2,369.28
234	Level IV Anterior Segment Eye Procedures	\$ 4,547.27	\$ 2,787.39	\$ 620.70
235	Level I Posterior Segment Eye Procedures	\$ 1,116.93	\$ 730.23	\$ 2,397.73
237	Level II Posterior Segment Eye Procedures	\$ 4,458.71	\$ 2,820.86	\$ 368.63
238	Level I Repair and Plastic Eye Procedures	\$ 663.94	\$ 433.68	\$ 922.25
239	Level II Repair and Plastic Eye Procedures	\$ 1,673.65	\$ 1,085.01	\$ 2,078.58
240	Level III Repair and Plastic Eye Procedures	\$ 3,769.79	\$ 2,445.39	\$ 2,755.65
241	Level IV Repair and Plastic Eye Procedures	\$ 5,165.94	\$ 3,241.95	\$ 3,866.00
242	Level V Repair and Plastic Eye Procedures	\$ 8,119.67	\$ 4,548.23	\$ 2,811.60
243	Strabismus/Muscle Procedures	\$ 5,062.49	\$ 3,307.77	\$ 3,804.99
244	Corneal and Amniotic Membrane Transplant	\$ 8,393.22	\$ 4,476.46	\$ 2,162.47
246	Cataract Procedures with IOL Insert	\$ 4,591.63	\$ 2,544.08	\$ 618.25
247	Laser Eye Procedures	\$ 1,113.42	\$ 727.35	\$ 2,960.81
249	Cataract Procedures without IOL Insert	\$ 5,601.31	\$ 3,483.30	\$ 121.49
250	Level I ENT Procedures	\$ 218.71	\$ 142.93	\$ 377.01
251	Level II ENT Procedures	\$ 678.83	\$ 443.54	\$ 782.45
252	Level III ENT Procedures	\$ 1,417.36	\$ 920.53	\$ 1,733.19
253	Level IV ENT Procedures	\$ 3,166.36	\$ 2,039.05	

Exhibit #4**Effective for Dates of Service on and After 1/1/2015**

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
254	Level V ENT Procedures	\$ 4,834.13	\$ 3,131.70	\$ 2,661.94
255	Level II Anterior Segment Eye Procedures	\$ 1,939.29	\$ 1,255.32	\$ 1,067.02
256	Level VI ENT Procedures	\$ 9,268.19	\$ 5,872.11	\$ 4,991.30
259	Level VII ENT Procedures	\$ 79,979.85	\$ 8,215.47	\$ 6,983.15
260	Level I Plain Film Except Teeth	\$ 149.11	\$ 97.50	\$ 82.87
261	Level II Plain Film Except Teeth Including Bone Density Measurement	\$ 236.31	\$ 154.51	\$ 131.34
262	Plain Film of Teeth	\$ 110.84	\$ 72.47	\$ 61.60
263	Level I Miscellaneous Radiology Procedures	\$ 826.57	\$ 527.04	\$ 447.99
265	Level I Diagnostic and Screening Ultrasound	\$ 234.13	\$ 153.09	\$ 130.12
266	Level II Diagnostic and Screening Ultrasound	\$ 349.88	\$ 228.75	\$ 194.43
267	Level III Diagnostic and Screening Ultrasound	\$ 496.18	\$ 324.40	\$ 275.74
269	Level II Echocardiogram Without Contrast	\$ 1,110.90	\$ 726.36	\$ 617.41
270	Level III Echocardiogram Without Contrast	\$ 1,545.47	\$ 1,009.89	\$ 858.41
272	Fluoroscopy	\$ 407.34	\$ 244.53	\$ 207.85
274	Myelography	\$ 1,553.27	\$ 1,015.29	\$ 863.00
275	Arthrography	\$ 882.26	\$ 576.80	\$ 490.28
276	Level I Digestive Radiology	\$ 264.78	\$ 173.13	\$ 147.16
277	Level II Digestive Radiology	\$ 393.20	\$ 256.83	\$ 218.31
278	Diagnostic Urography	\$ 669.76	\$ 432.97	\$ 368.03
279	Level II Angiography and Venography	\$ 6,698.74	\$ 3,661.20	\$ 3,112.02

Exhibit #4

Effective for Dates of Service on and After 1/1/2015

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
280	Level III Angiography and Venography	\$ 11,735.41	\$ 6,824.50	\$ 5,800.83
282	Miscellaneous Computed Axial Tomography	\$ 206.86	\$ 135.14	\$ 114.87
283	Computed Tomography with Contrast	\$ 647.40	\$ 423.26	\$ 359.77
284	Magnetic Resonance Imaging and Magnetic Resonance Angiography with Contrast	\$ 1,108.87	\$ 724.96	\$ 616.22
288	Bone Density:Axial Skeleton	\$ 234.42	\$ 153.27	\$ 130.28
293	Level VI Anterior Segment Eye Procedures	\$ 20,014.59	\$ 4,628.68	\$ 3,934.38
299	Hyperthermia and Radiation Treatment Procedures	\$ 1,074.37	\$ 702.47	\$ 597.10
300	Level I Radiation Therapy	\$ 271.08	\$ 177.24	\$ 150.66
301	Level II Radiation Therapy	\$ 499.93	\$ 326.88	\$ 277.84
303	Treatment Device Construction	\$ 555.07	\$ 362.90	\$ 308.46
304	Level I Therapeutic Radiation Treatment Preparation	\$ 298.09	\$ 194.91	\$ 165.67
305	Level II Therapeutic Radiation Treatment Preparation	\$ 809.56	\$ 529.33	\$ 449.93
308	Positron Emission Tomography (PET) imaging	\$ 3,407.56	\$ 2,227.80	\$ 1,893.63
310	Level III Therapeutic Radiation Treatment Preparation	\$ 2,694.61	\$ 1,749.00	\$ 1,486.65
312	Radioelement Applications	\$ 939.35	\$ 610.88	\$ 519.24
313	Brachytherapy	\$ 1,907.88	\$ 1,247.21	\$ 1,060.13
315	Level II Implantation of Neurostimulator Generator	\$ 60,042.35	\$ 4,758.12	\$ 4,044.41
317	Level II Miscellaneous Radiology Procedures	\$ 1,920.59	\$ 1,198.26	\$ 1,018.52
318	Implantation of Neurostimulator Pulse Generator and Electrode	\$ 71,837.09	\$ 6,031.00	\$ 5,126.35

Exhibit #4**Effective for Dates of Service on and After 1/1/2015**

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
319	Level III Endovascular Revascularization of the Lower Extremity	\$ 40,325.97	\$ 12,669.34	\$ 10,768.94
320	Electroconvulsive Therapy	\$ 1,132.33	\$ 740.37	\$ 629.31
322	Brief Individual Psychotherapy	\$ 219.41	\$ 143.46	\$ 121.94
323	Extended Individual Psychotherapy	\$ 298.66	\$ 195.28	\$ 165.99
324	Family Psychotherapy	\$ 336.02	\$ 219.71	\$ 186.75
325	Group Psychotherapy	\$ 180.28	\$ 117.88	\$ 100.20
326	Level I Skin Repair	\$ 517.48	\$ 338.22	\$ 287.48
327	Level II Skin Repair	\$ 1,064.47	\$ 695.23	\$ 590.95
328	Level III Skin Repair	\$ 3,565.09	\$ 2,326.59	\$ 1,977.60
329	Level IV Skin Repair	\$ 5,877.20	\$ 3,797.05	\$ 3,227.49
330	Dental Procedures	\$ 1,181.91	\$ 772.55	\$ 656.67
331	Combined Abdomen and Pelvis CT without Contrast	\$ 628.65	\$ 410.92	\$ 349.28
332	Computed Tomography without Contrast	\$ 328.82	\$ 214.98	\$ 182.73
333	Computed Tomography without Contrast followed by Contrast	\$ 729.04	\$ 476.63	\$ 405.14
334	Combined Abdomen and Pelvis CT with Contrast	\$ 1,014.34	\$ 663.15	\$ 563.68
336	Magnetic Resonance Imaging and Magnetic Resonance Angiography without Contrast	\$ 766.43	\$ 501.13	\$ 425.96
337	Magnetic Resonance Imaging and Magnetic Resonance Angiography without Contrast followed by Contrast	\$ 1,281.59	\$ 837.55	\$ 711.91
340	Level I Minor Procedures	\$ 138.94	\$ 90.81	\$ 77.19
341	Skin Tests	\$ 32.50	\$ 21.25	\$ 18.06

Exhibit #4

Effective for Dates of Service on and After 1/1/2015

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
342	Level I Pathology	\$ 51.58	\$ 33.73	\$ 28.67
343	Level III Pathology	\$ 159.82	\$ 104.50	\$ 88.82
344	Level IV Pathology	\$ 467.14	\$ 303.58	\$ 258.04
345	Level I Transfusion Laboratory Procedures	\$ 31.51	\$ 20.60	\$ 17.51
346	Level II Transfusion Laboratory Procedures	\$ 82.08	\$ 53.65	\$ 45.60
347	Level III Transfusion Laboratory Procedures	\$ 157.20	\$ 102.47	\$ 87.10
351	Level VII Anterior Segment Eye Procedures	\$ 40,433.20	\$ 4,002.58	\$ 3,402.19
360	Level I Alimentary Tests	\$ 377.39	\$ 246.71	\$ 209.70
361	Level II Alimentary Tests	\$ 840.61	\$ 545.72	\$ 463.87
363	Level I Otorhinolaryngologic Function Tests	\$ 193.47	\$ 126.50	\$ 107.52
364	Level I Audiometry	\$ 85.59	\$ 55.96	\$ 47.57
365	Level II Audiometry	\$ 199.55	\$ 130.48	\$ 110.90
366	Level III Audiometry	\$ 305.81	\$ 199.95	\$ 169.96
367	Level I Pulmonary Test	\$ 149.16	\$ 97.02	\$ 82.47
368	Level II Pulmonary Tests	\$ 230.72	\$ 150.84	\$ 128.22
369	Level III Pulmonary Tests	\$ 633.65	\$ 413.52	\$ 351.49
370	Multiple Allergy Tests	\$ 107.46	\$ 70.26	\$ 59.72
373	Level I Neuropsychological Testing	\$ 284.88	\$ 186.25	\$ 158.31
377	Level II Cardiac Imaging	\$ 2,999.41	\$ 1,961.15	\$ 1,666.98

Exhibit #4**Effective for Dates of Service on and After 1/1/2015**

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
378	Level II Pulmonary Imaging	\$ 1,120.26	\$ 732.33	\$ 622.48
381	Single Allergy Tests	\$ 90.90	\$ 59.43	\$ 50.52
382	Level II Neuropsychological Testing	\$ 530.97	\$ 347.17	\$ 295.10
383	Cardiac Computed Tomographic Imaging	\$ 577.23	\$ 377.23	\$ 320.64
384	GI Procedures with Stents	\$ 6,165.64	\$ 2,791.33	\$ 2,372.63
385	Level I Prosthetic Urological Procedures	\$ 21,573.08	\$ 5,166.84	\$ 4,391.81
386	Level II Prosthetic Urological Procedures	\$ 35,158.68	\$ 6,882.72	\$ 5,850.31
387	Level II Hysteroscopy	\$ 7,325.68	\$ 4,555.64	\$ 3,872.30
388	Discography	\$ 7,178.63	\$ 4,682.92	\$ 3,980.48
389	Level I Non-imaging Nuclear Medicine	\$ 365.01	\$ 238.66	\$ 202.86
390	Level I Endocrine Imaging	\$ 476.84	\$ 311.78	\$ 265.01
391	Level II Endocrine Imaging	\$ 746.04	\$ 487.80	\$ 414.63
392	Level II Non-imaging Nuclear Medicine	\$ 669.32	\$ 437.19	\$ 371.61
393	Hematologic Processing & Studies	\$ 1,471.47	\$ 961.25	\$ 817.06
394	Hepatobiliary Imaging	\$ 968.68	\$ 633.31	\$ 538.31
395	GI Tract Imaging	\$ 841.83	\$ 550.37	\$ 467.82
396	Bone Imaging	\$ 842.24	\$ 550.70	\$ 468.09
398	Level I Cardiac Imaging	\$ 996.06	\$ 651.14	\$ 553.47
400	Hematopoietic Imaging	\$ 900.48	\$ 588.07	\$ 499.86
401	Level I Pulmonary Imaging	\$ 795.63	\$ 519.49	\$ 441.57

Exhibit #4**Effective for Dates of Service on and After 1/1/2015**

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
402	Level II Nervous System Imaging	\$ 1,386.27	\$ 906.41	\$ 770.45
403	Level I Nervous System Imaging	\$ 422.97	\$ 276.56	\$ 235.07
404	Renal and Genitourinary Studies	\$ 1,084.25	\$ 708.79	\$ 602.47
406	Level I Tumor/Infection Imaging	\$ 995.20	\$ 650.71	\$ 553.10
407	Level I Radionuclide Therapy	\$ 665.11	\$ 434.75	\$ 369.53
408	Level III Tumor/Infection Imaging	\$ 3,009.29	\$ 1,967.61	\$ 1,672.47
412	Level III Radiation Therapy	\$ 1,327.20	\$ 867.78	\$ 737.61
413	Level II Radionuclide Therapy	\$ 927.37	\$ 604.48	\$ 513.80
414	Level II Tumor/Infection Imaging	\$ 1,708.12	\$ 1,116.74	\$ 949.23
415	Level II Endoscopy Lower Airway	\$ 5,201.01	\$ 3,285.04	\$ 2,792.28
419	Level II Upper GI Procedures	\$ 2,633.93	\$ 1,588.37	\$ 1,350.12
420	Level II Minor Procedures	\$ 255.45	\$ 166.59	\$ 141.60
422	Level III Upper GI Procedures	\$ 5,118.75	\$ 2,506.47	\$ 2,130.50
423	Level II Percutaneous Abdominal and Biliary Procedures	\$ 10,676.09	\$ 5,209.56	\$ 4,428.13
424	Level II Small Intestine Endoscopy	\$ 3,205.90	\$ 2,044.81	\$ 1,738.09
425	Level II Arthroplasty or Implantation with Prosthesis	\$ 25,303.38	\$ 6,629.39	\$ 5,634.98
426	Level II Strapping and Cast Application	\$ 359.61	\$ 235.13	\$ 199.86
427	Level II Tube or Catheter Changes or Repositioning	\$ 3,396.09	\$ 1,712.91	\$ 1,455.97
428	Level III Sigmoidoscopy and Anoscopy	\$ 4,308.54	\$ 2,795.43	\$ 2,376.11

Exhibit #4**Effective for Dates of Service on and After 1/1/2015**

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
429	Level V Cystourethroscopy and other Genitourinary Procedures	\$ 8,591.15	\$ 5,558.87	\$ 4,725.04
431	Level IV Closed Treatment Fracture	\$ 3,255.59	\$ 1,985.61	\$ 1,687.77
432	Level II Health and Behavior Services	\$ 127.71	\$ 83.50	\$ 70.98
433	Level II Pathology	\$ 94.98	\$ 62.10	\$ 52.79
434	Cardiac Defect Repair	\$ 33,247.89	\$ 7,171.70	\$ 6,095.94
435	Level III Extended EEG, Sleep, and Cardiovascular Studies	\$ 2,242.53	\$ 1,466.27	\$ 1,246.33
436	Level I Drug Administration	\$ 76.70	\$ 50.15	\$ 42.63
437	Level II Drug Administration	\$ 113.83	\$ 74.43	\$ 63.26
438	Level III Drug Administration	\$ 275.34	\$ 179.96	\$ 152.96
439	Level IV Drug Administration	\$ 447.67	\$ 292.62	\$ 248.73
440	Level V Drug Administration	\$ 778.78	\$ 509.10	\$ 432.73
442	Dosimetric Drug Administration	\$ 4,738.08	\$ 3,097.98	\$ 2,633.28
609	Level 1 Type A Emergency Visits	\$ 144.69	0	0
613	Level 2 Type A Emergency Visits	\$ 262.37	0	0
614	Level 3 Type A Emergency Visits	\$ 432.77	0	0
615	Level 4 Type A Emergency Visits	\$ 763.65	0	0
616	Level 5 Type A Emergency Visits	\$ 1,185.42	0	0
617	Critical Care	\$ 1,650.84	0	0
618	Trauma Response with Critical Care	0	0	0
621	Level I Vascular Access Procedures	\$ 2,209.25	\$ 1,241.26	\$ 1,055.08

Exhibit #4**Effective for Dates of Service on and After 1/1/2015**

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
622	Level II Vascular Access Procedures	\$ 5,002.35	\$ 2,165.25	\$ 1,840.46
623	Level III Vascular Access Procedures	\$ 6,100.74	\$ 2,848.51	\$ 2,421.23
624	Phlebotomy and Minor Vascular Access Device Procedures	\$ 210.55	\$ 137.60	\$ 116.96
626	Level 1 Type B Emergency Visits	\$ 134.99	\$ 88.26	\$ 75.02
627	Level 2 Type B Emergency Visits	\$ 160.34	\$ 104.84	\$ 89.11
628	Level 3 Type B Emergency Visits	\$ 238.45	\$ 155.91	\$ 132.52
629	Level 4 Type B Emergency Visits	\$ 424.50	\$ 277.56	\$ 235.93
630	Level 5 Type B Emergency Visits	\$ 812.32	\$ 531.08	\$ 451.42
631	Level 1 Examinations & Related Services	\$ 196.53	\$ 128.50	\$ 109.23
632	Level 2 Examinations & Related Services	\$ 250.98	\$ 164.08	\$ 139.47
633	Level 3 Examinations & Related Services	\$ 852.41	\$ 556.62	\$ 473.13
634	Hospital Clinic Visits	\$ 240.58	\$ 157.29	\$ 133.69
648	Level IV Breast and Skin Surgery	\$ 12,601.45	\$ 4,371.01	\$ 3,715.35
651	Complex Interstitial Radiation Source Application	\$ 2,594.54	\$ 1,556.64	\$ 1,323.15
652	Insertion of Intraperitoneal and Pleural Catheters	\$ 6,283.84	\$ 3,444.29	\$ 2,927.65
653	Vascular Reconstruction/Fistula Repair with Device	\$ 8,015.44	\$ 4,085.25	\$ 3,472.46
654	Level II Insertion/Replacement of Permanent Pacemaker	\$ 21,807.58	\$ 4,299.03	\$ 3,654.17
655	Insertion/Replacement/Conversion of a Permanent Dual Chamber Pacemaker or Pacing Electrode	\$ 27,529.84	\$ 4,948.28	\$ 4,206.04
656	Transcatheter Placement of Intracoronary Drug-Eluting Stents	\$ 20,056.45	\$ 5,305.86	\$ 4,509.98

Exhibit #4**Effective for Dates of Service on and After 1/1/2015**

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
659	Hyperbaric Oxygen	\$ 288.42	\$ 188.58	\$ 160.29
660	Level II Otorhinolaryngologic Function Tests	\$ 359.76	\$ 235.23	\$ 199.94
661	Level V Pathology	\$ 723.40	\$ 472.66	\$ 401.76
662	CT Angiography	\$ 759.10	\$ 496.03	\$ 421.63
664	Level I Proton Beam Radiation Therapy	\$ 2,268.16	\$ 1,483.03	\$ 1,260.57
665	Bone Density:AppendicularSkeleton	\$ 133.15	\$ 87.06	\$ 74.00
667	Level II Proton Beam Radiation Therapy	\$ 3,133.70	\$ 2,048.96	\$ 1,741.62
668	Level I Angiography and Venography	\$ 2,150.07	\$ 1,214.48	\$ 1,032.31
672	Level III Posterior Segment Eye Procedures	\$ 7,956.86	\$ 5,106.83	\$ 4,340.81
673	Level V Anterior Segment Eye Procedures	\$ 7,897.16	\$ 3,590.72	\$ 3,052.11
674	Prostate Cryoablation	\$ 21,329.65	\$ 6,008.07	\$ 5,106.86
676	Thrombolysis and Other Device Revisions	\$ 477.78	\$ 307.24	\$ 261.15
678	External Counterpulsation	\$ 282.20	\$ 184.52	\$ 156.84
679	Level II Resuscitation and Cardioversion	\$ 1,147.72	\$ 749.68	\$ 637.23
680	Insertion of Patient Activated Event Recorders	\$ 16,178.58	\$ 2,753.53	\$ 2,340.50
683	Level II Photochemotherapy	\$ 558.82	\$ 365.38	\$ 310.57
685	Level III Needle Biopsy/Aspiration Except Bone Marrow	\$ 1,970.18	\$ 1,282.91	\$ 1,090.47
687	Revision/Removal of Neurostimulator Electrodes	\$ 4,448.00	\$ 2,846.36	\$ 2,419.41
688	Revision/Removal of Neurostimulator Pulse Generator Receiver	\$ 5,777.64	\$ 3,623.56	\$ 3,080.03
690	Level I Electronic Analysis of Devices	\$ 93.99	\$ 61.46	\$ 52.24

Exhibit #4**Effective for Dates of Service on and After 1/1/2015**

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
				\$ 55.01
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 592.88
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 398.37
691	Level III Electronic Analysis of Devices	\$ 717.29	\$ 468.67	\$ 167.08
692	Level II Electronic Analysis of Devices	\$ 301.13	\$ 196.56	\$ 630.32
694	Mohs Surgery	\$ 1,134.15	\$ 741.56	\$ 362.00
697	Level I Echocardiogram Without Contrast	\$ 651.74	\$ 425.88	\$ 111.97
698	Level II Eye Tests & Treatments	\$ 201.47	\$ 131.73	\$ 1,709.85
699	Level IV Eye Tests & Treatments	\$ 3,111.08	\$ 2,011.59	\$ -
701	Sr89 strontium	\$ 2,868.61	\$ -	\$ -
726	Dexrazoxane HCl injection	\$ 352.87	\$ -	\$ -
731	Sargramostim injection	\$ 77.30	\$ -	\$ -
736	Amphotericin b liposome inj	\$ 42.09	\$ -	\$ -
738	Rasburicase	\$ 557.41	\$ -	\$ -
747	Chlorothiazide sodium inj	\$ 394.52	\$ -	\$ -
751	Mechlorethamine hcl inj	\$ 402.22	\$ -	\$ -
752	Dactinomycin injection	\$ 1,678.95	\$ -	\$ -
759	Naltrexone, depot form	\$ 7.15	\$ -	\$ -
800	Leuprolide acetate	\$ 1,946.15	\$ -	\$ -
802	Etoposide oral	\$ 152.85	\$ -	\$ -
807	Aldesleukin injection	\$ 4,345.09	\$ -	\$ -
809	Bcg live intravesical vac	\$ 310.49	\$ -	\$ -

Exhibit #4**Effective for Dates of Service on and After 1/1/2015**

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
810	Goserelin acetate implant	\$ 505.49	\$ -	\$ -
812	Carmustine injection	\$ 3,703.08	\$ -	\$ -
814	Asparaginase, NOS	\$ 167.88	\$ -	\$ -
820	Daunorubicin injection	\$ 67.91	\$ -	\$ -
821	Daunorubicin citrate inj	\$ 633.88	\$ -	\$ -
823	Docetaxel injection	\$ 10.35	\$ -	\$ -
825	Nelarabine injection	\$ 340.00	\$ -	\$ -
827	Floxuridine injection	\$ 180.41	\$ -	\$ -
831	Ifosfamide injection	\$ 93.11	\$ -	\$ -
832	Idarubicin hcl injection	\$ 92.77	\$ -	\$ -
835	Cosyntropin injection NOS	\$ 264.37	\$ -	\$ -
836	Interferon alfa-2b inj	\$ 53.69	\$ -	\$ -
838	Interferon gamma 1-b inj	\$ 7,005.88	\$ -	\$ -
840	Inj melphalan hydrochl	\$ 3,246.72	\$ -	\$ -
842	Fludarabine phosphate inj	\$ 184.81	\$ -	\$ -
843	Pegaspargase injection	\$ 15,619.19	\$ -	\$ -
844	Pentostatin injection	\$ 3,700.35	\$ -	\$ -
849	Rituximab injection	\$ 1,802.74	\$ -	\$ -
850	Streptozocin injection	\$ 723.94	\$ -	\$ -
851	Thiotepa injection	\$ 1,639.82	\$ -	\$ -

Exhibit #4

Effective for Dates of Service on and After 1/1/2015

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
856	Porfimer sodium injection	\$ 50,247.03	\$ -	\$ -
858	Inj cladribine	\$ 57.88	\$ -	\$ -
861	Leuprolide acetate injeciton	\$ 22.78	\$ -	\$ -
864	Mitoxantrone hydrochl	\$ 87.65	\$ -	\$ -
868	Oral aprepitant	\$ 17.63	\$ -	\$ -
873	Hyalgan/supartz inj per dose	\$ 237.43	\$ -	\$ -
874	Synvisc or synvisc-one	\$ 33.44	\$ -	\$ -
875	Euflexxa inj per dose	\$ 395.25	\$ -	\$ -
877	Orthovisc inj per dose	\$ 459.29	\$ -	\$ -
887	Azathioprine parenteral	\$ 564.98	\$ -	\$ -
890	Lymphocyte immune globulin	\$ 1,917.34	\$ -	\$ -
901	Alpha 1 proteinase inhibitor	\$ 10.48	\$ -	\$ -
902	Injection,onabotulinumtoxinA	\$ 14.14	\$ -	\$ -
903	Cytomegalovirus imm IV /vial	\$ 2,636.06	\$ -	\$ -
910	Interferon beta-1b / .25 MG	\$ 755.38	\$ -	\$ -
913	Ganciclovir long act implant	\$ 44,096.00	\$ -	\$ -
925	Factor viii	\$ 2.44	\$ -	\$ -
927	Factor viii recombinant	\$ 2.96	\$ -	\$ -
928	Factor ix complex	\$ 2.86	\$ -	\$ -

Exhibit #4**Effective for Dates of Service on and After 1/1/2015**

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
929	Anti-inhibitor	\$ 4.26	\$ -	\$ -
931	Factor IX non-recombinant	\$ 2.52	\$ -	\$ -
932	Factor IX recombinant	\$ 3.46	\$ -	\$ -
933	Gamma globulin > 10 CC inj	\$ 623.51	\$ -	\$ -
934	Capecitabine, oral	\$ 86.71	\$ -	\$ -
943	Octagam injection	\$ 79.61	\$ -	\$ -
944	Gammagard liquid injection	\$ 102.28	\$ -	\$ -
945	Rhophylac injection	\$ 12.27	\$ -	\$ -
946	Hepagam b im injection	\$ 133.35	\$ -	\$ -
947	Flebogamma injection	\$ 93.76	\$ -	\$ -
948	Gamunex-C/Gammaked	\$ 103.40	\$ -	\$ -
949	Frozen plasma, pooled, sd	\$ 186.16	\$ -	\$ -
950	Whole blood for transfusion	\$ 508.69	\$ -	\$ -
952	Cryoprecipitate each unit	\$ 170.38	\$ -	\$ -
954	RBC leukocytes reduced	\$ 495.85	\$ -	\$ -
955	Plasma, frz between 8-24hour	\$ 180.99	\$ -	\$ -
956	Plasma protein fract,5%,50ml	\$ 43.60	\$ -	\$ -
957	Platelets, each unit	\$ 305.89	\$ -	\$ -
958	Plaelet rich plasma unit	\$ 431.44	\$ -	\$ -
959	Red blood cells unit	\$ 393.87	\$ -	\$ -

Exhibit #4

Effective for Dates of Service on and After 1/1/2015

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
960	Washed red blood cells unit	\$ 752.47	\$ -	\$ -
961	Albumin (human),5%, 50ml	\$ 54.44	\$ -	\$ -
963	Albumin (human), 5%, 250 ml	\$ 177.37	\$ -	\$ -
964	Albumin (human), 25%, 20 ml	\$ 88.74	\$ -	\$ -
965	Albumin (human), 25%, 50ml	\$ 180.88	\$ -	\$ -
966	Plasmaprotein fract,5%,250ml	\$ 96.28	\$ -	\$ -
967	Blood split unit	\$ 264.32	\$ -	\$ -
968	Platelets leukoreduced irradi	\$ 418.16	\$ -	\$ -
969	RBC leukoreduced irradiated	\$ 723.87	\$ -	\$ -
1009	Cryoprecipitatereducedplasma	\$ 223.60	\$ -	\$ -
1010	Blood, l/r, cmv-neg	\$ 441.45	\$ -	\$ -
1011	Platelets, hla-m, l/r, unit	\$ 2,032.63	\$ -	\$ -
1013	Platelets leukocytes reduced	\$ 307.50	\$ -	\$ -
1015	Injection glatiramer acetate	\$ 393.67	\$ -	\$ -
1016	Blood, l/r, froz/degly/wash	\$ 589.71	\$ -	\$ -
1017	Plt, aph/pher, l/r, cmv-neg	\$ 1,124.66	\$ -	\$ -
1018	Blood, l/r, irradiated	\$ 429.88	\$ -	\$ -
1019	Plate pheres leukoredu irradi	\$ 1,741.14	\$ -	\$ -
1020	Plt, pher, l/r cmv-neg, irr	\$ 1,821.09	\$ -	\$ -

Exhibit #4**Effective for Dates of Service on and After 1/1/2015**

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
1021	RBC, frz/deg/wsh, l/r, irrad	\$ 1,129.91	\$ -	\$ -
1022	RBC, l/r, cmv-neg, irrad	\$ 754.88	\$ -	\$ -
1023	Pralidoxime chloride inj	\$ 232.86	\$ -	\$ -
1052	Injection, voriconazole	\$ 10.66	\$ -	\$ -
1064	I131 iodide cap, rx	\$ 48.15	\$ -	\$ -
1083	Adalimumab injection	\$ 1,480.10	\$ -	\$ -
1084	Denileukin diftiox inj	\$ 4,280.07	\$ -	\$ -
1086	Temozolomide	\$ 25.19	\$ -	\$ -
1138	Hepagam b intravenous, inj	\$ 133.35	\$ -	\$ -
1139	Protein c concentrate	\$ 37.08	\$ -	\$ -
1142	Supprelin LA implant	\$ 43,243.28	\$ -	\$ -
1150	I131 iodide sol, rx	\$ 28.08	\$ -	\$ -
1166	Cytarabine liposome inj	\$ 1,415.80	\$ -	\$ -
1168	Inj, temsirolimus	\$ 148.23	\$ -	\$ -
1178	Busulfan injection	\$ 66.48	\$ -	\$ -
1203	Verteporfin injection	\$ 27.64	\$ -	\$ -
1207	Octreotide injection, depot	\$ 356.93	\$ -	\$ -
1213	Antihemophilic viii/vwf comp	\$ 2.44	\$ -	\$ -
1214	Inj IVIG privigen 500 mg	\$ 95.50	\$ -	\$ -
1232	Mitomycin injection	\$ 61.26	\$ -	\$ -

Exhibit #4

Effective for Dates of Service on and After 1/1/2015

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
1235	Valrubicin injection	\$ 2,756.18	\$ -	\$ -
1236	Levoleucovorin injection	\$ 4.55	\$ -	\$ -
1237	Inj iron dextran	\$ 31.30	\$ -	\$ -
1238	Topotecan oral	\$ 232.21	\$ -	\$ -
1253	Triamcinolone A inj PRS-free	\$ 9.62	\$ -	\$ -
1263	Antithrombin iii injection	\$ 8.14	\$ -	\$ -
1268	Xyntha inj	\$ 2.96	\$ -	\$ -
1272	Acetylcysteine injection	\$ 6.86	\$ -	\$ -
1274	Edetate calcium disodium inj	\$ 523.64	\$ -	\$ -
1280	Corticotropin injection	\$ 8,230.35	\$ -	\$ -
1281	Bevacizumab injection	\$ 4.26	\$ -	\$ -
1289	AbobotulinumtoxinA	\$ 19.55	\$ -	\$ -
1291	Riloncept injection	\$ 62.63	\$ -	\$ -
1295	Sm 153 leixidronam	\$ 20,590.08	\$ -	\$ -
1296	Degarelix injection	\$ 9.15	\$ -	\$ -
1297	Ferumoxitol, non-esrd	\$ 1.79	\$ -	\$ -
1311	Canakinumab injection	\$ 236.63	\$ -	\$ -
1312	Hizentra injection	\$ 19.89	\$ -	\$ -
1327	Imiglucerase injection	\$ 109.20	\$ -	\$ -

Exhibit #4**Effective for Dates of Service on and After 1/1/2015**

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
1331	Olanzapine long-acting inj	\$ 7.15	\$ -	\$ -
1332	Antithrombin recombinant	\$ 268.71	\$ -	\$ -
1338	Methyl aminolevulinate, top	\$ 217.59	\$ -	\$ -
1340	Collagenase, clost hist inj	\$ 99.35	\$ -	\$ -
1341	Amobarbital 125 MG inj	\$ 467.66	\$ -	\$ -
1343	Ganciclovir sodium injection	\$ 187.46	\$ -	\$ -
1350	Topotecan injection	\$ 6.16	\$ -	\$ -
1352	Wilate injection	\$ 2.34	\$ -	\$ -
1353	Belimumab injection	\$ 100.88	\$ -	\$ -
1354	Hydroxyprogesterone caproate	\$ 7.02	\$ -	\$ -
1356	Zoledronic Acid 1mg	\$ 274.09	\$ -	\$ -
1361	Enfuvirtide injection	\$ 1.43	\$ -	\$ -
1408	Cyclophosphamide 100 MG inj	\$ 136.40	\$ -	\$ -
1413	Lumizyme injection	\$ 399.36	\$ -	\$ -
1415	Glassia injection	\$ 10.43	\$ -	\$ -
1416	Factor XIII anti-hem factor	\$ 17.52	\$ -	\$ -
1417	Gel-one	\$ 1,445.57	\$ -	\$ -
1419	Dermacell	\$ 198.07	\$ -	\$ -
1420	Aflibercept injection	\$ 2,549.30	\$ -	\$ -
1421	Imported lipodox inj	\$ 1,295.48	\$ -	\$ -

Exhibit #4**Effective for Dates of Service on and After 1/1/2015**

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
1422	Anthrax vaccine sc or im	\$ 244.53	\$ -	\$ -
1424	Nabilone oral	\$ 70.38	\$ -	\$ -
1426	Eribulin mesylate injection	\$ 255.42	\$ -	\$ -
1431	Centruroides immune f(ab)	\$ 9,501.88	\$ -	\$ -
1433	Calcitonin salmon injection	\$ 179.61	\$ -	\$ -
1439	Aprotonin, 10,000 kiu	\$ 8.89	\$ -	\$ -
1440	Inj desmopressin acetate	\$ 13.78	\$ -	\$ -
1442	Non-HEU TC-99M add-on/dose	\$ 26.00	\$ -	\$ -
1443	Icatibant injection	\$ 662.77	\$ -	\$ -
1445	Methylnaltrexone injection	\$ 1.22	\$ -	\$ -
1448	Ophthalmic mitomycin	\$ 986.62	\$ -	\$ -
1449	Talymed	\$ 35.83	\$ -	\$ -
1454	Mumps vaccine sc	\$ 422.08	\$ -	\$ -
1455	Foscarnet sodium injection	\$ 34.63	\$ -	\$ -
1456	Pentobarbital sodium inj	\$ 83.82	\$ -	\$ -
1457	Totazoline hcl injection	\$ 104.03	\$ -	\$ -
1458	Phentolaine mesylate inj	\$ 301.81	\$ -	\$ -
1459	Urea injection	\$ 318.24	\$ -	\$ -
1460	Interferon alfa-2a inj	\$ 139.52	\$ -	\$ -

Exhibit #4**Effective for Dates of Service on and After 1/1/2015**

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
1463	Tc99 Tilmanocept diag 0.5mci	\$ 624.00	\$ -	\$ -
1464	Factor VIII (porcine)	\$ 0.52	\$ -	\$ -
1465	Tacrolimus ex rel oral 0.1mg	\$ 1.09	\$ -	\$ -
1466	Inj, vincristine sul lip 1mg	\$ 5,374.20	\$ -	\$ -
1467	Factor IX recombinant	\$ 3.30	\$ -	\$ -
1468	Inj Aripiprazole Ext Rel 1mg	\$ 9.80	\$ -	\$ -
1469	Inj, Filgrastim G-CSF 1mcg	\$ 2.57	\$ -	\$ -
1471	Injection, Pertuzumab, 1 mg	\$ 26.55	\$ -	\$ -
1472	Inj beta interferon im 1 mcg	\$ 85.36	\$ -	\$ -
1473	Interferon alfa-n3 inj	\$ 82.68	\$ -	\$ -
1474	Certolizumab pegol inj 1mg	\$ 13.34	\$ -	\$ -
1475	Golimumab for iv use 1mg	\$ 63.39	\$ -	\$ -
1605	Abciximab injection	\$ 1,777.07	\$ -	\$ -
1607	Eptifibatide injection	\$ 72.12	\$ -	\$ -
1608	Etanercept injection	\$ 696.62	\$ -	\$ -
1609	Rho(D) immune globulin h, sd	\$ 49.11	\$ -	\$ -
1612	Daclizumab, parenteral	\$ 1,368.48	\$ -	\$ -
1613	Trastuzumab injection	\$ 209.53	\$ -	\$ -
1630	Hep b ig, im	\$ 292.86	\$ -	\$ -
1631	Baclofen intrathecal trial	\$ 197.18	\$ -	\$ -

Exhibit #4

Effective for Dates of Service on and After 1/1/2015

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
1633	Alefacept	\$ 108.26	\$ -	\$ -
1643	Y90 ibritumomab, rx	\$ 109,479.14	\$ -	\$ -
1645	#N/A	\$ 78,490.26	\$ -	\$ -
1670	Tetanus immune globulin inj	\$ 713.49	\$ -	\$ -
1675	P32 Na phosphate	\$ 579.98	\$ -	\$ -
1676	P32 chromic phosphate	\$ 821.78	\$ -	\$ -
1683	Basiliximab	\$ 6,418.39	\$ -	\$ -
1684	Corticotropin ovine triflural	\$ 20.20	\$ -	\$ -
1685	Darbepoetin alfa, non-esrd	\$ 9.57	\$ -	\$ -
1686	Epoetin alfa, non-esrd	\$ 29.59	\$ -	\$ -
1687	Digoxin immune fab (ovine)	\$ 3,257.67	\$ -	\$ -
1688	Ethanolamine oleate	\$ 779.84	\$ -	\$ -
1689	Fomepizole	\$ 18.10	\$ -	\$ -
1690	Hemin	\$ 42.87	\$ -	\$ -
1693	Lepirudin	\$ 667.50	\$ -	\$ -
1694	Ziconotide injection	\$ 17.16	\$ -	\$ -
1695	Nesiritide injection	\$ 157.59	\$ -	\$ -
1696	Palifermin injection	\$ 37.47	\$ -	\$ -
1697	Pegaptanib sodium injection	\$ 2,675.32	\$ -	\$ -

Exhibit #4**Effective for Dates of Service on and After 1/1/2015**

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
1700	Inj secretin synthetic human	\$ 71.47	\$ -	\$ -
1701	Treprostinil injection	\$ 159.22	\$ -	\$ -
1704	Humate-P, inj	\$ 2.34	\$ -	\$ -
1705	Factor viia	\$ 4.37	\$ -	\$ -
1709	Azacitidine injection	\$ 14.14	\$ -	\$ -
1710	Clofarabine injection	\$ 337.01	\$ -	\$ -
1711	Vantas implant	\$ 7,648.78	\$ -	\$ -
1712	Paclitaxel protein bound	\$ 24.75	\$ -	\$ -
1716	Brachytx, non-str, Gold-198	\$ 120.41	\$ -	\$ -
1717	Brachytx, non-str, HDR Ir-192	\$ 723.45	\$ -	\$ -
1719	Brachytx, NS, Non-HDRIr-192	\$ 87.20	\$ -	\$ -
1738	Oxaliplatin	\$ 0.70	\$ -	\$ -
1739	Pegademase bovine, 25 iu	\$ 717.29	\$ -	\$ -
1741	Urofollitropin, 75 iu	\$ 179.24	\$ -	\$ -
1841	Retinal prosth int/ext comp	\$ -		
2616	Brachytx, non-str,Yttrium-90	\$ 43,755.74	\$ -	\$ -
2632	Iodine I-125 sodium iodide	\$ 49.32	\$ -	\$ -
2634	Brachytx, non-str, HA, I-125	\$ 192.74	\$ -	\$ -
2635	Brachytx, non-str, HA, P-103	\$ 69.32	\$ -	\$ -
2636	Brachy linear, non-str,P-103	\$ 104.88	\$ -	\$ -

Exhibit #4

Effective for Dates of Service on and After 1/1/2015

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
2638	Brachytx, stranded, I-125	\$ 125.89	\$ -	\$ -
2639	Brachytx, non-stranded,I-125	\$ 105.33	\$ -	\$ -
2640	Brachytx, stranded, P-103	\$ 186.78	\$ -	\$ -
2641	Brachytx, non-stranded,P-103	\$ 178.75	\$ -	\$ -
2642	Brachytx, stranded, C-131	\$ 361.43	\$ -	\$ -
2643	Brachytx, non-stranded,C-131	\$ 163.85	\$ -	\$ -
2698	Brachytx, stranded, NOS	\$ 125.89	\$ -	\$ -
2699	Brachytx, non-stranded, NOS	\$ 69.32	\$ -	\$ -
2731	Immune globulin, powder	\$ 95.81	\$ -	\$ -
2770	Quinupristin/dalfopristin	\$ 516.36	\$ -	\$ -
3041	Bivalirudin	\$ 8.35	\$ -	\$ -
3043	Gamma globulin 1 CC inj	\$ 62.35	\$ -	\$ -
7000	Amifostine	\$ 781.77	\$ -	\$ -
7011	Oprelvekin injection	\$ 719.34	\$ -	\$ -
7035	Teniposide	\$ 902.07	\$ -	\$ -
7038	Monoclonal antibodies	\$ 17.21	\$ -	\$ -
7041	Tirofiban HCl	\$ 23.35	\$ -	\$ -
7042	Capecitabine, oral	\$ 26.05	\$ -	\$ -
7043	Infliximab injection	\$ 182.29	\$ -	\$ -

Exhibit #4**Effective for Dates of Service on and After 1/1/2015**

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
7046	Doxorubicin inj 10mg	\$ 1,335.05	\$ -	\$ -
7048	Alteplase recombinant	\$ 155.01	\$ -	\$ -
7308	Aminolevulinic acid hcl top	\$ 647.66	\$ -	\$ -
8000	Cardiac Electrophysiologic Evaluation and Ablation Composite	\$ 34,099.16	\$ 14,541.19	\$ 12,360.01
9001	Linezolid injection	\$ 105.59	\$ -	\$ -
9002	Tenecteplase injection	\$ 205.45	\$ -	\$ -
9003	Palivizumab	\$ 3,401.84	\$ -	\$ -
9004	Gemtuzumab ozogamicin inj	\$ 7,130.73	\$ -	\$ -
9005	Reteplase injection	\$ 5,984.97	\$ -	\$ -
9006	Tacrolimus injection	\$ 354.02	\$ -	\$ -
9012	Arsenic trioxide injection	\$ 128.02	\$ -	\$ -
9018	Inj, rimabotulinumtoxinB	\$ 29.09	\$ -	\$ -
9019	Caspofungin acetate	\$ 33.20	\$ -	\$ -
9024	Amphotericin b lipid complex	\$ 27.22	\$ -	\$ -
9032	Baclofen 10 MG injection	\$ 432.93	\$ -	\$ -
9033	Cidofovir injection	\$ 1,698.29	\$ -	\$ -
9038	Inj estrogen conjugate	\$ 424.22	\$ -	\$ -
9042	Glucagon hydrochloride	\$ 345.83	\$ -	\$ -
9044	Ibutilide fumarate injection	\$ 227.50	\$ -	\$ -
9104	Anti-thymocyte globulin rabbit	\$ 1,484.78	\$ -	\$ -

Exhibit #4

Effective for Dates of Service on and After 1/1/2015

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
9108	Thyrotropin injection	\$ 3,146.44	\$ -	\$ -
9110	Alemtuzumab injection	\$ 1,513.98	\$ -	\$ -
9119	Injection, pegfilgrastim 6mg	\$ 8,388.48	\$ -	\$ -
9120	Injection, Fulvestrant	\$ 233.09	\$ -	\$ -
9121	Injection, argatroban	\$ 46.67	\$ -	\$ -
9122	Triptorelin pamoate	\$ 482.92	\$ -	\$ -
9124	Daptomycin injection	\$ 1.66	\$ -	\$ -
9125	Risperidone, long acting	\$ 15.44	\$ -	\$ -
9126	Natalizumab injection	\$ 36.37	\$ -	\$ -
9130	Inj, Imm Glob Bivigam, 500mg	\$ 100.46	\$ -	\$ -
9131	Inj, Ado-trastuzumab Emt 1mg	\$ 75.84	\$ -	\$ -
9132	Kcentra, per i.u.	\$ 4.00	\$ -	\$ -
9133	Rabies ig, im/sc	\$ 568.91	\$ -	\$ -
9134	Rabies ig, heat treated	\$ 555.49	\$ -	\$ -
9135	Varicella-zoster ig, im	\$ 1,755.57	\$ -	\$ -
9137	Bcg vaccine, percut	\$ 310.49	\$ -	\$ -
9139	Rabies vaccine, im	\$ 613.65	\$ -	\$ -
9140	Rabies vaccine, id	\$ 411.89	\$ -	\$ -
9143	Meningococcal vaccine, sc	\$ 276.87	\$ -	\$ -

Exhibit #4**Effective for Dates of Service on and After 1/1/2015**

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
9144	Encephalitis vaccine, sc	\$ 270.74	\$ -	\$ -
9145	Meningococcal vaccine, im	\$ 253.68	\$ -	\$ -
9207	Bortezomib injection	\$ 118.48	\$ -	\$ -
9208	Agalsidase beta injection	\$ 380.09	\$ -	\$ -
9209	Laronidase injection	\$ 73.61	\$ -	\$ -
9210	Palonosetron hcl	\$ 50.31	\$ -	\$ -
9213	Pemetrexed injection	\$ 156.18	\$ -	\$ -
9214	Bevacizumab injection	\$ 170.72	\$ -	\$ -
9215	Cetuximab injection	\$ 136.60	\$ -	\$ -
9217	Leuprolide acetate suspnsion	\$ 543.63	\$ -	\$ -
9224	Galsulfase injection	\$ 936.75	\$ -	\$ -
9225	Fluocinolone acetonide implt	\$ 50,297.00	\$ -	\$ -
9227	Micafungin sodium injection	\$ 2.52	\$ -	\$ -
9228	Tigecycline injection	\$ 4.60	\$ -	\$ -
9229	Ibandronate sodium injection	\$ 410.62	\$ -	\$ -
9230	Abatacept injection	\$ 60.92	\$ -	\$ -
9231	Decitabine injection	\$ 83.82	\$ -	\$ -
9232	Idursulfase injection	\$ 1,219.63	\$ -	\$ -
9233	Ranibizumab injection	\$ 1,032.72	\$ -	\$ -
9234	Alglucosidase alfa injection	\$ 537.24	\$ -	\$ -

Exhibit #4

Effective for Dates of Service on and After 1/1/2015

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
9235	Panitumumab injection	\$ 237.20	\$ -	\$ -
9236	Eculizumab injection	\$ 532.01	\$ -	\$ -
9237	Inj, lanreotide acetate	\$ 98.51	\$ -	\$ -
9240	Injection, ixabepilone	\$ 178.49	\$ -	\$ -
9242	Injection, fosaprepitant	\$ 4.47	\$ -	\$ -
9243	Bendamustine injection	\$ 55.51	\$ -	\$ -
9245	Romiplostim injection	\$ 134.19	\$ -	\$ -
9250	Artiss fibrin sealant	\$ 111.46	\$ -	\$ -
9251	C1 esterase inhibitor inj	\$ 127.97	\$ -	\$ -
9252	Plerixafor injection	\$ 776.83	\$ -	\$ -
9253	Temozolomide injection	\$ 13.36	\$ -	\$ -
9255	Paliperidone palmitate inj	\$ 19.89	\$ -	\$ -
9256	Dexamethasone intra implant	\$ 509.26	\$ -	\$ -
9258	Telavancin injection	\$ 10.69	\$ -	\$ -
9259	Pralatrexate injection	\$ 498.29	\$ -	\$ -
9260	Ofatumumab injection	\$ 122.67	\$ -	\$ -
9261	Ustekinumab injection	\$ 384.46	\$ -	\$ -
9263	Ecallantide injection	\$ 924.14	\$ -	\$ -
9264	Tocilizumab injection	\$ 9.62	\$ -	\$ -

Exhibit #4**Effective for Dates of Service on and After 1/1/2015**

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
9265	Romidepsin injection	\$ 677.69	\$ -	\$ -
9268	Capsaicin 8% patch	\$ 66.43	\$ -	\$ -
9269	C-1 esterase, berinert	\$ 85.02	\$ -	\$ -
9270	Gammaplex IVIG	\$ 97.16	\$ -	\$ -
9271	Velaglucerase alfa	\$ 923.34	\$ -	\$ -
9272	Inj, denosumab	\$ 37.15	\$ -	\$ -
9273	Sipuleucel-T auto CD54+	\$ 87,050.42	\$ -	\$ -
9274	Crotalidae Poly Immune Fab	\$ 6,148.27	\$ -	\$ -
9276	Cabazitaxel injection	\$ 361.50	\$ -	\$ -
9278	Incobotulinumtoxin A	\$ 11.65	\$ -	\$ -
9281	Injection, pegloticase	\$ 1,482.00	\$ -	\$ -
9284	Ipilimumab injection	\$ 335.32	\$ -	\$ -
9286	Belatacept injection	\$ 9.88	\$ -	\$ -
9287	Brentuximab vedotin inj	\$ 277.84	\$ -	\$ -
9289	Erwinaze injection	\$ 895.39	\$ -	\$ -
9290	Inj, bupivacaine liposome	\$ 2.86	\$ -	\$ -
9293	Injection, glucarpidase	\$ 638.09	\$ -	\$ -
9294	Inj, Taliglucerase Alfa 10 u	\$ 80.34	\$ -	\$ -
9295	Injection, Carfilzomib, 1 mg	\$ 76.15	\$ -	\$ -
9296	Inj, ziv-aflibercept, 1mg	\$ 24.36	\$ -	\$ -

Exhibit #4**Effective for Dates of Service on and After 1/1/2015**

Col#1 APC	Column #2 APC Code Description	Column #3 Outpatient Emergency Room Department Facility Payment Rate *260%	Column #4 Outpatient Hospital Facility Payment Rate *170%	Column #5 Outpatient ASC Facility: 85% of OP Hospital Facility Payment Rate (Col #4)
1	Level I Photochemotherapy	\$ 98.98	\$ 64.72	\$ 55.01
4	Level I Needle Biopsy/ Aspiration Except Bone Marrow	\$ 1,069.22	\$ 697.50	\$ 592.88
9297	Inj, Omacetaxine Mep, 0.01mg	\$ 6.45	\$ -	\$ -
9298	Inj, Ocriplasmin, 0.125 mg	\$ 2,721.55	\$ -	\$ -
9300	Omalizumab injection	\$ 66.61	\$ -	\$ -
9366	Epifix	\$ 554.32	\$ -	\$ -
9368	Grafix core	\$ 333.22	\$ -	\$ -
9369	Grafix prime	\$ 299.49	\$ -	\$ -
9441	Inj, ferric carboxymaltose	\$ 2.76	\$ -	\$ -
9497	Loxapine, inhalation powder	\$ 399.62	\$ -	\$ -
9500	Platelets, irradiated	\$ 437.89	\$ -	\$ -
9501	Platelet pheres leukoreduced	\$ 1,299.17	\$ -	\$ -
9502	Platelet pheresis irradiated	\$ 1,518.84	\$ -	\$ -
9503	Fr frz plasma donor retested	\$ 158.68	\$ -	\$ -
9504	RBC deglycerolized	\$ 987.61	\$ -	\$ -
9505	RBC irradiated	\$ 570.28	\$ -	\$ -
9506	Granulocytes, pheresis unit	\$ 4,906.64	\$ -	\$ -
9507	Platelets, pheresis	\$ 1,045.77	\$ -	\$ -
9508	Plasma 1 donor frz w/in 8 hr	\$ 205.82	\$ -	\$ -

Exhibit #5
Effective January 1, 2015
Rural Health Facilities
Akron Clinic
82 Main
Akron, CO 80720 – Washington County
Telephone: (970) 345-6336, Fax: (970) 345-6576
Arkansas Valley Family Practice, LLC
2317 San Juan Avenue
La Junta, CO 81050 – Otero County
Telephone: (719) 383-2325, Fax: (719) 383-2327
Basin Clinic
421 West Adams Road
Naturita, CO 81422 – Montrose County
Telephone: (970) 865-2665, Fax: (970) 825-2674
Brush Family Clinic
2400 W Edison
Brush, CO 80723 - Morgan County
Telephone: (970) 842-2833, Fax: (970) 842-6241
Buena Vista Health Center
28374 County Road 317
Buena Vista, CO 81211 - Chaffee County
Telephone: (719) 395-9048, Fax: (719) 395-9064
Button Family Practice
715 South 9th Street
Cannon City, CO 81212 – Fremont County
Telephone: (719) 269-8820, Fax: (719) 204-0230
Centennial Family Health Center
319 Main Street
Ordway, CO 81063 – Crowley County
Telephone: (719) 267-3503, Fax: (719) 267-4153
Cortez Primary Care Clinic

Exhibit #5
Effective January 1, 2015
Rural Health Facilities
118 North Chestnut
Cortez, CO 81321 – Montezuma County
Telephone: (970) 564-9777, Fax: (970) 564-8833
Creed Family Practice Of Rio Grande Hospital
802 Rio Grande Avenue
Creed, CO 81130 – Mineral County
Telephone: (719) 658-0929, Fax: (719) 657-2851
Custer County Medical Clinic
704 Edwards
Westcliffe, CO 81252 - Custer County
Telephone: (719) 783-2380, Fax: (719) 783-2377
Dolores Medical Center
507 Central Avenue
Dolores, CO 81323 - Montezuma County
Telephone: (970) 882-7221, Fax: (970) 882-4243
Eads Medical Clinic
1211 Luther Street
Eads, CO 81036 - Kiowa County
Telephone: (719) 438-2251, Fax: (719) 438-2254
Eastern Plains Medical Clinic Of Calhan
560 Crystola Street
Calhan, CO 80808 - El Paso County
Telephone: (719) 347-0100, Fax: (719) 347-0551
Family Care Clinic
615 Fairhurst
Sterling, CO 80751 - Logan County
Telephone: (970) 521-3223, Fax: (970) 521-3266
Family Practice Of Holyoke
1001 East Johnson Street

Exhibit #5
Effective January 1, 2015
Rural Health Facilities
Holyoke, CO 80734 - Phillips County
Telephone: (970) 854-2500, Fax: (970) 854-3440
Florence Medical Center
501 W 5th St
Florence, CO 81226 - Fremont County
Telephone: (719) 784-4816, Fax: (719) 784-6014
Fort Morgan Pediatric Clinic, PC
1000 Lincoln Street, Ste. 202
Fort Morgan, CO 80701 – Morgan County
Telephone: (970) 542-9187, Fax: (970) 867-9187
Grand River Health Clinic West
201 Sipperelle Drive
Parachute, CO 81635 – Garfield County
Telephone: (970) 285-7046, Fax: (970) 285-6064
Grand River Primary Care
501 Airport Road
Rifle, CO 81650 - Garfield County
Telephone: (970) 625-1100, Fax: (970) 625-0725
Kit Carson Clinic
102 East 2nd Avenue
Kit Carson, CO 80825 - Cheyenne County
Telephone: (719) 962-3501, Fax: (719) 962-3403
Lake City Area Medical Center
700 N Henson Street
Lake City, CO 81235 - Hinsdale County
Telephone: (970) 944-2331, Fax: (970) 944-2320
Lamar Medical Clinic
403 Kendall Drive
Lamar, CO 81052 – Prowers County

Exhibit #5
Effective January 1, 2015
Rural Health Facilities
Telephone: (719) 336-6767; Fax: (719) 336-7217
Las Animas Family Practice
304 Carson Avenue
Las Animas, CO 81054 – Bent County
Telephone: (719) 456-6000; Fax: (719) 456-9701
Mancos Valley Health Center
111 Railroad Avenue
Mancos, CO 81328 – Montezuma County
Telephone: (970) 564-2104, Fax: (970) 564-2134
Meeker Family Health Center
345 Cleveland Street
Meeker, CO 81641 - Rio Blanco County
Telephone: (970) 878-4014, Fax: (970) 878-3285
Mountain Medical Center Of Buena Vista, P.C
36 Oak St
Buena Vista, CO 81211 - Chaffee County
Telephone: (719) 395-8632, Fax: (719) 395-4971
Mt San Rafael Hospital Health Clinic
400 Benedicta, Suite A
Trinidad, CO 81082 – Las Animas County
Telephone: (719) 846-2206, Fax: (719) 846-7823
North Park Medical Center - Walden
350 McKinley Street
Walden, CO 80480 - Jackson County
Telephone: (970) 723-4255, Fax: (970) 723-4268
Pagosa Mountain Clinic
95 South Pagosa Blvd.
Pagosa Springs, CO 81147 – Archuleta County
Telephone: (970) 731-3700, Fax: (970) 731-3707

Exhibit #5
Effective January 1, 2015
Rural Health Facilities
Parke Health Clinic
182 16th St
Burlington, CO 80807 - Kit Carson County
Telephone: (719) 346-9481, Fax: (719) 346-9485
Pediatric Associates, The
947 South 5th Street
Montrose, CO 81401 – Montrose County
Telephone: (970) 249-2421, Fax: (970) 249-8897
Pediatric Association Of Canon City
1335 Phay Avenue, Suite A
Canon City, CO 81212 - Fremont County
Telephone: (719) 269-1727, Fax: (719) 269-1730
Prairie View Rural Health Clinic
615 West 5th North
Cheyenne Wells, CO 80810 - Cheyenne County
Telephone: (719) 767-5669, Fax: (719) 767-8042
R and D Medical Management Corp.
109 Latigo Lane, Suite C
Canon City, CO 81212 – Fremont County
Telephone: (719) 276-3211; Fax: (719) 276-3011
Rio Grande Hospital Clinic
0310C County Road 14
Del Norte CO 81132 – Rio Grande County
Telephone: (719) 657-2418, Fax: (719) 658-3001
Rocky Ford Family Health Center
1014 Elm Avenue
Rocky Ford, CO 81067 - Otero County
Telephone: (719) 254-7421, Fax: (719) 254-6966
Sabatini Pediatrics, PC

Exhibit #5
Effective January 1, 2015
Rural Health Facilities
612 Yale Place
Canon City, CO 81212 – Fremont County
Telephone: (719) 275-3442, Fax: (719) 275-2306
San Luis Valley Health Antonio Clinic
115 Main Street
Antonio, CO 81120 – Conejos County
Telephone: (719) 376-2308, Fax: (719) 376-2395
San Luis Valley La Jara Medical Clinic
509 Main Street
La Jara, CO 81140 – Conejos County
Telephone: (719) 274-5000, Fax: (719) 274-4111
Southeast Colorado Physician's Clinic
900 Church Street
Springfield, CO 81073 - Baca County
Telephone: (719) 523-6628, Fax: (719) 523-4513
Southwest Memorial Primary Care
33 North Elm Street
Cortez, CO 81321 – Montezuma County
Telephone: (970) 565-8556, Fax: (970) 564-1134
Southwest Walk-In Care
2095 North Dolores Road, Suite C
Cortez, CO 81321 – Montezuma County
Telephone: (970) 564-1037, Fax: (970) 564-1041
Spanish Peaks Family Clinic
23400 US Highway 160
Walsenburg, CO 81089 – Huerfano County
Telephone: (719) 738-4591, Fax: (719) 738-4553
Stratton Medical Clinic
500 Nebraska Avenue

Exhibit #5
Effective January 1, 2015
Rural Health Facilities
Stratton, CO 80836 - Kit Carson County
Telephone: (719) 348-4650, Fax: (719) 348-4653
Surface Creek Family Practice
255 SW 8th Ave
Cedaredge, CO 81413 - Delta County
Telephone: (970) 856-3146, Fax: (970) 856-4385
Trinidad Family Medical Center
1502 E Main St
Trinidad, CO 81082 - Las Animas County
Telephone: (719) 846-3305, Fax: (719) 846-4922
Valley Medical Clinic
116 E Ninth Street
Julesburg, CO 80737 - Sedgwick County
Telephone: (970) 474-3376, Fax: (970) 474-2461
Walsh Medical Clinic
137 Kansas Street
Walsh, CO 81090 – Baca County
Telephone: (719) 324-5253, Fax: (719) 324-5621
Washington County Clinic
482 Adams Avenue
Akron, CO 80720 - Washington County
Telephone: (970) 345-2262, Fax: (970) 345-2265
Yuma Clinic
1000 W 8th Avenue
Yuma, CO 80759
Telephone: (970) 8848-4792, Fax: (970) 848-5405

Exhibit # 6
Dental Free Schedule
Effective January 1, 2015

CDT 2014	2015 Fees
D0120	\$67.15
D0140	\$112.29
D0145	\$104.19
D0150	\$118.08
D0160	\$237.31
D0170	\$78.72
D0180	\$128.50
D0190	\$62.00
D0191	\$44.00
D0210	\$187.18
D0220	\$37.68
D0230	\$34.03
D0240	\$58.35
D0250	\$71.72
D0260	\$65.64
D0270	\$38.89
D0272	\$63.21
D0273	\$76.58
D0274	\$88.74
D0277	\$133.71
D0290	\$218.79
D0310	\$556.70
D0320	\$948.10
D0321	BR
D0322	\$765.77
D0330	\$165.54
D0340	\$186.38
D0350	\$89.13
D0360	\$1,067.34
D0362	\$853.17
D0363	\$889.06

CDT 2014	2015 Fees
D0364	\$1,251.00
D0365	\$1,251.00
D0366	\$1,251.00
D0367	\$1,251.00
D0368	\$1,831.00
D0369	\$3,274.00
D0370	\$1,102.00
D0371	BR
D0380	\$998.00
D0381	\$998.00
D0382	\$998.00
D0383	\$998.00
D0384	\$1,459.00
D0385	\$2,382.00
D0386	\$596.00
D0391	BR
D0415	\$72.00
D0416	\$106.00
D0417	\$97.00
D0418	\$100.00
D0421	\$72.00
D0425	\$62.00
D0431	\$100.00
D0460	\$100.00
D0470	\$219.00
D0472	\$137.00
D0473	\$290.00
D0474	\$325.00
D0475	\$175.00
D0476	\$170.00
D0477	\$232.00

CDT 2014	2015 Fees
D0478	\$212.00
D0479	\$325.00
D0480	\$200.00
D0481	\$858.14
D0482	\$250.00
D0483	\$250.00
D0484	\$375.00
D0485	\$517.00
D0486	\$240.00
D0502	BR
D0999	BR
D1110	\$120.33
D1120	\$83.87
D1206	\$72.93
D1208	\$45.15
D1310	\$70.61
D1320	\$77.56
D1330	\$97.24
D1351	\$78.72
D1352	\$94.50
D1510	\$503.57
D1515	\$704.99
D1520	\$554.51
D1525	\$856.64
D1550	\$108.82
D1555	\$104.19
D2140	\$262.55
D2150	\$339.13
D2160	\$410.84
D2161	\$500.79
D2330	\$239.45

CDT 2014	2015 Fees
D2331	\$306.31
D2332	\$374.38
D2335	\$443.66
D2390	\$491.06
D2391	\$280.78
D2392	\$368.30
D2393	\$457.03
D2394	\$560.35
D2410	\$457.26
D2420	\$762.88
D2430	\$1,322.01
D2510	\$1,209.72
D2520	\$1,372.95
D2530	\$1,582.48
D2542	\$1,551.22
D2543	\$1,623.00
D2544	\$1,687.82
D2610	\$1,423.88
D2620	\$1,502.60
D2630	\$1,601.00
D2642	\$1,555.85
D2643	\$1,677.40
D2644	\$1,779.27
D2650	\$935.36
D2651	\$1,114.80
D2652	\$1,171.52
D2662	\$1,016.40
D2663	\$1,195.82
D2664	\$1,281.49
D2710	\$628.41
D2712	\$628.41
D2720	\$1,548.55
D2721	\$1,451.31
D2722	\$1,482.92
D2740	\$1,588.67
D2750	\$1,568.01
D2751	\$1,459.83
D2752	\$1,495.07

CDT 2014	2015 Fees
D2780	\$1,503.58
D2781	\$1,414.85
D2782	\$1,461.04
D2783	\$1,546.13
D2790	\$1,512.09
D2791	\$1,433.08
D2792	\$1,459.83
D2794	\$1,548.55
D2799	\$628.41
D2910	\$143.43
D2915	\$143.43
D2920	\$144.65
D2929	\$543.00
D2930	\$395.04
D2931	\$447.31
D2932	\$476.48
D2933	\$545.76
D2934	\$545.76
D2940	\$150.73
D2950	\$376.80
D2951	\$85.08
D2952	\$595.60
D2953	\$297.80
D2954	\$476.48
D2955	\$367.08
D2957	\$238.23
D2960	\$1,152.30
D2961	\$1,306.67
D2962	\$1,419.72
D2970	\$357.36
D2971	\$228.51
D2975	\$695.27
D2980	BR
D2981	BR
D2982	BR
D2983	BR
D2990	\$94.00
D2999	BR

CDT 2014	2015 Fees
D3110	\$131.25
D3120	\$105.35
D3220	\$268.80
D3221	\$295.20
D3222	\$273.20
D3230	\$307.52
D3240	\$379.24
D3310	\$1,207.00
D3320	\$1,479.27
D3330	\$1,834.20
D3331	\$472.84
D3332	\$899.47
D3333	\$414.49
D3346	\$1,609.34
D3347	\$1,893.76
D3348	\$2,343.50
D3351	\$968.76
D3352	\$433.93
D3353	\$1,335.84
D3354	BR
D3410	\$1,920.50
D3421	\$2,138.07
D3425	\$2,421.29
D3426	\$818.03
D3430	\$601.67
D3450	\$1,251.97
D3460	\$4,676.05
D3470	\$2,388.47
D3910	\$334.27
D3920	\$951.74
D3950	\$433.93
D3999	BR
D4210	\$1,603.00
D4211	\$712.00
D4212	\$570.00
D4230	\$2,244.00
D4231	\$1,096.39
D4240	\$2,030.00

CDT 2014	2015 Fees
D4241	\$1,175.00
D4245	\$1,496.00
D4249	\$2,226.00
D4260	\$3,383.00
D4261	\$1,816.00
D4263	\$1,211.00
D4264	\$1,033.00
D4265	BR
D4266	\$1,247.00
D4267	\$1,603.00
D4268	BR
D4270	\$2,404.00
D4273	\$2,938.00
D4274	\$1,667.00
D4275	\$2,208.00
D4276	\$3,294.00
D4277	\$2,493.00
D4278	\$819.00
D4320	\$625.99
D4321	\$633.28
D4341	\$361.00
D4342	\$217.57
D4355	\$246.75
D4381	BR
D4910	\$222.44
D4920	\$161.66
D4999	BR
D5110	\$2,343.00
D5120	\$2,343.00
D5130	\$2,555.00
D5140	\$2,555.00
D5211	\$1,977.00
D5212	\$2,298.00
D5213	\$2,771.36
D5214	\$2,589.00
D5225	\$1,977.00
D5226	\$2,298.00
D5281	\$1,509.00

CDT 2014	2015 Fees
D5410	\$128.00
D5411	\$128.00
D5421	\$128.00
D5422	\$128.00
D5510	\$274.70
D5520	\$214.00
D5610	\$278.00
D5620	\$316.03
D5630	\$363.00
D5640	\$235.00
D5650	\$321.00
D5660	\$385.00
D5670	\$1,006.44
D5671	\$1,006.44
D5710	\$951.00
D5711	\$909.00
D5720	\$898.00
D5721	\$898.00
D5730	\$537.00
D5731	\$537.00
D5740	\$492.00
D5741	\$492.00
D5750	\$716.00
D5751	\$716.00
D5760	\$705.00
D5761	\$705.00
D5810	\$1,133.00
D5811	\$1,218.00
D5820	\$876.00
D5821	\$930.00
D5850	\$224.00
D5851	\$224.00
D5860	BR
D5861	BR
D5862	BR
D5867	BR
D5875	BR
D5899	BR

CDT 2014	2015 Fees
D5911	\$594.00
D5912	\$594.00
D5913	\$12,514.00
D5914	\$12,514.00
D5915	\$16,935.00
D5916	\$4,517.00
D5919	BR
D5922	BR
D5923	BR
D5924	BR
D5925	BR
D5926	BR
D5927	BR
D5928	BR
D5929	BR
D5931	\$6,738.00
D5932	\$12,602.00
D5933	BR
D5934	\$11,486.00
D5935	\$9,994.00
D5936	\$11,225.00
D5937	\$1,411.00
D5951	\$1,834.00
D5952	\$5,956.00
D5953	\$11,310.00
D5954	\$10,481.00
D5955	\$9,694.00
D5958	BR
D5959	BR
D5960	BR
D5982	\$997.93
D5983	\$2,416.43
D5984	\$2,416.43

CDT 2014	2015 Fees
D5985	\$2,416.43
D5986	\$214.00
D5987	\$3,627.07
D5988	\$641.00
D5991	\$246.00
D5992	BR
D5993	BR
D5999	BR
D6101	BR
D6102	BR
D6103	BR
D6104	BR
D6010	\$3,914.00
D6012	\$3,698.00
D6040	\$14,418.34
D6050	\$10,047.00
D6051	BR
D6053	\$2,922.00
D6054	\$2,922.00
D6055	\$1,176.00
D6056	\$812.00
D6057	\$1,005.00
D6058	\$2,253.00
D6059	\$2,379.96
D6060	\$2,249.90
D6061	\$2,294.88
D6062	\$2,286.36
D6063	\$1,963.04
D6064	\$2,079.74
D6065	\$2,217.00
D6066	\$2,311.89
D6067	\$2,242.61
D6068	\$2,234.00
D6069	\$2,379.96
D6070	\$2,249.90
D6071	\$2,144.00
D6072	\$2,343.50

CDT 2014	2015 Fees
D6073	\$2,121.06
D6074	\$2,106.00
D6075	\$2,217.00
D6076	\$2,311.89
D6077	\$2,242.61
D6078	BR
D6079	BR
D6080	\$184.00
D6090	BR
D6091	\$887.00
D6092	\$173.00
D6093	\$271.00
D6094	\$1,887.68
D6095	BR
D6100	BR
D6190	\$395.00
D6194	\$1,817.00
D6199	BR
D6205	\$1,016.16
D6210	\$1,553.41
D6211	\$1,454.96
D6212	\$1,514.52
D6214	\$1,563.15
D6240	\$1,533.97
D6241	\$1,416.06
D6242	\$1,493.86
D6245	\$1,582.59
D6250	\$1,514.52
D6251	\$1,396.62
D6252	\$1,441.59
D6253	\$652.72
D6545	\$610.19
D6548	\$651.00
D6600	\$1,186.33
D6601	\$1,266.56
D6602	\$1,294.51
D6603	\$1,424.58
D6604	\$1,268.99

CDT 2014	2015 Fees
D6605	\$1,344.35
D6606	\$1,248.32
D6607	\$1,385.67
D6608	\$1,277.00
D6609	\$1,355.29
D6610	\$1,396.62
D6611	\$1,527.89
D6612	\$1,389.33
D6613	\$1,452.53
D6614	\$1,358.93
D6615	\$1,413.64
D6624	\$1,294.51
D6634	\$1,358.93
D6710	\$1,345.00
D6720	\$1,619.06
D6721	\$1,535.18
D6722	\$1,563.15
D6740	\$1,650.00
D6750	\$1,656.73
D6751	\$1,546.13
D6752	\$1,583.81
D6780	\$1,563.15
D6781	\$1,516.00
D6782	\$1,563.15
D6783	\$1,561.00
D6790	\$1,599.60
D6791	\$1,516.96
D6792	\$1,571.65
D6793	\$637.00
D6794	\$1,571.65
D6920	\$420.57
D6930	\$245.53
D6940	\$556.70
D6950	\$1,074.51
D6975	\$1,191.19
D6980	BR
D6985	\$934.72
D6999	BR

CDT 2014	2015 Fees
D7111	\$229.73
D7140	\$305.09
D7210	\$405.98
D7220	\$509.29
D7230	\$678.25
D7240	\$796.15
D7241	\$1,000.37
D7250	\$429.07
D7251	\$770.70
D7260	\$3,182.19
D7261	\$1,104.60
D7270	\$828.45
D7272	\$1,104.60
D7280	\$772.80
D7282	\$386.40
D7283	\$331.80
D7285	\$1,546.65
D7286	\$662.55
D7287	\$265.65
D7288	\$265.65
D7290	\$662.55
D7291	\$466.76
D7292	\$1,060.50
D7293	\$662.55
D7294	\$552.30
D7295	BR
D7310	\$1,009.00
D7311	\$883.00
D7320	\$1,640.00
D7321	\$1,388.00
D7340	\$6,938.00
D7350	\$20,182.00
D7410	\$3,027.00
D7411	\$4,793.00
D7412	\$5,298.00
D7413	\$3,532.00
D7414	\$5,298.00
D7415	\$5,928.00

CDT 2014	2015 Fees
D7440	\$4,793.00
D7441	\$7,064.00
D7450	\$3,027.00
D7451	\$4,137.00
D7460	\$3,027.00
D7461	\$4,137.00
D7465	\$1,640.00
D7471	\$3,749.00
D7472	\$4,455.00
D7473	\$4,203.00
D7485	\$3,749.00
D7490	\$30,273.00
D7510	\$1,085.00
D7511	\$1,640.00
D7520	\$5,167.00
D7521	\$5,676.00
D7530	\$1,862.00
D7540	\$2,064.00
D7550	\$1,287.00
D7560	\$10,217.00
D7610	\$16,524.00
D7620	\$12,392.00
D7630	\$21,484.00
D7640	\$13,633.00
D7650	\$10,328.00
D7660	\$6,090.00
D7670	\$4,753.00
D7671	\$8,956.00
D7680	\$30,984.00
D7710	\$19,420.00
D7720	\$13,633.00
D7730	\$28,093.00

CDT 2014	2015 Fees
	0
D7740	\$13,900.00
D7750	\$17,679.00
D7760	\$7,094.00
D7770	\$9,612.00
D7771	\$7,417.00
D7780	\$41,313.00
D7810	\$18,174.00
D7820	\$2,977.00
D7830	\$1,705.00
D7840	\$24,773.00
D7850	\$21,393.00
D7852	\$24,496.00
D7854	\$25,278.00
D7856	\$17,937.00
D7858	\$51,126.00
D7860	\$21,792.00
D7865	\$35,117.00
D7870	\$1,160.00
D7871	\$2,321.00
D7872	\$12,387.00
D7873	\$14,914.00
D7874	\$21,393.00
D7875	\$23,436.00
D7876	\$25,268.00
D7877	\$22,301.00

CDT 2014	2015 Fees
D7880	\$2,785.00
D7899	BR
D7910	\$1,655.00
D7911	\$4,132.00
D7912	\$7,437.00
D7920	\$12,185.00
D7921	\$1,125.00
D7940	BR
D7941	\$31,030.00
D7943	\$28,507.00
D7944	\$25,404.00
D7945	\$33,805.00
D7946	\$41,878.00
D7947	\$35,218.00
D7948	\$45,712.00
D7949	\$59,537.00
D7950	BR
D7951	BR
D7952	BR
D7953	\$858.00
D7955	BR
D7960	\$1,388.00
D7963	\$2,270.00
D7970	\$2,018.00
D7971	\$757.00
D7972	\$2,825.00
D7980	\$3,179.00
D7981	BR

CDT 2014	2015 Fees
D7982	\$7,518.00
D7983	\$7,215.00
D7990	\$6,206.00
D7991	\$15,137.00
D7995	BR
D7996	BR
D7997	\$1,160.00
D7998	\$5,046.00
D7999	BR
D8010	BR
D8020	BR
D8030	BR
D8040	BR
D8050	BR
D8060	BR
D8070	BR
D8080	BR
D8090	BR
D8210	BR
D8220	BR
D8660	\$700.13
D8670	\$525.09
D8680	\$1,154.73
D8690	\$545.76
D8691	\$512.95
D8692	\$571.28
D8693	\$528.75
D8999	BR
D9110	\$215.15
D9120	\$243.11
D9210	\$181.65
D9211	\$200.55
D9212	\$312.90

CDT 2014	2015 Fees
D9215	\$150.15
D9220	\$1,815.45
D9221	\$813.75
D9230	\$300.30
D9241	\$1,408.05
D9242	\$688.80
D9248	\$437.85
D9310	\$487.42
D9410	\$557.92
D9420	\$903.13
D9430	\$151.94
D9440	\$305.09
D9450	\$151.94
D9610	BR
D9612	BR
D9630	BR
D9910	\$103.03
D9911	\$144.70
D9920	BR
D9930	BR
D9940	\$940.80
D9941	\$307.52
D9942	\$354.24
D9950	\$560.29
D9951	\$251.20
D9952	\$1,179.62
D9970	\$133.13
D9971	\$171.33
D9972	\$590.39
D9973	\$97.24
D9974	\$516.31
D9975	\$576.00
D9999	BR

Exhibit # 7
(Effective January 1, 2015)
Evaluation and Management (E&M) Guidelines for Colorado
Workers' Compensation Claims

This E&M Guidelines for Colorado Workers' Compensation Claims is intended for the physicians who manage injured workers' medical and non-medical care. Providers may use the "1997 Documentation Guidelines for Evaluation and Management Services" as developed by Medicare and available on Medicare's web site when indicated in this Exhibit.

1. History (Hx), 2. Examination (Exam), and 3. Medical Decision Making (MDM) Determines the Level of Service:

New Patient/Office Consultations

Level of Service (Requires all three key components at the same level or higher)	1. Hx	2. Exam	3. MDM	Avg. time (minutes) as listed for the specific CPT® code
99201/99241	Problem Focused (PF)	PF	Straight Forward (SF)	10
99202/99242	Extended Problem Focused (EPF)	EPF	SF	20
99203/99243	Detailed (D)	D	Low	30
99204/99244	Comprehensive(C)	C	Moderate	45
99205/99245	C	C	High	60

Established Patient Office Visit

Level of Service (Requires at least two of the three key components at the same level or higher)	1. Hx	2. Exam	3. MDM	Avg. time (minutes) as listed for the specific CPT® code
99211	N/A	N/A	N/A	5
99212	PF	PF	SF	10
99213	EPF	EPF	Low	15
99214	D	D	Moderate	25
99215	C	C	High	40

NOTES: Documentation of a chief complaint is required for any billed office visit.

CPT® criteria for a consultation is still required to bill a consultation code.

1. History Component – To qualify for a given level of history all three elements in the table below must be met and documented in the record. Documentation must be patient specific and pertain directly to the current visit. Information copied directly from prior records without change is not considered current nor counted.

History Elements	Requirements for a Problem Focused (PF) History Level	Requirements for an Expanded Problem Focused (EPF) History Level	Requirements for a Detailed (D) History Level	Requirements for a Comprehensive (C) History Level
History of Present Illness/Injury (HPI)	Brief 1-3 elements	Brief 1-3 elements	Extended 4+ elements (required a detailed patient specific description of the patient's progress with the current TX plan, which should include objective functional gains/losses, ADLs)	Extended 4+ elements (requires a detailed patient specific description of the patient's progress with the current TX plan, which should include objective functional gains/losses, ADLs)
Review of Systems (ROS) is not required for established patient visits.	None	Problem pertinent – limited to injured body part	2 to 9 body parts or body systems	Complete 10+
Past Medical, Family and Social/Work History (PMFSH)	None	None	Pertinent 1 of 4 types of histories	2 or more of the 4 types of histories

A. HPI Elements represents the injured worker relaying their condition to the physician and should include the following:

1. Location (where?)
2. Quality (sharp, dull)
3. Severity (pain level 1-10 or pain diagram)
4. Duration (how long?)
5. Timing (how often?)
6. Context (what ADLs or functions aggravates/relieves?）**
7. Modifying factors (doing what?)
8. Associated signs (nausea, when?)

For the provider to achieve an “extended” HPI in an established patient/injured worker visit it is necessary to document a detailed description of the patient’s progress since the last visit with current treatment plan that includes patient pertinent objective functional gains, such as ADLs, physical therapy goals and return to work.

For the provider to achieve an “extended” HPI in an initial patient/injured worker’s visit it is necessary for the provider to discuss the causality of the patient/injured worker’s work related

injury(s) to the patient/injured worker's job duties.

B. Review of Systems (ROS) each system/body part is counted once whether positive or negative:

1. Constitutional symptoms (e.g., fever, weight loss)
2. Eyes
3. Ears, Nose, Mouth, Throat
4. Cardiovascular
5. Respiratory
6. Gastrointestinal
7. Genitourinary
8. Musculoskeletal
9. Integumentary (skin and/or breast)
10. Neurological
11. Psychiatric
12. Endocrine
13. Hematologic/Lymphatic
14. Allergic/Immunologic

Identify, perform and documentation of all pertinent ROS systems with either a "positive or negative" response is necessary to be counted.

C. The PMFSH consists of a review of four areas (NOTE: Employers should not have access to any patient's or the family's generic/hereditary diagnoses or testing information, etc.)

1. Past history – the patient's past experiences with illnesses, operations, injuries and treatments;
2. Family history – a review of medical events in the patient's family, including diseases which may be hereditary or place the patient at risk and any family situations that can interfere with or support the injured worker's treatment plan and returning to work;
3. Occupational/Social History – an age appropriate review of past and current work activities, occupational history, current work status, any work situations that support or interfere with return to work. For established visits specific updates of progress must be discussed.
4. Non-Occupational/Social History – Hobbies, current recreational physical activities and the patient's support relationships, etc. For established visits specific updates of progress must be discussed.

2. Pertinent Physician's Examination Component – Each bullet is counted only when it is pertinent

and related to the workers' compensation injury and the medical decision making process.

The 1997 Evaluation and Management (E&M) guidelines may be used for specialist examination.

Content and Documentation Requirements

Level of Examination Performed and Documented	# of Bullets Required for each Level
Problem Focused	1 to 5 elements identified by a bullet as indicated in this guideline
Expanded Problem Focused	6 elements identified by a bullet as indicated in this guideline
Detailed	7-12 elements identified by a bullet as indicated in this guideline
Comprehensive	> 13 elements identified by a bullet as indicated in this guideline

Constitutional Measurement

Vital signs (may be measured and recorded by ancillary staff) – any of three vital signs is counted as one bullet:

1. sitting or standing blood pressure
2. supine blood pressure
3. pulse rate and regularity
4. respiration
5. temperature
6. height
7. weight or BMI

One bullet for commenting on the general appearance of patient (e.g., development, nutrition, body habitus, deformities, attention to grooming)

Musculoskeletal

Each of the six body areas with three (3) assessments is counted as one bullet.

1. head and or neck
2. spine or ribs and pelvis or all three
3. right upper extremity (shoulder, elbow, wrist, entire hand)
4. left upper extremity (shoulder, elbow, wrist, entire hand)
5. right lower extremity (hip, knee, ankle, entire foot)
6. left lower extremity (hip, knee, ankle, entire foot)

Assessment of a given body area includes:

1. Inspection, percussion and/or palpation with notation of any misalignment, asymmetry,

crepitation, defects, tenderness, masses or effusions

2. Assessment of range of motion with notation of any pain (e.g., straight leg raising), crepitation or contracture
3. Assessment of stability with notation of any dislocation (luxation), subluxation or laxity
4. Assessment of muscle strength and tone (e.g., flaccid, cog wheel, spastic) with notation of any atrophy or abnormal movements (fasciculation, tardive dyskinesia)
7. Examination of gait and station

Neck – one bullet for both examinations

1. Examination of neck (e.g., masses, overall appearance, symmetry, tracheal position, crepitus)
2. Examination of thyroid (e.g., enlargement, tenderness, mass)

Neurological

One bullet for each neurological examination/assessment(s) per extremity:

1. Test coordination (e.g., finger/nose, heel/knee/shin, rapid alternating movements in the upper and lower extremities)
2. Examination of deep tendon reflexes and/or nerve stretch test with notation of pathological reflexes (e.g., Babinski)
3. Examination of sensation (e.g., by touch, pin, vibration, proprioception)
4. One bullet for all of the 12 cranial nerves assessments with notations of any deficits

Cardiovascular

1. One bullet per extremity examination/assessment of peripheral vascular system by:
 - a. Observation (e.g., swelling, varicosities); and
 - b. Palpation (e.g., pulses, temperature, edema, tenderness)
2. One bullet for palpation of heart (e.g., location, size, thrills)
3. One bullet for auscultation of heart with notation of abnormal sounds and murmurs
4. One bullet for examination of each one of the following:
 - a. carotid arteries (e.g., pulse amplitude, bruits)
 - b. abdominal aorta (e.g., size, bruits)
 - c. femoral arteries (e.g., pulse amplitude, bruits)

Skin

One bullet for pertinent body part(s) inspection and/or palpation of skin and subcutaneous tissue

(e.g., scars, rashes, lesions, cafeau-lait pots, ulcers)

Respiratory (one bullet for each examination/assessment)

1. Assessment of respiratory effort (e.g., intercostal retractions, use of accessory muscles, diaphragmatic movement)
2. Percussion of chest (e.g., dullness, flatness, hyperresonance)
3. Palpation of chest (e.g., tactile fremitus)
4. Auscultation of lungs (e.g., breath sounds, adventitious sounds, rubs)

Gastrointestinal (one bullet for each examination /assessment)

1. Examination of abdomen with notation of presence of masses or tenderness and liver and spleen
2. Examination of presence or absence of hernia
3. Examination (when indicated) of anus, perineum and rectum, including sphincter tone, present of hemorrhoids, rectal masses and/or obtain stool sample of occult blood test when indicated

Psychiatric

1. One bullet for assessment of mood and affect (e.g., depression, anxiety, agitation) if not counted under the Neurological system
2. One bullet for a mental status examination which includes:
 - a. Attention span and concentration; and
 - b. Language (e.g., naming objects, repeating phrases, spontaneous speech) orientation to time, place and person; and
 - c. Recent and remote memory; and
 - d. Fund of knowledge (e.g., awareness of current events, past history, vocabulary)

Eyes (one bullet for both eyes and all three examinations/assessments)

1. Inspection of conjunctivae and lids; and
2. Examination of pupils and irises (e.g., reaction of light and accommodation, size and symmetry); and
3. Ophthalmoscopic examination of optic discs (e.g., size, C/D ratio, appearance) and posterior segments (e.g., vessel changes, exudates, hemorrhages)

Ears and Nose, Mouth and Throat

One bullet for all of the following examination/assessment:

1. External inspection of ears and nose (e.g., overall appearance, scars, lesions, asses)
2. Otoscopic examination of external auditory canals and tympanic membranes
3. Assessment of hearing with tuning fork and clinical speech reception thresholds (e.g., whispered voice, finger rub, tuning fork)

One bullet for all of the following examinations/assessments:

1. Inspection of nasal mucosa, septum and turbinates
2. Inspection of lips, teeth and gums
3. Examination of oropharynx: oral mucosa, salivary glands, hard and soft palates, tongue, tonsils and posterior pharynx (e.g., asymmetry, lesions, hydration of mucosal surfaces)

Genitourinary

MALE –

One bullet for each of the following examination of the male genitalia:

1. The scrotal contents (e.g., hydrocele, spermatocele, tenderness of cord, testicular mass)
2. Epididymides (e.g., size, symmetry, masses)
3. Testes (e.g., size symmetry, masses)
4. Urethral meatus (e.g., size location, lesions, discharge)
5. Examination of the penis (e.g., lesions, presence of absence of foreskin, foreskin retract ability, plaque, masses, scarring, deformities)
6. Digital rectal examination of prostate gland (e.g., size, symmetry, nodularity, tenderness)
7. Inspection of anus and perineum

FEMALE –

One bullet for each of the following female pelvic examination(s) (with or without specimen collection for smears and cultures):

1. Examination of external genitalia (e.g., general appearance, hair distribution, lesions) and vagina (e.g., general appearance, estrogen effect, discharge, lesions, pelvic support, cystocele rectocele)
2. Examination of urethra (e.g., masses, tenderness, scarring)
3. Examination of bladder (e.g., fullness, masses, tenderness)
4. Cervix (e.g., general appearance, lesions, discharge)
5. Uterus (e.g., size, contour, position, mobility, tenderness, consistency, descent or support)
6. Adnexa/parametria (e.g., masses, tenderness, organomegaly, nodularity)

Chest (one bullet for both examinations/assessments of both breasts)

1. Inspection of breasts (e.g., symmetry, nipple discharge); and
2. Palpation of breasts and axillae (e.g., masses or lumps, tenderness)

Lymphatic palpation of lymph nodes -- two or more areas is counted as one bullet:

1. Neck
2. Axillae
3. Groin
4. Other

3. Medical Decision Making (MDM) Component

Documentation must be patient specific and pertain directly to the current visit. Information copied directly from prior records without change is not considered current nor counted.

Level of Risk	1. # of Points for the # of Dx's and Management Options)	2. # of Points for Amount and Complexity of Data)	3. Level of Risk
Straightforward	0-1	0-1	Minimal
Low	2	2	Low
Moderate	3	3	Moderate
High	4+	4+	High

Overall MDM is determined by the highest 2 out of the 3 above categories.

1. Number of Diagnosis & Management Options					
Category of Problem(s)	Occurrence of Problem(s)		Value		TOTAL
Self-limited or minor problem	(max 2)	X	1	=	
Established problem, stable or improved		X	1	=	
Established problem, minor worsening		X	2	=	
New problem with no additional workup planned or established patient with worsening of condition and no additional workup planned	(max1)	X	3	=	
New problem, additional workup planned or established patient with worsening of condition and additional workup planned.		X	4	=	

2. Amount and/or Complexity of Data Reviewed	
Date Type:	Points
Lab(s) ordered and/or reports reviewed	1
X-ray(s) ordered and/or reports reviewed	1
Discussion of test results with performing physician	1
Decision to obtain old records and/or obtain history from someone other than the patient	1

Medicine section (90701-99199) ordered and/or physical therapy reports reviewed and commented on progress (state whether the patient is progressing and how they are functionally progressing or not and document any planned changes to the plan of care)	2
Review and summary of old records and/or discussion with other health provider	2
Independent visualization of images, tracing or specimen	2
TOTAL	

3. Table of Risk (the highest one in any one category determines the overall risk for this portion)			
Level of Risk	Presenting Problem(s)	Diagnostic Procedure(s) Ordered	Management Option(s) Selected
Minimal	One self-limited or minor problem, e.g., cold, insect bite, tinea corpori, minor non-sutured laceration	Lab tests requiring venipuncture Chest x-rays EKG/EEG Urinalysis Ultrasound KOH prep	Rest Gargles Elastic bandages Superficial dressings
Low	Two or more self-limited or minor problems One stable chronic illness, e.g., well-controlled HTN, NIDDM, cataract, BPH Acute, uncomplicated illness or injury, e.g., allergic rhinitis or simple sprain Acute laceration repair	Physiologic tests nor under stress, e.g., PFTs Non-cardiovascular imaging studies w/contrast, e.g., barium enema Superficial needle biopsies Lab tests requiring arterial puncture Skin biopsies	Over-the-counter drugs Minor surgery w/no identified risk factors PT/OT IV fluids w/o additives Simple or layered closure Vaccine injection
Moderate	One of more chronic illnesses with mild exacerbation, progression or side effects of treatment Two or more stable chronic illnesses Undiagnosed new problem with uncertain prognosis, e.g., new extremity neurologic complaints Acute illness with systemic symptoms, e.g., pyelonephritis, colitis Acute complicated injury, e.g., head injury with brief loss of consciousness	Physiologic tests under stress, e.g. cardiac stress test, Discography, stress tests Diagnostic injections Deep needle or incisional biopsies Cardiovascular imaging studies with contrast and no identified risk factors e.g. arteriogram, cardiac cath Obtain fluid from body cavity, e.g. lumbar puncture, thoracentesis, culdocentesis	Minor surgery with identified risk factors Elective major surgery (open, percutaneous, or endoscopic) with no identified risk factors Prescription drug management Therapeutic nuclear medicine IV fluids with additives Closed Tx of Fx or dislocation w/o manipulation Inability to return the injured worker to work and requires detailed functional improvement

			plan.
High	One or more chronic illness with severe exacerbation, progression or side effects of treatment Acute or chronic illnesses or injuries that pose a threat to life or bodily function, e.g., multiple trauma, acute MI, severe respiratory distress, progressive severe rheumatoid arthritis, psychiatric illness with potential threat to self or others; An abrupt change in neurological status, e.g., seizure, TIA, weakness, sensory loss	Cardiovascular imaging studies with contrast with identified risk factors Cardiac electrophysiological tests Diagnostic endoscopies with identified risk factors	Elective major surgery with identified risk factors Emergency major surgery Parenteral controlled substances Drug therapy requiring intensive monitoring for toxicity Decision not to resuscitate or to de-escalate care because of poor prognosis, Potential for significant permanent work restrictions or total disability Management of addiction behavior or other significant psychiatric condition Treatment plan for patients with symptoms causing severe functional deficits without supporting physiological findings or verified related medical diagnosis.

If greater than fifty percent of a physician's time at an E&M visit is spent either face-to-face with the patient counseling and/or coordination of care and there is detailed patient specific documentation of the counseling and/or coordination of care, then time can determine the level of service.

The total time spent face-to-face with the patient and/or coordination of care must be documented in the record and the total visit time.

If time is used to establish the level of visit and total amount of time falls in between two levels, then the provider's time shall be more than half way to reaching the higher level.

Documentation must be patient specific and pertain directly to the current visit. Information copied directly from prior records without change is not considered current nor counted.

Counseling:

Primary care physicians should have shared decision making conferences with their patients to establish viable functional goals prior to making referrals for diagnostic testing and/or to specialists. Shared decision making occurs when the physician shares with the patient all the treatment alternatives reflected

in the Colorado Medical Treatment Guidelines as well as any possible side effects or limitations, and the patient shares with the primary physician their desired outcome from the treatment. Patients should be encouraged to express their goals, outcome expectations and desires from treatment as well as any personal habits or traits that may be impacted by procedures or their possible side effects.

The physician's time spent face-to-face with the patient and/or their family counseling him/her or them in one or more of the following:

1. Injury/disease education that includes discussion of diagnostic tests results and a disease specific treatment plan.
2. Return to work
3. Temporary and/or permanent restrictions
4. Self-management of symptoms while at home and/or work
5. Correct posture/mechanics to perform work functions
6. Job task exercises for muscle strengthening and stretching
7. Appropriate tool and equipment use to prevent re-injury and/or worsening of the existing injury/condition
8. Patient/injured worker expectations and specific goals
9. Family and other interpersonal relationships and how they relate to psychological/social issues
10. Discussion of pharmaceutical management (includes drug dosage, specific drug side effects and potential of addiction /problems
11. Assessment of vocational plans (i.e., restrictions as they relate to current and future employment job requirements)

Coordination of Care:

Coordination of care requires the physician to either call another health care provider (outside of their own clinic) regarding the patient's diagnosis and/or treatment or the physician telephones or visits the employer in person to safely return the patient to work.

The counseling or coordination of care activities must be done 24 hours prior to the actual patient encounter or within seven (7) business days after the actual patient encounter. If these activities are done outside of the 24 hours prior to or 7 business days after the patient encounter, then Rule 18-5(l)(4) "Treating Physician Telephone or On-line Services" or Rule 18-6(A) "Face-to-Face or Telephonic meeting by a Treating Physician with the Employer ... With or Without the Injured Workers" is applicable.

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
78268		Breath test analysis c-14	\$ 198.48
80047	QW	Metabolic panel ionized ca	\$ 24.93
80047		Metabolic panel ionized ca	\$ 24.93
80048	QW	Metabolic panel total ca	\$ 24.93
80048		Metabolic panel total ca	\$ 24.93
80050	QW	Health Panel	\$ 116.16
80050		Health Panel	\$ 116.16
80051	QW	Electrolyte panel	\$ 20.67
80051		Electrolyte panel	\$ 20.67
80053	QW	Comprehen metabolic panel	\$ 31.13
80053		Comprehen metabolic panel	\$ 31.13
80061	QW	Lipid panel	\$ 39.46
80061		Lipid panel	\$ 39.46
80069	QW	Renal function panel	\$ 25.60
80069		Renal function panel	\$ 25.60
80074		Acute hepatitis panel	\$ 140.38
80076		Hepatic function panel	\$ 24.06
80102		Drug confirmation	\$ 39.03
80150		Assay of amikacin	\$ 44.41
80152		Assay of amitriptyline	\$ 52.75
80154		Assay of benzodiazepines	\$ 54.50
80155		Drug screen quant caffeine	\$ 41.69

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
80156		Assay carbamazepine total	\$ 42.92
80157		Assay carbamazepine free	\$ 39.07
80158		Assay of cyclosporine	\$ 53.20
80159		Drug screen quant clozapine	\$ 54.50
80160		Assay of desipramine	\$ 50.72
80162		Assay of digoxin	\$ 39.14
80164		Assay dipropylacetic acid	\$ 39.94
80166		Assay of doxepin	\$ 45.66
80168		Assay of ethosuximide	\$ 48.17
80169		Drug screen quant everolimus	\$ 40.46
80170		Assay of gentamicin	\$ 48.30
80171		Drug screen quant gabapentin	\$ 39.07
80172		Assay of gold	\$ 48.00
80173		Assay of haloperidol	\$ 42.92
80174		Assay of imipramine	\$ 50.72
80175		Drug screen quan lamotrigine	\$ 39.07
80176		Assay of lidocaine	\$ 43.29
80177		Drug scrn quan levetiracetam	\$ 39.07
80178	QW	Assay of lithium	\$ 19.48
80178		Assay of lithium	\$ 19.48
80180		Drug scrn quan mycophenolate	\$ 53.20
80182		Assay of nortriptyline	\$ 39.94
80183		Drug scrn quant oxcarbazepin	\$ 39.07

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
80184		Assay of phenobarbital	\$ 33.74
80185		Assay of phenytoin total	\$ 39.07
80186		Assay of phenytoin free	\$ 40.56
80188		Assay of primidone	\$ 48.90
80190		Assay of procainamide	\$ 49.36
80192		Assay of procainamide	\$ 49.36
80194		Assay of quinidine	\$ 43.03
80195		Assay of sirolimus	\$ 40.46
80196		Assay of salicylate	\$ 20.91
80197		Assay of tacrolimus	\$ 40.46
80198		Assay of theophylline	\$ 41.69
80199		Drug screen quant tiagabine	\$ 53.20
80200		Assay of tobramycin	\$ 47.50
80201		Assay of topiramate	\$ 35.14
80202		Assay of vancomycin	\$ 39.94
80203		Drug screen quant zonisamide	\$ 39.07
80299		Quantitative assay drug	\$ 40.35
80400		Acth stimulation panel	\$ 96.12
80402		Acth stimulation panel	\$ 256.24
80406		Acth stimulation panel	\$ 184.05
80408		Aldosterone suppression eval	\$ 369.81
80410		Calcitonin stimul panel	\$ 236.74

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
80412		CRH stimulation panel	\$ 971.33
80414		Testosterone response	\$ 152.17
80415		Estradiol response panel	\$ 164.68
80416		Renin stimulation panel	\$ 388.86
80417		Renin stimulation panel	\$ 129.62
80418		Pituitary evaluation panel	\$ 1,707.96
80420		Dexamethasone panel	\$ 212.31
80422		Glucagon tolerance panel	\$ 135.78
80424		Glucagon tolerance panel	\$ 148.80
80426		Gonadotropin hormone panel	\$ 437.34
80428		Growth hormone panel	\$ 196.56
80430		Growth hormone panel	\$ 231.27
80432		Insulin suppression panel	\$ 347.63
80434		Insulin tolerance panel	\$ 298.14
80435		Insulin tolerance panel	\$ 303.57
80436		Metyrapone panel	\$ 268.64
80438		TRH stimulation panel	\$ 148.54
80439		TRH stimulation panel	\$ 198.07
80440		TRH stimulation panel	\$ 171.33
81000		Urinalysis nonauto w/scope	\$ 9.33
81001		Urinalysis auto w/scope	\$ 9.33
81002		Urinalysis nonauto w/o scope	\$ 7.54
81003	QW	Urinalysis auto w/o scope	\$ 6.61

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCCPS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
81003		Urinalysis auto w/o scope	\$ 6.61
81005		Urinalysis	\$ 6.39
81007	QW	Urine screen for bacteria	\$ 7.56
81007		Urine screen for bacteria	\$ 7.56
81015		Microscopic exam of urine	\$ 8.96
81020		Urinalysis glass test	\$ 10.86
81025		Urine pregnancy test	\$ 18.64
81050		Urinalysis volume measure	\$ 8.83
81161		Dmd dup/delet analysis	\$ -
81201	0		\$ 1,619.83
81202	0		\$ 202.91
81203	0		\$ 1,231.31
81206		Bcr/abl1 gene major bp	\$ 483.17
81207		Bcr/abl1 gene minor bp	\$ 426.79
81208		Bcr/abl1 gene other bp	\$ 473.97
81210		Braf gene	\$ 387.18
81211		Brca1&2 seq & com dup/del	\$ 4,716.36
81212		Brca1&2 185&5385&6174 var	\$ 381.67
81213		Brca1&2 uncom dup/del var	\$ 1,258.68
81214		Brca1 full seq & com dup/del	\$ 3,106.38
81215		Brca1 gene known fam variant	\$ 201.40
81217		Brca2 gene known fam variant	\$ 201.40

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
81225		Cyp2c19 gene com variants	\$ 630.29
81226		Cyp2d6 gene com variants	\$ 975.43
81227		Cyp2c9 gene com variants	\$ 378.17
81235		Egfr gene com variants	\$ 712.82
81240		F2 gene	\$ 145.00
81241		F5 gene	\$ 180.08
81245		Flt3 gene	\$ 358.39
81256		Hfe gene	\$ 192.61
81261		Igh gene rearrange amp meth	\$ 583.44
81262		Igh gene rearrang dir probe	\$ 128.63
81263		Igh vari regional mutation	\$ 867.87
81264		Igk rearrangeabn clonal pop	\$ 440.04
81265		Str markers specimen anal	\$ 633.70
81266	0		\$ 344.74
81267		Chimerism anal no cell selec	\$ 611.34
81268		Chimerism anal w/cell select	\$ 768.48
81270		Jak2 gene	\$ 270.13
81275		Kras gene	\$ 426.56
81287		Mgmt gene methylation anal	\$ -
81291		Mthfr gene	\$ 128.63
81292		MLh1 gene full seq	\$ 1,395.88
81293		MLh1 gene known variants	\$ 559.57
81294		MLh1 gene dup/delete variant	\$ 411.87

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
81295		Msh2 gene full seq	\$ 327.69
81296		Msh2 gene known variants	\$ 279.78
81297		Msh2 gene dup/delete variant	\$ 327.69
81298		Msh6 gene full seq	\$ 621.71
81299		Msh6 gene known variants	\$ 348.28
81300		Msh6 gene dup/delete variant	\$ 349.23
81301		Microsatellite instability	\$ 853.29
81310		Npm1 gene	\$ 533.82
81315		Pml/raralpha com breakpoints	\$ 610.91
81316		Pml/raralpha 1 breakpoint	\$ 931.80
81317		Pms2 gene full seq analysis	\$ 1,687.59
81318		Pms2 known familial variants	\$ 398.76
81319		Pms2 gene dup/delet variants	\$ 478.79
81321		Pten gene full sequence	\$ 1,297.51
81322		Pten gene known fam variant	\$ 126.14
81323		Pten gene dup/delet variant	\$ 189.22
81332		Serpina1 gene	\$ 128.63
81340		Trb@ gene rearrange amplify	\$ 615.64
81341		Trb@ gene rearrange dirprobe	\$ 146.12
81342		Trg gene rearrangement anal	\$ 593.78
81370		Hla i & ii typing lr	\$ 1,184.98
81371		Hla i & ii type verify lr	\$ 709.26

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
81372		Hla i typing complete lr	\$ 650.94
81373		Hla i typing 1 locus lr	\$ 328.17
81374		Hla i typing 1 antigen lr	\$ 214.38
81375		Hla ii typing ag equiv lr	\$ 650.48
81376		Hla ii typing 1 locus lr	\$ 360.16
81377		Hla ii type 1 ag equiv lr	\$ 270.54
81378		Hla i & ii typing hr	\$ 1,018.31
81379		Hla i typing complete hr	\$ 988.29
81380		Hla i typing 1 locus hr	\$ 522.31
81381		Hla i typing 1 allele hr	\$ 278.70
81382		Hla ii typing 1 loc hr	\$ 364.46
81383		Hla ii typing 1 allele hr	\$ 321.58
82000		Assay of blood acetaldehyde	\$ 36.50
82003		Assay of acetaminophen	\$ 56.42
82009		Test for acetone/ketones	\$ 13.31
82010	QW	Acetone assay	\$ 24.08
82010		Acetone assay	\$ 24.08
82013		Acetylcholinesterase assay	\$ 32.92
82016		Acylcarnitines qual	\$ 40.85
82017		Acylcarnitines quant	\$ 7.78
82024		Assay of acth	\$ 113.83
82030		Assay of adp & amp	\$ 41.75
82040	QW	Assay of serum albumin	\$ 14.58

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
82040		Assay of serum albumin	\$ 14.58
82042	QW	Assay of urine albumin	\$ 8.55
82042		Assay of urine albumin	\$ 8.55
82043	QW	Microalbumin quantitative	\$ 17.04
82043		Microalbumin quantitative	\$ 17.04
82044	QW	Microalbumin semiquant	\$ 13.48
82044		Microalbumin semiquant	\$ 13.48
82045		Albumin ischemia modified	\$ 96.10
82055	QW	Assay of ethanol	\$ 31.84
82055		Assay of ethanol	\$ 31.84
82075		Assay of breath ethanol	\$ 35.51
82085		Assay of aldolase	\$ 28.60
82088		Assay of aldosterone	\$ 120.10
82101		Assay of urine alkaloids	\$ 88.45
82103		Alpha-1-antitrypsin total	\$ 39.59
82104		Alpha-1-antitrypsin pheno	\$ 42.62
82105		Alpha-fetoprotein serum	\$ 49.44
82106		Alpha-fetoprotein amniotic	\$ 49.44
82107		Alpha-fetoprotein I3	\$ 189.82
82108		Assay of aluminum	\$ 75.08
82120	QW	Amines vaginal fluid qual	\$ 5.10
82120		Amines vaginal fluid qual	\$ 5.10

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
82127		Amino acid single qual	\$ 40.85
82128		Amino acids mult qual	\$ 40.85
82131		Amino acids single quant	\$ 49.70
82135		Assay aminolevulinic acid	\$ 48.49
82136		Amino acids quant 2-5	\$ 7.78
82139		Amino acids quan 6 or more	\$ 7.78
82140		Assay of ammonia	\$ 42.94
82143		Amniotic fluid scan	\$ 20.24
82145		Assay of amphetamines	\$ 45.79
82150	QW	Assay of amylase	\$ 19.09
82150		Assay of amylase	\$ 19.09
82154		Androstenediol glucuronide	\$ 43.98
82157		Assay of androstenedione	\$ 86.27
82160		Assay of androsterone	\$ 73.68
82163		Assay of angiotensin II	\$ 60.46
82164		Angiotensin I enzyme test	\$ 43.03
82172		Assay of apolipoprotein	\$ 45.66
82175		Assay of arsenic	\$ 55.92
82180		Assay of ascorbic acid	\$ 29.12
82190		Atomic absorption	\$ 43.93
82205		Assay of barbiturates	\$ 33.74
82232		Assay of beta-2 protein	\$ 47.67
82239		Bile acids total	\$ 24.86

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
82240		Bile acids cholyglycine	\$ 37.69
82247	QW	Bilirubin total	\$ 14.77
82247		Bilirubin total	\$ 14.77
82248		Bilirubin direct	\$ 14.77
82252		Fecal bilirubin test	\$ 4.13
82261		Assay of biotinidase	\$ 7.78
82270		Occult blood feces	\$ 9.59
82271	QW	Occult blood other sources	\$ 9.59
82271		Occult blood other sources	\$ 9.59
82272	QW	Occult bld feces 1-3 tests	\$ 9.59
82272		Occult bld feces 1-3 tests	\$ 9.59
82274	QW	Assay test for blood fecal	\$ 46.87
82274		Assay test for blood fecal	\$ 46.87
82286		Assay of bradykinin	\$ 20.30
82300		Assay of cadmium	\$ 68.21
82306		Vitamin d 25 hydroxy	\$ 87.26
82308		Assay of calcitonin	\$ 78.93
82310	QW	Assay of calcium	\$ 15.21
82310		Assay of calcium	\$ 15.21
82330	QW	Assay of calcium	\$ 40.28
82330		Assay of calcium	\$ 40.28
82331		Calcium infusion test	\$ 15.25

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
82340		Assay of calcium in urine	\$ 17.78
82355		Calculus analysis qual	\$ 34.11
82360		Calculus assay quant	\$ 37.93
82365		Calculus spectroscopy	\$ 37.99
82370		X-ray assay calculus	\$ 36.91
82373		Assay c-d transfer measure	\$ 53.20
82374	QW	Assay blood carbon dioxide	\$ 8.38
82374		Assay blood carbon dioxide	\$ 8.38
82375		Assay carboxyhb quant	\$ 36.31
82376		Assay carboxyhb qual	\$ 14.69
82378		Carcinoembryonic antigen	\$ 55.90
82379		Assay of carnitine	\$ 7.78
82380		Assay of carotene	\$ 27.17
82382		Assay urine catecholamines	\$ 50.67
82383		Assay blood catecholamines	\$ 73.85
82384		Assay three catecholamines	\$ 74.41
82387		Assay of cathepsin-d	\$ 23.82
82390		Assay of ceruloplasmin	\$ 31.64
82397		Chemiluminescent assay	\$ 23.82
82415		Assay of chloramphenicol	\$ 37.35
82435	QW	Assay of blood chloride	\$ 8.21
82435		Assay of blood chloride	\$ 8.21
82436		Assay of urine chloride	\$ 14.82

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
82438		Assay other fluid chlorides	\$ 14.41
82441		Test for chlorohydrocarbons	\$ 17.69
82465	QW	Assay bld/serum cholesterol	\$ 12.81
82465		Assay bld/serum cholesterol	\$ 12.81
82480		Assay serum cholinesterase	\$ 23.22
82482		Assay rbc cholinesterase	\$ 22.64
82485		Assay chondroitin sulfate	\$ 52.34
82486		Gas/liquid chromatography	\$ 53.20
82487		Paper chromatography	\$ 47.07
82488		Paper chromatography	\$ 62.96
82489		Thin layer chromatography	\$ 54.50
82491		Chromotography quant sing	\$ 53.20
82492		Chromotography quant mult	\$ 53.20
82495		Assay of chromium	\$ 59.77
82507		Assay of citrate	\$ 81.93
82520		Assay of cocaine	\$ 44.67
82523	QW	Collagen crosslinks	\$ 55.08
82523		Collagen crosslinks	\$ 55.08
82525		Assay of copper	\$ 36.57
82528		Assay of corticosterone	\$ 66.36
82530		Cortisol free	\$ 49.25
82533		Total cortisol	\$ 48.04

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
82540		Assay of creatine	\$ 13.65
82541		Column chromatography qual	\$ 53.20
82542		Column chromatography quant	\$ 53.20
82543		Column chromatograph/isotope	\$ 53.20
82544		Column chromatograph/isotope	\$ 53.20
82550	QW	Assay of ck (cpk)	\$ 19.18
82550		Assay of ck (cpk)	\$ 19.18
82552		Assay of cpk in blood	\$ 39.48
82553		Creatine mb fraction	\$ 34.02
82554		Creatine isoforms	\$ 34.97
82565	QW	Assay of creatinine	\$ 15.10
82565		Assay of creatinine	\$ 15.10
82570	QW	Assay of urine creatinine	\$ 15.25
82570		Assay of urine creatinine	\$ 15.25
82575		Creatinine clearance test	\$ 27.84
82585		Assay of cryofibrinogen	\$ 20.87
82595		Assay of cryoglobulin	\$ 19.07
82600		Assay of cyanide	\$ 57.15
82607		Vitamin B-12	\$ 44.41
82608		B-12 binding capacity	\$ 42.21
82610		Cystatin c	\$ 16.70
82615		Test for urine cystines	\$ 24.06

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
82626		Dehydroepiandrosterone	\$ 74.48
82627		Dehydroepiandrosterone	\$ 65.51
82633		Desoxycorticosterone	\$ 91.28
82634		Deoxycortisol	\$ 86.27
82638		Assay of dibucaine number	\$ 36.09
82646		Assay of dihydrocodeinone	\$ 60.85
82649		Assay of dihydromorphinone	\$ 75.75
82651		Assay of dihydrotestosterone	\$ 56.42
82652		Vit d 1 25-dihydroxy	\$ 113.46
82654		Assay of dimethadione	\$ 40.80
82656		Pancreatic elastase fecal	\$ 34.00
82657		Enzyme cell activity	\$ 53.20
82658		Enzyme cell activity ra	\$ 53.20
82664		Electrophoretic test	\$ 101.24
82666		Assay of epiandrosterone	\$ 63.31
82668		Assay of erythropoietin	\$ 55.40
82670		Assay of estradiol	\$ 82.34
82671		Assay of estrogens	\$ 95.19
82672		Assay of estrogen	\$ 63.94
82677		Assay of estriol	\$ 71.26
82679	QW	Assay of estrone	\$ 73.55
82679		Assay of estrone	\$ 73.55

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
82690		Assay of ethchlorvynol	\$ 50.93
82693		Assay of ethylene glycol	\$ 43.89
82696		Assay of etiocholanolone	\$ 69.51
82705		Fats/lipids feces qual	\$ 14.99
82710		Fats/lipids feces quant	\$ 49.53
82715		Assay of fecal fat	\$ 29.29
82725		Assay of blood fatty acids	\$ 39.23
82726		Long chain fatty acids	\$ 53.20
82728		Assay of ferritin	\$ 40.15
82731		Assay of fetal fibronectin	\$ 189.82
82735		Assay of fluoride	\$ 54.63
82742		Assay of flurazepam	\$ 58.32
82746		Assay of folic acid serum	\$ 43.33
82747		Assay of folic acid rbc	\$ 50.72
82757		Assay of semen fructose	\$ 22.98
82759		Assay of rbc galactokinase	\$ 45.90
82760		Assay of galactose	\$ 32.98
82775		Assay galactose transferase	\$ 62.08
82776		Galactose transferase test	\$ 16.80
82777		Galectin-3	\$ 64.82
82784		Assay iga/igd/igg/igm each	\$ 16.80
82785		Assay of ige	\$ 48.54
82787		Igg 1 2 3 or 4 each	\$ 13.54

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCCPS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
82800		Blood pH	\$ 24.93
82803		Blood gases any combination	\$ 57.02
82805		Blood gases w/o2 saturation	\$ 83.61
82810		Blood gases o2 sat only	\$ 25.73
82820		Hemoglobin-oxygen affinity	\$ 28.56
82930		Gastric analy w/ph ea spec	\$ 16.07
82938		Gastrin test	\$ 52.14
82941		Assay of gastrin	\$ 51.97
82943		Assay of glucagon	\$ 42.10
82945		Glucose other fluid	\$ 11.58
82946		Glucagon tolerance test	\$ 39.29
82947	QW	Assay glucose blood quant	\$ 11.58
82947		Assay glucose blood quant	\$ 11.58
82948		Reagent strip/blood glucose	\$ 9.33
82950	QW	Glucose test	\$ 14.00
82950		Glucose test	\$ 14.00
82951	QW	Glucose tolerance test (GTT)	\$ 18.90
82951		Glucose tolerance test (GTT)	\$ 18.90
82952	QW	GTT-added samples	\$ 11.56
82952		GTT-added samples	\$ 11.56
82953		Glucose-tolbutamide test	\$ 44.65
82955		Assay of g6pd enzyme	\$ 28.56

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
82960		Test for G6PD enzyme	\$ 17.84
82962		Glucose blood test	\$ 5.31
82963		Assay of glucosidase	\$ 63.31
82965		Assay of gdh enzyme	\$ 22.79
82975		Assay of glutamine	\$ 35.58
82977	QW	Assay of GGT	\$ 21.21
82977		Assay of GGT	\$ 21.21
82978		Assay of glutathione	\$ 31.38
82979		Assay rbc glutathione	\$ 20.30
82980		Assay of glutethimide	\$ 54.00
82985	QW	Assay of glycated protein	\$ 44.41
82985		Assay of glycated protein	\$ 44.41
83001	QW	Assay of gonadotropin (fsh)	\$ 54.76
83001		Assay of gonadotropin (fsh)	\$ 54.76
83002	QW	Assay of gonadotropin (lh)	\$ 54.56
83002		Assay of gonadotropin (lh)	\$ 54.56
83003		Assay growth hormone (hgh)	\$ 49.16
83008		Assay of guanosine	\$ 49.46
83009		H pylori (c-13) blood	\$ 198.48
83010		Assay of haptoglobin quant	\$ 19.53
83012		Assay of haptoglobins	\$ 50.67
83013		H pylori (c-13) breath	\$ 198.48
83014		H pylori drug admin	\$ 23.18

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
83015		Heavy metal screen	\$ 55.49
83018		Quantitative screen metals	\$ 64.71
83020		Hemoglobin electrophoresis	\$ 34.24
83021		Hemoglobin chromatography	\$ 53.20
83026		Hemoglobin copper sulfate	\$ 6.98
83030		Fetal hemoglobin chemical	\$ 24.36
83033		Fetal hemoglobin assay qual	\$ 17.56
83036	QW	Glycosylated hemoglobin test	\$ 28.60
83036		Glycosylated hemoglobin test	\$ 28.60
83037	QW	Glycosylated hb home device	\$ 28.60
83037		Glycosylated hb home device	\$ 28.60
83045		Blood methemoglobin test	\$ 14.60
83050		Blood methemoglobin assay	\$ 21.60
83051		Assay of plasma hemoglobin	\$ 10.32
83055		Blood sulfhemoglobin test	\$ 14.49
83060		Blood sulfhemoglobin assay	\$ 24.36
83065		Assay of hemoglobin heat	\$ 20.30
83068		Hemoglobin stability screen	\$ 24.93
83069		Assay of urine hemoglobin	\$ 11.64
83070		Assay of hemosiderin qual	\$ 14.00
83071		Assay of hemosiderin quant	\$ 20.24
83080		Assay of b hexosaminidase	\$ 7.78

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
83088		Assay of histamine	\$ 87.03
83090		Assay of homocystine	\$ 49.70
83150		Assay of homovanillic acid	\$ 57.02
83491		Assay of corticosteroids 17	\$ 51.62
83497		Assay of 5-hiaa	\$ 37.99
83498		Assay of progesterone 17-d	\$ 80.07
83499		Assay of progesterone 20-	\$ 74.30
83500		Assay free hydroxyproline	\$ 66.74
83505		Assay total hydroxyproline	\$ 71.65
83516		Immunoassay nonantibody	\$ 34.00
83518	QW	Immunoassay dipstick	\$ 24.97
83518		Immunoassay dipstick	\$ 24.97
83519		Ria nonantibody	\$ 39.81
83520	QW	Immunoassay quant nos nonab	\$ 38.15
83520		Immunoassay quant nos nonab	\$ 38.15
83525		Assay of insulin	\$ 33.67
83527		Assay of insulin	\$ 37.30
83528		Assay of intrinsic factor	\$ 46.87
83540		Assay of iron	\$ 19.07
83550		Iron binding test	\$ 25.77
83570		Assay of idh enzyme	\$ 26.07
83582		Assay of ketogenic steroids	\$ 41.77

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCCPS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
83586		Assay 17- ketosteroids	\$ 37.74
83593		Fractionation ketosteroids	\$ 77.50
83605	QW	Assay of lactic acid	\$ 4.13
83605		Assay of lactic acid	\$ 4.13
83615		Lactate (LD) (LDH) enzyme	\$ 17.78
83625		Assay of ldh enzymes	\$ 17.50
83630		Lactoferrin fecal (qual)	\$ 57.84
83631		Lactoferrin fecal (quant)	\$ 57.84
83632		Placental lactogen	\$ 59.57
83633		Test urine for lactose	\$ 16.20
83634		Assay of urine for lactose	\$ 33.98
83655	QW	Assay of lead	\$ 35.68
83655		Assay of lead	\$ 35.68
83661		L/s ratio fetal lung	\$ 29.29
83662		Foam stability fetal lung	\$ 55.75
83663		Fluoro polarize fetal lung	\$ 55.75
83664		Lamellar bdy fetal lung	\$ 55.75
83670		Assay of lap enzyme	\$ 26.98
83690		Assay of lipase	\$ 20.30
83695		Assay of lipoprotein(a)	\$ 38.15
83698		Assay lipoprotein pla2	\$ 96.10
83700		Lipopro bld electrophoretic	\$ 29.12

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
83701		Lipoprotein bld hr fraction	\$ 73.14
83704		Lipoprotein bld by nmr	\$ 92.97
83718	QW	Assay of lipoprotein	\$ 24.13
83718		Assay of lipoprotein	\$ 24.13
83719		Assay of blood lipoprotein	\$ 34.28
83721	QW	Assay of blood lipoprotein	\$ 28.12
83721		Assay of blood lipoprotein	\$ 28.12
83727		Assay of lrh hormone	\$ 50.67
83735		Assay of magnesium	\$ 19.74
83775		Assay malate dehydrogenase	\$ 21.73
83785		Assay of manganese	\$ 72.47
83788		Mass spectrometry qual	\$ 53.20
83789		Mass spectrometry quant	\$ 53.20
83805		Assay of meprobamate	\$ 51.93
83825		Assay of mercury	\$ 47.91
83835		Assay of metanephrines	\$ 49.92
83840		Assay of methadone	\$ 48.12
83857		Assay of methemalbumin	\$ 31.64
83858		Assay of methsuximide	\$ 43.65
83861	QW	Microfluid analy tears	\$ 48.69
83861		Microfluid analy tears	\$ 48.69
83864		Mucopolysaccharides	\$ 58.69
83866		Mucopolysaccharides screen	\$ 29.03

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCCPS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
83872		Assay synovial fluid mucin	\$ 17.28
83873		Assay of csf protein	\$ 50.70
83874		Assay of myoglobin	\$ 38.06
83876		Assay myeloperoxidase	\$ 96.10
83880	QW	Assay of natriuretic peptide	\$ 96.10
83880		Assay of natriuretic peptide	\$ 96.10
83883		Assay nephelometry not spec	\$ 16.70
83885		Assay of nickel	\$ 72.21
83887		Assay of nicotine	\$ 69.79
83915		Assay of nucleotidase	\$ 32.85
83916		Oligoclonal bands	\$ 59.25
83918		Organic acids total quant	\$ 48.49
83919		Organic acids qual each	\$ 48.49
83921		Organic acid single quant	\$ 48.49
83925		Assay of opiates	\$ 57.33
83930		Assay of blood osmolality	\$ 19.48
83935		Assay of urine osmolality	\$ 20.09
83937		Assay of osteocalcin	\$ 43.98
83945		Assay of oxalate	\$ 37.93
83950		Oncoprotein her-2/neu	\$ 189.82
83951		Oncoprotein dcp	\$ 189.82
83970		Assay of parathormone	\$ 121.63

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
83986	QW	Assay ph body fluid nos	\$ 10.54
83986		Assay ph body fluid nos	\$ 10.54
83987		Exhaled breath condensate	\$ 46.79
83992		Assay for phencyclidine	\$ 43.31
83993		Assay for calprotectin fecal	\$ 57.84
84022		Assay of phenothiazine	\$ 45.90
84030		Assay of blood pku	\$ 16.20
84035		Assay of phenylketones	\$ 9.03
84060		Assay acid phosphatase	\$ 21.77
84061		Phosphatase forensic exam	\$ 23.31
84066		Assay prostate phosphatase	\$ 28.47
84075	QW	Assay alkaline phosphatase	\$ 15.25
84075		Assay alkaline phosphatase	\$ 15.25
84078		Assay alkaline phosphatase	\$ 21.51
84080		Assay alkaline phosphatases	\$ 43.57
84081		Assay phosphatidylglycerol	\$ 48.69
84085		Assay of rbc pg6d enzyme	\$ 19.87
84087		Assay phosphohexose enzymes	\$ 30.43
84100		Assay of phosphorus	\$ 13.95
84105		Assay of urine phosphorus	\$ 15.25
84106		Test for porphobilinogen	\$ 12.51
84110		Assay of porphobilinogen	\$ 24.86

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPSC	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
84112		Placenta alpha micro ig c/v	\$ 189.82
84119		Test urine for porphyrins	\$ 25.38
84120		Assay of urine porphyrins	\$ 43.35
84126		Assay of feces porphyrins	\$ 75.06
84127		Assay of feces porphyrins	\$ 29.40
84132	QW	Assay of serum potassium	\$ 13.54
84132		Assay of serum potassium	\$ 13.54
84133		Assay of urine potassium	\$ 12.68
84134		Assay of prealbumin	\$ 16.70
84135		Assay of pregnanediol	\$ 56.38
84138		Assay of pregnanetriol	\$ 55.79
84140		Assay of pregnenolone	\$ 43.98
84143		Assay of 17-hydroxypregнено	\$ 43.98
84144		Assay of progesterone	\$ 45.90
84145		Procalcitonin (pct)	\$ 78.93
84146		Assay of prolactin	\$ 57.11
84150		Assay of prostaglandin	\$ 73.55
84152		Assay of psa complexed	\$ 54.19
84153		Assay of psa total	\$ 54.19
84154		Assay of psa free	\$ 54.19
84155	QW	Assay of protein serum	\$ 10.80
84155		Assay of protein serum	\$ 10.80

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
84156		Assay of protein urine	\$ 10.80
84157	QW	Assay of protein other	\$ 10.80
84157		Assay of protein other	\$ 10.80
84160		Assay of protein any source	\$ 15.25
84163		Pappa serum	\$ 44.37
84165		Protein e-phoresis serum	\$ 31.64
84166		Protein e-phoresis/urine/csf	\$ 52.55
84181		Western blot test	\$ 50.20
84182		Protein western blot test	\$ 53.03
84202		Assay RBC protoporphyrin	\$ 42.27
84203		Test RBC protoporphyrin	\$ 25.36
84206		Assay of proinsulin	\$ 52.34
84207		Assay of vitamin b-6	\$ 82.79
84210		Assay of pyruvate	\$ 31.99
84220		Assay of pyruvate kinase	\$ 27.82
84228		Assay of quinine	\$ 34.28
84233		Assay of estrogen	\$ 189.82
84234		Assay of progesterone	\$ 191.18
84235		Assay of endocrine hormone	\$ 154.22
84238		Assay nonendocrine receptor	\$ 107.76
84244		Assay of renin	\$ 64.82
84252		Assay of vitamin b-2	\$ 59.64
84255		Assay of selenium	\$ 75.23

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
84260		Assay of serotonin	\$ 54.78
84270		Assay of sex hormone globul	\$ 64.04
84275		Assay of sialic acid	\$ 39.59
84285		Assay of silica	\$ 69.38
84295	QW	Assay of serum sodium	\$ 14.17
84295		Assay of serum sodium	\$ 14.17
84300		Assay of urine sodium	\$ 14.34
84302		Assay of sweat sodium	\$ 14.34
84305		Assay of somatomedin	\$ 57.87
84307		Assay of somatostatin	\$ 53.87
84311		Spectrophotometry	\$ 20.61
84315		Body fluid specific gravity	\$ 7.41
84375		Chromatogram assay sugars	\$ 7.06
84376		Sugars single qual	\$ 16.20
84377		Sugars multiple qual	\$ 16.20
84378		Sugars single quant	\$ 33.98
84379		Sugars multiple quant	\$ 33.98
84392		Assay of urine sulfate	\$ 14.00
84402		Assay of free testosterone	\$ 75.04
84403		Assay of total testosterone	\$ 76.08
84425		Assay of vitamin b-1	\$ 62.55
84430		Assay of thiocyanate	\$ 34.28

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
84431		Thromboxane urine	\$ 49.53
84432		Assay of thyroglobulin	\$ 45.04
84436		Assay of total thyroxine	\$ 20.24
84437		Assay of neonatal thyroxine	\$ 19.07
84439		Assay of free thyroxine	\$ 24.02
84442		Assay of thyroid activity	\$ 34.24
84443	QW	Assay thyroid stim hormone	\$ 49.53
84443		Assay thyroid stim hormone	\$ 49.53
84445		Assay of tsi globulin	\$ 149.86
84446		Assay of vitamin e	\$ 41.77
84449		Assay of transcortin	\$ 43.98
84450	QW	Transferase (AST) (SGOT)	\$ 15.25
84450		Transferase (AST) (SGOT)	\$ 15.25
84460	QW	Alanine amino (ALT) (SGPT)	\$ 15.60
84460		Alanine amino (ALT) (SGPT)	\$ 15.60
84466		Assay of transferrin	\$ 37.63
84478	QW	Assay of triglycerides	\$ 16.93
84478		Assay of triglycerides	\$ 16.93
84479		Assay of thyroid (t3 or t4)	\$ 19.07
84480		Assay triiodothyronine (t3)	\$ 41.77
84481		Free assay (FT-3)	\$ 49.92
84482		T3 reverse	\$ 46.44
84484		Assay of troponin quant	\$ 19.70

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCP	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
84485		Assay duodenal fluid trypsin	\$ 12.51
84488		Test feces for trypsin	\$ 12.51
84490		Assay of feces for trypsin	\$ 16.80
84510		Assay of tyrosine	\$ 30.65
84512		Assay of troponin qual	\$ 22.70
84520	QW	Assay of urea nitrogen	\$ 11.64
84520		Assay of urea nitrogen	\$ 11.64
84525		Urea nitrogen semi-quant	\$ 5.10
84540		Assay of urine/urea-n	\$ 14.00
84545		Urea-N clearance test	\$ 19.46
84550	QW	Assay of blood/uric acid	\$ 13.31
84550		Assay of blood/uric acid	\$ 13.31
84560		Assay of urine/uric acid	\$ 14.00
84577		Assay of feces/urobilinogen	\$ 36.78
84578		Test urine urobilinogen	\$ 4.13
84580		Assay of urine urobilinogen	\$ 20.91
84583		Assay of urine urobilinogen	\$ 14.82
84585		Assay of urine vma	\$ 45.66
84586		Assay of vip	\$ 43.98
84588		Assay of vasopressin	\$ 96.10
84590		Assay of vitamin a	\$ 34.19
84591		Assay of nos vitamin	\$ 34.19

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
84597		Assay of vitamin k	\$ 40.41
84600		Assay of volatiles	\$ 47.37
84620		Xylose tolerance test	\$ 34.91
84630		Assay of zinc	\$ 33.54
84681		Assay of c-peptide	\$ 51.21
84702		Chorionic gonadotropin test	\$ 44.37
84703	QW	Chorionic gonadotropin assay	\$ 20.58
84703		Chorionic gonadotropin assay	\$ 20.58
84704		Hcg free betachain test	\$ 44.37
84830		Ovulation tests	\$ 29.55
85002		Bleeding time test	\$ 13.28
85004		Automated diff wbc count	\$ 14.69
85007		Bl smear w/diff wbc count	\$ 10.13
85008		Bl smear w/o diff wbc count	\$ 10.13
85009		Manual diff wbc count b-coat	\$ 10.97
85013		Spun microhematocrit	\$ 6.98
85014	QW	Hematocrit	\$ 6.98
85014		Hematocrit	\$ 6.98
85018	QW	Hemoglobin	\$ 6.98
85018		Hemoglobin	\$ 6.98
85025		Complete cbc w/auto diff wbc	\$ 20.82
85027		Complete cbc automated	\$ 14.69
85032		Manual cell count each	\$ 12.68

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
85041		Automated rbc count	\$ 8.88
85044		Manual reticulocyte count	\$ 12.68
85045		Automated reticulocyte count	\$ 11.77
85046		Reticyte/hgb concentrate	\$ 16.44
85048		Automated leukocyte count	\$ 7.47
85049		Automated platelet count	\$ 13.20
85055		Reticulated platelet assay	\$ 53.33
85130		Chromogenic substrate assay	\$ 20.82
85170		Blood clot retraction	\$ 10.67
85175		Blood clot lysis time	\$ 13.41
85210		Clot factor ii prothrom spec	\$ 38.28
85220		Blood clot factor v test	\$ 51.99
85230		Clot factor vii proconvertin	\$ 52.77
85240		Clot factor viii ahg 1 stage	\$ 52.77
85244		Clot factor viii reltd antgn	\$ 60.16
85245		Clot factor viii vw ristoctn	\$ 67.61
85246		Clot factor viii vw antigen	\$ 67.61
85247		Clot factor viii multimetric	\$ 67.61
85250		Clot factor ix ptc/chrstmas	\$ 56.10
85260		Clot factor x stuart-power	\$ 52.77
85270		Clot factor xi pta	\$ 52.77
85280		Clot factor xii hageman	\$ 57.02

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
85290		Clot factor xiii fibrin stab	\$ 48.17
85291		Clot factor xiii fibrin scrn	\$ 26.22
85292		Clot factor fletcher fact	\$ 55.81
85293		Clot factor wght kininogen	\$ 55.81
85300		Antithrombin iii activity	\$ 34.93
85301		Antithrombin iii antigen	\$ 31.86
85302		Clot inhibit prot c antigen	\$ 35.42
85303		Clot inhibit prot c activity	\$ 40.76
85305		Clot inhibit prot s total	\$ 34.19
85306		Clot inhibit prot s free	\$ 45.17
85307		Assay activated protein c	\$ 45.17
85335		Factor inhibitor test	\$ 27.15
85337		Thrombomodulin	\$ 30.72
85345		Coagulation time lee & white	\$ 12.68
85347		Coagulation time activated	\$ 12.55
85348		Coagulation time otr method	\$ 10.97
85360		Euglobulin lysis	\$ 13.65
85362		Fibrin degradation products	\$ 20.30
85366		Fibrinogen test	\$ 25.38
85370		Fibrinogen test	\$ 33.46
85378		Fibrin degrade semiquant	\$ 21.02
85379		Fibrin degradation quant	\$ 23.87
85380		Fibrin degradj d-dimer	\$ 23.87

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCP	CS	Modifier	SHORTDESC	216%
36415			Routine venipuncture	\$ 6.48
78267			Breath tst attain/anal c-14	\$ 23.18
85384			Fibrinogen activity	\$ 25.01
85385			Fibrinogen antigen	\$ 25.01
85390			Fibrinolysins screen i&r	\$ 12.51
85397			Clotting funct activity	\$ 67.61
85400			Fibrinolytic plasmin	\$ 26.07
85410			Fibrinolytic antiplasmin	\$ 20.87
85415			Fibrinolytic plasminogen	\$ 50.67
85420			Fibrinolytic plasminogen	\$ 19.27
85421			Fibrinolytic plasminogen	\$ 30.02
85441			Heinz bodies direct	\$ 12.40
85445			Heinz bodies induced	\$ 20.09
85460			Hemoglobin fetal	\$ 22.81
85461			Hemoglobin fetal	\$ 19.55
85475			Hemolysin acid	\$ 26.16
85520			Heparin assay	\$ 31.38
85525			Heparin neutralization	\$ 34.91
85530			Heparin-protamine tolerance	\$ 41.77
85536			Iron stain peripheral blood	\$ 19.07
85540			Wbc alkaline phosphatase	\$ 25.36
85547			RBC mechanical fragility	\$ 25.36
85549			Muramidase	\$ 55.27
85555			RBC osmotic fragility	\$ 19.70

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
85557		RBC osmotic fragility	\$ 39.38
85576	QW	Blood platelet aggregation	\$ 63.31
85576		Blood platelet aggregation	\$ 63.31
85597		Phospholipid pltlt neutraliz	\$ 45.27
85598		Hexagnal phosph pltlt neutrl	\$ 45.27
85610	QW	Prothrombin time	\$ 11.60
85610		Prothrombin time	\$ 11.60
85611		Prothrombin test	\$ 11.62
85612		Viper venom prothrombin time	\$ 28.21
85613		Russell viper venom diluted	\$ 28.21
85635		Reptilase test	\$ 29.01
85651		Rbc sed rate nonautomated	\$ 10.45
85652		Rbc sed rate automated	\$ 7.97
85660		RBC sickle cell test	\$ 16.26
85670		Thrombin time plasma	\$ 17.00
85675		Thrombin time titer	\$ 20.17
85705		Thromboplastin inhibition	\$ 20.58
85730		Thromboplastin time partial	\$ 17.69
85732		Thromboplastin time partial	\$ 19.07
85810		Blood viscosity examination	\$ 34.39
86000		Agglutinins febrile antigen	\$ 20.56
86001		Allergen specific igg	\$ 14.10
86003		Allergen specific IgE	\$ 14.10

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
86005		Allergen specific IgE	\$ 20.63
86021		WBC antibody identification	\$ 44.37
86022		Platelet antibodies	\$ 54.13
86023		Immunoglobulin assay	\$ 36.72
86038		Antinuclear antibodies	\$ 35.62
86039		Antinuclear antibodies (ANA)	\$ 32.90
86060		Antistreptolysin o titer	\$ 16.59
86063		Antistreptolysin o screen	\$ 10.50
86140		C-reactive protein	\$ 15.25
86141		C-reactive protein hs	\$ 38.15
86146		Beta-2 glycoprotein antibody	\$ 45.04
86147		Cardiolipin antibody ea ig	\$ 45.04
86148		Anti-phospholipid antibody	\$ 47.35
86152		Cell enumeration & id	\$ 724.05
86155		Chemotaxis assay	\$ 45.90
86156		Cold agglutinin screen	\$ 19.74
86157		Cold agglutinin titer	\$ 23.76
86160		Complement antigen	\$ 35.38
86161		Complement/function activity	\$ 35.38
86162		Complement total (ch50)	\$ 59.88
86171		Complement fixation each	\$ 29.51
86185		Counterimmunoelectrophoresis	\$ 26.35

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
86200		Ccp antibody	\$ 38.15
86215		Deoxyribonuclease antibody	\$ 39.05
86225		Dna antibody native	\$ 40.48
86226		Dna antibody single strand	\$ 35.68
86235		Nuclear antigen antibody	\$ 44.02
86243		Fc receptor	\$ 60.46
86255		Fluorescent antibody screen	\$ 35.51
86256		Fluorescent antibody titer	\$ 35.51
86277		Growth hormone antibody	\$ 46.38
86280		Hemagglutination inhibition	\$ 24.13
86294	QW	Immunoassay tumor qual	\$ 57.82
86294		Immunoassay tumor qual	\$ 57.82
86300		Immunoassay tumor ca 15-3	\$ 61.32
86301		Immunoassay tumor ca 19-9	\$ 61.32
86304		Immunoassay tumor ca 125	\$ 61.32
86305		Human epididymis protein 4	\$ 61.32
86308	QW	Heterophile antibody screen	\$ 15.25
86308		Heterophile antibody screen	\$ 15.25
86309		Heterophile antibody titer	\$ 19.07
86310		Heterophile antibody absrbj	\$ 21.73
86316		Immunoassay tumor other	\$ 61.32
86317		Immunoassay infectious agent	\$ 44.17
86318	QW	Immunoassay infectious agent	\$ 38.15

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
86318		Immunoassay infectious agent	\$ 38.15
86320		Serum immunoelectrophoresis	\$ 66.05
86325		Other immunoelectrophoresis	\$ 65.90
86327		Immunoelectrophoresis assay	\$ 66.85
86329		Immunodiffusion nes	\$ 41.36
86331		Immunodiffusion ouchterlony	\$ 35.32
86332		Immune complex assay	\$ 50.76
86334		Immunofix e-phoresis serum	\$ 65.84
86335		Immunfix e-phorsis/urine/csf	\$ 86.49
86336		Inhibin A	\$ 38.17
86337		Insulin antibodies	\$ 63.09
86340		Intrinsic factor antibody	\$ 44.41
86341		Islet cell antibody	\$ 39.57
86343		Leukocyte histamine release	\$ 36.74
86344		Leukocyte phagocytosis	\$ 23.54
86352		Cell function assay w/stim	\$ 400.38
86353		Lymphocyte transformation	\$ 144.48
86355		B cells total count	\$ 52.34
86356		Mononuclear cell antigen	\$ 53.33
86357		Nk cells total count	\$ 52.34
86359		T cells total count	\$ 52.34
86360		T cell absolute count/ratio	\$ 104.63

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
86361		T cell absolute count	\$ 53.33
86367		Stem cells total count	\$ 52.34
86376		Microsomal antibody each	\$ 42.88
86378		Migration inhibitory factor	\$ 58.02
86382		Neutralization test viral	\$ 49.83
86384		Nitroblue tetrazolium dye	\$ 33.54
86386	QW	Nuclear matrix protein 22	\$ 47.07
86386		Nuclear matrix protein 22	\$ 47.07
86403		Particle agglut antbdy scrn	\$ 20.58
86406		Particle agglut antbdy titr	\$ 31.34
86430		Rheumatoid factor test qual	\$ 16.72
86431		Rheumatoid factor quant	\$ 16.72
86480		Tb test cell immun measure	\$ 182.65
86481		Tb ag response t-cell susp	\$ 220.80
86590		Streptokinase antibody	\$ 31.38
86592		Syphilis test non-trep qual	\$ 12.57
86593		Syphilis test non-trep quant	\$ 12.96
86602		Antinomyces antibody	\$ 30.00
86603		Adenovirus antibody	\$ 33.05
86606		Aspergillus antibody	\$ 41.45
86609		Bacterium antibody	\$ 37.97
86611		Bartonella antibody	\$ 30.00
86612		Blastomyces antibody	\$ 33.05

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
86615		Bordetella antibody	\$ 38.88
86617		Lyme disease antibody	\$ 45.64
86618	QW	Lyme disease antibody	\$ 50.20
86618		Lyme disease antibody	\$ 50.20
86619		Borrelia antibody	\$ 39.42
86622		Brucella antibody	\$ 24.11
86625		Campylobacter antibody	\$ 38.66
86628		Candida antibody	\$ 35.38
86631		Chlamydia antibody	\$ 34.84
86632		Chlamydia igm antibody	\$ 37.39
86635		Coccidioides antibody	\$ 33.05
86638		Q fever antibody	\$ 33.05
86641		Cryptococcus antibody	\$ 20.58
86644		CMV antibody	\$ 42.42
86645		Cmv antibody igm	\$ 42.08
86648		Diphtheria antibody	\$ 44.82
86651		Encephalitis californ antbdy	\$ 38.88
86652		Encephaltis east eqne anbdy	\$ 38.88
86653		Encephaltis st louis antibody	\$ 38.88
86654		Encephaltis west eqne antbdy	\$ 38.88
86658		Enterovirus antibody	\$ 33.05
86663		Epstein-barr antibody	\$ 38.66

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
86664		Epstein-barr nuclear antigen	\$ 42.08
86665		Epstein-barr capsid vca	\$ 42.08
86666		Ehrlichia antibody	\$ 30.00
86668		Francisella tularensis	\$ 22.98
86671		Fungus nes antibody	\$ 33.05
86674		Giardia lamblia antibody	\$ 42.08
86677		Helicobacter pylori antibody	\$ 42.77
86682		Helminth antibody	\$ 30.50
86684		Hemophilus influenza antibdy	\$ 20.58
86687		Htlv-i antibody	\$ 24.73
86688		Htlv-ii antibody	\$ 29.40
86689		Htlv/hiv confirmj antibody	\$ 57.02
86692		Hepatitis delta agent antbdy	\$ 50.57
86694		Herpes simplex nes antbdy	\$ 42.42
86695		Herpes simplex type 1 test	\$ 38.88
86696		Herpes simplex type 2 test	\$ 57.02
86698		Histoplasma antibody	\$ 33.05
86701	QW	Hiv-1antibody	\$ 26.18
86701		Hiv-1antibody	\$ 26.18
86702		Hiv-2 antibody	\$ 29.40
86703		Hiv-1/hiv-2 1 result antbdy	\$ 29.40
86704		Hep b core antibody total	\$ 35.51
86705		Hep b core antibody igm	\$ 34.71

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
86706		Hep b surface antibody	\$ 31.64
86707		Hepatitis be antibody	\$ 34.08
86708		Hepatitis a total antibody	\$ 36.50
86709		Hepatitis a igm antibody	\$ 33.18
86710		Influenza virus antibody	\$ 39.94
86711		John cunningham antibody	\$ 42.42
86713		Legionella antibody	\$ 42.08
86717		Leishmania antibody	\$ 36.09
86720		Leptospira antibody	\$ 38.88
86723		Listeria monocytogenes	\$ 38.88
86727		Lymph choriomeningitis ab	\$ 33.05
86729		Lympho venereum antibody	\$ 35.21
86732		Mucormycosis antibody	\$ 38.88
86735		Mumps antibody	\$ 38.45
86738		Mycoplasma antibody	\$ 39.03
86741		Neisseria meningitidis	\$ 38.88
86744		Nocardia antibody	\$ 38.88
86747		Parvovirus antibody	\$ 44.30
86750		Malaria antibody	\$ 38.88
86753		Protozoa antibody nos	\$ 30.50
86756		Respiratory virus antibody	\$ 37.97
86757		Rickettsia antibody	\$ 57.02

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
86759		Rotavirus antibody	\$ 38.88
86762		Rubella antibody	\$ 42.42
86765		Rubeola antibody	\$ 37.97
86768		Salmonella antibody	\$ 38.88
86771		Shigella antibody	\$ 38.88
86774		Tetanus antibody	\$ 43.61
86777		Toxoplasma antibody	\$ 42.42
86778		Toxoplasma antibody igm	\$ 42.08
86780		Treponema pallidum	\$ 39.01
86784		Trichinella antibody	\$ 18.73
86787		Varicella-zoster antibody	\$ 37.97
86788		West nile virus ab igm	\$ 42.08
86789		West nile virus antibody	\$ 42.42
86790		Virus antibody nos	\$ 37.97
86793		Yersinia antibody	\$ 38.88
86800		Thyroglobulin antibody	\$ 46.87
86803	QW	Hepatitis c ab test	\$ 42.06
86803		Hepatitis c ab test	\$ 42.06
86804		Hep c ab test confirm	\$ 45.64
86805		Lymphocytotoxicity assay	\$ 154.09
86806		Lymphocytotoxicity assay	\$ 140.25
86807		Cytotoxic antibody screening	\$ 116.62
86808		Cytotoxic antibody screening	\$ 87.46

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
86812		Hla typing a b or c	\$ 76.05
86813		Hla typing a b or c	\$ 94.11
86816		Hla typing dr/dq	\$ 82.10
86817		Hla typing dr/dq	\$ 189.73
86821		Lymphocyte culture mixed	\$ 166.38
86822		Lymphocyte culture primed	\$ 107.74
86825		Hla x-math non-cytotoxic	\$ 159.99
86826		Hla x-match noncytotoxc addl	\$ 53.33
86828		Hla class i&ii antibody qual	\$ 116.62
86829		Hla class i/ii antibody qual	\$ 87.46
86830		Hla class i phenotype qual	\$ 237.92
86831		Hla class ii phenotype qual	\$ 203.93
86832		Hla class i high defin qual	\$ 373.87
86833		Hla class ii high defin qual	\$ 339.90
86834		Hla class i semiquant panel	\$ 1,053.65
86835		Hla class ii semiquant panel	\$ 951.70
86880		Coombs test direct	\$ 15.85
86885		Coombs test indirect qual	\$ 16.87
86886		Coombs test indirect titer	\$ 15.25
86900		Blood typing abo	\$ 8.79
86901		Blood typing rh (d)	\$ 8.79
86902		Blood type antigen donor ea	\$ 11.28

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
86904		Blood typing patient serum	\$ 28.02
86905		Blood typing rbc antigens	\$ 11.28
86906		Blood typing rh phenotype	\$ 18.90
86940		Hemolysins/agglutinins auto	\$ 24.17
86941		Hemolysins/agglutinins	\$ 35.68
87001		Small animal inoculation	\$ 38.94
87003		Small animal inoculation	\$ 49.62
87015		Specimen infect agnt concntj	\$ 19.68
87040		Blood culture for bacteria	\$ 30.43
87045		Feces culture aerobic bact	\$ 27.82
87046		Stool cultr aerobic bact ea	\$ 27.82
87070		Culture othr specimn aerobic	\$ 25.38
87071		Culture aerobic quant other	\$ 27.82
87073		Culture bacteria anaerobic	\$ 27.82
87075		Cultr bacteria except blood	\$ 27.89
87076		Culture anaerobe ident each	\$ 20.87
87077	QW	Culture aerobic identify	\$ 20.87
87077		Culture aerobic identify	\$ 20.87
87081		Culture screen only	\$ 19.55
87084		Culture of specimen by kit	\$ 25.38
87086		Urine culture/colony count	\$ 23.78
87088		Urine bacteria culture	\$ 23.87
87101		Skin fungi culture	\$ 22.72

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
87102		Fungus isolation culture	\$ 24.75
87103		Blood fungus culture	\$ 26.57
87106		Fungi identification yeast	\$ 30.43
87107		Fungi identification mold	\$ 30.43
87109		Mycoplasma	\$ 45.34
87110		Chlamydia culture	\$ 57.74
87116		Mycobacteria culture	\$ 31.84
87118		Mycobacteric identification	\$ 32.25
87140		Culture type immunofluoresc	\$ 16.44
87143		Culture typing glc/hplc	\$ 36.91
87147		Culture type immunologic	\$ 15.25
87149		Dna/rna direct probe	\$ 59.10
87150		Dna/rna amplified probe	\$ 103.40
87152		Culture type pulse field gel	\$ 15.40
87153		Dna/rna sequencing	\$ 339.94
87158		Culture typing added method	\$ 15.40
87164		Dark field examination	\$ 31.64
87166		Dark field examination	\$ 33.29
87168		Macroscopic exam arthropod	\$ 12.57
87169		Macroscopic exam parasite	\$ 12.57
87172		Pinworm exam	\$ 12.57
87176		Tissue homogenization cultur	\$ 17.34

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
87177		Ova and parasites smears	\$ 26.22
87181		Microbe susceptible diffuse	\$ 14.00
87184		Microbe susceptible disk	\$ 20.33
87185		Microbe susceptible enzyme	\$ 14.00
87186		Microbe susceptible mic	\$ 25.49
87187		Microbe susceptible mlc	\$ 30.54
87188		Microbe suscept macrobroth	\$ 19.57
87190		Microbe suscept mycobacteri	\$ 12.51
87197		Bactericidal level serum	\$ 44.28
87205		Smear gram stain	\$ 12.57
87206		Smear fluorescent/acid stai	\$ 15.85
87207		Smear special stain	\$ 16.80
87209		Smear complex stain	\$ 50.44
87210	QW	Smear wet mount saline/ink	\$ 12.57
87210		Smear wet mount saline/ink	\$ 12.57
87220		Tissue exam for fungi	\$ 12.57
87230		Assay toxin or antitoxin	\$ 58.19
87250		Virus inoculate eggs/animal	\$ 57.63
87252		Virus inoculation tissue	\$ 76.81
87253		Virus inoculate tissue addl	\$ 59.53
87254		Virus inoculation shell via	\$ 57.63
87255		Genet virus isolate hsv	\$ 99.79
87260		Adenovirus ag if	\$ 35.34

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCCPS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
87265		Pertussis ag if	\$ 35.34
87267		Enterovirus antibody dfa	\$ 35.34
87269		Giardia ag if	\$ 35.34
87270		Chlamydia trachomatis ag if	\$ 35.34
87271		Cytomegalovirus dfa	\$ 35.34
87272		Cryptosporidium ag if	\$ 35.34
87273		Herpes simplex 2 ag if	\$ 35.34
87274		Herpes simplex 1 ag if	\$ 35.34
87275		Influenza b ag if	\$ 35.34
87276		Influenza a ag if	\$ 35.34
87277		Legionella micdadei ag if	\$ 35.34
87278		Legion pneumophila ag if	\$ 35.34
87279		Parainfluenza ag if	\$ 35.34
87280		Respiratory syncytial ag if	\$ 35.34
87281		Pneumocystis carinii ag if	\$ 35.34
87283		Rubeola ag if	\$ 35.34
87285		Treponema pallidum ag if	\$ 35.34
87290		Varicella zoster ag if	\$ 35.34
87299		Antibody detection nos if	\$ 35.34
87300		Ag detection polyval if	\$ 35.34
87301		Adenovirus ag eia	\$ 35.34
87305		Aspergillus ag eia	\$ 35.34

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
87320		Chylmd trach ag eia	\$ 35.34
87324		Clostridium ag eia	\$ 35.34
87327		Cryptococcus neoform ag eia	\$ 35.34
87328		Cryptosporidium ag eia	\$ 35.34
87329		Giardia ag eia	\$ 35.34
87332		Cytomegalovirus ag eia	\$ 35.34
87335		E coli 0157 ag eia	\$ 35.34
87336		Entamoeb hist dispr ag eia	\$ 35.34
87337		Entamoeb hist group ag eia	\$ 35.34
87338		Hpylori stool eia	\$ 35.36
87339		H pylori ag eia	\$ 35.34
87340		Hepatitis b surface ag eia	\$ 30.46
87341		Hepatitis b surface ag eia	\$ 30.46
87350		Hepatitis be ag eia	\$ 33.98
87380		Hepatitis delta ag eia	\$ 48.36
87385		Histoplasma capsul ag eia	\$ 35.34
87389		Hiv-1 ag w/hiv-1 & hiv-2 ab	\$ 70.98
87390		Hiv-1 ag eia	\$ 51.97
87391		Hiv-2 ag eia	\$ 51.97
87400		Influenza a/b ag eia	\$ 35.34
87420		Resp syncytial ag eia	\$ 35.34
87425		Rotavirus ag eia	\$ 35.34
87427		Shiga-like toxin ag eia	\$ 35.34

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
87430		Strep a ag eia	\$ 35.34
87449	QW	Ag detect nos eia mult	\$ 35.34
87449		Ag detect nos eia mult	\$ 35.34
87450		Ag detect nos eia single	\$ 28.25
87451		Ag detect polyval eia mult	\$ 28.25
87470		Bartonella dna dir probe	\$ 59.10
87471		Bartonella dna amp probe	\$ 103.40
87472		Bartonella dna quant	\$ 126.23
87475		Lyme dis dna dir probe	\$ 59.10
87476		Lyme dis dna amp probe	\$ 103.40
87477		Lyme dis dna quant	\$ 126.23
87480		Candida dna dir probe	\$ 59.10
87481		Candida dna amp probe	\$ 103.40
87482		Candida dna quant	\$ 123.03
87485		Chylmd pneum dna dir probe	\$ 59.10
87486		Chylmd pneum dna amp probe	\$ 103.40
87487		Chylmd pneum dna quant	\$ 126.23
87490		Chylmd trach dna dir probe	\$ 59.10
87491		Chylmd trach dna amp probe	\$ 103.40
87492		Chylmd trach dna quant	\$ 103.01
87493		C diff amplified probe	\$ 103.40
87495		Cytomeg dna dir probe	\$ 59.10

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
87496		Cytomeg dna amp probe	\$ 103.40
87497		Cytomeg dna quant	\$ 126.23
87498		Enterovirus probe&revrs trns	\$ 103.40
87500		Vanomycin dna amp probe	\$ 103.40
87501		Influenza dna amp prob 1+	\$ 151.22
87502		Influenza dna amp probe	\$ 250.75
87503		Influenza dna amp prob addl	\$ 61.19
87510		Gardner vag dna dir probe	\$ 59.10
87511		Gardner vag dna amp probe	\$ 103.40
87512		Gardner vag dna quant	\$ 123.03
87515		Hepatitis b dna dir probe	\$ 59.10
87516		Hepatitis b dna amp probe	\$ 103.40
87517		Hepatitis b dna quant	\$ 126.23
87520		Hepatitis c rna dir probe	\$ 59.10
87521		Hepatitis c probe&rvrs trnsc	\$ 103.40
87522		Hepatitis c revrs trnscrpj	\$ 126.23
87525		Hepatitis g dna dir probe	\$ 59.10
87526		Hepatitis g dna amp probe	\$ 103.40
87527		Hepatitis g dna quant	\$ 123.03
87528		Hsv dna dir probe	\$ 59.10
87529		Hsv dna amp probe	\$ 103.40
87530		Hsv dna quant	\$ 126.23
87531		Hhv-6 dna dir probe	\$ 59.10

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
87532		Hhv-6 dna amp probe	\$ 103.40
87533		Hhv-6 dna quant	\$ 123.03
87534		Hiv-1 dna dir probe	\$ 59.10
87535		Hiv-1 probe&reverse trnscrpj	\$ 103.40
87536		Hiv-1 quant&revrse trnscrpj	\$ 250.75
87537		Hiv-2 dna dir probe	\$ 59.10
87538		Hiv-2 probe&revrse trnscripj	\$ 103.40
87539		Hiv-2 quant&revrse trnscripj	\$ 126.23
87540		Legion pneumo dna dir prob	\$ 59.10
87541		Legion pneumo dna amp prob	\$ 103.40
87542		Legion pneumo dna quant	\$ 123.03
87550		Mycobacteria dna dir probe	\$ 59.10
87551		Mycobacteria dna amp probe	\$ 103.40
87552		Mycobacteria dna quant	\$ 126.23
87555		M.tuberculo dna dir probe	\$ 59.10
87556		M.tuberculo dna amp probe	\$ 103.40
87557		M.tuberculo dna quant	\$ 126.23
87560		M.avium-intra dna dir prob	\$ 59.10
87561		M.avium-intra dna amp prob	\$ 103.40
87562		M.avium-intra dna quant	\$ 126.23
87580		M.pneumon dna dir probe	\$ 59.10
87581		M.pneumon dna amp probe	\$ 103.40

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
87582		M.pneumon dna quant	\$ 123.03
87590		N.gonorrhoeae dna dir prob	\$ 59.10
87591		N.gonorrhoeae dna amp prob	\$ 103.40
87592		N.gonorrhoeae dna quant	\$ 126.23
87620		Hpv dna dir probe	\$ 59.10
87621		Hpv dna amp probe	\$ 103.40
87622		Hpv dna quant	\$ 123.03
87631		Resp virus 3-11 targets	\$ 378.04
87632		Resp virus 6-11 targets	\$ 628.95
87633		Resp virus 12-25 targets	\$ 1,228.18
87640		Staph a dna amp probe	\$ 103.40
87641		Mr-staph dna amp probe	\$ 103.40
87650		Strep a dna dir probe	\$ 59.10
87651		Strep a dna amp probe	\$ 103.40
87652		Strep a dna quant	\$ 123.03
87653		Strep b dna amp probe	\$ 103.40
87660		Trichomonas vagin dir probe	\$ 59.10
87661		Trichomonas vaginalis amplif	\$ 103.40
87797		Detect agent nos dna dir	\$ 59.10
87798		Detect agent nos dna amp	\$ 103.40
87799		Detect agent nos dna quant	\$ 126.23
87800		Detect agnt mult dna direc	\$ 118.20
87801		Detect agnt mult dna ampli	\$ 206.84

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
87802		Strep b assay w/optic	\$ 35.34
87803		Clostridium toxin a w/optic	\$ 35.34
87804	QW	Influenza assay w/optic	\$ 35.34
87804		Influenza assay w/optic	\$ 35.34
87807	QW	Rsv assay w/optic	\$ 35.34
87807		Rsv assay w/optic	\$ 35.34
87808	QW	Trichomonas assay w/optic	\$ 35.34
87808		Trichomonas assay w/optic	\$ 35.34
87809	QW	Adenovirus assay w/optic	\$ 35.34
87809		Adenovirus assay w/optic	\$ 35.34
87810		Chylmd trach assay w/optic	\$ 35.34
87850		N. gonorrhoeae assay w/optic	\$ 35.34
87880	QW	Strep a assay w/optic	\$ 35.34
87880		Strep a assay w/optic	\$ 35.34
87899	QW	Agent nos assay w/optic	\$ 35.34
87899		Agent nos assay w/optic	\$ 35.34
87900		Phenotype infect agent drug	\$ 384.09
87901		Genotype dna hiv reverse t	\$ 758.64
87902		Genotype dna/rna hep c	\$ 758.64
87903		Phenotype dna hiv w/culture	\$ 1,439.94
87904		Phenotype dna hiv w/clt add	\$ 76.81
87905	QW	Sialidase enzyme assay	\$ 15.44

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
87905		Sialidase enzyme assay	\$ 15.44
87906		Genotype dna/rna hiv	\$ 379.34
87910		Genotype cytomegalovirus	\$ 758.64
87912		Genotype dna hepatitis b	\$ 758.64
88130		Sex chromatin identification	\$ 44.37
88140		Sex chromatin identification	\$ 8.55
88142		Cytopath c/v thin layer	\$ 59.70
88143		Cytopath c/v thin layer redo	\$ 59.70
88147		Cytopath c/v automated	\$ 33.54
88148		Cytopath c/v auto rescreen	\$ 44.78
88150		Cytopath c/v manual	\$ 31.15
88152		Cytopath c/v auto redo	\$ 31.15
88153		Cytopath c/v redo	\$ 31.15
88154		Cytopath c/v select	\$ 31.15
88155		Cytopath c/v index add-on	\$ 17.67
88164		Cytopath tbs c/v manual	\$ 31.15
88165		Cytopath tbs c/v redo	\$ 31.15
88166		Cytopath tbs c/v auto redo	\$ 31.15
88167		Cytopath tbs c/v select	\$ 31.15
88174		Cytopath c/v auto in fluid	\$ 62.96
88175		Cytopath c/v auto fluid redo	\$ 78.06
88230		Tissue culture lymphocyte	\$ 108.67
88233		Tissue culture skin/biopsy	\$ 217.27

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
88235		Tissue culture placenta	\$ 217.27
88237		Tissue culture bone marrow	\$ 372.21
88239		Tissue culture tumor	\$ 434.72
88240		Cell cryopreserve/storage	\$ 29.76
88241		Frozen cell preparation	\$ 29.76
88245		Chromosome analysis 20-25	\$ 438.67
88248		Chromosome analysis 50-100	\$ 510.32
88249		Chromosome analysis 100	\$ 510.32
88261		Chromosome analysis 5	\$ 520.80
88262		Chromosome analysis 15-20	\$ 367.29
88263		Chromosome analysis 45	\$ 442.86
88264		Chromosome analysis 20-25	\$ 367.29
88267		Chromosome analys placenta	\$ 529.76
88269		Chromosome analys amniotic	\$ 490.13
88271		Cytogenetics dna probe	\$ 63.12
88272		Cytogenetics 3-5	\$ 78.90
88273		Cytogenetics 10-30	\$ 94.69
88274		Cytogenetics 25-99	\$ 102.58
88275		Cytogenetics 100-300	\$ 118.35
88280		Chromosome karyotype study	\$ 73.96
88283		Chromosome banding study	\$ 202.15
88285		Chromosome count additional	\$ 55.99

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
88289		Chromosome study additional	\$ 101.48
88371		Protein western blot tissue	\$ 65.45
88372		Protein analysis w/probe	\$ 58.21
88720		Bilirubin total transcut	\$ 14.77
88738		Hgb quant transcutaneous	\$ 14.77
88740		Transcutaneous carboxyhb	\$ 14.77
88741		Transcutaneous methb	\$ 14.77
89050		Body fluid cell count	\$ 12.51
89051		Body fluid cell count	\$ 16.22
89055		Leukocyte assessment fecal	\$ 12.57
89060		Exam synovial fluid crystals	\$ 21.08
89125		Specimen fat stain	\$ 12.72
89160		Exam feces for meat fibers	\$ 10.50
89190		Nasal smear for eosinophils	\$ 10.50
89300	QW	Semen analysis w/huhner	\$ 26.29
89300		Semen analysis w/huhner	\$ 26.29
89310		Semen analysis w/count	\$ 18.73
89320		Semen anal vol/count/mot	\$ 35.51
89321	QW	Semen anal sperm detection	\$ 35.51
89321		Semen anal sperm detection	\$ 35.51
89322		Semen anal strict criteria	\$ 45.66
89325		Sperm antibody test	\$ 22.98
89329		Sperm evaluation test	\$ 61.80

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
89330		Evaluation cervical mucus	\$ 29.16
89331		Retrograde ejaculation anal	\$ 57.74
ATP02		Auto.Test Pane Pricing Code, 1-2 Tests	\$ 15.34
ATP03		Auto.Test Pane Pricing Code, 3 Tests	\$ 19.59
ATP04		Auto.Test Pane Pricing Code, 4 Tests	\$ 20.67
ATP05		Auto.Test Pane Pricing Code, 5 Tests	\$ 23.07
ATP06		Auto.Test Pane Pricing Code, 6 Tests	\$ 23.11
ATP07		Auto.Test Pane Pricing Code, 7 Tests	\$ 24.06
ATP08		Auto.Test Pane Pricing Code, 8 Tests	\$ 24.93
ATP09		Auto.Test Pane Pricing Code, 9 Tests	\$ 25.60
ATP10		Auto.Test Pane Pricing Code, 10 Tests	\$ 25.60
ATP11		Auto.Test Pane Pricing Code, 11 Tests	\$ 26.03
ATP12		Auto.Test Pane Pricing Code, 12 Tests	\$ 26.59
ATP16		Auto Test Panel Pricing Code 13-16 Test	\$ 31.13
ATP18		Auto Test Panel Pricing Code, 17-18 Test	\$ 31.36
ATP19		Auto Test Panel Pricing Code,	\$ 32.62

Exhibit #8, Pathology Laboratory Maximum Fees

For Dates of Service on and After 1/1/2015

HCPCS	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
		19 Tests	
ATP20		Auto Test Panel Pricing Code, 20 Tests	\$ 33.63
ATP21		Auto Test Panel Pricing Code, 21 Tests	\$ 34.71
ATP22		Auto.Test Panel Pricing Code, 22+ Tests	\$ 35.75
ATP23		Auto.Test Panel Pricing Code, 23+ Tests	\$ 35.75
G0027		Semen analysis	\$ 19.16
G0103		PSA screening	\$ 54.19
G0123		Screen cerv/vag thin layer	\$ 59.70
G0143		Scr c/v cyto,thinlayer,rescr	\$ 59.70
G0144		Scr c/v cyto,thinlayer,rescr	\$ 62.96
G0145		Scr c/v cyto,thinlayer,rescr	\$ 78.06
G0147		Scr c/v cyto, automated sys	\$ 33.54
G0148		Scr c/v cyto, autosys, rescr	\$ 44.78
G0306		CBC/diffwbc w/o platelet	\$ 20.82
G0307		CBC without platelet	\$ 14.69
G0328	QW	Fecal blood scrn immunoassay	\$ 46.87
G0328		Fecal blood scrn immunoassay	\$ 46.87
G0431		Drug screen multiple class	\$ 214.27
G0432		EIA HIV-1/HIV-2 screen	\$ 29.40
G0433	QW	ELISA HIV-1/HIV-2 screen	\$ 29.40
G0433		ELISA HIV-1/HIV-2 screen	\$ 29.40

Exhibit #8, Pathology Laboratory Maximum Fees			
For Dates of Service on and After 1/1/2015			
HCP	Modifier	SHORTDESC	216%
36415		Routine venipuncture	\$ 6.48
78267		Breath tst attain/anal c-14	\$ 23.18
G0434	QW	Drug screen multi drug class	\$ 42.85
G0434		Drug screen multi drug class	\$ 42.85
G0435		Oral HIV-1/HIV-2 screen	\$ 35.34
G9143		Warfarin respon genetic test	\$ 355.73
P2038		Blood mucoprotein	\$ 14.82
P3000		Screen pap by tech w md supv	\$ 31.15
P9612		Catheterize for urine spec	\$ 6.48
P9615		Urine specimen collect mult	\$ 6.48
Q0111		Wet mounts/ w preparations	\$ 12.57
Q0112		Potassium hydroxide preps	\$ 12.57
Q0113		Pinworm examinations	\$ 15.94
Q0114		Fern test	\$ 21.08
Q0115		Post-coital mucous exam	\$ 29.16

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State of Colorado
Department of Law
Office of the Attorney General

Tracking number: 2014-00634

Opinion of the Attorney General rendered in connection with the rules adopted by the
Division of Workers' Compensation

on 09/12/2014

7 CCR 1101-3

WORKERS' COMPENSATION RULES OF PROCEDURE WITH TREATMENT GUIDELINES

The above-referenced rules were submitted to this office on 09/12/2014 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.

September 26, 2014 09:58:19

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Permanent Rules Adopted

Department

Department of Agriculture

Agency

Inspection and Consumer Services Division

CCR number

8 CCR 1202-10

Rule title

8 CCR 1202-10 RULES PERTAINING TO THE ADMINISTRATION AND
ENFORCEMENT OF THE COLORADO EGG LAW 1 - eff 11/14/2014

Effective date

11/14/2014

COLORADO DEPARTMENT OF AGRICULTURE

Inspection and Consumer Services Division

Rules Pertaining to the Administration and Enforcement of the Colorado Egg Law

8 CCR 1202-10

General and Specific Authority: C.R.S. §§ 35-21-106(1) and 35-21-103 (2)

1.0 TEMPERATURE REQUIREMENTS

1.1 TEMPERATURE REQUIREMENTS

- 1.1.1 Every dealer shall store, display, transport or otherwise maintain shell eggs at an ambient temperature of no more than forty-one degrees Fahrenheit (41° F), and no less than thirty-three degrees Fahrenheit (33° F).
- 1.1.2 A dealer who is registered with the USDA as a shell egg handler and is in compliance with USDA temperature requirements is exempt from Rule 1.1.1.

1.2 TEMPERATURE REQUIREMENTS FOR DELIVERY TRUCKS

- 1.2.1 Except as provided in 1.2.2 below, delivery trucks used for the transportation of shell eggs shall be equipped with a refrigeration unit capable of delivering refrigerated air to the cargo area to maintain the eggs at an ambient temperature of no more than forty-one degrees Fahrenheit (41° F), and no less than thirty-three degrees Fahrenheit (33° F).
- 1.2.2 Any person transporting for resale not more than two (2) cases of shell eggs (totaling not more than sixty dozen eggs) shall transport such eggs using equipment in the cargo space of the delivery vehicle that will maintain the eggs at an ambient temperature of no more than forty-one degrees Fahrenheit (41°), and no less than thirty-three degrees Fahrenheit (33° F).

2.0 SANITATION REQUIREMENTS

2.1 DEALER REQUIREMENTS

Every dealer shall store, display, transport or otherwise maintain shell eggs in a clean and sanitary environment, free from any substance or condition that could adulterate or otherwise adversely affect the wholesomeness, quality, or taste of the eggs by absorption of bacteria or odors, or render them inedible by any other means.

2.2 EGG WASHING REQUIREMENTS

All Class I Dealers and persons who produce and sell eggs at a farmers market or community supported agricultural organization must comply with the following requirements.

- 2.2.1 Must use potable water to wash and sanitize eggs.
- 2.2.2 Cleaning agents appropriate to clean shell eggs must be used. The wash water must be at a minimum temperature of 110° F. Eggs shall not be allowed to stand or soak in the wash water.

- 2.2.3 Cleaned eggs must be rinsed with water at a minimum temperature of 115° F.
- 2.2.4 Cleaned eggs must be sanitized (dipped or sprayed) with water containing a sanitizer that is labelled for use as an egg sanitizer. If a chlorine or sodium hypochlorite solution is used to clean eggs the solution must be of a concentration of not less than 100 PPM nor more than 200 PPM of available chlorine. If a hydrogen peroxide solution is used to clean eggs the solution must be a concentration of 3% hydrogen peroxide or its equivalent. Any other sanitizer must be used in accordance with the product label directions or requirements.

3.0 LABELING REQUIREMENTS

The following labeling requirements apply to all eggs offered for sale:

3.1 PRODUCER IDENTIFICATION

Every case, carton or, container of shell eggs at the time of packing shall have legibly printed thereon, in letters and numerals not less than one-eighth inch in height, one (1) of the following means of identification:

- 3.1.1 The name and address of the producer or person who packed the eggs; or
- 3.1.2 The United States Department of Agriculture's plant number or shell egg surveillance registration number; or
- 3.1.3 The egg license number issued to the packer by another state, preceded by the abbreviated name of such state, using the two-letter state abbreviations customarily used for sending mail through the United States Postal Service (e.g., AL-Alabama, AK-Alaska, AZ-Arizona, etc.) ; or
- 3.1.4 The business identification number issued by the Colorado Department of Agriculture.

3.2 PACK DATE REQUIREMENTS

Every case, carton, or container of shell eggs at the time of packing shall have legibly printed thereon, in numerals not less than one-eighth inch in height, the date the eggs are first packed, (referred to in these rules as the "pack date"). The pack date shall be stated numerically by month and day (e.g., 1/15), or by the numbered consecutive day of the year (e.g., 123, being the 123rd consecutive day of the year).

3.3 SELL-BY DATE REQUIREMENTS

Every case, carton, or container of shell eggs may, but need not have legibly printed thereon, in letters and numerals not less than one-eighth inch in height, a date by which the eggs must be sold, which shall be referred to in these rules as the "sell-by date." The sell-by date shall be no more than 30 days after the pack date. It shall be stated by month and day using the three-letter abbreviation of the month followed by the numerical day of the month (e.g., Jan 15), and preceded by the term SELL BY or EXP.

3.4 SIZE AND GRADE REQUIREMENTS

Every case, carton or container of shell eggs at the time of packing shall have clearly printed thereon, in letters not less than one-fourth inch in height, the grade and the weight designation as specified in section 35-21-102(2), C.R.S.; except that Class I Dealers selling fewer than 250 dozen eggs per month to a farmer's market, community sustained agriculture organization or directly to the household consumer are exempt from these requirements.

4.0 SALE REQUIREMENTS

4.1 AGE OF EGGS

No shell eggs may be offered for sale or sold to a consumer or restaurant more than 45 days after the pack date.

4.2 CONTAINERS

It is unlawful for any person to sell or offer for sale shell eggs in any case, carton, or container on which there is evidence of adhering filth or contamination on the inside or outside thereof, or in any case, carton, or container on which there is printed, stamped, or affixed any trademark, design, or other identification of any person other than the person selling such eggs.

4.3 REPACKAGED EGGS

Dealers that repack eggs from damaged cartons into new cartons for sale to consumers shall comply with the following requirements:

- 4.3.1 Repacked eggs must be clean and have sound shells. There should be no evidence of yolks, whites or shell fragments from broken eggs on the eggs or carton.
- 4.3.2 Cartons used to repack eggs must be new and cannot be marked with any name other than the name of dealer repacking the eggs.
- 4.3.3 Cartons used to repack eggs must identify the dealer location either by listing the store number or by listing the dealer address on the carton.
- 4.3.4 Cartons used to repack eggs must be labeled as a particular size and grade. (For example: Grade B Medium). The repackaged eggs must meet the specifications for the size and grade indicated on the repacked carton label.
- 4.3.5 Repacked egg cartons must list the oldest pack date of the eggs repacked and the date the eggs were repacked must be stated on the carton. Dealers must sell the eggs within 45 days of the oldest pack date.
- 4.3.6 The carton shall bear the statement, "The eggs in this carton were packed by this store at this location."
- 4.3.7 Any other information about the eggs may be included, as long as the information is not misleading to the consumer.

5.0 STOP SALE NOTICES

5.1 DISPOSITION OF SHELL EGGS MORE THAN 45 DAYS AFTER PACK DATE

Eggs withdrawn from being offered for sale after the expiration of 45 days after the pack date may be returned to a packer for shipment to an egg breaking plant.

5.2 DISPOSITION OF BELOW-STANDARD SHELL EGGS

Shell eggs offered for sale by any dealer found to be below the minimum standards and requirements of quality and/or weight for the grade and size labeled, shall be withdrawn from being offered for sale at the time of inspection, pursuant to section 35-21-106(2), C.R.S.

5.3 UNLICENSED DEALERS

Shell eggs offered for sale by any dealer who is not licensed under the Colorado Egg Law, sections 35-21-101 through 35-21-108, inclusive, C.R.S., may be withdrawn by such person from being offered for sale until such person obtains a validly issued license under said law, and is otherwise in compliance with all of the provisions of the Egg Law and these rules.

6.0 DEALER LICENSE EXPIRATION DATE

The expiration date for all egg dealer licenses shall be December 31.

7.0 DEALER LICENSE CATEGORIES

7.1 The license categories for dealers are based on the average number of cases of eggs (30 dozen per case) sold per week during the previous 12 months.

Dealer categories are as follows:

1. Class I – produces and sells fewer than 40 cases per;
2. Class II – sells up to and including 0.5 cases per week;
3. Class III – sells over 0.5 and up to and including 2 cases per week;
4. Class IV – sells over 2 cases and up to and including 25 cases per week;
5. Class V – sells over 25 cases and up to and including 100 cases per week;
6. Class VI – sells over 100 cases and up to and including 500 cases per week;
7. Class VII – sells over 500 cases per week.

The average number of cases of eggs sold per week shall be calculated by dividing the total number of cases of eggs sold during the previous 12 months by the number of weeks the dealer sold eggs during that same period. If an applicant for a dealer license has not sold eggs during the previous 12 months, a class II license shall be required.

8.0 – 9.0 RESERVED

10.0 STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE

The Statements of Basis, Specific Statutory Authority and Purpose for rulemaking activity from 1996 to 1997 are no longer in the Department's files.

10.1 Emergency Rule Adopted July 1, 2009 – Effective July 1, 2009

STATUTORY AUTHORITY:

The Commissioner's authority for the adoption of these Emergency Rule Amendments is set forth in § 35-21-106(1), C.R.S. (2008), § 24-4-103(6), C.R.S. (2008), and §§ 35-21-104(1), and 104(4)(b)(I), C.R.S., as enacted in SB 09-127.

PURPOSE:

The purpose of these Emergency Rule Amendments is to update the rules pertaining to the Colorado Egg Act to comply with the amendments to the Act set forth in SB 09-127.

These Amendments:

- a. Replace the terms “retailer” and “wholesaler” with “dealer.”
- b. Remove recordkeeping requirements for wholesalers.
- c. Establish a license expiration date of June 30.
- d. Establish egg dealer license categories based upon the average number of cases of eggs sold per week.
- e. Add a section to contain the statements of basis, specific statutory authority and purpose.

FACTUAL AND POLICY BASIS:

The factual and policy issues that require the immediate adoption of these Emergency Rule Amendments are as follows:

1. The Department of Regulatory Agencies performed a Sunset Review in 2008 of the Colorado Egg Act, which resulted in several amendments to the Act enacted by the General Assembly in SB 09-127 effective July 1, 2009, that:
 - a. Eliminate the terms “wholesalers” or “retailers” from the Act. These terms have been replaced with “dealer” throughout the rules.
 - b. Established uniform recordkeeping requirements for all licensees, making the current recordkeeping requirements for egg wholesalers in the rule obsolete.
 - c. Removed the license expiration date from the Act and required the Commissioner to establish by rule. These rules establish a license expiration date of June 30.
 - d. Removed the license categories from the Act and required the Commissioner to establish them by rule, based upon the average number of cases of eggs sold per week.
2. The Commissioner hereby finds that immediate adoption of these Emergency Rule Amendments is imperatively necessary to comply with the revisions to the Colorado Egg Act, §§ 35-21-101 – 108, C.R.S. enacted by the General Assembly in its 2009 legislative session, which take effect on July 1, 2009. These Emergency Rule Amendments are required to permit the continuous and uninterrupted administration and enforcement of the Act, including the issuance of licenses thereunder.

10.2 Adopted July 16, 2009 – Effective August 30, 2009

STATUTORY AUTHORITY:

The Commissioner's authority for the adoption of these Permanent Rule Amendments is set forth in § 35-21-106(1), C.R.S. (2008), and §§ 35-21-104(1), and 104(4)(b)(I), C.R.S., as enacted in SB 09-127.

PURPOSE:

The purpose of these Permanent Rule Amendments is to update the rules pertaining to the Colorado Egg Act to comply with the amendments to the Act set forth in SB 09-127.

These Permanent Rule Amendments:

- a. Replace the terms “retailer” and “wholesaler” with “dealer.”
- b. Remove recordkeeping requirements for wholesalers.
- c. Establish a license expiration date of June 30.
- d. Establish egg dealer license categories based upon the average number of cases of eggs sold per week.
- e. Add a section to contain the statements of basis, specific statutory authority and purpose.
- f. Remove obsolete language that is no longer needed.

FACTUAL AND POLICY BASIS:

The factual and policy issues pertaining to the adoption of these Permanent Rule Amendments are as follows:

1. The Department of Regulatory Agencies performed a Sunset Review in 2008 of the Colorado Egg Act, which resulted in several amendments to the Act enacted by the General Assembly in SB 09-127 effective July 1, 2009, that:
 - a. Eliminate the terms “wholesalers” or “retailers” from the Act. These terms have been replaced with “dealer” throughout the rules.
 - b. Established uniform recordkeeping requirements for all licensees, making the current recordkeeping requirements for egg wholesalers in the rule obsolete.
 - c. Removed the license expiration date from the Act and required the Commissioner to establish by rule. These rules establish a license expiration date of June 30.
 - d. Removed the license categories from the Act and required the Commissioner to establish them by rule, based upon the average number of cases of eggs sold per week.
2. The Commissioner intends to adopt Emergency Amendments to the Rules on July 1, 2009 in order to implement the changes to the Act made by the General Assembly in SB 09-127. These Permanent Rule Amendments will make permanent those Emergency Amendments

10.3 Adopted April 9, 2013 – Effective January 1, 2014

STATUTORY AUTHORITY:

The Commissioner's authority for the adoption of this permanent rule amendment is set forth in § 35-21-104(1) and § 35-1-107(5)(a), C.R.S.

PURPOSE:

The purpose of this permanent rule amendment is to amend Rule 6 to change the expiration date for an egg dealer license from June 30 to December 31.

FACTUAL AND POLICY BASIS:

The factual and policy issues pertaining to the adoption of this permanent rule amendment are as follows:

1. This change is necessary to allow the Department to consolidate licensing functions to one time per year for all licenses issued by the ICS Division.
2. The Department of Agriculture is moving its licensing functions from a paper based system to an online system. To accommodate licensee's who hold multiple licenses with the Department of Agriculture, we are establishing a common licensing date so a licensee can obtain all their licenses in one transaction.

10.4 Adopted September 17, 2014 – Effective November 14, 2014

STATUTORY AUTHORITY:

The Commissioner's authority for the adoption of these permanent rule amendments is set forth in § 35-21-106(1), § 35-21-104(1), and § 35-21-104(4)(b)(I), C.R.S.

THE PURPOSE OF THIS RULEMAKING IS TO:

1. Adopt a new Rule 1.1.2 to exempt registered USDA egg handlers from the temperature requirements of Rule 1.1.1.
2. Adopt a new Rule 2.2 to specify egg washing requirements for Class I Dealers.
3. Adopt a new Rule 3.1.4 to allow egg producers to use their Colorado Department of Agriculture business identification number on egg cartons.
4. Adopt Rule 3.4.1 to exempt Class I Dealers selling eggs at farmer's markets and community sustainable agriculture organizations from grading requirements.
5. Remove obsolete language that is no longer needed.
6. Adopt a new Rule 4.3 to specify the egg repacking requirements for retail dealers.
7. Amend Rule 7.1 to clarify the maximum number of egg cases that a Class I Dealer may produce and sell.

FACTUAL AND POLICY BASIS:

The factual and policy issues pertaining to the adoption of these permanent rule amendments are as follows:

1. The Department of Agriculture conducted a regulatory review of these Rules as part of the Department's Regulatory Efficiency Review Process conducted in accordance with the Governor's Executive Order D 2012-002. This review resulted in the above changes to the rules.
2. Egg production is regulated by two distinct agencies, the USDA and the Colorado Department of Agriculture. Both agencies have separate regulations. The USDA regulates chicken flocks of greater than 3,000 hens and the Colorado Department of Agriculture regulates flocks of fewer than 3,000 hens. The USDA and the Colorado egg rules have different egg storage and transportation temperature requirements. Rule 1.1.2 eliminates this temperature conflict for large flock producers.
3. Currently small flock egg producers (fewer than 3,000 hens) are not required to wash and sanitize their eggs. Washing and sanitizing eggs will promote public health by reducing the risk of disease.
4. The Colorado Department of Agriculture business identification number was not available when

the current rule was adopted. Rule 3.1.4 provides an additional method to identify the egg producer on the egg carton.

5. Generally most consumers buying eggs at farmer's markets and from community sustainable agriculture organizations are not concerned about the grade of egg but like to buy from a local producer. In addition most small egg producers lack the necessary equipment and training to properly grade their eggs. Rule 3.4.1 will exempt these producers from the egg grading requirements.
6. The current Rule 4.2 was adopted many years ago when it was common to sell fertilized eggs. Fertile eggs are no longer desired and the production of fertile eggs is considered an unacceptable production practice. Therefore the egg carton labelling requirement is obsolete and is no longer needed.
7. Eggs can be damaged (broken or cracked) during shipping and handling at retail stores. Repacking eggs provides a way for retail egg dealers to sell the eggs instead of discarding the entire carton of eggs.
8. Current Class I Dealers produce and sell fewer than 2 cases of eggs per week. This amendment increases the number of cases produced and sold to 40 per week. This equates to a flock of a little fewer than 3,000 laying hens. The USDA registers and inspects producers with more than 3,000 laying hens. Amended Rule 7.1 ensures that all egg producers are inspected by the Colorado Department of Agriculture or by the USDA.

John W. Suthers
Attorney General

Cynthia H. Coffman
Chief Deputy Attorney General

Daniel D. Domenico
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State of Colorado
Department of Law
Office of the Attorney General

Tracking number: 2014-00740

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

on 09/17/2014

8 CCR 1202-10

RULES PERTAINING TO THE ADMINISTRATION AND ENFORCEMENT OF THE COLORADO
EGG LAW

The above-referenced rules were submitted to this office on 09/17/2014 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.

September 22, 2014 13:44:53

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Permanent Rules Adopted

Department

Department of Agriculture

Agency

Conservation Services Division

CCR number

8 CCR 1206-1

Rule title

8 CCR 1206-1 WATER QUALITY CONTROL CONCERNING AGRICULTURAL
CHEMICALS AND GROUND WATER 1 - eff 11/14/2014

Effective date

11/14/2014

Colorado Department of Agriculture

Conservation Services Division

Water Quality Control Concerning Agricultural Chemicals and Ground Water

8 CCR 1206-1

II. PESTICIDES

Part 11.0 Definitions

These definitions apply to Parts 11 through 18.

- 11.1. "Agricultural Chemical" for pesticides 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.
- 11.2. "Appurtenances" means all valves, pumps, fittings, pipes, hoses, metering devices, mixing containers, and dispensing devices which are connected to a storage container, or which are used to transfer bulk pesticide into or out of a storage container.
- 11.3. "Bulk pesticide" means any pesticide which is transported or held in an individual container in undivided quantities of greater than fifty-five (55) U.S. gallons liquid measure or one hundred (100) pounds net dry weight.
- 11.4. "Bulk pesticide storage facility" means any facility or site where pesticides are being stored in bulk for a period of more than 15 consecutive days. Any bulk storage facility within 300 feet of another bulk pesticide storage facility shall be considered one facility for the purpose of determining the number of consecutive days in storage.
- 11.5. "Dry pesticide" means any pesticide which is in solid form prior to any application or mixing for application, and includes formulations such as dusts, wettable powders, dry flowable powders, and granules.
- 11.6. "Impervious" means that the structure shall be maintained so that liquid pesticide or water does not move through it at a rate that exceeds 1×10^{-7} centimeters per second (~0.0035 inches per day).
- 11.7. "Liquid pesticide" means any pesticide in liquid form, and includes solutions, emulsions, suspensions and slurries.
- 11.8. "Mixing and loading area" means a physical site where pesticides are transferred, loaded, unloaded, mixed, repackaged, refilled or where pesticides are cleaned, washed or rinsed from containers or application, handling, storage or transportation equipment. Any mixing and loading area within 300 feet of another mixing and loading area shall be considered one mixing and loading area for the purpose of determining the threshold amount of formulated product or active ingredient of pesticides.
- 11.9. "Mobile container" means any storage container designed for transportation.
- 11.10. "Primary containment" means the storage of bulk liquid pesticides in storage containers at a

storage facility.

- 11.11. "Secondary containment" means any structure used to contain product spills from primary containment and prevent runoff or leaching.
- 11.12. "Sump" means a shallow reservoir or area at the lowest point of the bulk pesticide facility or mixing and loading area that allows for the temporary collection and retrieval of liquid.
- 11.13. "Storage container" means:
- (a) A container used for the storage of bulk pesticide; or
 - (b) A nurse tank, or other mobile container used for the storage of bulk pesticide.

Part 12.0 Scope of These Rules

12.1. These rules apply to:

- (a) All operating bulk pesticide storage facilities, commercial or private, with the exception that portable refillable containers that are approved by the Environmental Protection Agency and have a capacity of greater than 56 gallons and less than 660 gallons are exempt from secondary containment.
- (b) All mixing and loading areas, commercial or private, where any of the following are handled in any one year period:
 - (1) Five hundred (500) gallons or more, in the aggregate, of formulated product or combination of formulated products of liquid pesticides;
 - (2) Three thousand (3,000) pounds or more, in the aggregate, of formulated product or combination of formulated products of dry pesticides; or
 - (3) One thousand five hundred (1,500) pounds or more, in the aggregate, of active ingredients of pesticides.

(For liquid pesticides, Parts 13 and 15–17 apply; for dry pesticides, Parts 14–17 apply)

12.2. These rules do not apply to:

- (a) Field mixing and loading of pesticides; or
- (b) Loading and unloading of unopened containers; or
- (c) Facilities storing pesticides used for water treatment at public water systems, which are systems used to provide the public with piped water for human consumption, and domestic wastewater treatment works.

12.3. Operation of the bulk pesticide storage facilities and mixing and loading areas are regulated by these rules.

12.4.

- (a) Pesticide facilities subject to these rules must be in compliance the following number of years after the effective date of these rules (September 30, 1994):

Liquid Pesticide Secondary Containment	3 years
Liquid & Dry Pesticide Mixing and Loading Areas	3 years
Dry Pesticide Storage	3 years

- (b) New facilities or expansion of existing facilities constructed three (3) years after the effective date of these rules (September 30, 1994) shall be in compliance with these rules prior to beginning operations.

12.5. All bulk pesticide storage facilities are required to have a mixing and loading area.

Part 21.0 Statements of Basis, Specific Statutory Authority and Purpose

21.4 September 17, 2014 – Effective November 14, 2014

Statutory Authority:

This amendment to the Rules published at 8 C.C.R. 1206-1 is adopted by the Commissioner of Agriculture pursuant to his authority under § 25-8-205.5(3)(b), C.R.S.

Purpose:

This amendment adds a new subpart (c) to part 12.2 to exempt from these rules the inspection of bulk pesticide storage and mixing/loading areas at public water treatment systems and domestic wastewater treatment works.

Factual and Policy Basis:

The factual, legal and policy issues pertaining to the amendment of these Rules are as follows:

1. The Department of Agriculture has identified a duplication of State efforts regarding inspection at water treatment facilities and this change is needed to clarify which facilities the CDA will regulate.
2. The Department has determined, in consultation with the CDPHE, that the CDPHE inspection protocol adequately addresses pesticide storage at water treatment facilities.
3. The Department needs to more narrowly focus its rules regarding the storage of bulk pesticides. This change will more clearly define which types of pesticide storage facilities that the CDA will regulate. The rules are intended to focus on agriculturally-related industries and this change will keep the CDA's efforts focused on industries where CDA has its primary expertise.
4. The proposed changes have been reviewed by the members of the Agricultural Chemicals and Groundwater Protection Advisory Committee, an advisory body established by the State Agricultural Commission that is composed of representatives from various stakeholders including the Colorado Water Quality Control Commission, commercial pesticide applicators, the green industry, agricultural chemical suppliers, agricultural producers, and the general public. The Committee members unanimously support the adoption of these amendments.

John W. Suthers
Attorney General

Cynthia H. Coffman
Chief Deputy Attorney General

Daniel D. Domenico
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State of Colorado
Department of Law
Office of the Attorney General

Tracking number: 2014-00741

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

on 09/17/2014

8 CCR 1206-1

WATER QUALITY CONTROL CONCERNING AGRICULTURAL CHEMICALS AND GROUND
WATER

The above-referenced rules were submitted to this office on 09/17/2014 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.

September 22, 2014 13:44:08

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 State

Agency

Secretary of State

CCR number

8 CCR 1505-1

Rule title

8 CCR 1505-1 ELECTIONS 1 - eff 10/30/2014

Effective date

10/30/2014

COLORADO SECRETARY OF STATE

8 CCR 1505-1 Election Rules

Rules as Adopted – Clean September 10, 2014

Please note the following formatting key:

Font effect	Meaning
<i>Italic blue font text</i>	Publication notes and annotations

Amendments to Rule 20.1:

- 20.1 The county must submit its annual security plan on the form prescribed by the Secretary of State in accordance with section 1-5-616(5), C.R.S. A county must also submit a comprehensive procedure for ballot delivery in an emergency under section 1-7.5-115(1), C.R.S.

Amendments to Rule 20.2.2, regarding general requirements concerning chain-of-custody:

- 20.2.2 The county must maintain and document uninterrupted chain-of-custody for each voting device from the installation of trusted build to the present, throughout the county's ownership or leasing of the device. For optical scanners approved for use under section 1-5-613(2), C.R.S. but for which no trusted build exists, the county must maintain and document uninterrupted chain-of-custody for each voting device from the successful completion of acceptance testing conducted according to Rule 20.8.4.

Amendments to Rules 20.3.1 and 20.3.1(e), regarding physical locking mechanisms and seals for DREs and ballot marking devices:

- 20.3.1 DREs, ballot marking devices and Judge's Booth Controllers (JBCs)

- (e) In each voter service and polling center, the county must provide a minimum of one accessible DRE with a headset that has adjustable volume control.

Amendments to Rule 20.4:

- 20.4 Individuals with access to keys, door codes, and vault combinations

- 20.4.1 For employees with access to areas addressed in Rule 20.4.3, the county must state in the security plan each employee's title and the date of the criminal

background check performed under Rule 6.5. [Section 24-72-305.6, C.R.S.]

Amendments to Rule 20.5.2, regarding internal controls for the Voting System:

20.5.2 In addition to the access controls discussed in Rule 20.4, the county must change all passwords and limit access to the following areas:

- (a) The county must change all software passwords once per calendar year prior to the first election. This includes any boot or startup passwords in use, as well as any administrator and user passwords and remote device passwords.
- (b) The county must change all hardware passwords once per calendar year prior to the first election. This includes any encryption keys, key card tools, supervisor codes, poll worker passwords on smart cards, USB keys, tokens, and voting devices themselves as it applies to the specific system.
- (c) Administrative and user accounts for election management system and election databases.
 - (1) The county may use the administrative user account only to create individual user accounts for each election database.
 - (2) The county must create individual user accounts that are associated and identified with each individual authorized user of the election management system or election database.
 - (3) The county must restrict access to each individual user account with a unique password known only to each individual user. Authorized users must access the election management system and election database using his or her individual user account and unique password.
 - (4) The county may grant administrative privileges to no more than ten individual user accounts per election.
- (d) Other than for the purpose of programming the election, the voting system provider may not have administrative or user access to the county's election management system.
- (e) The county may not connect or allow a connection of any voting system component to the Internet.
- (f) If any component of the voting system is equipped with Wi-Fi capability or a wireless device, the county must disable the wireless capability or device.

- (g) The county may not connect any component of the voting system to another device by modem.
- (h) The county must include in its security plan the title and date of background checks for each employee with access to any of the areas or equipment set forth in this Rule. The county must maintain a storage facility access log that details employee name, date, and time of access to the storage facility in which the software, hardware, or components of any voting system are maintained. If access to the storage facility is controlled by use of key card or similar door access system that is capable of producing a printed paper log including the person's name and date and time of entry, such a log must meet the requirements of this Rule. [Section 24-72-305.6, C.R.S.]

Amendments to Rules 20.8.4 and 20.8.5; stylistic changes:

- 20.8.4 Upon completion of any maintenance, the county must verify or reinstate the trusted build and conduct a full acceptance test of equipment that must, at a minimum, include the hardware diagnostics test, as indicated in Rule 11, and a mock election in which an employee(s) must cast a minimum of five ballots on the device to ensure tabulation of votes is working correctly. The county must maintain all documentation of the results of the acceptance testing on file with the specific device.
- 20.8.5 The Secretary of State will annually inspect county maintenance and chain-of-custody records and verify the integrity of trusted build on a randomly selected basis.

Amendments to Rule 20.9.3(d):

- (d) If a seal is broken or chain-of-custody is unverifiable, the county clerk must investigate, document his or her findings, and report the incident to the Secretary of State, as appropriate.

New Rule 20.11.1(d), regarding VVPAT security:

- (d) If the DRE's trusted build is not capable of verification by reference to the hash value (MD5 or SHA-1) of the firmware or software, the county must secure the printer port on the DRE with tamper-evident seals when the VVPAT is not connected to the DRE's printer port.

Amendments to Rule 20.11.2:

- 20.11.2 Anonymity. The designated election official must implement measures to protect the anonymity of voters choosing to vote on DREs.

- (a) Measures to protect anonymity include:
 - (1) The county may not keep any record indicating the order in which people voted on the DRE, or which VVPAT record is associated with the voter.
 - (2) When more than one DRE is available at a voting location, the county must, to the extent practicable, allow the voter to choose the DRE he or she wishes to vote on.
- (b) The county clerk may not release a report generated from SCORE that includes a date and time stamp that could potentially identify a voter who cast a specific ballot.
- (c) At no time may an election official simultaneously access a VVPAT and the list of voters. If the VVPAT record requires inspection, at least two election officials must conduct the examination.
- (d) The county must arrange voter service and polling center DREs in a manner that prevents election officials and other voters from observing how a DRE voter marks or casts his or her ballot.

[Repeal of Rule 20.11.3(c), regarding VVPAT storage]

New Rules 20.17 through 20.20:

20.17 Voting system conditions for use

20.17.1 The county must use the voting system only on a closed network or in a standalone fashion.

20.17.2 Access logs.

- (a) In addition to the audit logs generated by the election management system, the county must maintain access logs that record the following:
 - (1) The date, time, and user's name for each instance that a user enters or exits the system or the system's report printing functions; and
 - (2) Modifications to the system's hardware, including insertion or removal of removable storage media, or changes to hardware drivers.
- (b) The county may create and maintain the access logs in the manner the county deems most suitable, including key stroke recording software, video surveillance recordings, manually or electronically written records, or a combination of these methods.

20.17.3 The county must create a backup copy of the election setup records on a read-only, write-once CD, immediately after completing the Logic and Accuracy Test.

- (a) The county must identify the master database name and date of election on the label of the backup CD.
- (b) The county must store the backup CD in a sealed container. Two election officials of different party affiliations must sign and date entries to the chain-of-custody log for the sealed container.

20.17.4 DREs

- (a) The county's election judges must:
 - (1) Test the VVPAT printer immediately after changing the VVPAT paper; and
 - (2) Lock and re-seal the VVPAT canister, and make appropriate entries on the VVPAT chain-of-custody log, before voting resumes on the DRE.
- (b) At least one DRE in each voter service and polling center must have a backup battery, or be connected to an uninterruptible power supply, sufficient to sustain continuous operation for a minimum of two hours in the event of power loss.
- (c) The county must maintain logs indicating administrator function use.

20.17.5 Optical scanners:

- (a) When issuing ballots, the county must provide in-person voters with a secrecy sleeve sufficient to conceal a voter's marked ballot from others in the polling location, including election officials.
- (b) The county must record the optical scanner serial number on all chain-of-custody logs and reports generated by the device.
- (c) Each optical scanner must have a backup battery, or be connected to an uninterruptible power supply sufficient to sustain continuous operation for a minimum of two hours in the event of power loss.
- (d) The county must maintain logs indicating administrator function use.
- (e) The county must program each optical scanner to permit an election judge to override rejection of overvoted ballots that cannot be duplicated in accordance with Rule 18.

20.18 ES&S voting system conditions

20.18.1 If the county must provide language minority assistance under section 203 of the Voting Rights Act (42 U.S.C. §§ 1973 to 1973bb-1), it may not use an ES&S voting system.

20.18.2 DREs. The county may only use the nine inch screen on the VVPAT.

20.18.3 For optical scanners with a zip disk drive, the county must save the cast vote records for each batch of tabulated ballots to a zip disk. A batch of tabulated ballots may consist of one or more SCORE absentee ballot batches.

20.19 Hart DRE conditions. If a county shortens a lengthy candidate name on the VVPAT, it must provide printed notice of the change to voters at the voter service and polling center.

20.20 Sequoia DRE conditions

20.20.1 The county must add clarifying text to the display screen during the VVPAT review process that instructs the voter to review his or her ballot choices.

20.20.2 The county must lock the activate button to prevent its use during an election.

20.20.3 A county may not modify the screen display using an override.ini file without approval from the Secretary of State.

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State of Colorado
Department of Law
Office of the Attorney General

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

on 09/10/2014

8 CCR 1505-1

ELECTIONS

The above-referenced rules were submitted to this office on 09/10/2014 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.

September 30, 2014 14:29:02

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Permanent Rules Adopted

Department

Department of State

Agency

Secretary of State

CCR number

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Effective date

10/30/2014

COLORADO SECRETARY OF STATE

8 CCR 1505-1

Election Rules

Rules as Adopted – Clean

September 10, 2014

Please note the following formatting key:

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<i>Italic blue font text</i>	Publication notes and annotations

[Amendments to 8 CCR 1505-1]

Amendments to Current Rule 1:

[Current Rules 21.1.1, 21.1.2, 21.1.3, 21.1.4, 21.1.5, 21.1.6, 21.1.9, 21.1.10, 21.1.13, 21.1.18, 21.1.21 are amended and incorporated into Rule 1]

Rule 1. Definitions

1.1 As used in these Rules, unless stated otherwise:

- 1.1.1 “Audio ballot” means a voter interface containing the list of all candidates, ballot issues, and ballot questions upon which an eligible elector is entitled to vote in an election. It also provides the voter with audio stimuli and allows the voter to communicate voting intent to the voting system through vocalization or physical actions.
- 1.1.2 “Audit log” means a record generated by a voting system, in printed or electronic format, providing a record of activities and events relevant to initializing election management software and hardware, including the identification of files containing election parameters, initializing the tabulation process, processing voted ballots, and terminating the tabulation process.
- 1.1.3 “Ballot image” means a digitally captured image of a paper ballot or a representation in electronic form of the marks or vote positions of a cast ballot on a DRE.
- 1.1.4 “Ballot marking device” (BMD) means a device that may integrate components such as an optical scanner, printer, touch-screen monitor, audio output, and a navigational keypad and uses electronic technology to:

- (a) Mark a paper ballot at voter direction;

- (b) Interpret the ballot selections;
 - (c) Communicate the interpretation for voter verification; and
 - (d) Print a voter-verifiable ballot.
- 1.1.5 “Ballot measure” means a ballot issue or ballot question as defined in sections 1-1-104(2.3) and (2.7), C.R.S.
- 1.1.6 “Blank ballot” means a ballot on which the voter has made no marks in any voting position, has marked with an unreadable marker, or has consistently marked outside of the “read” area of the optical scanner.
- 1.1.7 “Ballot style” means a specific ballot layout or content for an election. The ballot style is the presentation of the unique combination of contests and candidates for which the voter is eligible to vote. It includes the order of contests and candidates, the list of ballot positions for each contest, and the binding of candidate names to ballot positions within the presentation. Multiple precincts may use a single ballot style. Multiple styles may appear in a single precinct where voters are split between two or more districts or other categories defining voter eligibility for particular contests and candidates.
- 1.1.8 “Canvass workers” means workers appointed or hired by the designated election official to assist in the preparation and conduct of the canvass.
- 1.1.9 “Central count” means the county’s principal ballot counting and processing location.
- 1.1.10 “Chain-of-custody log” means a written record documenting security, possession, and control of a voting system component, election record, or other election material.
- 1.1.11 “Closed network” means a network configuration in which voting system components connect to and communicate only with each other and not with the Internet or any other computer network.
- 1.1.12 “Damaged ballot” means a ballot that is torn, bent, or otherwise mutilated or rendered unreadable, so that it cannot be processed by the optical scanner ballot reader. Damaged ballots include:
 - (a) All ballots that contain a foreign substance that could interfere with the optical scanner (e.g. food, drink, etc.).
 - (b) Ballots that are marked in a medium or manner other than indicated in the ballot instructions.
 - (c) Ballots that the elector marked in a way that would disclose his or her

identity.

- 1.1.13 “Data entry county” means a county using an election management system that exports a file to be uploaded to the Election Night Reporting system.
- 1.1.14 “Designated election official” or “DEO” includes the designated election official’s sworn, deputized designee.
- 1.1.15 “Direct Recording Electronic voting device” (DRE) means a voting device that visually displays or audibly presents a ballot and records an elector’s votes directly into electronic storage media.
- 1.1.16 “Duplicated ballot” means a ballot for which a true copy must be made for the ballot to be properly processed and counted because of damage, improper marking, or any issue that would prevent a ballot tabulating machine from accurately counting the ballot.
- 1.1.17 “Election complaint” means a complaint filed with the Secretary of State under Articles 1 through 13 of Title 1, C.R.S.
- 1.1.18 “Election management system” means the hardware and software applications used to configure, program, and report election results from one or more voting system components, including the ballot definition and the election reporting subsystem. The election management system may provide utilities for other election administration tasks, including maintaining equipment inventories, estimating ballot printing needs, and maintaining information on voter service and polling centers.
- 1.1.19 “Election media” means any device including a cartridge, card, memory device, or hard drive used in a voting system for the purposes of storing election setup records (ballot or card styles), recording voting results from electronic vote tabulating equipment, or any other data storage required by the voting system for a particular election function. The election management system typically downloads ballot style information to the election media and uploads results and ballot images from the election media.
- 1.1.20 “Election setup records” means the electronic records, often in the form of a database or a set of databases, generated by election management software to create and define ballots, tabulation instruction, and other functions related to the election.
- 1.1.21 “Election management software” means the software for election equipment or computers that controls election setup vote recording, vote tabulation, and reporting.
- 1.1.22 “Electronic ballot” means a non-paper ballot such as on a touch screen or through

audio feedback. After a voter casts an electronic ballot, the voter's choices must be:

- (a) Marked and printed on a paper ballot for subsequent counting by an optical scanner; or
- (b) Digitally recorded and counted by the touch screen device, commonly referred to as a Direct Recording Electronic (DRE) device.

1.1.23 "Electronic Transmission" means:

- (a) For the purpose of sending an unvoted ballot by fax, email, or online delivery to:
 - (1) A military or overseas elector under Article 8.3 of Title 1, C.R.S.
 - (2) An elector requesting a replacement for an emergency under section 1-7.5-115, C.R.S.
 - (3) An affected elector requesting a ballot because of a disaster emergency.
- (b) For the purpose of returning a voted ballot to the county clerk fax or email.

1.1.24 "Firmware" means computer programs stored on read-only memory devices or other electronic circuitry in voting devices that control the basic operation and function of those devices.

1.1.25 "Help America Vote Act complaint" or "HAVA complaint" means a complaint filed with the Secretary of State under Title III of the Help America Vote Act (HAVA) and Article 1.5 of Title 1, C.R.S.

1.1.26 "Immediate voting area" means the area that is within six feet of the voting equipment, voting booths, and the ballot box.

1.1.27 "Manual entry county" means a county that does not use an election management system to export data to the Election Night Results system.

1.1.28 "Official Observer" means either an observer appointed by the Secretary of State or an observer appointed by the federal government and approved by the Secretary of State. Official Observers may be present in all phases of the election process and perform duties as may be assigned by the Secretary of State, but are subject to Rules and regulations as prescribed by the Secretary of State.

1.1.29 "Optical scanner" means an optical or digital ballot scanner.

- 1.1.30 “Overvote” means an instance where the elector marked votes for more than the maximum number of candidates or responses for a ballot measure.
- 1.1.31 “Qualified political organization” means an organization that has placed a candidate for congressional or state office on the ballot in a congressional vacancy or general election, whose officers have filed proof of organization with the Secretary of State, and that continues to meet the requirements of Rules 3.3 and 3.4. [*Baer v. Meyer*, 728 F.2d 471 (10th Cir. 1984)]
- 1.1.32 “Related to the second degree” means spouse, civil union partner, parents, children, brothers and sisters, grandparents, and grandchildren.
- 1.1.33 “Removable card or cartridge” means a programming card or cartridge, except a voter activation card, that stores firmware, software, or data.
- 1.1.34 “SCORE” means the centralized statewide registration system and the computerized statewide voter registration list described in Part 3 of Article 2 of Title 1.
- 1.1.35 “Seal” means a serial-numbered tamper-evident device that, if broken or missing, indicates that the chain-of-custody is broken and a device is not secure.
- 1.1.36 “Split precinct” means a precinct that has a geographical divide between one or more political jurisdictions which results in each jurisdiction within the precinct to be assigned different ballot styles for a specific election.
- 1.1.37 “Statement of Ballots Form” means the form used at the polling location that accounts for all ballots at that location and includes all information required by Rule 10.
- 1.1.38 “Target area” means the square, oval, incomplete line, or incomplete arrow corresponding to the candidate’s name or ballot response (examples: “Yes”, “No”, “For” or “Against”) on a paper ballot.
- 1.1.39 “Teleprocessing lines” means secure, dedicated communication transmission facilities used for the purpose of accessing SCORE, and ensuring the security and integrity of voting information so that no deviation can go undetected.
- 1.1.40 “Trusted build” means the write-once installation disk or disks for software and firmware for which the Secretary of State has established the chain-of-custody to the building of the disk(s), which is then used to establish or re-establish the chain-of-custody of any component of a voting system that contains firmware or software. The trusted build is the origin of the chain-of-custody for any software and firmware component of the voting system.
- 1.1.41 “Undervote” means an instance where the voter marked votes for fewer than the

maximum number of candidates or responses for a ballot measure.

1.1.42 “Video security surveillance recording” means video monitoring by a device that continuously records a designated location or a system using motion detection that records one frame, or more, per minute until detection of motion triggers continuous recording.

1.1.43 “Voting system” as defined in section 1-1-104(50.8), C.R.S., means:

- (a) The total combination of mechanical, electromechanical, or electronic equipment (including the software, firmware, and documentation required to program, control, and support the equipment) that is used to:
 - (1) Define ballots;
 - (2) Cast and count votes;
 - (3) Report or display election results; and
 - (4) Maintain and produce any audit trail information.
- (b) The practices and associated documentation used to:
 - (1) Identify system components and versions of such components;
 - (2) Test the system during its development and maintenance;
 - (3) Maintain records of system errors and defects;
 - (4) Determine specific system changes to be made to a system after the initial qualification of the system; and
 - (5) Make available any materials to the voter (such as notices, instructions, forms, or paper ballots).
- (c) “Voting system” does not include any other component of election administration, such as voter registration applications or systems, electronic pollbooks, ballot delivery and retrieval systems, signature verification and envelope sorting devices, ballot on demand printers, election night reporting and other election reporting systems, and other components used throughout the election process that do not capture and tabulate votes.

1.1.44 “Voting system test laboratory” (VSTL) means a federally accredited entity that conducts certification testing for voting systems.

1.1.45 “VVPAT” has the same meaning as in section 1-1-104(50.6), C.R.S.

1.1.46 “Watcher” has the same meaning as in section 1-1-104(51), C.R.S.

- (a) A watcher may be appointed for a recall election in the same manner as in a primary election.
- (b) For the purpose of appointing a watcher, the proponent or opponent of a ballot measure means a registered issue committee supporting or opposing the ballot measure.
- (c) A designated watcher need not be a resident of the county he or she is designated in as long as he or she is an eligible elector in the State of Colorado.

1.1.47 “Write-in vote” means a vote where the voter physically writes in the name of a qualified write-in candidate in the space reserved on the ballot for write-in votes and properly marks the target area according to voter instructions.

1.1.48 “Zero tape” means a printout of the internal data registers in electronic vote-tabulating equipment indicating a zero value before any ballots are tabulated on that machine.

Rule 2.1 is amended as follows:

Rule 2. Voter Registration

2.1 Submission of voter registration forms

- 2.1.1 An applicant may submit a properly executed voter registration form to the county clerk in person, by mail, by fax, by online voter registration, or as an email attachment.
- 2.1.2 If any portion of a mail application is illegible, the county clerk must notify the applicant of the additional information required in accordance with section 1-2-509, C.R.S.
- 2.1.3 For submitting applications by fax, email, or online voter registration, close of business is 11:59 p.m. MT.
- 2.1.4 Under section 1-2-508, C.R.S., the effective date of a voter registration application received by the Secretary of State is the date of the postmark, if legible. If there is no legible postmark, the effective date is the date the application is received.
- 2.1.5 The county clerk must implement a data entry review process to ensure that the county accurately processes voter registration applications in SCORE.

Amendments to Current Rule 2.2:

2.2 For purposes of precinct caucus lists the elector's duration of residency is based upon the date the elector moved to his or her current residence address, as provided by the elector in his or her application. [Section 1-3-101, C.R.S.]

2.2.1 In SCORE, the county clerk must enter the date provided by the elector that he or she moved to his or her current residence address.

2.2.2 If the elector submits an application and does not include the date he or she moved, the county clerk must use the date the application is received or postmarked, whichever is earlier, as the date moved. If the elector submits the application during the 22 days before election day and does not provide the date he or she moved, the county clerk must use as the date moved the twenty-second day before election day based upon the affidavit.

Amendments to Current Rule 2.3.3; corrected numbering:

2.3.2 As used in section 1-1-104(19.5)(a)(VII), C.R.S., current means that the date of the document is within 60 days of the date submitted for identification purposes unless the document states a longer billing cycle.

New Rule 2.3.3:

2.3.3 Documents issued under section 42-2-505, C.R.S., are not acceptable forms of identification for any purpose under the Uniform Election Code of 1992 and these rules.

Current Rule 2.5.4 is repealed.

Current Rule 2.10 is repealed.

Rules 2.11 through 2.17 are renumbered accordingly.

Amendments to Current Rule 2.12.1 concerning voter registration confidentiality:

2.11.1 Information about an agency's name and location for an application completed at a voter registration agency or driver's license office is confidential. [42 USC §§ 1973gg-3(c)(2)(D)(iii)]

Amendments to Current Rule 2.13.2 through 2.13.5 (concerning list maintenance under section 8 of the National Voter Registration Act of 1993):

2.12.2 The Secretary of State will provide monthly National Change of Address (NCOA) data under section 1-2-302.5, C.R.S., to the county clerk by the fifth of each month.

(a) The county must process the data to update registration records and send notifications in accordance with section 1-2-302.5, C.R.S., by the end of

each month.

- (1) The county may not change a residential address to a non-residential address, like a post office box, based on the information in the NCOA data.
 - (2) If the county clerk has previously mailed a confirmation card to an elector whose record is marked inactive for any reason, the county clerk is not required to mail another confirmation card to the elector at the same address.
 - (3) If an elector moves within a county, the county may not mark the elector's record "active" based on the NCOA data if the record is incomplete, pending, or canceled.
- (b) When the county updates a voter registration record using NCOA data, the county must use the NCOA transaction source.

2.12.3 In accordance with section 1-2-605(7), C.R.S., no later than 90 days following a General Election, the county clerk in each county must cancel the registrations of electors:

- (a) Whose records have been marked "Inactive – returned mail", "Inactive – undeliverable ballot", or "Inactive – NCOA";
- (b) Who have been mailed a confirmation card; and
- (c) Who have since failed to vote in two consecutive general elections.

2.12.4 The county must process all records designated for cancelation by the Secretary of State within 21 days of receipt.

2.12.5 The county must process and mail all confirmation cards using SCORE so that the elector's voter registration record audit log shows the date on which the county printed or extracted the confirmation card.

2.12.6 To the extent a county has records of confirmation cards it has generated and sent outside of SCORE, the county must retain those records as election records under section 1-7-802, C.R.S.

Amendments to Current Rule 2.14:

2.13 Voter registration at a voter service and polling center

2.13.1 A person registering voters or updating voter registration information in a voter service and polling center must:

- (a) Be a permanent or temporary county employee, state employee, or temporary staff hired by the county clerk;
- (b) Successfully pass the criminal background check described in Rule 6.5; and

The deleted portion of Current Rule 2.14.1(b) moved to New Rule 6.5.

- (c) Complete a training course provided by the Secretary of State.

[Other than renumbering, Current Rule 2.14.2 is retained; unaltered]

Amendments to Current Rule 2.15:

2.14 Voter registration records and data

- 2.14.1 Notwithstanding the retention timelines specified in section 1-2-227, C.R.S., the county clerk may destroy paper voter registration records as soon as they have been digitally recorded in SCORE. The SCORE system must retain digital images of voter registration applications in perpetuity in accordance with section 1-5-301, C.R.S.

[Other than renumbering, Current rules 2.15.2 through 2.15.4 are retained; unaltered]

New Rule 4.1.3 concerning participation in coordinated elections:

- 4.1.3 The designated election official of each participating political subdivision must certify the completeness and accuracy of the SCORE address library for addresses within the district no later than the 70th day before election day. For special district elections, the designated election official of each district must certify to the county clerk the list of electors eligible to vote under section 32-1-806, C.R.S.

[The last sentence of New Rule 4.1.3 is language moved from Current Rule 7.2.3(c)]

Amendments to Current Rule 4.8.3(a):

4.8.3 Printing primary election ballots

- (a) If a major political party, as defined in section 1-1-104(22.5), C.R.S., nominates more than one candidate for any office, the county clerk must conduct the primary election for all major political parties.
 - (1) The county clerk must include on the ballot all offices to which candidates may be nominated in the primary election.
 - (2) If there are no candidates for any particular office, the county clerk must print on the ballot “There are no candidates for this office”.

[Sections 1-4-101 and 1-4-104.5, C.R.S.; Election Rule 10.1.1]

[Current Rule 4.8.3(b) is retained; unaltered]

Amendments to Current Rule 4.8.4(a) and (b):

4.8.4 Use of unique numbers on ballots

- (a) Except for ballots sent to military or overseas electors by electronic transmission under Rule 16.2, a county may not print a ballot for use in a state or federal election that has a unique number, or a barcode containing a unique number, that is specific to a single ballot.
 - (1) A county that uses rotating numbers must print at least ten ballots of each ballot style for each number.
 - (2) Nothing in this Rule prohibits a county from printing a unique number or barcode on a removable stub.
- (b) After an election official dissociates a voted ballot from its envelope and removes the stub, if any, the county may write or print unique numbers on the voted ballot for auditing and accounting purposes, including duplication of damaged ballots and risk limiting audits.

[Current Rule 4.8.4(c) is retained; unaltered]

Amendments to Current Rule 5:

Rule 5. Nonpartisan Elections not Coordinated by the County Clerk

- 5.1 The designated election official must send notice of the election to the clerk of the county in which the election will be held. The notice must include the date by which the list of registered electors must be submitted to the political subdivision.
- 5.2 For multi-county political subdivisions, the notice sent to each clerk must also include the names of all other counties in which the election will be held.
- 5.3 If a political subdivision coordinates with the county clerk, the designated election official is not required to submit a separate mail ballot plan for the election.

[Current Rules 5.2.2 through 5.8 are repealed]

New Rules 5.4 through 5.6:

5.4 Registration list for a special district election

- 5.4.1 If a special district requests a registration list under section 1-13.5-203(1), C.R.S.,

the county clerk must provide to the designated election official:

- (a) A list of registered electors as of the 40th day before the election to be delivered on the 30th day before the election, followed by a list of all registered electors as of the close of business on the 22nd day before the election to be delivered on the 20th day before the election; or
- (b) A complete list of registered electors as of the sixth day before the election.

5.4.2 Upon request, the county must provide the designated election official a list of UOCAVA electors who reside within the special district.

5.4.3 Beginning the 40th day before the date of election and through election day, the county must stay current with all voter registration data entry.

5.4.4 For every registration list sent to the special district, the county clerk must inform the designated election official of the proper procedures for handling protected or confidential elector information. [Section 24-72-204(3.5), (8), and Part 21, Article 30, Title 24, C.R.S.]

5.5 Registration lists for municipal elections

5.5.1 If a municipality is conducting a mail ballot election, the county clerk must provide the municipality with:

- (a) A preliminary list of all eligible electors no later than the 30th day before the election; and
- (b) A supplemental list of electors no later than the 20th day before the election. The list must contain the names of all eligible electors in the municipality who were not on the 30-day list and who registered on or before the 22nd day before the election.

5.5.2 The county clerk must provide the municipality with a registration list no later than the fifth day before the election. If provided on the fifth day, the list must include all registered electors in the municipality as of the sixth day before the election.

5.5.3 Beginning the 40th day before the election and through election day, the county clerk must stay current with all voter registration data entry.

5.5.4 For every registration list sent to the municipality, the county clerk must inform the designated election official of the proper procedures for handling protected or confidential elector information. [Section 24-72-204(3.5), (8), and Part 21, Article 30, Title 24, C.R.S.]

- 5.6 If an eligible elector attempts to register or update his or her registration at the county clerk's office, the county must process the request and ensure that the elector appears on the next registration list provided to the municipality or issue the elector a certificate of registration.

Amendments to Rules 6.4 and 6.5 concerning election judges:

- 6.4 A supervisor judge in a voter service and polling center must:
- 6.4.1 Successfully pass the criminal background check described in Rule 6.5. Any person who has been convicted of an election offense or an offense with an element of fraud is prohibited from handling voter registration applications or conducting voter registration and list maintenance activities.
 - 6.4.2 Complete a training course provided by the Secretary of State.
- 6.5 The county clerk must arrange for a criminal background check on a supervisor judge and each staff member conducting voter registration activities.
- (a) The criminal background check must be conducted by or through the Colorado Bureau of Investigation, the county sheriff's department in accordance with section 24-72-305.6(3), C.R.S., or similar state or federal agency.
 - (b) A person convicted of an election offense or an offense containing an element of fraud may not:
 - (1) Handle voter registration applications or conduct voter registration and list maintenance activities; or
 - (2) Have access to a code, combination, password, or encryption key for the voting equipment, ballot storage area, counting room, or tabulation workstation.

Amendments to Rule 7.1.1 (concerning mail ballot plans for elections conducted by the county clerk and recorder):

- 7.1.1 The county clerk must submit a mail ballot plan to the Secretary of State by email no later than 90 days before every election. The county clerk must submit with the mail ballot plan the voter instructions and secrecy sleeve that the clerk intends to use in the election.

Amendments to Rule 7.2.3(c) (concerning ballots and ballot packets for elections conducted by the county clerk and recorder):

- (c) In coordinated elections, the county clerk must mail ballots to all active eligible electors of each political subdivision.

[The last sentence of Current Rule 7.2.3(c) moved to New Rule 4.1.3.]

Amendments to Rule 7.2.4(2)(b) and (c); numbering corrections:

- (A) If the county mails its own ballots, the county clerk must remove all voided ballots before mailing.
- (B) If the county processes the change to the elector's record after it mails ballots, the county must count the first ballot returned by the elector in accordance with section 1-7.5-107(6), C.R.S., except where an elector changed his or her affiliation, the county must count the ballot issued for the elector's new party affiliation.

New Rule 7.2.5 and 7.2.6 (concerning mail ballot and ballot packets):

- 7.2.5 Effective January 1, 2015, each mail ballot return envelope and mail ballot instruction must include a statement informing voters that it is a violation of law to drop off more than ten ballots in any election.
- 7.2.6 Effective January 1, 2015, each mail ballot return envelope must include the following: "For third party delivery: I am voluntarily giving my ballot to (name and address) for delivery. I have marked and sealed my ballot in private and have not allowed any person to observe the marking of the ballot, except for those authorized to assist voters under state or federal law."

Amendments to Rule 7.4.6:

- 7.4.6 Upon receipt of the ballot, election judges must verify the signature on the affidavit under Rule 7.8. After the signature on the affidavit has been verified, a bipartisan team of election judges must duplicate the ballot following the procedures outlined in Rule 18. Duplicating judges must not reveal how the elector has cast his or her ballot.

[Rule 7.4.7, concerning emergency ballot transmission, is repealed (this information is currently addressed by section 1-7.5-115, C.R.S.)]

New Rule 7.5.1(c) and (d) concerning receipt and processing of ballots:

- (c) Signage at each drop-off location must inform voters that it is a violation of law to drop off more than ten ballots in any election.
- (d) The minimum number of drop-off locations must be open during reasonable business hours as defined in Rule 7.8.1(a) and from 7:00 a.m. through 7:00 p.m. on election day.

New Rule 7.5.7 concerning disassociating voted ballots from mail ballot return envelopes:

- 7.5.7 After election judges verify the elector's eligibility and signature, the county clerk must dissociate and segregate the mail ballot return envelope from the secrecy sleeve and a voted ballot in a manner that ensures no person is able to determine how an individual voted.

[Current Rule 7.5.7 is renumbered as Rule 7.5.8]

Amendments to Current Rule 7.5.8:

- 7.5.9 The county clerk must dissociate any batch number that could trace a ballot back to the specific voter who cast it from the counted ballots or any reports generated by the tabulation software no later than the final certification of the abstract of votes cast.

New Rule 7.5.10 concerning ballots received by the wrong county:

- 7.5.10 If an elector delivers a ballot to the wrong county, that county must date stamp the ballot envelope and forward it to the correct county. The correct county must treat the ballot as received as of the date and time of the date stamp.

New Rule 7.6 (amended and relocated current Temporary Rule 7.13; adopted on 6/24/2014):

7.6 Ballot returned in unofficial envelope

- 7.6.1 If the county timely receives a mail ballot from an eligible elector in an envelope other than the official ballot return envelope for that particular election, the county must contact the elector in writing within three calendar days of receiving the ballot but no later than two calendar days after election day. The county must use the letter and affidavit prescribed by the Secretary of State and keep a copy as part of the official election record. If the county receives the completed affidavit no later than the eighth day after election day, the county must count the ballot.

[Current Rules 7.6 through 7.7.8 are renumbered accordingly]

New Rule 7.8.9 concerning voter service and polling centers:

- 7.8.9 Signage at each voter service and polling center must indicate that it is a violation of law to drop off more than ten ballots in any election.

[Current Rule 7.8 is renumbered as Rule 7.9]

Amendments to Current Rule 7.9:

- 7.10 The county clerk must complete an accessibility survey for all drop-off and voter service and polling center locations annually before designating a location for use, and no later than 90 days before an election, the county clerk must designate drop-off locations and voter service and polling centers.

- 7.10.1 For the first survey of a location, the county clerk must complete the full ADA Checklist for voter service and polling centers. The county clerk must complete the Annual Voter Service and Polling Center Accessibility Survey form for each location designated for use in an election year after the initial survey is completed. [Section 1-5-703, C.R.S.]
- 7.10.2 If a location fails to meet the minimum accessibility requirements outlined in the ADA Checklist, the county clerk must develop a barrier removal plan outlining the modifications that the county clerk will implement to bring the site into compliance. The county clerk must indicate on the survey whether the modifications are temporary or permanent.
- 7.10.3 The Secretary of State may deny an application for accessibility grant funds if a county clerk fails to assess locations, timely file complete accessibility surveys, or develop and implement necessary barrier removal plans in accordance with this Rule. The Secretary will conduct site visits to assess compliance and identify accessibility barriers. The Secretary will seek injunctive action or other penalties under section 1-1-107(2)(d), C.R.S., as necessary to remedy violations of this Rule.

[Current Rule 7.10 is renumbered as Rule 7.11]

Amendments to Current Rule 7.10.3:

- 7.11.3 Every voter service and polling center designated by the county clerk must meet the minimum security procedures for transmitting voter registration data as outlined in section 1-5-102.9, C.R.S., and Rule 2.16.

[Renumbering and amendments to Current Rules 7.11 and 7.12:]

7.12 Assisting voters with disabilities in a voter service and polling center

- 7.12.1 The designated election official must post a sign at the voter service and polling center that states:

NOTICE

VOTING ASSISTANCE FOR ELECTORS WITH DISABILITIES

Colorado law protects a voter's legal right to assistance in voting if assistance is needed because of a disability.

- 1. If you require assistance, please inform an election judge.*
- 2. Any person, including an election judge, may assist you.*
- 3. If you select a person other than an election judge, he or she must complete a*

Voter Assistance Form, which includes an oath that states:

I, ..., certify that I am the individual chosen by the elector to assist the elector in casting a ballot. I further certify that I will not in any way attempt to persuade or induce the elector to vote in a particular manner, nor will I cast the elector's vote other than as directed by the elector I am assisting.

4. *The person you select may provide any assistance you need, including entering the voting booth, preparing the ballot, or operating the voting machine.*
5. *The person assisting you may not seek to persuade you or induce you to vote in a particular manner.*
6. *The election judge must record the name of each voter who receives assistance and the name of the person who provides assistance on the signature card.*

7.12.2 If a voter has spoiled two ballots and requests a third ballot, an election official must offer assistance in voting procedures and casting the ballot.

7.13 Voter history

7.13.1 After the canvass, the designated election official must give vote credit to each voter who voted in the election.

7.13.2 If the voter history records do not match the number of voters who voted at that election, the designated election official must ensure the following:

- (a) Each voter received credit for voting; and
- (b) All signature cards are accounted for.

7.13.3 All research concerning discrepancies must be explained and documented.

[Current Rule 10.10 is relocated and incorporated into New Rule 7.13 as shown above]

7.14 Reimbursement to counties for state ballot measure elections. No later than 90 days after an election, the county must submit a completed request for reimbursement under section 1-5-505.5, C.R.S. The county must submit the request using the form provided by the Secretary of State.

[Current Temporary Rule 7.13 is amended and relocated to New Rule 7.6]

Amendments to Rule 8.6:

8.6 A watcher may not:

8.6.1 Personally interrupt or disrupt the processing, verification, and counting of any

ballots or any other stage of the election.

[Current rules 8.6.2 through 8.6.7 are retained; unaltered. New Rules 8.6.8 through 8.6.10 follow:]

8.6.8 Attempt to determine how any elector voted.

8.6.9 Disclose or record any confidential voter information as defined in section 24-72-204(8), C.R.S., that he or she may observe.

8.6.10 Disclose any results before the polls have closed.

Amendments to Rule 9

Rule 9. Voting Challenges

9.1 Challenging an in-person voter

9.1.1 Under Section 1-9-201, C.R.S., an election official, watcher, or eligible elector of the precinct may challenge an elector's right to vote. A person whose eligibility is challenged while voting in-person, must be offered a regular ballot by an election judge if the person satisfactorily answers the applicable challenge questions specified in section 1-9-203, C.R.S., and this Rule. If the person challenged provides unsatisfactory answers or refuses to answer the challenge questions, an election judge must offer the person a provisional ballot.

9.1.2 Citizenship. The election judge must ask the elector, "Are you a citizen of the United States?"

9.1.3 Residency. The election judge must ask the elector the following questions:

(a) "Will you have resided in Colorado for the 22 days before election day?"

(b) "Do you reside at the address stated in your voter registration record?"

(c) "Have you been absent from Colorado during the past 22 days?" If the elector responds that he or she was absent during the 22-day period, the election judge must also ask the following questions:

(1) "Have you been absent for a temporary purpose with the intent of returning, or did you intend to remain outside Colorado?"

(2) "While you were absent, did you consider Colorado to be your home or did you maintain a home or domicile elsewhere?"

(3) "While you were absent, did you vote in any other state or territory of the United States?"

- 9.1.4 Age. The election judge must ask the elector, "Will you be 18 years of age or older on election day?"
- 9.2 If an individual challenges a mail ballot under section 1-9-207, C.R.S., the election judge must forward the ballot to two other election judges of different political party affiliations who must review the elector's eligibility to vote.
- 9.2.1 If both election judges determine the elector is not eligible under section 1-9-207, C.R.S., the judges must follow the procedures in section 1-7.5-107.3(2), C.R.S.
- 9.2.2 If both election judges determine the elector is eligible and that elector's signature is valid, the election judges must count the elector's ballot.

Amendments to Rule 10:

Rule 10. Canvassing and Recount

[Current Rule 10.1 is relocated to New Rule 10.2]

[New Rule 10.1 includes relocated portions of Current Rules 10.3, 10.4, and 10.5 as shown below]

- 10.1 Precanvass accounting
- 10.1.1 Detailed Ballot Log. The designated election official must keep a detailed ballot log that accounts for every ballot issued and received beginning when ballots are ordered and received. The election officials must reconcile the log at the conclusion of each workday.
- 10.1.2 Daily voter service and polling center ballot accounting. The designated election official must supply each polling location with a Statement of Ballots Form. Election judges must record the following information on a separate statement of ballots form for each day that the polling location is open:
- (a) The name or number of the polling location;
 - (b) The number of ballots provided to or printed on-demand at the polling location;
 - (c) The number of ballots cast;
 - (d) The number of unvoted ballots;
 - (e) The number of damaged or spoiled ballots;
 - (f) The number of voted provisional ballots; and

- (g) The date.

10.1.3 After a polling location closes for the day election judges must complete the following tasks:

- (a) Reconcile the total number of voted ballots with the number of voters who voted.
- (b) Verify that the total number of voted ballots, spoiled or damaged ballots, provisional ballots, and unvoted ballots is the same as the number of total ballots supplied to or printed at the polling location.
- (c) Reconcile the number of people who signed signature cards to the total number of ballots cast.
- (d) Provide a written explanation of any discrepancy in the numbers on the Statement of Ballots form, (for example, the voter signed in but left the polling location without voting, etc.).

10.1.4 After the voter service and polling center closes on election night, election judges must return the completed Statement of Ballots form for each day the location was open along with all voted ballots to one of the election offices designated in the mail ballot plan.

10.1.5 Designated Election Official's disposition of forms

- (a) The designated election official must review the Statement of Ballots forms for completion and accuracy.
- (b) If the designated election official or the canvass board discovers a problem with a Statement of Ballots form that cannot be easily resolved, they may contact the election judges for an explanation or correction.

[Current Rules 10.1 and 10.9 are amended and renumbered as New Rule 10.2 as follows:]

10.2 Appointment to the Canvass Board

10.2.1 In all cases, the canvass board must consist of an odd number of members, and each member has equal voting rights.

10.2.2 For a partisan election, each major party may have no more than two representatives on the canvass board. The board must include an equal number of representatives from each major party, unless a major party fails to certify representatives for appointment.

10.2.3 Each major party representative on the canvass board must be registered to vote in the county where the representative will serve and affiliated with the party he or

she represents.

10.2.4 A candidate for office and members of the candidate's immediate family may not serve on the canvass board.

10.2.5 Appointment of Canvass Workers. The designated election official may appoint canvass workers to help prepare and conduct the canvass.

[Current Rules 10.2 and 10.12 are amended renumbered as New Rule 10.3 as follows:]

10.3 Duties of the Canvass Board

10.3.1 The canvass board must make its determinations by majority vote in accordance with section 1-10-101.5(1)(c), C.R.S.

10.3.2 The canvass board's duties are to:

- (a) Conduct the canvass in accordance with section 1-10-101.5, C.R.S., including:
 - (1) Account and balance the election and certify the official abstract of votes;
 - (2) Reconcile the number of ballots counted to the number of ballots cast; and
 - (3) Reconcile the number of ballots cast to the number of voters who voted by reviewing the reconciled detailed ballot logs and Statement of Ballots.
- (b) Observe the post-election audit in accordance with section 1-7-514(4), C.R.S., and Election Rule 11.3.3(k);
- (c) In coordination with the county clerk, investigate and report discrepancies found in the audit under section 1-7-514(2), C.R.S.; and
- (d) Conduct any recount in accordance with section 1-10.5-107, C.R.S., and this Rule. The canvass board's role in conducting a recount includes selecting ballots for the random test, observing the recounting of ballots, and certifying the results.

10.3.3 If the board identifies a discrepancy in a Statement of Ballots form, the board may review the particular ballots at issue to identify, correct, and account for the error.

10.3.4 The canvass board may not perform duties typically reserved for election judges, including:

- (a) Determining voter intent;
- (b) Evaluating voter eligibility; and
- (c) Requesting new logs or reports that were not created to conduct the election.

10.3.5 Role of Watchers. Watchers appointed under section 1-10-101(1)(a), C.R.S., may observe the board while it performs its duties, subject to Rule 8.

Current Rule 10.3 is amended and renumbered as New Rule 10.1.1.

Current Rules 10.4 and 10.4.1 are amended and renumbered as New Rule 10.1.2.

Current Rule 10.4.2 is amended and renumbered as New Rule 10.1.3.

Current Rule 10.5 is amended and renumbered as New Rule 10.1.4.

Current Rules 10.6, 10.7.2(e)-(7) and 10.11 are amended and renumbered as New Rule 10.4 as follows:

10.4 Procedures for the day of the Canvass

10.4.1 The designated election official must provide the following information to the canvass board:

- (a) The name of each candidate, office, and votes received;
- (b) The number or letter of each ballot issue or question and votes received;
- (c) The number of ballots cast, including the number of accepted and rejected mail ballots;
- (d) The number of provisional ballots cast, including the number accepted and rejected;

[Current Rules 10.7.2(e)-(h) are relocated to this New Rule 10.4.1 (e)-(h) as follows:]

- (e) The number of mail ballots counted and the number rejected;
- (f) The number of in-person ballots counted;
- (g) The number of provisional ballots counted and the number rejected listed by each rejection code; and
- (h) The number of damaged and spoiled ballots.

10.4.2 Any written documentation regarding official results must be included as part of the canvass.

10.4.3 Written Complaints

- (a) The designated election official must provide the canvass board with any written complaint submitted by a registered elector about a voting device.
- (b) If the complaint is resolved, the designated election official must provide the details of the resolution.
- (c) If the complaint is pending resolution when the board meets to conduct the canvass, the designated election official must provide a proposal for how the issue will be resolved.

10.5 Official Abstract and Reporting to the Secretary of State

[Current Election Rule 10.7.1 is incorporated into New Rule 10.5.2.]

10.5.1 The official county abstract must include, by precinct or ballot style, where applicable:

- (a) The total number of active registered electors on election day;
- (b) The total number of registered electors (active and inactive) on election day;
- (c) The statement of votes counted by race and ballot question or issue; and
- (d) The total number of ballots cast in the election.

[Current Election Rules 10.7.2(e)-(h) are relocated to New Rules 10.4.1(e)-(h).]

10.5.2 The state portion of the abstract, which the county must use the format approved by the Secretary of State and transmit to the Secretary of State, must include:

- (a) The total number of active registered electors on election day;
- (b) The total number of registered electors (active and inactive) on election day;
- (c) The summary of votes cast for each state race and each ballot question or issue;
- (d) The total number of ballots cast in the election; and
- (e) The Canvass ENR upload required under Rule 11.10.4.

10.6 The County Abstract is the Official Permanent Record

10.6.1 The designated election official must keep all official canvass reports and forms as part of the official permanent election record.

10.6.2 Once the canvass board certifies the abstract it may not withdraw the certification. In the event of a recount, the canvass board may only affirm or amend the abstract.

Current Rule 10.9 is renumbered as New Rule 10.2.5.

Current Rule 10.10 is relocated and incorporated into New Rule 7.13

Current Rule 10.11 is renumbered as New Rule 10.4.3.

Current Rule 10.12 is renumbered as New Rule 10.3.5.

10.7 Role of the Secretary of State

10.7.1 As part of the Secretary's duties under section 1-1-107, C.R.S., the Secretary may provide guidance and investigate imperfections as outlined below.

10.7.2 The county clerk or the canvass board may request that the Secretary of State provide guidance and support to the canvass board in the exercise of the board's duties.

10.7.3 If, in the course of assisting a canvass board, the Secretary of State discovers an imperfection that the Secretary believes may affect the conduct of other canvass boards, the Secretary may provide notice to other counties regarding the nature of the imperfection.

[Current Rule 10.13.4 is repealed; this information is addressed by Article 10, of Title 1, C.R.S.]

10.8 Recount generally

10.8.1 The purpose of a recount is to re-tabulate the ballots.

10.8.2 For statewide or federal races, ballot issues or ballot questions, the county clerk must coordinate scheduling the recount through the Secretary of State's office so that it can ensure adequate observer coverage.

10.9 Recount cost estimates and reimbursements

10.9.1 A county must submit a request for reimbursement for a mandatory recount of a state or federal race or ballot measure using the Secretary of State approved form. The county may not request reimbursement for meals or normal overhead costs or

regular employee compensation. The county must include itemized costs for reasonable expenditures, including:

- (a) Mailings and notices;
- (b) Election judges, temporary staff, canvass board pay, and overtime pay; and
- (c) Copies and other office expenses related to the recount.

10.9.2 Requested recounts

- (a) The county clerk must provide an itemized cost estimate in accordance with section 1-10.5-106, C.R.S., upon submission of a formal request for a recount.
- (b) In preparing a cost estimate for a requested recount, the county must use the Secretary of State approved form. The estimate must include reasonable itemized costs for conducting the recount. The county may not request reimbursement for normal overhead costs.
- (c) The county clerk must submit a cost estimate to the Secretary of State when the clerk provides it to a requesting party.

10.10 In accordance with section 1-10.5-107, C.R.S., and Rule 10.3.2(d), the canvass board's role in conducting a recount includes selecting ballots for the test, observing the recounting of ballots, and certifying the results.

10.11 Watchers and observers during a recount

10.11.1 The Secretary of State may appoint official observers in any recount.

10.11.2 Each candidate or the candidate's watcher, media observers, and official observers, may be present and witness the recount in accordance with Rule 8.

10.11.3 The recount board must take the canvass board oath, assisting election judges must take the election judge's oath, and any person observing the recount must take a watcher's oath.

10.11.4 Complaints. A watcher may submit a complaint in writing to the county clerk or designee. Written complaints during a recount will be addressed in accordance with Rule 13.

10.12 Testing recount equipment

10.12.1 The canvass board must review the post-election audit before selecting the equipment for testing under section 1-10.5-102(3), C.R.S. To the extent feasible,

the board must select equipment for testing that was not included in the post-election audit.

10.12.2 The county clerk must test all optical scanners that will be used in the recount. The purpose of the test is to ensure that the tabulation machines are counting properly.

(a) The test deck must include 50 ballots or 1% of the total number of ballots cast in the election, whichever is greater, except that the total number of ballots tested may not exceed the total number of ballots comprising the county's test deck for the Logic and Accuracy test before the election. The ballots must be marked to test every option for the race or measure that will be recounted.

(1) In a mandatory recount, the canvass board must select the ballots to be tested from the county's test deck for the Public Logic and Accuracy test.

(2) In a requested recount, the person requesting the recount may mark up to 25 ballots. Any other candidate in the race may also mark up to 25 ballots. The canvass board must randomly select ballots from the county's test deck for the Public Logic and Accuracy test to ensure the minimum number of test ballots required by this Rule.

(b) Sworn judges or staff must hand tally the test ballots for comparison to the tabulation results.

(c) The test is limited to the race or measure that is recounted.

10.12.3 The county clerk must test the VVPAT records from 1% of the DREs that had votes cast for the race or measure being recounted.

(a) Sworn judges or staff must manually verify the results on the machines selected for the test.

(b) The test is limited to the race or measure that is recounted.

10.13 Counting ballots during a recount

10.13.1 In accordance with section 1-10.5-102(3)(b), C.R.S., if there are no discrepancies in the test under Rule 10.12, the recount must be conducted in the same manner as the ballots were counted in the election except as outlined in this Rule. If there are unresolvable discrepancies in the test, the recount must be conducted as a hand count under Rule 10.13.5.

10.13.2 A clear audit trail must be maintained throughout the recount including, but not

limited to, a log of seal numbers on transfer cases or ballot boxes, and the corresponding numbered seal for each transfer case or ballot box.

10.13.3 Ballots must be reviewed for voter intent using the standards in Rule 18.

- (a) Every over-vote or under-vote in the race(s) or measure(s) subject to the recount must be reviewed for voter intent under Rule 18.
- (b) The judges conducting the voter intent review may resolve the intent differently than the judges in the election.

10.13.4 To recount ballots using “Ballot Now”:

- (a) Back up the official election database.
- (b) Open Ballot Now with an unused Mobile Ballot Box (MBB) from the election and create a Ballot Now recount database.
- (c) Scan and resolve all recount ballots according to this Rule 10.
- (d) Save all recount Cast Vote Records to the MBBs after verifying that the number of ballots processed matches the number of ballots cast in the recount contest.
- (e) Open a new recount election in “Tally” and process the recount MBBs following the tabulation procedures above.
- (f) Compare recount results to original results and document any differences.
- (g) Backup the test database and the official recount database.

10.13.5 To recount ballots by hand count.

- (a) If the tabulation of the original count was conducted by hand count, the recount must be conducted by hand count.
- (b) Ballots must be counted in batches of 25 to ensure that the number of ballots recounted matches the number originally counted.
- (c) Votes must be counted by individual hash marks in 25-count sections by two different judges.

10.13.6 For tabulation of DREs, if there are no discrepancies in the test under Rule 10.12.3, the county clerk must upload the memory cards.

10.13.7 Tabulation of ballots cast must be completed through a precise, controlled process that ensures each container of ballots is retabulated and resealed before tabulation

of the next container begins.

10.13.8 The number of ballots counted according to the final results for that race or measure must be available during the recount for comparison purposes.

10.14 Canvass and reporting results for a recount

10.14.1 Totals of recounted ballots must be reported in summary form as follows:

- (a) Sum total of votes cast for each race or measure recounted, under-votes, and over-votes for each location;
- (b) The totals must be a combined total, not totaled by individual precincts or location, unless the tabulation system allows.

10.14.2 In accordance with section 1-10.5-107, C.R.S., and this Rule 10, the canvass board must amend, if necessary, and re-submit the abstract of votes cast.

Amendments to Current Rule 11.3.2 concerning voting systems:

11.3.2 Logic and Accuracy Test

[Current Rules 11.3.2(a) and (b) are amended and renumbered as New Rules 11.3.2(c)(1) and (2). Current Rules 11.3.2(c) and (d) are amended and renumbered as New Rules 11.3.2(a) and (b):]

- (a) The county clerk must conduct the public Logic and Accuracy Test no later than the 18th day before election day.
- (b) The county must ensure that the Logic and Accuracy Test is open to the extent allowable in accordance with section 1-7-509(2)(b), C.R.S. The county clerk may limit the number of representatives from each group because of space limitations.

Current Rules 11.3.2(a), (b), (e) through (g) are amended and renumbered as New Rules 11.3.2(c)(1) through (5):

(c) Preparing for the Logic and Accuracy Test

- (1) The county must prepare a sufficient number of test ballots that represent every ballot style and precinct, if applicable, allow for a sufficient number of ballots to mark every vote position for every candidate on every race including write-in candidates, allow for situations where a race may permit an elector to vote for two or more positions, where applicable, and include overvotes and undervotes for each race.

- (2) The county must create a Testing Board of one registered elector from each of the major political parties, if appointed. Testing Board members must be registered to vote in the county.

[Current Rules 11.3.2(c) and (d) are amended and renumbered as New Rules 11.3.2(a) and (b) as shown above.]

- (3) The county must provide at least 25 ballots that are clearly marked as test ballots to each Testing Board member.
- (4) Testing Board members must secretly vote their ballots following the instructions printed on the ballots and retain a record of the tally.
- (5) The Testing Board must test the ballots on each type of voting device used in the election and each type of ballot including audio ballots.

Current Rule 11.3.2(h) is amended and renumbered as New Rule 11.3.2(d):

(d) Conducting the Test

- (1) The county and Testing Board must observe the tabulation of all test ballots, compare the tabulation with the previously retained records of the test vote count, and correct any discrepancies before the device is used in the election.
- (2) The county must reset the public counter to zero on all devices and present zero tapes to the Testing Board for verification. For any device capable of producing or verifying the trusted build hash value (MD5 or SHA-1) of the firmware or software, the county clerk must verify and document the accuracy of the value for the device.
- (3) The county must make an appropriate number of voting devices available and the Testing Board may witness the programming and/or downloading of memory devices necessary for the test.
- (4) The Testing Board and designated election official must count the test ballots as follows:
 - (A) Optical Scanners:
 - (i) The Testing Board must count test ballots on at least one, but not more than five, central count optical scanners and at least one optical scanner

used at a voter service and polling center, if applicable.

- (ii) The Testing Board must randomly select the machines to test.
- (iii) The Testing Board must count the board and county's test ballot batches separately and generate reports to verify that the machine count is identical to the predetermined tally.

(B) DREs:

- (i) The Testing Board must count the test ballots on at least one, but not more than five, DREs.
- (ii) The Testing Board must randomly select the machines to test.
- (iii) The Testing Board must identify and test two ballots as audio ballots.
- (iv) The Testing Board must count at least 50 of the board's ballots and a random sampling of at least 25 of the county's test ballots separately and generate reports to verify that the machine count is identical to the predetermined tally. For DREs with VVPAT devices, the Testing Board must manually count the paper record to verify that the pre-determined totals of the Testing Board and county test ballot batches match the VVPAT total.

Current Rules 11.3.2(h)(4)(B)(v), (vi), and (viii) are re-codified as New Rules 11.3.2(e)(1), (2), and (3):

(e) Completing the Test

- (1) The county must keep all test materials, when not in use, in a durable, secure box. Each member of the Testing Board must verify the seals and initial the chain-of-custody log maintained by the county clerk. If the records are opened for inspection, at least two election officials must verify the seals and initial the chain-of-custody log.
- (2) After testing, the Testing Board must watch the county reset and seal each voting device.

- (3) The Testing Board and the county clerk must sign a written statement attesting to the qualification of each device successfully tested, the number of the seal attached to the voting device at the end of the test, any problems discovered, and any other documentation necessary to provide a full and accurate account of the condition of a given device.
- (4) After testing, the testing board must watch the county create a backup copy of the election database.
- (5) The county may not change the programming of any voting device after completing the logic and accuracy test for an election, except as required to conduct a recount or as authorized by the Secretary of State.

Amendments to Current rule 11.4:

- 11.4 The county must submit election setup records by regular mail no later than 5:00 p.m. on the seventh day before election day.

Amendments to Current rule 11.10:

- 11.10 Election Night Reporting (ENR). The county must report election night results for all primary, general, coordinated and recall elections.

11.10.1 A data entry county must program the election to support the exporting of election night results in accordance with the following upload requirements:

- (a) List contest names and candidate names exactly as provided on the certified list.
- (b) For counties that use the ES&S and Premier voting systems, arrange the contests in the order prescribed by section 1-5-403(5), C.R.S.
- (c) Capitalize candidate names (e.g., John A. Smith).
- (d) Present a precinct name as a ten-digit precinct number.
- (e) For counties that use the Hart voting systems, use the “Split_name” field for split precinct naming purposes.
- (f) Create a “Provisional” precinct.
- (g) Use only the party codes certified by the Secretary of State.
- (h) Do not include the party name or code in the candidate name field.

11.10.2 No later than 14 days before the election, a county must send the following information to the Secretary of State, at the address in Rule 11.6:

- (a) A data entry county must email a sample or “zero” file.
- (b) A manual entry county must send a list of all ballot content.

11.10.3 Manual entry counties must produce preliminary election results and upload them to the ENR system once counting is completed. All other counties must export or produce preliminary election results and upload them to the ENR system a minimum of three times on election night:

- (a) After the close of polls but no later than 8:00 p.m.
- (b) At or around 9:00 p.m.
- (c) The county must indicate that reporting is complete in the ENR system for election day after the county uploads the last results on election night.

11.10.4 The county must export or produce official election results, and check the appropriate box in the ENR system to indicate that the canvass upload is complete, not later than close of business of the first business day after the statutory deadline for completing the canvass.

Current Rule 12.1 is repealed. Rule 12 is reserved:

Rule 12. Recall

[Reserved]

Amendments to Current Rule 13:

Rule 13. Election and HAVA Complaints

13.1 Election complaint procedures

13.1.1 Any individual who personally witnesses a violation of the Uniform Election Code of 1992 may file an election complaint.

[Current Rule 13.1.2 is retained; unaltered]

13.1.3 Processing and docketing election complaints

- (a) Within three business days of receiving a complaint, the Secretary’s designee will review the complaint to determine if it satisfies Rule 13.1.2 and sufficiently alleges a violation of the Uniform Election Code of 1992.

- (1) If the complaint does not meet the requirements of Rule 13.1.3(a), the Secretary's designee will notify the complainant of the deficiency.
 - (2) If a complaint meets the criteria, the Secretary's designee will assign a complaint number, notify the complainant, and send a copy of the complaint to the person or entity alleged to have committed a violation.
- (b) After notification, the person or entity alleged to have committed the violation will have 15 business days to submit a written response to the Secretary of State's office.

[Current Rule 13.1.4 is retained; unaltered]

[Current Rules 13.1.5 (a), (b), and (d) are retained; unaltered.] Rule 13.1.5(c) is amended as follows:

13.1.5 Investigation

- (c) Depending on the violation alleged, the Secretary's designee may:
- (1) Review documents;
 - (2) Visit the county;
 - (3) Conduct interviews;
 - (4) Test equipment;
 - (5) Take other steps necessary; or
 - (6) Convene a hearing and take testimony from interested parties.

Amendments to Current Rule 13.1.6:

13.1.6 Resolution of election complaints

- (a) After an investigation and hearing, if applicable, the Secretary's designee will:
- (1) Dismiss the complaint as not supported by credible evidence;
 - (2) Refer the complaint to a prosecuting authority under Article 13 of Title 1, C.R.S.; or
 - (3) Find a violation, recommend a resolution, and forward the

recommendation for resolution to the Secretary of State.

[Current Rules 13.1.7 through 13.2.2 are retained; unaltered]

New Rule 13.2.3 through 13.2.5:

13.2.3 A complainant must allege a HAVA violation with particularity and refer to the section of HAVA that has been violated.

13.2.4 A complaint must be filed no later than one year from the date of either the occurrence of the alleged violation or of the election giving rise to the violation, whichever is later.

13.2.5 Each complaint must be in writing and notarized, signed, and sworn by the person filing the complaint.

Amendments to Current Rule 13.2.3:

13.2.6 Processing and docketing HAVA complaints

- (a) Within three business days of receiving a complaint, the Secretary's designee will review the complaint to determine if it satisfies Rules 13.2.2 through 13.2.5.
 - (1) If the complaint does not include a cover sheet the Secretary's designee will notify the complainant of the discrepancy.
 - (2) If a complaint meets the criteria, the Secretary's designee will assign a complaint number, notify the complainant, and send a copy of the complaint to the person or entity alleged to have committed a violation.
- (b) After notification, the person or entity alleged to have committed the violation will have 15 business days to submit a written response to the Secretary of State's office.
- (c) The Secretary's designee may consolidate two or more HAVA complaints.

Other than renumbering, Current Rule 13.2.4 is retained, unaltered]

Current Rule 13.2.5 is renumbered accordingly. The cross-reference included in Current Rule 13.2.5(a) (renumbered as Rule 13.2.8(a)) is amended as follows:

- (a) After the response period outlined in Rule 13.2.6, the Secretary's designee will investigate the complaint.

Amendments to Current Rules 13.2.6 and 13.2.7. New Rule 13.2.10:

13.2.9 Hearing and Resolution of HAVA complaints

- (a) If the complainant requests, the Secretary of State or his or her designee will hold a hearing.
- (b) After the investigation and hearing, if any, the Secretary's designee will:
 - (1) Dismiss the complaint as not supported by credible evidence;
 - (2) Refer the complaint to a prosecuting authority under Article 13 of Title 1, C.R.S.; or
 - (3) Find a violation, recommend a resolution, and forward the recommendation for resolution to the Secretary of State.

13.2.10 Alternative Dispute Resolution under section 1-1.5-105(2)(j), C.R.S.

- (a) If the Secretary of State does not resolve the complaint within 90 days of the date that it was filed and the complainant does not consent to an extension of time, the Secretary of State will transfer the complaint to the Office of Administrative Courts (OAC).
- (b) The Secretary of State will provide the record and any other materials from the proceedings to the OAC.
- (c) The Secretary of State will consider the initial determination by the OAC and issue a final determination within 60 days of the date the determination is received by the Secretary.

13.2.11 The Secretary of State's determination is a final agency action.

New Rule 13.2.12:

13.2.12 The Secretary of State may recover the costs of proceeding against any complainant that files a frivolous, groundless, or vexatious complaint.

New Rule 14.4.6 concerning Voter Registration Drives:

14.4.6 A VRD organizer or circulator may not highlight or otherwise mark the approved voter registration drive application form other than to write the VRD number and circulator information.

Amendments to Current Rule 15:

Rule 15. Preparation, Filing, and Verification of Petitions

Current Rule 15.1 is amended and renumbered as New Rule 15.2. Current Rules 15.5.7, 15.6,

and 15.8, are amended and re-codified as New Rule 15.1 as follows:

15.1 The following requirements apply to candidate, statewide initiative, recall, and referendum petitions, unless otherwise specified.

15.1.1 The Secretary of State or DEO will not accept or count additional signatures after proponents file the original petition or addendum.

15.1.2 Circulator affidavit

- (a) If a petition section does not have a completed circulator affidavit, the Secretary of State or DEO will reject the entire section.
- (b) If a petition section does not have a completed notary clause, or if the date of the notary clause differs from the date the circulator signed the affidavit, the Secretary of State or DEO will reject the entire section.

15.1.3 Verifying individual entries

- (a) Staff will check each individual entry against the information contained in SCORE.
- (b) Staff will create and maintain a master record of each accepted and rejected entry, along with the reason code for each rejected entry.
- (c) If an entry does not match the signor's current information in SCORE, staff must check the signor's information in SCORE as of the date the signor signed the petition.
- (d) Secretary of State or DEO staff will reject the entry if:
 - (1) The name on the entry is not in SCORE;
 - (2) The middle initial or middle name on the entry does not match the middle initial or middle name in SCORE;
 - (3) The address on the entry does not match the address in SCORE;
 - (4) The address on the entry is a post office box;
 - (5) The entry is incomplete;
 - (6) The signer completed the entry before the designated election official approved the petition format;
 - (7) The signer was not an eligible elector at the time he or she completed the entry;

- (8) The signer completed the entry after the date on the circulator affidavit;
 - (9) Evidence exists that some other person assisted the signer in completing the entry but no statement of assistance accompanies the entry;
 - (10) The name and signature on the entry is illegible and cannot be verified in SCORE;
 - (11) The entry is a duplicate of a previously accepted entry on the same petition; or
 - (12) For a candidate petition where an elector may sign only one petition for the same office, the entry is a duplicate of a previously accepted entry on a previously filed petition for the same office.
- (e) Secretary of State or DEO staff will accept the entry if:
- (1) The name on an entry matches or is substantially similar to the information in SCORE, or if the signature on an entry is a common variant of the name;
 - (2) A middle initial or middle name is present on the entry but not in SCORE, or present in SCORE but not on the entry;
 - (3) A name suffix is present on the entry but not in SCORE, or present in SCORE but not on the entry; or
 - (4) The address on the entry is missing an apartment letter or number or a street direction.

Current Rules 15.1 and 15.2 are amended and renumbered as New Rules 15.2 and 15.3 as follows:

15.2 Petition entity license, registration, filing, and circulation

15.2.1 A petition entity that intends to pay petition circulators must obtain a petition entity license, pay a fee, and register with the Secretary of State before circulating petitions. The license application must include:

- (a) The petition entity's name, address, telephone number, and email address;
- (b) The designated agent's name; and
- (c) An affirmation that the designated agent has read and understands Article 40 of Title 1, C.R.S., and has completed the Secretary of State's circulator

training program.

15.2.2 Before compensating a circulator, the designated agent must register with the Secretary of State by submitting a signed form that includes a list of the proposed initiatives the petition entity will circulate.

15.2.3 If a petition entity fails to register a proposed initiative over any two-year period, the license expires. The Secretary of State will notify a petition entity that its license has expired within 30 days after the date of expiration.

15.2.4 A petition entity may renew an expired license without a fee by submitting a new license application.

Current Rule 15.2 is repealed. Subsequent Rules are renumbered accordingly and otherwise amended as follows:

15.3 Statewide initiative petition circulation

15.3.1 Petition circulation may begin after the title board's final decision, including disposition of any rehearing motion, after the time for filing a rehearing motion, and after the Secretary of State has approved the petition format. If an appeal is filed with the Supreme Court, the six-month period specified in section 1-40-108(1), C.R.S., begins on the date the petition is first signed or on the date the Supreme Court's decision becomes final, whichever is first. Signatures gathered outside of this period are invalid.

15.3.2 The petition circulator must provide a permanent residence address on the circulator affidavit. If the circulator is not a permanent Colorado resident, the circulator must also provide the Colorado address where he or she temporarily lives.

(a) For purposes of Article 40 of Title 1, C.R.S., and this Rule, a circulator's permanent "residence" or "domicile" means his or her principal or primary home or place of abode in which a circulator's habitation is fixed and to which the circulator, whenever absent, has the present intention of returning after a departure or absence, regardless of the duration of the absence. A permanent "residence" or "domicile" is a permanent building or part of a building and may include a house, condominium, apartment, room in house, or mobile home. Except as provided in paragraph (b) of this Rule, a vacant lot, business address, or post office box is not a permanent "residence" or "domicile". (Sections 1-2-102(1)(a)(i) and 1-40-121(1)(b), C.R.S.)

(b) A homeless circulator must provide the address or location where he or she is living the date the affidavit is signed. The circulator must provide a physical location; a post office box may not be provided.

- (c) For the purposes of sections 1-40-106(4)(b), 1-40-111(3)(a), 1-40-121(2)(a), and 1-40-135(2)(c), C.R.S., a circulator's permanent residence address that does not comply with this Rule 15.4.2 is a "false address".

15.3.3 Proponents may file a petition or addendum only once, and may not supplement additional signatures after filing the petition or addendum, even if the additional signatures are offered before the deadline to submit the original petition or addendum.

15.4 Statewide initiative petition receipt by Secretary of State

15.4.1 The Secretary of State will not accept a petition that lists proponents other than those authorized by law.

[Current Rules 15.5.2 through 15.5.6 are renumbered accordingly but retained unaltered]

[Current Rule 15.5.7 moved to New Rule 15.1.1]

[Current Rule 15.6 is amended and renumbered as New Rule 15.1.2.]

15.5 Statewide initiative petition verification

15.5.1 Verification by random sample.

15.5.2 Preliminary count and random number generation.

- (a) After counting the entries on each petition section, Secretary of State staff will enter the petition identification number, the petition section number, the page number, and the number of entries on the page into the database.
- (b) Staff will then create a record for each entry that contains the petition identification number, petition section number, page number, and the entry number. Staff will tally the total number of entries.
- (c) If the number of entries is less than the total number of signatures required to certify the measure to the ballot, the Secretary of State will issue a statement of insufficiency.

15.5.3 Random sample. The database will generate a series of random numbers equal to 4,000 signatures or five percent of the total number of signatures, whichever is greater. Staff will check the validity of the random signatures in accordance with this Rule. Staff will maintain a master record of each accepted and rejected entry, along with the reason code for each rejected entry.

[Current Rule 15.8 is amended and renumbered as New Rule 15.1.3.]

15.6 Curing insufficient statewide initiative petitions

- 15.6.1 If petition proponents submit additional signatures within the permitted time, Secretary of State staff will verify the additional signatures in accordance with this Rule 15.
- 15.6.2 If the Secretary of State found the original submission insufficient based on the random sample verification, staff will add the number of additional valid signatures to the number of projected valid signatures in the original submission.
- (a) If the new projected number of valid signatures equals 110% or more of the required signatures, the Secretary of State will issue a statement of sufficiency.
 - (b) If the new projected number of valid signatures equals more than 90% but less than 110% of the required signatures, staff will verify all previously submitted signatures. Staff will add the total number of valid signatures in the original petition to the number of additional valid signatures submitted in the addendum in order to determine sufficiency.
- 15.6.3 If the initial verification was of every signature, staff will add the number of additional valid signatures to the number of valid signatures in the original submission in order to determine sufficiency.
- 15.6.4 Staff will issue a new statement of insufficiency or sufficiency that reports the total number of valid signatures submitted.

[Current Rule 15.10 is repealed]

15.7 Referendum petitions

- 15.7.1 This Rule applies to statewide referendum petitions under Article V, Section 1 (3) of the Colorado Constitution.
- 15.7.2 Except where this Rule states otherwise, any statutory or constitutional provision that applies specifically to initiative petitions also applies to referendum petitions.
- 15.7.3 Proponents may submit a referendum petition to the Secretary of State for approval at any time after the General Assembly has passed the bill. The Secretary of State will not issue final approval of the referendum petition form until the bill has become law under Article IV, Section 11 of the Colorado Constitution.
- 15.7.4 Each referendum petition section must consist of the following, in the order listed:
- [New Rules 15.7.4 (a)-(g), formerly numbered 15.11.5 (a)-(g), are retained; unaltered]*
- 15.7.5 A referendum petition section must include only the matters required by Article

40, Title 1, C.R.S., and this Rule, and no extraneous material.

- 15.7.6 The ballot title must consist of the title of the act on which the referendum is demanded, followed by the bill number, in substantially the following form, in which the underlined material is only for example:

“An Act concerning registration requirements for motor vehicles, and, in connection therewith, authorizing two- and five-year registration periods and authorizing discretionary vehicle identification number inspections, and making an appropriation, being House Bill No. 02-1010.”

- 15.7.7 When referendum is demanded on less than an entire Act of the General Assembly, the ballot title and submission clause must consist of the ballot title preceded by words in substantially the following form, in which the underscored material is only for example, and ending in a question mark:

“Shall Section 3 (concerning definition of terms) and Section 4 (eliminating licensing requirements for motor vehicle dealers) of the following Act of the General Assembly be approved:” The material in parentheses shall correctly and fairly summarize the subject or the effect of the portion of the Act referenced.

Amendments to Current Rule 16.1 concerning military and overseas voters (UOCAVA):

16.1 General Rules concerning voting by military and overseas electors

- 16.1.1 For the purposes of this Rule 16, elector means a covered voter as defined in section 1-8.3-102(2), C.R.S.
- 16.1.2 In accordance with the Help America Vote Act of 2002 and this Rule 16, each county clerk’s office must have a dedicated fax machine for the purpose of fax ballot transmission.
- 16.1.3 The county clerk must mail or electronically transmit a ballot to all active eligible electors. An elector who requests covered-voter status must submit an application affirming his or her eligibility to do so in accordance with section 1-8.3-102(2), C.R.S.
- 16.1.4 If an unregistered elector submits a Federal Write-in Absentee Ballot (FWAB) by the deadline set forth in sections 1-8.3-111 and 1-8.3-113, C.R.S., the FWAB is a timely application for registration and ballot request.
- 16.1.5 In accordance with sections 1-8.3-111 and 1-8.3-113, C.R.S., all ballots cast must be voted and mailed or electronically transmitted no later than 7:00 p.m. MT on election day, and received by the county clerk or the Secretary of State no later than the close of business on the eighth day after election day.

16.1.6 Ballots received by the Secretary of State

- (a) If the Secretary of State timely receives a ballot under section 1-8.3-113, C.R.S., and Rule 16, the Secretary of State will immediately notify the appropriate county clerk and forward the ballot by the most efficient means available no later than the next business day.
- (b) To ensure voter secrecy, any county notified that the Secretary of State has received a ballot must retain a minimum of ten voted ballots to be counted with the ballot received by the State.

16.1.7 The county clerk must send a minimum of one correspondence no later than 60 days before the Primary Election to each elector whose record is marked “Inactive.” The correspondence may be sent by email or mail and, at a minimum, must notify the electors of:

- (a) The status of the elector’s record and ballot request;
- (b) The upcoming federal elections;
- (c) How to update the elector’s mailing information and request a ballot; and
- (d) Any other information the county clerk deems appropriate.

16.1.8 No later than 45 days before an election, the county clerk must report to the Secretary of State the number ballots transmitted to military and overseas electors by the 45-day deadline.

16.1.9 Failure to meet the 45-day ballot transmission deadline in section 1-8.3-110, C.R.S.

- (a) If a county fails to meet the 45-day ballot transmission deadline provided for any state or federal election, the county clerk must immediately report the failure and reason for the failure to the Secretary of State.
- (b) The county clerk must provide a plan to the Secretary of State for complying with the deadline in the next state or federal election.
 - (1) The county must submit the plan to the Secretary of State no later than 60 days before the transmission deadline.
 - (2) The county must provide a weekly progress report on implementing the plan to the Secretary of State beginning 50 days before the transmission deadline.
 - (3) The county clerk must provide a daily progress report to the Secretary of State beginning five days before the transmission

deadline.

Amendments to Current Rule 16.2.1 concerning electronic transmission for military and overseas voters (UOCAVA):

16.2.1 In accordance with sections 1-8.3-110 and 1-8.3-113, C.R.S., an elector may request to receive and return his or her ballot by electronic transmission.

[Current Rules 16.2.1 (a) and (b) are retained; unaltered]

- (c) In accordance with section 1-8.3-113(1), C.R.S., an elector who chooses to receive his or her unvoted ballot by online ballot delivery may return his or her ballot by fax or email.
- (d) To return a voted ballot and self-affirmation by email, the elector must scan and return the documents as an email attachment.
- (e) If an elector requests to receive his or her ballot by electronic transmission, the county clerk must transmit the elector's ballot electronically for all covered elections until the elector requests otherwise or the elector's electronic transmission method becomes undeliverable.

Amendments to Rule 16.2.6:

16.2.6 Upon receipt of a voted ballot sent by electronic transmission, the county clerk must verify the elector's signature in accordance with Rule 7.8. After the affidavit has been verified, a bipartisan team of judges must duplicate the ballot. Duplicating judges must not reveal how the elector voted.

Amendments to Current Rule 18.3.2(d)(6) concerning sequence of resolution procedures for central count optical scanners:

- (6) The county must separately log the seal number of each box containing one or more valid write-in votes.

Amendments to Current Rule 21 concerning voting system standards for certification:

Current Rule 21.1.1 is moved to New Rule 1.1.1.

Current Rule 21.1.2 is amended and moved to New Rule 1.1.2.

Current Rule 21.1.3 is amended and moved to New Rule 1.1.3.

Current Rule 21.1.4 is amended and moved to New Rule 1.1.4.

Current Rule 21.1.5 is amended and moved to New Rule 1.1.7.

Current Rule 21.1.6 is amended and move to New Rule 1.1.11.

Current Rule 21.1.8 is repealed.

Current Rule 21.1.9 is amended and moved to New Rule 1.1.18.

Current Rule 21.1.10 moved to New Rule 1.1.19.

Current Rules 21.1.11 and 21.1.12 are repealed.

Current Rule 21.1.13 is amended and moved to New Rule 1.1.29.

Current Rules 21.1.14 through 21.1.17 are repealed.

Current Rule 21.1.18 is amended and moved to New Rule 1.1.36.

Current Rules 21.1.19 and 21.1.20 are repealed.

Current Rule 21.1.21 is amended and moved to New Rule 1.1.44.

21.1 Introduction

- 21.1.1 For Colorado purposes, no single component of a voting system, or device, meets the definition of a voting system except that nothing in this Rule requires the testing of an entire modified system if the Secretary of State determines in accordance with section 1-5-618, C.R.S., that a modification to any certified voting system requires testing for security and accuracy. Only the modification and any affected features or capabilities must be tested to ensure compliance with this Rule.
- 21.1.2 Sufficient components must be assembled to create a configuration that allows the system or modification as a whole to meet the requirements as described for a voting system in this Rule.
- 21.1.3 The certification of a voting system is not a requirement that a county purchase or lease all of the components of the voting system. Counties may choose to configure and use a subset of the certified voting system and may use the services of a vendor or third party to provide ballot definition and election programming of memory cards. Counties are not required to use a paper ballot tabulation device if they choose to manually tabulate the election results.

21.2 Certification Process Overview and Timeline

- 21.2.1 The voting system will be considered as a unit, and all components tested at once, unless the circumstances necessitate otherwise. Any change made to individual components of a voting system will require the entire voting system to be recertified unless the change is a modification that can be approved under section

1-5-618(1.5), C.R.S.

21.2.2 For a voting system to be certified, the voting system provider must successfully complete all phases of the certification process. The certification process includes: submission of a complete application, a documentation review, a public demonstration of the system, and functional testing.

21.2.3 The flow of each phase of certification is as follows:

- (a) Phase I – The voting system provider must submit an application and all documentation required in Rule 21.3. The Secretary of State will review the application and inform the voting system provider whether or not the application is complete. If the application is incomplete, the Secretary of State will identify the deficiencies and the voting system provider will have 30 days to remedy the deficiencies and make the application complete. When the application is complete, the Secretary of State will make arrangements with the voting system provider for a public demonstration.
- (b) Phase II – The Secretary of State will review the submitted documentation, VSTL reports from previous testing, and evaluations provided by other states.
- (c) Phase III – The Secretary of State will prepare a certification test plan. If a VSTL is contracted to test the voting system, the VSTL will work with the Secretary of State to prepare a certification test plan. The certification test plan will be presented to the voting system provider for review before execution of the test plan.
- (d) Phase IV– Upon receipt of the voting system provider’s agreement to the certification test plan, the Secretary of State or the VSTL will execute the test plan.
- (e) Phase V – The Secretary of State will review the test results and determine whether the voting system substantially meets the requirements for certification. Within 30 days of a decision, the Secretary of State will post the certification test report for the voting system on its website.

21.2.4 The Secretary of State will certify voting systems that substantially comply with the requirements in this Rule 21, Colorado Election Code, and any additional testing the Secretary of State finds necessary.

21.3 Application Procedure

21.3.1 Any voting system provider may apply to the Secretary of State for certification at any time.

- 21.3.2 A voting system provider that desires to submit a voting system for certification must complete the Secretary of State's "Application for Certification of Voting System" that is available on the Secretary of State's website.
- 21.3.3 The Secretary of State, in accordance with section 24-21-104(1)(a), C.R.S., will charge the voting system provider all direct and indirect costs associated with the testing of a voting system submitted for certification. The Secretary of State will provide an estimate of costs for certification testing before the certification process begins. In order to begin testing, the voting system provider must provide a written approval of the cost estimate. The voting system provider must pay all costs before the Secretary of state will issue a final determination.
- 21.3.4 Along with the application, the voting system provider must submit all documentation required in this Rule 21 in electronic format.
- 21.3.5 The vendor must identify any material it asserts is exempt from public disclosure under the Colorado Open Records Act, Part 2, Article 72 of Title 24, C.R.S., together with a citation to the specific grounds for exemption before beginning Phase III of the certification process.
- 21.3.6 The voting system provider must coordinate with the Secretary of State for the establishment of the trusted build. The voting system provider must submit all documentation and instructions necessary for the creation and guided installation of files contained in the trusted build which will be created at the start of functional testing and will be the model tested. At a minimum, the trusted build must include a compilation of files placed on write-once media, and an established hash file distributed from a VSTL or the National Software Reference Library to compare federally certified versions. The trusted build disks should all be labeled with identification of the voting system provider's name and release version.
- 21.3.7 All materials submitted to the Secretary of State must remain in the custody of the Secretary of State as follows:
- (a) For certified systems, until the certification is permanently revoked, or until no components of the certified system are used in the State of Colorado; and
 - (b) For systems that are not certified, a period of 25 months.

21.4 Voting System Standards

- 21.4.1 The 2002 Voting Systems Standards are incorporated by reference. Material incorporated by reference in the Election Rules does not include later amendments or editions of the incorporated material. Copies of the material incorporated by reference may be obtained by contacting the Federal Election

Commission, 999 E Street NW, Washington, DC, 20463, 800-424-9530. Copies are also available online at http://www.eac.gov/testing_and_certification/voluntary_voting_system_guidelines.aspx.

21.4.2 All voting systems must meet the 2002 Voting System Standards.

21.4.3 The voting system provider must document that all voting system software, hardware, and firmware meet all requirements of federal law that address accessibility for the voter interface of the voting system. These laws include:

- (a) The Help America Vote Act,
- (b) The Americans with Disabilities Act, and
- (c) The Federal Rehabilitation Act.

21.4.4 Independent Analysis. Before completion of functional testing, all voting system providers submitting a voting system must complete an independent analysis of the system, which includes:

- (a) An application penetration test conducted to analyze the system for potential vulnerabilities that may result from poor or improper system configuration, known or unknown hardware or software flaws, or operational weaknesses in process or technical countermeasures. The test must involve active exploitation of security vulnerabilities of the voting system, whether or not the vulnerabilities can be mitigated through compensating controls.
- (b) A source code evaluation conducted in accordance with Software Design and Coding Standards of the 2002 Voting System Standard or the most current version of the Voluntary Voting System Guidelines approved after January 1, 2008.
- (c) A complete report detailing all findings and recommended compensating controls for vulnerabilities and deficiencies identified.
- (d) The voting system provider must use at least one of the following to perform the independent analysis:
 - (1) An EAC approved VSTL;
 - (2) Testing conducted in another state; or
 - (3) Some combination of such VSTL and state testing that meets the requirements of this Rule.

- (e) The Secretary of State or VSTL will conduct a quality review of all work under this section. The review may include an examination of the testing records, interviews of the individuals who performed the work, or both. Review of testing records may be conducted at the VSTL, the state in which the testing was conducted, or at the site of any contractor or subcontractor utilized by another state to conduct the testing.
- (f) The Secretary of State may reject any evaluation if not satisfied with the work product and to require additional analysis to meet the requirements of section 1-5-608.5, C.R.S., and this Rule.

21.4.5 Functional Requirements

- (a) Functional requirements must address all detailed operations of the voting system related to the management and controls required to successfully conduct an election.
- (b) The voting system must provide for appropriately authorized users to:
 - (1) Set up and prepare ballots for an election;
 - (2) Lock and unlock system to prevent or allow changes to ballot design;
 - (3) Conduct hardware diagnostic testing;
 - (4) Conduct logic and accuracy testing;
 - (5) Conduct an election and meet requirements as identified in this Rule 21 for procedures for voting, auditing information, inventory control where applicable, counting ballots, opening and closing polls, recounts, reporting and accumulating results;
 - (6) Conduct the post-election audit; and
 - (7) Preserve the system for future election use.
- (c) The voting system must integrate election day voting results with mail and provisional ballot results.
- (d) The election management system must provide authorized users with the capability to produce electronic files including election results in either ASCII (both comma-delimited and fixed-width) or web-based format. The software must provide authorized users with the ability to generate these files on an “on-demand” basis. After creating such files, the authorized users must have the capability to copy the files to diskette, tape, CD-ROM or other media type.

- (1) Exports necessary for the Secretary of State must conform to a format approved by the Secretary of State. The format must be compatible with a commercially available data management program such as a spreadsheet, database, or report generator.
- (e) The voting system must include hardware or software to enable the closing of the voting location and disabling the acceptance of ballots on all vote tabulation devices to allow for the following:
 - (1) Printout of the time the voting system was closed.
 - (2) Printout of the public counter and protective counter upon closing the ballot casting functionality.
 - (3) Ability to print a report which must contain:
 - (A) Names of the offices;
 - (B) Names of the candidates and party, when applicable;
 - (C) A tabulation of votes from ballots of different political parties at the same voting location in a primary election;
 - (D) Ballot titles;
 - (E) Submission clauses of all initiated, referred or other ballot issues or questions;
 - (F) The number of votes counted for or against each candidate or ballot issue;
 - (G) Date of election (day, month and year);
 - (H) Precinct number (ten digit format);
 - (I) County or jurisdiction name;
 - (J) “State of Colorado”;
 - (K) Count of votes for each contest; and
 - (L) An election judge’s certificate with an area for judges’ signatures with the words similar to: “Certified by us”, and “Election Judges”. Space must allow for a minimum of two signatures.
 - (4) Votes counted by a summary of the voting location and by

individual precincts.

- (5) Ability to produce multiple copies of the unofficial results at the close of the election.
- (f) The election management system must ensure that an election setup may not be changed once ballots are printed and/or election media devices are downloaded without proper authorization and acknowledgement by the application administrative account. The application and database audit transaction logs must accurately reflect the name of the system operator making the change(s), the date and time of the change(s), and the “old” and “new” values of the change(s).
- (g) All DRE or BMD voting devices must use technology providing visual or auditory ballot display and selection methods used by people with disabilities.
- (h) All electronic voting devices supplied by the voting system provider and used at voter service and polling centers must have the capability to continue all normal voting operations and provide continuous device availability during a 2-hour period of electrical outage without any loss of election data.
- (i) The voting system must provide capabilities to protect the anonymity of ballot choices.
 - (1) All optical scanners, associated ballot boxes, and VVPAT storage devices must provide physical locks and procedures during and after the vote casting operation.
 - (2) All DRE devices must provide randomization of all voter choices and stored electronic ballot information during and after storage of the voters’ ballot selections.

21.4.6 Physical and design characteristics

[Rules 21.4.6 (a) and (b), formerly numbered 21.5.6 (a) and (b), are retained; unaltered]

21.4.7 Ballot Definition Subsystem

[Rules 21.4.7 (a)-(d), formerly numbered 21.5.7 (a)-(d), are retained; unaltered]

- 21.4.8 Trusted Build. The voting system must allow the operating system administrative account to verify that the software installed is the certified software by comparing it to the trusted build or other reference information.

21.4.9 Audit Capacity

[Rules 21.4.9 (a)-(d), formerly numbered 21.5.9 (a)-(d), are retained; unaltered]

21.4.10 Security requirements. All voting systems must meet the following minimum system security requirements:

- (a) The voting system must meet the following requirements to accommodate a general system of access by least privilege and role-based access control:
 - (1) Operating system administrative accounts may not have access to read or write data to the database;
 - (2) Operating system user/operator accounts must be able to be created that are restricted from the following aspects of the operating system:
 - (A) No access to system root directory;
 - (B) No access to operating system specific folders;
 - (C) No access to install or remove programs; and
 - (D) No access to modify other user accounts on the system.
 - (3) Application administrative accounts must have full access and rights to the application and database;
 - (4) Application user/operator accounts must have limited rights specifically designed to perform functional operation within the scope of the application. This user/operator must be restricted in the creation or modification of any user/operator accounts.
- (b) The voting system must meet the following requirements for network security:
 - (1) All network-applicable components of the voting system must have the ability to operate on a closed network dedicated to the voting system;
 - (2) All network-applicable components of the voting system must include the limited use of non-routable IP address configurations for any device connected to the closed network. For the purposes of this requirement, non-routable IP addresses are those defined in the RFC 1918 Address base; and
 - (3) The voting system must include provisions for updating security

patches, software and/or service packs without access to the open network.

- (c) All voting systems that use databases must: Have databases hardened to specifications developed by the voting system provider. Documentation included with the application must provide a detailed procedure for hardening according to current industry standards. Any government or industry guidelines adopted in whole, or in part, are to be identified in the documentation.
- (d) The voting system must meet the following requirements for operating system security:
 - (1) All voting systems must have all operating systems hardened to specifications developed by the voting system provider according to current industry standards. Documentation included with the application must provide a detailed procedure for hardening. Any government or industry guidelines adopted in whole, or in part, are to be identified in the documentation.
 - (2) The voting system provider must configure the voting system operating system of the workstation and server used for the election management software to the following requirements:
 - (A) The ability for the system to take an action upon inserting a removable media (auto run) must be disabled; and
 - (B) The operating system must only boot from the drive or device identified as the primary drive.
 - (3) The voting system provider must use a virus protection/prevention application on the election management server(s)/workstations which must be capable of manual updates without the use of direct connection to the internet.
- (e) The voting system must meet the following requirements for password security:
 - (1) All passwords must be stored and used in a non-reversible format;
 - (2) Passwords to the database must not be stored in the database;
 - (3) Password to the database must be owned and only known by the application;
 - (4) The application's database management system must require

separate passwords for the administrative account and each operator account;

- (5) The system must be designed in such a way to ensure that the use of the administrative account password is not required for normal operating functions;
 - (6) The system must allow users to change passwords;
 - (7) The use of blank or empty passwords must not be permitted at any time with the exception of a limited one-time use startup password which requires a new password to be assigned before the system can be used; and
 - (8) All voting systems must have all components of the voting system capable of supporting passwords of a minimum of eight characters, and must be capable of including numeric, alpha and special characters in upper case or lower case used in any combination.
- (f) All modules of the system must meet the 2002 voting system standards requirements for installation of software, including hardware with embedded firmware:
- (1) Where the system includes a feature to interpret and control execution using data from a script, code tokens, or other form of control data file separate from the source code, the human-readable source information must be made available as part of a source code review.
 - (2) Security features and procedures must be defined and implemented to prevent any changes of interpreted data files after the initial election testing of the final election definition Replacement of the interpreted data files with tested and approved files from the trusted build must be by authorized personnel before the election definition is finalized for an election.
 - (3) The introduction of interpreted data during execution must not be permitted unless defined as a predefined set of commands or actions subject to security review and the interpretation function provides security edits on input to prevent the introduction of other commands or the modification or replacement of existing code.
 - (4) The application must not allow users to open database tables for direct editing.
- (g) All voting systems must meet the following minimum requirements for

removable storage media with data controls:

- (1) All voting data stored that includes, ballot images, tally data and cast vote records must be authenticated and validated.
- (2) All non-voting data stored must be authenticated, encrypted, and validated.
- (3) All removable media, upon insertion on server and/or workstations hosting the elections management software, must automatically be scanned by antivirus software.

21.4.11 Telecommunications requirements

[Rules 21.4.11 (a)-(g), formerly numbered 21.5.11 (a)-(g), are retained; unaltered]

21.4.12 Voter-verifiable paper record requirements

[Rules 21.4.12 (a)-(d), formerly numbered 21.5.12 (a)-(d), are retained; unaltered]

21.4.13 Documentation Requirements

[Rules 21.4.13 (a)-(c), formerly numbered 21.5.13 (a)-(c), are retained; unaltered]

- (d) For the review of VSTL or other state testing in Rule 21.4.12(a) copies of all VSTL or state qualification reports, test logs and technical data packages must be provided to the Secretary of State.
 - (1) The voting system provider must execute and submit any necessary releases for the applicable VSTL, state or EAC to discuss any and all procedures and findings relevant to the voting system with the Secretary of State and allow the review by the Secretary of State of any documentation, data, reports, or similar information upon which the VSTL or other state relied in performing its testing. The voting system provider must provide a copy of the documentation to the Secretary of State.
 - (2) The voting system provider, the VSTL, the state or the EAC will identify to the Secretary of State any specific sections of documents for which they assert a legal requirement for redaction.

[Rules 21.4.13 (e)-(r), formerly numbered 21.5.13 (e)-(r), are retained; unaltered]

21.5 Testing preparation procedures

21.5.1 Voting system provider demonstration

[Rules 21.5.1 (a)-(p), formerly numbered 21.6.1 (a)-(p), are retained; unaltered]

- (q) Functional testing must be completed according to the phases identified in Rule 21.2.3.

[Rules 21.5.1 (r) and (s), formerly numbered 21.6.1 (r) and (s), are retained; unaltered]

- (t) The Secretary of State will maintain records of the test procedures in accordance with Rule 21.3.7. The records must identify the system and all components by voting system provider name, make, model, serial number, software version, firmware version, date tested, test number, test plan, requirements matrix, test team notes, and other supplemental information, and results of test. The test environment conditions must be described.

[Rules 21.5.1 (u), formerly numbered 21.6.1 (u), is retained; unaltered]

21.5.2 General testing procedures and instructions

[Rules 21.5.2 (a)-(i), formerly numbered 21.6.2 (a)-(i), are retained; unaltered]

21.6 Temporary use

- 21.6.1 If a voting system provider has a system that has not yet been approved for certification through the Secretary of State, the voting system provider or the designated election official may apply to the Secretary of State for temporary approval of the system to be used for up to one year.

- 21.6.2 Upon approval of temporary use, a jurisdiction may use the voting system, or enter into a contract to rent or lease the voting system for a specific election upon receiving written notice from the Secretary of State's office. At no time may a jurisdiction enter into a contract to purchase a voting system that has been approved for temporary use.

- 21.6.3 Temporary use does not supersede the certification requirements or process, and may be revoked at any time at the discretion of the Secretary of State.

21.7 Decertification

- 21.7.1 If, after any time the Secretary of State has certified a voting system, it is determined that the voting system fails to substantially meet the standards set forth in this Rule 21, the Secretary of State will notify any jurisdictions in the State of Colorado and the voting system provider of that particular voting system that the certification of that system for future use and sale in Colorado is to be withdrawn.

21.7.2 Certification of a voting system may be revoked or suspended at the discretion of the Secretary of State based on information that may be provided after the completion of the initial certification. This information may come from any of the following sources:

[Rules 21.7.2 (a)-(i), formerly numbered 21.8.2 (a)-(i), are retained; unaltered]

21.7.3 If any voting system provider, provides for use, installs, or causes to be installed an uncertified and decertified voting system or component, the Secretary of State may suspend use of the component or the voting system.

21.7.4 In accordance with section 1-5-621, C.R.S., the Secretary of State will hold a public hearing to consider the decision to decertify a voting system.

21.8 Modifications and reexamination. Any modification, change or other alteration to a certified voting system requires certification or review of the modification under section 1-5-618, C.R.S., unless the voting system provider decides to present the modified system for certification under this Rule.

21.9 Acceptance Testing by Jurisdictions

21.9.1 Whenever a jurisdiction acquires voting equipment, the jurisdiction must perform acceptance tests of the system before it may be used to cast or count votes at any election. The voting system must be operating correctly, pass all tests as directed by the acquiring jurisdiction's project manager or contract negotiator and must be identical to the voting system certified by the Secretary of State.

21.9.2 The voting system provider must provide all manuals and training necessary for the proper operation of the system to the jurisdiction.

21.9.3 The election jurisdiction must perform functional and programming tests for all functions of the voting system at their discretion.

21.10 Escrow of voting system software and firmware by voting system provider. The voting system provider must meet the requirement for software escrow per the following:

21.10.1 The voting system provider must place in escrow a copy of the election management software, firmware, and supporting documentation being certified with either the Secretary of State or an independent escrow agent approved by the Secretary of State. [Section 1-7-511, C.R.S.]

21.10.2 Within ten days of the voting system provider receiving notification of examination of voting equipment as part of the certification process, the voting system provider must arrange for the completion of escrow requirements as indicated by this Rule.

- 21.10.3 The voting system provider must sign a sworn affidavit that the election management software in escrow is the same as the election management software used in its voting systems in this state.
- 21.10.4 A complete copy of the certified election management software including any and all subsystems of the certified software will be maintained in escrow.
- 21.10.5 Any changes to current configurations or new installations must be approved through the certification program of the Secretary of State.
- 21.10.6 In addition to the requirements listed below, the voting system provider must include a cover/instructions sheet for any escrow material to include the voting system provider, address and pertinent contact information, software version, hardware version, firmware revision number, and other uniquely identifying numbers of the software submitted for certification.
- 21.10.7 Election management software source code, maintained in escrow, must contain internal documentation such that a person reasonably proficient in the use of the programming language can efficiently use the documentation to understand the program structure, control techniques, and error processing logic in order to maintain the source code should it be removed from escrow for any reason.
- 21.10.8 System documentation will include instructions for converting the escrowed source code into object code, organized and configured to produce an executable system, if warranted.
- 21.10.9 System documentation will include technical architecture design, analysis, detail design, testing and an installation and configuration guide.
- 21.10.10 A set of schematics and drawings on electronic vote casting and counting equipment purchased or in use by the county clerk must be filed with the Secretary of State.
- 21.10.11 All parties must treat as confidential the terms of this Rule including all escrow materials and any other related information that comes into their possession, control or custody in accordance with this section.
- 21.10.12 Copies of electronic media and supporting documentation for escrow within the Secretary of State will be sent to:
- Colorado Secretary of State
Attn: Voting Systems Specialist
1700 Broadway – Suite 200
Denver, CO 80290
- 21.10.13 Any cost of using an alternative third party escrow agent must be borne by

the voting system provider.

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**State of Colorado
Department of Law
Office of the Attorney General**

Tracking number: 2014-00684

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

on 09/10/2014

8 CCR 1505-1

ELECTIONS

The above-referenced rules were submitted to this office on 09/10/2014 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

September 30, 2014 14:04:01

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 09/15/2014

Effective date

09/15/2014

Basis and Purpose – R 231

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(III), 12-43.4-305, and 12-43.4-306 and section 24-76.5-101 *et. seq.*, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(III). The purpose of this rule is to clarify the qualifications for licensure, including, but not limited to, the requirement for a fingerprint-based criminal history record check for all Owners, officers managers, contractors, employees, and other support staff of licensed entities.

R 231 – Qualifications for Licensure: Individuals

A. General Requirements

1. All Applicants shall submit information to the Division in a full, faithful, truthful, and fair manner. The Division may recommend denial of an application where the Applicant made intentional misstatements, purposeful omissions, misrepresentations, or untruths in the application or in connection with the Applicant's background investigation. This type of conduct may be considered as the basis of additional administrative action against the Applicant and it may also be the basis for criminal charges against the Applicant.
2. The Division may deny the application of an Applicant who fails to provide the requested evidence or information by the Division deadline.

B. Other Licensing Requirements

1. Fingerprints Required

- a. All Applicants for initial licensure shall be fingerprinted for a fingerprint-based criminal history record check.
- b. A renewal Applicant shall be fingerprinted at the Director's discretion.
- c. An Applicant shall also be fingerprinted if the Director has required the Applicant to submit a new application. The Director may require a new application for the following non-exhaustive list of reasons:
 - i. An Applicant is re-applying after more than one year since the expiration of his or her most recent license;
 - ii. If an Applicant's previous license was denied or revoked by the State Licensing Authority; or
 - iii. When the Division needs additional information in order to proceed with a background investigation.

2. Other Documents May Be Required . Any Applicant may be required to establish his or her identity and age by any document required for a determination of lawful presence.

3. Maintaining Ongoing Suitability For Licensing: Duty to Report Offenses . An Applicant or Licensee shall notify the Division in writing of any felony criminal charge and felony conviction against such person within ten days of such person's arrest or felony summons, and within ten days of the disposition of any arrest or

summons. Failure to make proper notification to the Division may be grounds for disciplinary action. Licensees shall cooperate in any investigation conducted by the Division. This duty to report includes, but is not limited to, deferred sentences or judgments that are not sealed. If the Division lawfully finds a disqualifying event and an Applicant asserts that the record was sealed, the Division may require the Applicant to provide proof from a court evidencing the sealing of the case.

4. Application Forms Accessible to Law Enforcement and Licensing Authorities . All application forms supplied by the Division and filed by an Applicant for license shall be accessible by the State Licensing Authority, local jurisdictions, and any state or local law enforcement agent.

C. Owners . An Owner Applicant must meet the following criteria before receiving a license:

1. The Applicant must pay the annual application and licensing fees;
2. The Applicant's criminal history must indicate that he or she is of Good Moral Character;
3. The Applicant is not employing, or financed in whole or in part, by any other Person whose criminal history indicates that he or she is not of Good Moral Character;
4. The Applicant is at least 21 years of age;
5. The Applicant has paid all taxes, interest, or penalties due the Department of Revenue relating to a Retail Marijuana Establishment;
6. The Applicant can prove that he or she has not discharged a sentence for a conviction of a felony in the five years immediately preceding his or her application date;
7. The Applicant can prove that he or she has not discharged a sentence for a conviction of a felony pursuant to any state or federal law regarding the possession, distribution, manufacturing, cultivation, or use of a controlled substance in the ten years immediately preceding his or her application date or five years from May 27, 2013, whichever is longer, except that the State Licensing Authority may grant a license to a Person if the Person has a state felony conviction based on possession or use of marijuana or marijuana concentrate that would not be a felony if the Person were convicted of the offense on the date he or she applied for a license;
8. The Applicant can establish that he or she does not employ another person who does not have a valid Occupational License issued pursuant to either the Retail Code or the Medical Code.
9. The Applicant can establish that he or she is not a sheriff, deputy sheriff, police officer, or prosecuting officer, or an officer or employee of the State Licensing Authority or a local jurisdiction;
10. The Applicant can establish that its premises proposed to be licensed is not currently licensed as a retail food establishment or wholesale food registrant;
11. The Applicant has been a resident of Colorado for at least two years prior to the date of the Application. See Rule R 232 – Factors Considered When Determining Residency: Individuals.

D. Occupational Licenses . An Occupational License Applicant must meet the following criteria before receiving a license:

1. The Applicant must pay the annual application and licensing fees;
2. The Applicant's criminal history must indicate that he or she is of Good Moral Character;
3. The Applicant is at least 21 years of age;
4. The Applicant can establish that he or she is currently a resident of Colorado.
5. The Applicant can prove that he or she has not discharged a sentence for a conviction of a felony in the five years immediately preceding his or her application date;
6. The Applicant can prove that he or she has not discharged a sentence for a conviction of a felony pursuant to any state or federal law regarding the possession, distribution, manufacturing, cultivation, or use of a controlled substance in the ten years immediately preceding his or her application date or five years from May 27, 2013, whichever is longer, except that the State Licensing Authority may grant a license to a person if the person has a state felony conviction based on possession or use of marijuana or marijuana concentrate that would not be a felony if the person were convicted of the offense on the date he or she applied for a license;
7. The Applicant can establish that he or she is not a sheriff, deputy sheriff, police officer, or prosecuting officer, or an officer or employee of the State Licensing Authority or a local jurisdiction;

E. Current Medical Marijuana Occupational Licensees

1. An individual who holds a current, valid Occupational License issued pursuant to the Medical Code may also work in a Retail Marijuana Establishment; no separate Occupational License is required.
2. An individual who holds a current, valid Occupational License issued pursuant to the Retail Code and these rules shall only work at licensed premises that are exclusively a Retail Marijuana Establishment and shall not work at a Medical Marijuana Business unless he or she also holds a current, valid Occupational License issued pursuant to the Medical Code.

Basis and Purpose – R 234

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(2)(e), 12-43.4-202(3)(b)(VIII), 12-43.4-202(3)(b)(IX), 12-43.4-309(6), 12-43.4-401(1)(e), and 12-43.3-501(1), C.R.S. The purpose of this rule is to establish licensing fees for individuals.

R 234 – Schedule of License Fees: Individuals

A. Individual License Fees

1. Retail Owner License - \$1,300.00

2. Retail Occupational License - \$150.00

B. When Fees Are Due. License fees are due at the time Applicant submits application.

Basis and Purpose – R 235

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(2)(e), 12-43.4-202(3)(b)(VIII), 12-43.4-202(3)(b)(IX), 12-43.4-309(6), 12-43.4-401(1)(e), and 12-43.3-501(1), C.R.S. The purpose of this rule is to establish renewal license fees for individuals.

R 235 – Schedule of Renewal Fees: Individuals

A. Individual Renewal License Fees

1. Retail Owner License - \$200.00
2. Retail Occupational License. \$75.00

B. When Fees Are Due. Renewal license fees are due at the time Applicant submits application for renewal.

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 Rule, Retail Marijuana, 1 CCR 212-2

Rule R 231 – Qualifications for Licensure: Individuals

New Rules, Retail Marijuana, 1 CCR 212-2

R 234 – Schedule of License Fees: Individuals

R 235 – Schedule of Renewal Fees - Individuals

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 and new Retail Marijuana Rules, which are attached hereto.

Section 24-4-103(6), C.R.S., authorizes the State Licensing Authority to issue an emergency rule if the State Licensing Authority finds that the immediate adoption of the rule is imperatively necessary to comply with a state law or for the preservation of public health, safety, or welfare and compliance with the requirements of section 24-4-103, C.R.S., would be contrary to the public interest

I find 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(2)(e), 12-43.4-202(3)(a)(II), 12-43.4-202(3)(a)(III), 12-43.4-202(3)(b)(VIII), 12-43.4-202(3)(b)(IX), 12-43.4-305, 12-43.4-306, 12-43.4-309(6), 12-43.4-401(1)(e), C.R.S., subsection 12-43.3-501(1), C.R.S., and sections 24-76.5-101 *et seq.* Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(III).

Purpose

The primary purpose necessitating the revision and additions to 1 CCR 212-2 on an emergency basis is to help the State Licensing Authority effectively regulate the retail marijuana industry. As of July 1, 2014, the State Licensing Authority began to accept new applications for new retail marijuana businesses. § 12-43.4-104(1)(b)(II), C.R.S. Accordingly, as of October 1, 2014, there will be new retail-only licensees that are not, and have never been, affiliated with medical marijuana businesses.

I am adopting the rules related to retail occupational licenses on an emergency basis. These same rules are also in the midst of the permanent rulemaking process. However, the permanent rules will not be effective before October 1st. Consequently, these rules are needed on a temporary, emergency basis in order to ensure the regulated community has clear guidance about the governing regulations. If these rules were not adopted, there would be a regulatory gap between October 1st and the effective date of the permanent rules. Adoption of these rules will clarify the requirements related to retail occupational licensees.

These emergency rules are effective immediately upon adoption. The prior version of Rule R 231, 1 CCR 212-1, is hereby repealed and replaced by the attached emergency rule. New emergency Rules R 234 and R 235, 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

John W. Suthers

Attorney General

Cynthia H. Coffman

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Department of Law

Office of the Attorney General

Tracking number: 2014-00976

**Opinion of the Attorney General rendered in connection with the rules adopted by the
Marijuana Enforcement Division**

on 09/15/2014

1 CCR 212-2

RETAIL MARIJUANA CODE

The above-referenced rules were submitted to this office on 09/16/2014 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.

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

September 26, 2014 09:53:47

Emergency Rules Adopted

Department

Department of Education

Agency

Colorado State Board of Education

CCR number

1 CCR 301-10

Rule title

1 CCR 301-10 RULES FOR THE ADMINISTRATION OF THE ENGLISH LANGUAGE
PROFICIENCY ACT 1 - eff 09/10/2014

Effective date

09/10/2014

DEPARTMENT OF EDUCATION

Colorado State Board of Education

RULES FOR THE ADMINISTRATION OF THE ENGLISH LANGUAGE PROFICIENCY ACT

1 CCR 301-10

2224-R-1.00 Statement of Basis and Purpose.

The English Language Proficiency Act, article 24 of title 22, was repealed and reenacted. The rules for the administration of the English Language Proficiency Act are repealed and reenacted with the rules that continue to be appropriate and with additional rules added only when necessary to implement the English Language Proficiency Act, in accordance with section 22-24-106 (3), C.R.S.

The Colorado State Board of Education and the Colorado Department of Education have the responsibility for implementing "The English Language Proficiency Act". These Rules are intended to assist Local Education Providers in meeting the requirements of the Act.-

The statutory basis for these emergency rules adopted on September 10, 2014 is found in section 22-2-106(1)(a) and (c), C.R.S. state board duties; section 22-2-107(1)(c), C.R.S. state board powers; and section 22-24-101 through 22-24-108, C.R.S., the English Language Proficiency Act; including the English Language Proficiency Program, the English Language Proficiency Excellence Award Program, and the Professional Development and Student Support Program.

The English Language Proficiency Program, section 22-24-104, C.R.S., is established to assist Local Education Providers in administering and implementing English Language Proficiency Programs for English Language Learners in kindergarten and grades one through twelve.

The English Language Proficiency Act Excellence Award Program, section 22-24-107, C.R.S., requires the State Board of Education to promulgate rules that create the criteria or measures that the Department must apply to identify the Local Education Providers and Charter Schools that achieve the highest English language and academic growth among English Language Learners and that achieve the highest academic achievement for English Language Learners who transition out of the English Language Proficiency Program.

The Professional Development and Student Support Program, referred to as the "Support Program", section 22-24-108, C.R.S., provides moneys to Local Education Providers to offset the cost of reporting the number of students who exit the program; providing effective professional development activities related to teaching English Language Learners for all educators who may work with English Language Learners in the classroom; and expanding programs to students who, at any time, have been identified as English Language Learners in achieving greater content proficiency.

2224-R-2.00 Definitions.

- 2.00 (1) "Charter School" means a Charter School authorized by a District pursuant to part 1 of article 30.5 of this title or an Institute Charter School authorized by the State Charter School Institute pursuant to part 5 of article 30.5 of title 22.

- 2.00 (2) "Department" means the Colorado Department of Education.
- 2.00 (3) "District" means a school District organized and existing pursuant to article 30 of title 22 or a Board of Cooperative Services organized and existing pursuant to article 5 of this title.
- 2.00 (4) "English Language Learner" means a student who is linguistically diverse and who is identified pursuant to section 22-24-105 (2) C.R.S. as having a level of English language proficiency that requires language support to achieve standards in grade-level content in English.
- 2.00 (5) "English Language Proficiency Program" means a program implemented by a Local Education Provider that is designed to develop English language proficiency for an English Language Learner while enabling the English Language Learner to achieve and maintain grade-level performance in academic content areas.
- 2.00 (6) "Evidence-Based" means the instruction or item described is based on reliable, trustworthy, and valid evidence that the instruction or item shows promise or has demonstrated a record of success in achieving objectives that are relevant to English language development, English language proficiency, and achievement in grade-level content for English Language Learners.
- 2.00 (7) "Facility School" means an approved Facility School as defined in section 22-2-402 (1), C.R.S.
- 2.00 (8) "Local Education Provider" means a District, the State Charter School Institute, or a Facility School.
- 2.00 (9) "State Charter School Institute" means the State Charter School Institute created pursuant to part 5 of article 30.5 title 22.

2224-R-3.00 The English Language Proficiency Program

3.00 (1) Local Education Providers - Duties

- 3.00 (1) (a) Evidenced Based Programs.** Local Education Providers must provide Evidence-Based English Language Proficiency Programs for English Language Learners to enable them to develop and acquire English language proficiency while achieving and maintaining grade-level performance in academic content areas.
- 3.00 (1) (b) Identification.** Each Local Education Provider will identify English Language Learners who are enrolled in public schools of the Local Education Provider using state approved assessment for English language proficiency.
- 3.00 (1) (c) Reporting.** Each Local Education Provider will annually report to the Department the number of English Language Learners who exit the English Language Proficiency Program.

3.00 (2) Eligibility for Funding

Funding to Local Education Providers is on a per-pupil basis using the number, as certified by the Local Education Provider. To be eligible for funding English Language Learners must be in an English Language Proficiency Program.

3.00 (3) Certification.

Every year through the October count process developed by the Department, each Local Education Provider will report to the Department a count of students certified by the Local Education Provider as eligible for funding under the Act. Annual allocations to Local Education Provider will be based on the number of students certified and determined by the Department to be eligible.

The Local Education Provider will annually certify to the Department the number of English Language Learners who are enrolled in the public schools of the Local Education Provider and are eligible for funding. Students are eligible for up to a total of five budget years regardless of whether the student transfers enrollment among Local Education Providers during the five years.

The five budget years in which a student receives funding are not required to be consecutive if a student exits an English Language Proficiency Program and is subsequently re-identified for inclusion. A student is not eligible for funding in a school year in which the student does not receive educational support through an English Language Proficiency Program.

If a student has been identified for inclusion and received state funding, the Department must include the budget years for which the student received funding in calculating the five-year limit.

3.00 (4) Fund Distribution.

Upon certification of the numbers of eligible students by Local Education Providers the Department will determine the amount of allocation for each Local Education Provider based on the amount of the general assembly appropriation and the funding provisions of the Act. The allocation for each Local Education Provider will be based on a statewide count of students eligible for certification and funding under the Act. Any District choosing not to receive State monies under the Act will continue to be subject to the duties of the Local Education Provider.

3.00 (4) (a) Seventy-five percent of the amount annually appropriated to the Department pursuant to this subsection (3) to Local Education Providers to provide services to English Language Learners who:

3.00 (4) (a) (i) Speak a language other than English and do not comprehend or speak English; and

- 3.00 (4) (a) (ii) Comprehend or speak some English but whose primary comprehension or speech is in a language other than English.
- 3.00 (4) (b) A student will not be funded pursuant to this paragraph (b) for more than four hundred dollars per year or an amount equal to twenty percent of the state average per pupil revenues for the preceding budget year as determined by the Department, whichever is greater.
- 3.00 (4) (c) The Department will distribute the remainder of the amount annually appropriated to Local Education Providers to provide services to English Language Learners who comprehend and speak English and one or more other languages but whose English language development and comprehension is:
- 3.00 (4) (c) (i) At, or below the mean of students enrolled in the Local Education Provider or below the mean or equivalent on a nationally standardized test; or
- 3.00 (4) (c) (ii) Below the acceptable proficiency level based on the assessments identified by the Department.
- 3.00 (4) (d) A student will not be funded for more than two hundred dollars per year or an amount equal to ten percent of the state average per pupil revenues, as defined in section 22-54-103 (12), C.R.S. for the preceding budget year as determined by the Department, whichever is greater.

3.00 (5) **Program Administration.**

The Local Education Provider will administer and provide programs for all identified English Language Learner students. This responsibility includes students who enter the Local Education Provider after October count each year and who therefore are not included in the Local Education Provider's reported count for that year. Nothing in these Rules will be construed to prohibit the use of moneys made available under the Act by a Local Education Provider for bilingual programs, English-as-a-second-language programs, or any other methods of English language development, providing said funds are used to achieve the purposes of the Act.

2224-R-4.00 The English Language Proficiency Act Excellence Award Program

- 4.00 (1) **Award Timeline.** By December 1 of each year, when data and appropriations are available, the Department will identify the Local Education Providers and Charter Schools that achieve the highest English language and academic growth among English Language Learners and that achieve the highest academic achievement for English Language Learners who transition out of the English Language Proficiency Program.

- 4.00 (2) **Award Procedures.** The Department will develop and provide an application for funds to Local Education Providers and Charter Schools that qualify for the excellence award grant. The application will request contact information and an agreement to program assurances.
- 4.00 (3) **Criteria to Identify Highest Academic Growth.** The following criteria will be used by the Department to identify the Local Education Providers and Charter Schools that achieve the highest English language and academic growth among English Language Learners in an English Language Proficiency Program and that achieve the highest academic achievement for English Language Learners who transition out of an English Language Proficiency Program:
- 4.00 (3) (a) High growth percentiles on the state's English Language Proficiency assessment for English Language Learners in program;
- 4.00 (3) (b) High growth percentiles on the state's academic content assessment on reading and writing/English language arts, and math for English learners in program, section 22-7-409, C.R.S.; and
- 4.00 (3) (c) High percentages of proficient and advanced on the state content assessment on reading and writing/English language arts and math (and when available science and social studies) for English Language Learners that have transitioned out of an English Language Proficiency Program, section 22-7-409, C.R.S.
- 4.00 (4) **Duration and Amount of Grant Awards.** Subject to available appropriations, the Department will award grants to Local Education Providers and Charter Schools pursuant to section 22-24-107, C.R.S. Each grant will have a term of one fiscal year.
- 4.00 (5) **Reporting**
- 4.00 (5) (a) Each Local Education Provider and Charter School that receives a grant pursuant to this section, at the conclusion of each school year for which it receives a grant, must submit to the Department:
- (i) A data analysis and summary of the Local Education Provider's or Charter School's English Language Proficiency Program; and
- (ii) A report of the Local Education Provider's or Charter School's use of the grant moneys received.
- 4.00 (5) (b) The Department will provide the information received pursuant to 22-24-107 3(a), C.R.S. to Local Education Providers and will make the information available to the public through the data portal operated pursuant to section 22-11-502, C.R.S.

Immediate adoption of the Rules for the Administration of the Rules for the Administration of the English Language Proficiency Act is imperatively necessary in order to implement the changes in statute and to provide funding for The English Language Proficiency Act Excellence Award Program.

John W. Suthers

Attorney General

Cynthia H. Coffman

Chief Deputy Attorney General

Daniel D. Domenico

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State of Colorado

Department of Law

Office of the Attorney General

Tracking number: 2014-00964

**Opinion of the Attorney General rendered in connection with the rules adopted by the
Colorado State Board of Education**

on 09/10/2014

1 CCR 301-10

RULES FOR THE ADMINISTRATION OF THE ENGLISH LANGUAGE PROFICIENCY ACT

The above-referenced rules were submitted to this office on 09/11/2014 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.

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

September 26, 2014 09:55:23

Emergency Rules Adopted

Department

Department of Education

Agency

Colorado State Board of Education

CCR number

1 CCR 301-95

Rule title

1 CCR 301-95 Rules for the Administration of the School Turnaround Leaders
Development Program 1 - eff 09/10/2014

Effective date

09/10/2014

COLORADO STATE BOARD OF EDUCATION
Department of Education
1 COLORADO CODE OF REGULATION 301-97
RULES FOR THE ADMINISTRATION OF
THE SCHOOL TURNAROUND LEADERS DEVELOPMENT 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); 22-13-103 of the Colorado Revised Statutes (C.R.S.).

1.00 Statement of Basis and Purpose.

The statutory basis for these emergency rules adopted on September 10, 2014 is found in 22-2-106(1)(a) and (c), State Board Duties; 22-2-107(1)(c), State Board Powers; and 22-13-103, C.R.S., School Turnaround Leaders Development Program – Rules.

The School Turnaround Leaders Development Program, 22-13-103, C.R.S., requires the State Board of Education to promulgate rules to implement and administer the program. At a minimum, the rules must include: Criteria for identifying approved providers from among those that respond to the request for proposals pursuant to section 22-13-104, C.R.S.; Timelines for the design grant application and approval process; Criteria for awarding design grants to identified providers to partially offset the design and development costs of creating or expanding high-quality turnaround leadership development programs; Timelines for the school turnaround leader grant application and approval process; The requirements for a school turnaround leader grant application, including but not limited to the goals that the applicant expects to achieve through the grant; and Criteria for selecting school turnaround leader grant recipients.

2.00 Definitions.

- 2.00 (1) Charter School: A charter school authorized by a school district pursuant to part 1 of article 30.5 of title 22 or an institute charter school authorized by the state charter school institute pursuant to part 5 of article 30.5 of title 22 of the Colorado Revised Statutes.
- 2.00 (2) Department: The Department of Education created and existing pursuant to section 24-1-115, C.R.S.
- 2.00 (3) Institute: The State Charter School Institute established in section 22-30.5-503, C.R.S.

- 2.00 (4) Program: The School Turnaround Leaders Development program created in section 22-13-103.
- 2.00 (5) Provider: A public or private entity that offers a high-quality turnaround leadership development program for Colorado educators.
- 2.00 (6) School District: A school district organized pursuant to article 30 of title 22, C.R.S.
- 2.00 (7) School Turnaround Leader: A principal or teacher leader in a school that is required to adopt a priority improvement plan or turnaround plan pursuant to section 22-11-210, C.R.S. or a district-level administrator or employee of the State Charter School Institute that coordinates and supports turnaround efforts in schools of the School District or Institute Charter schools that implement priority improvement plans or turnaround plans.
- 2.00 (8) Turnaround plan: The lowest plan type assigned to a school in Colorado based on the percentage of points earned on the School Performance Framework. A Turnaround plan puts a school on the “five-year accountability clock” per the Education Accountability Act of 2009.
- 2.00 (9) Priority Improvement plan: The second-lowest plan type assigned to a school in Colorado based on the percentage of points earned on the School Performance Framework. A Priority Improvement plan puts a school on the “five-year accountability clock” per the Education Accountability Act of 2009.
- 2.00 (10) State Board: The State Board of Education created pursuant to Section 1 of Article IX of the Colorado Constitution.

2.01 Turnaround Leadership Development Programs – Design Grants.
The Turnaround Leadership Development Programs Design Grants will provide funding to assist in the design of turnaround leadership development programs. The Department shall issue a Request for Proposals (RFP) from providers who seek to participate in the program.

- 2.01 (1) **Criteria for Identifying Approved Providers for Design Grant.**
The Department will develop an RFP, according to the Department's competitive grants and awards RFP process, which consists of: use of a standard grant application and scoring rubric template; and a fair and equitable application review. The following criteria will be considered for identifying providers from among those that respond to the RFP for funding as well as non-awarded providers to be listed to provide services for the Turnaround Leaders Grant recipients:

- 2.01 (1) (a) Each Provider's experience in developing successful, effective leadership in low-performing schools and School Districts;
- 2.01 (1) (b) The leadership qualities that each Provider's turnaround leadership development program is expected to develop;
- 2.01 (1) (c) A Provider's capacity to implement identified program components that make up a comprehensive leadership development experience; and
- 2.01 (1) (d) The availability of turnaround leadership development programs for School Turnaround Leaders in public schools throughout the state. The grant program shall seek to ensure approved providers are available for leaders in all regions of the state.
- 2.01 (2) **Timeline for Design Grant.** During the 2014-15 school year, the Department will conduct an initial Turnaround Leadership Development Program Design competition. Applications will be due to the Department on or before January 1, 2015. Application decision notification will occur on or before February 1, 2015. For the 2015-16 school year and each year thereafter, subject to available appropriations, Turnaround Leadership Development Program Design Grant applications will be due by September 1.
- 2.01 (3) **Duration of Design Grant Awards.** During the first three years that the program receives appropriations, an identified provider may apply as provided by rule for a one-time design grant to offset the costs incurred in creating or expanding the Provider's turnaround leadership development programs.
- 2.01 (4) **Reporting Requirements for Design Grant.** Each identified provider shall track the effectiveness of persons who complete a turnaround leadership development program and report the effectiveness to the department on or before July 1 of the year following the training. The report must use department rubrics to measure the effectiveness of persons who complete the turnaround leadership development program. Each grant recipient must report on the following:
 - 2.01 (4) (a) Number of participants in program;
 - 2.01 (4) (b) Schools served; and
 - 2.01 (4) (c) Change in principal or aspiring leaders actions/behavior (as data is available).

- 2.02 School Turnaround Leader Grants.** Subject to available appropriations, the State Board shall award School Turnaround Leader Grants to one or more School Districts or Charter Schools or the Institute to use in: identifying and recruiting practicing and aspiring School Turnaround Leaders; subsidizing the costs incurred for School Turnaround Leaders and their staff, if appropriate, to participate in turnaround leadership development programs offered by identified providers (both funded and non-funded); and reimbursing the School Turnaround Leaders for costs they incur in completing turnaround leadership development programs offered by identified providers (both funded and non-funded).
- 2.02 (1) **Timeline for School Turnaround Leader Grants.** During the 2014-2015 school year, the Department will conduct an initial School Turnaround Leader Grant competition. Applications will be due to the Department on or before February 1, 2015. Application decision notification will occur on or before, April 1, 2015. For the 2015-16 school year and each year thereafter, subject to available appropriations, School Turnaround Leader Grant applications will be due by September 1.
- 2.02 (2) **Application Procedures for School Turnaround Leader Grants.** The Department will develop an RFP, according to the Department's competitive grants and awards RFP process, which consists of: use of a standard grant application and scoring rubric template; and a fair and equitable application review. The following criteria will be considered for identifying School Turnaround Leader grants:
- 2.02 (2) (a) The goals that the applicant expects to achieve through the grant;
- 2.02 (2) (b) The number of individuals to participate in leadership programs, including: existing leaders, aspiring leaders, district managers or support staff;
- 2.02 (2) (c) A clear plan for leadership development, implementation, and application of skills in the schools and district; and
- 2.02 (2) (d) A plan to evaluate impact of program.
- 2.02 (3) **Criteria for Selecting Recipients of School Turnaround Leader Grants.** The following criteria will be considered in selecting School Turnaround Leader Grant recipients:
- 2.02 (3) (a) For applying school districts, the concentration of schools of the school district or, for the Institute, the concentration of Institute Charter Schools, that must implement priority improvement or turnaround plans. For applying Charter Schools that are

implementing priority improvement or turnaround plans will be prioritized.

- 2.02 (4) **Duration of School Turnaround Leader Grant Awards.** Each school turnaround leader grant may continue for up to three budget years. The Department shall annually review each grant recipient's use of the grant moneys and may rescind the grant if the Department finds that the grant recipient is not making adequate progress toward achieving the goals identified in the grant application.
- 2.02 (5) **Reporting Requirements for School Turnaround Leader Grant.** Each grant recipient will annually track the effectiveness of persons who complete a turnaround leadership development program and report the effectiveness to the department on or before July 1 of the year following the training. The report must use department rubrics to measure the effectiveness of persons who complete the turnaround leadership development program. Each grant recipient must report on the following:
 - 2.02 (5) (a) Number of people who participated and in which programs;
 - 2.02 (5) (b) Schools served;
 - 2.02 (5) (c) Impact on student achievement; and
 - 2.02 (5) (d) Change in principal or aspiring leaders actions/behavior.
- 2.02 (6) **Evaluation of School Turnaround Leader Grant Program.** The Department will analyze and summarize the reports received from grant recipients and annually submit to the State Board, the Governor, and the Education Committees of the Senate and the House of Representatives, or any successor committees, a report of the effectiveness of the School Turnaround Leader Grants awarded pursuant to this section. The Department will also post the annual report on its web site.

Immediate adoption of the Rules for the Administration of the School Turnaround Leaders Development Program is imperatively necessary in order to comply with 22-13-103, C.R.S., which requires the Colorado Department of Education to administer the Turnaround Leadership Development Programs Design Grants.

John W. Suthers
Attorney General

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State of Colorado
Department of Law
Office of the Attorney General

Tracking number: 2014-00968

Opinion of the Attorney General rendered in connection with the rules adopted by the
Colorado State Board of Education

on 09/10/2014

1 CCR 301-95

RULES FOR THE ADMINISTRATION OF THE SCHOOL TURNAROUND LEADERS
DEVELOPMENT PROGRAM

The above-referenced rules were submitted to this office on 09/11/2014 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.

September 26, 2014 09:57:45

A handwritten signature in black ink, appearing to read "DD", 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 301-98

Rule title

1 CCR 301-98 Rules for the Administration of the Adult Education and Literacy Grant
Program 1 - eff 09/10/2014

Effective date

09/10/2014

COLORADO STATE BOARD OF EDUCATION
Department of Education
1 COLORADO CODE OF REGULATION 301-93
RULES FOR THE ADMINISTRATION OF
THE ADULT EDUCATION AND LITERACY GRANT PROGRAM

Authority: Article IX, Section 1, Colorado Constitution. 22-2-106(1)(a) and (c); 22-2-107(1)(c); HB14-085

1.0 Statement of Basis and Purpose

These rules are promulgated pursuant to Colorado Revised Statutes article 10 of title 22. Article 10 of Title 22 authorizes the Colorado Department of Education to provide state funding for workforce development partnerships through which eligible adults receive basic education in literacy and numeracy that leads to additional skills acquisition, postsecondary credential attainment, and employment.

2.0 Definitions

2.1 "Adult education and literacy programs" means programs that provide adult basic education, adult education leading to a high school equivalency credential, English as a Second language instruction, or integrated basic education and skills training.

2.2 "Department" means the Department of Education created and existing pursuant to Section 24-1-115, C.R.S.

2.3 "Eligible adult" means a person who:

2.3.1 Is at least 17 years of age;

2.3.2 Is not enrolled in a public or private secondary school; and

2.3.3 (I) Lacks a high school diploma or its equivalency; or

(II) Is in need of English language instruction; or

(III) Lacks sufficient mastery of the basic literacy and numeracy skills necessary to enable the person to function effectively in the workplace.

2.4 “English language instruction” means instruction that is designed to assist a person with limited English proficiency to achieve competence in the English language, thus allowing the person to understand and navigate governmental, educational, and workplace systems.

2.5 “Grant program” means the Adult Education and Literacy Grant Program created in Section 22-10-104.

2.6 “Literacy” means a person’s ability to read, write, and speak English at levels of proficiency that are necessary to function on the job and in society, achieve the person’s goals, and develop the person’s knowledge and potential.

2.7 “Local Educational Provider” means one of the following entities that the Department recognizes as providing appropriate and effective adult education and literacy programs.

2.7.1 A secondary or postsecondary, public or private, nonprofit educational entity, including but not limited to a school district, charter school, board of cooperative services, state institution of higher education, junior college, and area vocational school;

2.7.2 A community-based, nonprofit agency or organization;

2.7.3 A library;

2.7.4 A literacy council or other literacy institute;

2.7.5 A business or business association that provides adult education and literacy programs either on- site or off-site;

2.7.6 A volunteer literacy organization;

2.7.7 A work force board, as defined in Section 8-83-203, C.R.S., that oversees a work force investment program described in the “Colorado Work Force Investment Act,” Part 2 of Article 83 of title 8, C.R.S.

2.7.8 A one-stop partner, as described in section 8-83-216, C.R.S., under the “Colorado Work Force Investment Act,” Part 2 of Article 83 of Title 8, C.R.S.; or

2.7.9 A consortia of entities described in this subsection.

2.8 “Numeracy” means a person’s ability to compute and solve mathematical problems at levels of proficiency that are necessary to function on the job and in society, achieve the person’s goals, and develop the person’s knowledge and potential.

2.9 “Office” means the office within the Department that is responsible for adult education.

2.10 “State Board” means the State Board of Education created in Section 1 of Article IX of the State Constitution.

2.11 “Workforce Development Partnership” means a collaboration that assists adults in attaining basic literacy and numeracy skills leading to additional skill acquisition, postsecondary credentials, and employment. At a minimum, a workforce development partnership must include a local education provider, at least one postsecondary education or training provider, and at least one workforce development provider.

2.11.1 For purposes of this subsection, a postsecondary education or training provider includes, but need not be limited to:

2.11.1.1 A state institution of higher education, junior college, or area vocational school;

2.11.1.2 An apprenticeship program;

2.11.1.3 An entity that provides accelerated education and skills training certificate programs created pursuant to Part 9 of Article 60 of Title 23, C.R.S.;

2.11.1.4 An entity that operates programs through the manufacturing career pathway established by the State Board for Community Colleges and Occupational Education as provided in Part 10 of Article of Title 23, C.R.S.; and

2.11.1.5 A community-based workforce development program that is operated through the Colorado customized training program created in Section 23-60-306, C.R.S.

2.11.2 “Workforce development provider” includes, but need not be limited to:

2.11.2.1 A work force investment program described in the “Colorado Work Force Investment Act,” Part 2 of Article 83 of Title 8, C.R.S.; and

2.11.2.2 A program that is supported by the state workforce development council created in Article 46.3 of Title 24, C.R.S.

2.12 “Measureable student outcome” means student success indicators, which include but are not limited to student employment, educational gains, and locally set goals.

3.0 Application Requirements and Timeline

3.1 On or before April 30 of each year, any Local Education Agency interested in obtaining funding shall submit an Adult Education and Literacy grant application to

the Department, using the application form provided by the Department. A Local Education Provider must be a member of a Workforce Development Partnership.

3.2 Each application submitted shall include, but need not be limited to, the following:

- 3.2.1 Information concerning the number of adults in the local area , including employment, average income, and unemployment rates;
- 3.2.2 Information concerning the local job market, identifying areas of highest need, including major local industries or employers;
- 3.2.3 Information concerning the number of other Local Educational Providers within a thirty mile radius;
- 3.2.4 Information concerning the percentage of the local population of adults who will be served using grant moneys, including the following:
 - 3.2.4.1 the percentage who are members of a minority group
 - 3.2.4.2 the percentage who do not have a high school diploma or equivalency and who are not currently enrolled in adult education and literacy programs
 - 3.2.4.3 the percentage of adults who will be served using grant moneys, including the percentage who are receiving either state or federal public assistance
 - 3.2.4.4 the percentage of adults who will be served using grant moneys, including the percentage who are unemployed workers
- 3.2.5 Information concerning the demonstrated success of the Local Educational Provider in enabling adults to attain basic literacy and numeracy skills and in assisting them, through collaboration with postsecondary education or training providers and workforce development providers, to achieve additional skills attainment, postsecondary credential attainment, and employment
- 3.2.6 A description of the instructional program that the applicant plans to implement using the grant moneys
- 3.2.7 A description of the professional development program that the applicant plans to implement for educators to assist adult students achieve their educational and career goals
- 3.2.8 A description of services and responsibilities of each of the partnership members
- 3.2.9 An explanation of the cost of the instructional and student support program that the applicant plans to implement using the grant moneys

and an explanation of how grant funding will be used to supplement and not supplant any funding currently being used on workforce preparation activities

3.2.10 The measureable student outcomes that the applicant expects to achieve as a result of implementing the proposed program, including employment, and a description of the method that will be used to monitor and evaluate outcomes; and

3.2.11 Any other necessary information, as identified by the Department.

3.3 On or before June 1 of each year, based on the recommendations of the Department and available funding, the State Board shall award grants to applying Local Education Providers, and in so doing ensure that awards are geographically diverse.

4.0 Adult Education and Literacy-Workforce Development Meetings

4.1 The office shall convene periodic meetings of representatives of, at a minimum, the Department of Higher Education, the Department of Labor and Employment, the Community College system, other Local Educational Providers, other postsecondary education or training providers, and other workforce development providers to discuss, at a minimum:

4.1.1 Ways to increase the communication and collaboration among adult education and literacy programs, postsecondary education or training programs, and workforce development programs within the state; and

4.1.2 The state's workforce development needs and the levels of unmet need for adult education within the state, including identifying particular areas of the state with significant unmet adult education needs.

5.0 Application Evaluation Criteria

5.1 In reviewing grant applications to recommend which applicants should receive grant funding and the amount of each grant, the Department shall consider but not be limited to the following criteria:

the quality of the instructional program that the applicant plans to implement, in particular the expected measurable student outcomes the applicant hopes to achieve, using the grant moneys;

5.1.1 the quality of the professional development program that the applicant plans to implement for educators to assist students in meeting the applicant's expected measurable student outcomes;

5.1.2 The effectiveness and completeness of the planned workforce development partnership;

- 5.1.3 The cost of the instructional and student support program that the applicant plans to implement using the grant moneys;
- 5.1.4 The rigor with which the applicant intends to monitor and evaluate the implementation of the proposed program;
- 5.1.5 The geographical diversity of the applicant pool.

6.0 Data Collection and Reporting

6.1 Each Local Education Provider that receives an Adult Education and Literacy grant shall submit information to the Department describing the following:

- 6.1.1 The instructional programs and services for which the Local Education Provider used the grant;
- 6.1.2 The number of adult students who participated in each of the types of programs and services provided;
- 6.1.3 The educational progress made by participating students as measured by standardized tests and training completion;
- 6.1.4 The number of students who received workforce services, including the number of students who entered employment.

5.02 The Department shall submit a report annually to the State Board, the governor, the Joint Budget Committee of the Colorado General Assembly, the House and Senate Education Committees the Senate Business, Labor, and Technology Committee and the House Business, Labor, Economic, and Workforce Development Committee, and shall post the report on the Department's web site.. This report concerning the grant program should, at a minimum, address the use, allocation, geographical diversity of the programs, and outcomes of the grant moneys, including the effectiveness of each program that receives a grant and the continuing level of unmet need for adult education within the state. The report must also include an overview of the collaboration efforts of the office, the Department of Higher Education, the Department of Labor and Employment, the Community College system, other local education providers, other postsecondary education or training providers, and other workforce development providers in meeting the state's need for adult education and literacy programs and workforce development.

Immediate adoption of the Rules for the Administration of the Adult Education and Literacy Grant Program is imperatively necessary in order to provide funding for workforce development partnerships through which eligible adults receive basic education in literacy and numeracy that leads to additional skills acquisition, postsecondary credential attainment and employment.

John W. Suthers
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State of Colorado
Department of Law
Office of the Attorney General

Tracking number: 2014-00954

Opinion of the Attorney General rendered in connection with the rules adopted by the
Colorado State Board of Education

on 09/10/2014

1 CCR 301-98

RULES FOR THE ADMINISTRATION OF THE ADULT EDUCATION AND LITERACY GRANT
PROGRAM

The above-referenced rules were submitted to this office on 09/11/2014 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.

September 26, 2014 09:57:12

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Emergency Rules Adopted

Department

Department of Transportation

Agency

Transportation Commission and Office of Transportation Safety

CCR number

2 CCR 601-19

Rule title

2 CCR 601-19 RULES CONCERNING THE IMPLEMENTATION OF THE SAFE
ROUTES TO SCHOOL PROGRAM 1 - eff 09/04/2014

Effective date

09/04/2014

DEPARTMENT OF TRANSPORTATION

Division of Transportation Development

RULES CONCERNING THE IMPLEMENTATION OF THE SAFE ROUTES TO SCHOOL PROGRAM

2 CCR 601-19

I. PURPOSE

- A. The purpose of these Rules is to prescribe procedures for application and disbursement of federal or state moneys to political subdivisions of the State, for projects to improve safety for pedestrians and bicyclists in School Areas, as authorized by § 43-1-1601 et seq., C.R.S.
- B. The Department promulgated these Rules in order to carry out the purposes of § 43-1-1601 et seq., concerning the “Safe Routes to School” program. The Rules were adopted for the following reasons: (1) to comply with § 43-1-1604 C.R.S.; (2) to establish the procedures to review and award grants; (3) to define essential terms; (3) to determine additional criteria and procedures under which the program will be managed.

II. STATEMENT OF BASIS AND SPECIFIC STATUTORY AUTHORITY

A. Statement of Basis

Sections 43-1-1601 et seq. C.R.S. was enacted in June 2004. Section 43-1-1604 C.R.S. directs the Department to promulgate Rules for the implementation of a grant based program awarding federal funds to political subdivisions of Colorado to improve safety for pedestrians and bicyclists in School Areas.

During September 2004, the Department formed a committee to review the statutory directive. The objective of the committee was to provide opportunity for input from stakeholders while developing the Rules, allow stakeholders to review and comment on the proposed Rules language, and develop understanding and consensus among stakeholders. Comments and concerns from the taskforce were considered in developing the Rules.

Stakeholders represented on the rulemaking committee included Bicycle Colorado, Colorado Dept. of Public Health and Environment, Colorado Dept. of Transportation Traffic Safety Office, Colorado Dept. of Transportation Bicycle/Pedestrian coordinator, and Colorado Dept. of Transportation policy staff.

The Department promulgated the Rules in May 2005. The Department initiated the rulemaking

process to amend the existing Rules in June 2007. The first amendment was needed to revise the contact person to be in compliance with job duties and responsibilities within the Department of Transportation, and Section 1404 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy of Users Act of 2005. The second amendment was necessary to attain continuity of services and leadership on the Advisory Committee.

The Department amended the Rules in 2012 as part of a Department-wide initiative to update Rules where warranted, eliminate unnecessary language and lessen restrictions on local government when possible. This initiative was in keeping with the Governor's Executive Order D2011-005 and Executive Order 2012-002.

The Department amended the Rules in 2014 as a result of HB14-1301. This bill made state general funds available for FY15 for the Safe Routes to Schools Program, and specified that all of the grants awarded using the funds resulting from HB14-1301 must be for non-infrastructure projects. The bill also provides that if the Safe Routes to Schools Program received federal dollars in FY15, general funds appropriated for the program will be reduced by the amount of the federal moneys received. Finally, the bill eliminated the need to distribute projects by geographic distribution of the student population. Instead, the bill requires that the Department consider schools having greater than fifty percent of the students eligible for free or reduced-priced lunch as one of the criteria for awarding grants.

B. Specific Statutory Authority

These Rules are promulgated by the Department pursuant to the specific statutory authority of §§43-1-110 (2) and 43-1-1604 C.R.S.

1.00 DEFINITIONS

- 1.01 "Advisory Committee" means the committee appointed by the Executive Director as established in §43-1-1601(4) C.R.S. and Section 2.00 of these Rules.
- 1.02 "Applicant" means a political subdivision of the State of Colorado that applies for an award under these Rules.
- 1.03 "Commission" means the Colorado Department of Transportation Commission established pursuant to §43-1-106 C.R.S.
- 1.04 "Department" means the Colorado Department of Transportation established pursuant to §43-1-101 C.R.S.
- 1.05 "Executive Director" means the Executive Director of the Colorado Department of Transportation pursuant to §43-1-103 C.R.S.
- 1.06 "Free or Reduced-Priced Lunch" means a lunch served to a child from a household eligible for such benefits as provided by 7 CFR 245, and the National School Lunch Act, 42 U.S.C. § 1751 *et seq.*
- 1.07 "MPO" means a Metropolitan Planning Organization located in

urban areas with a population over 50,000. An MPO is a federally-designated entity established by agreement between the Governor and the units of local government responsible for transportation planning processes.

- 1.08 “Non-System Road or Trail” means a road or trail that is not part of the State highway system.
- 1.09 “On-System Road or Trail” means a road that is part of the State highway system.
- 1.10 “Rural Area” for purposes of these Rules means an area outside an MPO boundary.
- 1.11 “School Areas” means the area within a two mile radius of a school.
- 1.12 “STAC” means Statewide Transportation Advisory Committee as created in §43-1-1104, C.R.S.
- 1.13 “TPR” means a Transportation Planning Region. TPRs are geographically designated areas of the state with similar transportation needs and commonalities, pursuant to the provisions of §43-1-1102 and 1103 C.R.S.

2.00 ADVISORY COMMITTEE

- 2.01 The Executive Director shall appoint an Advisory Committee in conformance with §43-1-1601(4) C.R.S.
- 2.02 In addition, the Advisory Committee shall include representatives of the STAC, who shall serve a two year term. The STAC shall choose their designees, with the approval of the Executive Director. STAC representatives to the Advisory Committee shall consist of:
 - 2.02.1 Two STAC representatives of Metropolitan Planning Organizations or their designee;
 - 2.02.2 Two STAC representatives of rural Transportation Planning Regions or their designee.

3.00 APPLICATION INFORMATION

- 3.01 The Department will notify city and county governments, schools, and school districts of the potential availability of Safe Routes to School funds, requirements for requesting an application package, and the deadline to submit an application to the Department for Safe Routes to School funds.
- 3.02 The application package, to be developed and periodically updated by the Advisory Committee, will contain instructions and guidelines for completion of the application, as determined by the Advisory Committee and the Department. Instructions and guidelines may not be in conflict with § 43-1-1601 et seq., C.R.S.

4.00 THRESHOLD CRITERIA FOR APPLICANT ELIGIBILITY

- 4.01 The purpose of this section is to describe the threshold criteria the Department and Advisory Committee will use to determine if an Applicant will be eligible for funding. An Applicant must comply with all threshold criteria.
 - 4.01.1 Applicants must be political subdivisions of the state.
 - 4.01.2 A political subdivision of the state that receives money under this Part 16 of Article 1 of Title 43, may not use such moneys as a substitute for funds currently being used to support similar activities.

- 4.01.3 In order for a political subdivision of the state to be eligible for the funds, the political subdivision must show that it has established an agreement with the school in the area where the project will occur. Such agreement of the improvement project must be documented and signed by an official of the school.
- 4.01.4 An Applicant must submit the application to the Advisory Committee through CDOT's Safe Routes to School Program Manager.
- 4.01.5 An Applicant must ensure that all forms, assurances, and resolutions required by the application are signed by the appropriate officer or individual with authority to legally bind the Applicant.
- 4.01.6 If the project is not located on CDOT right of way, maintenance shall be the responsibility of the Applicant. If the project is located on CDOT right of way, maintenance agreements shall be in place prior to construction.
- 4.01.7 If required by the program, a local match must be demonstrated.
- 4.01.8 On-System projects must not conflict with the State and Regional Transportation Plans available on the Department website found at www.coloradodot.info/programs/statewide-planning/statewide-transportation-plan.
- 4.01.9 Applicant eligibility is contingent upon compliance with all state and federal laws and regulations. Applicants that fail to comply with all applicable federal and state laws, regulations and requirements will not be considered eligible under these Rules. Compliance by an Applicant with all threshold eligibility criteria does not obligate the Commission to award funds, but only allows the Applicant to be evaluated by the Department and Advisory Committee for consideration for available funding based upon the evaluation criteria described in Section 5.00. of the Rules.

5.00 EVALUATION CRITERIA

- 5.01 The purpose of this section is to describe the basic evaluation criteria used by the Department to determine whether an eligible Applicant will be funded and to assist in determining the level of funding to be awarded. Guidelines, instructions, and details concerning such evaluation criteria shall be described fully in the application package.
- 5.02 The Advisory Committee shall create a scoring procedure utilizing the criteria described in this section.
- 5.03 The Department and Advisory Committee will include the following criteria to evaluate eligible Applicants:
 - 5.03.1. The demonstrated need of the Applicant;

- 5.03.2. The potential of the proposed project to reduce injuries and fatalities among children;
 - 5.03.3. The potential of the proposed project to encourage walking and bicycling to school;
 - 5.03.4. The extent to which the application identifies existing safety hazards;
 - 5.03.5. The extent to which the application identifies existing and potential walking and bicycling routes and the extent to which the proposed project would improve or connect them;
 - 5.03.6. Support for the proposed project from local school-based associations, traffic engineers, elected officials, law enforcement agencies, and school officials;
 - 5.03.7. Consideration for implementation of Safe Routes to Schools in communities with schools having greater than fifty percent of the students eligible for Free or Reduced-Priced Lunch; and
 - 5.03.8. Other criteria allowed or required by applicable federal laws or regulations.
- 5.04 If the project request is located in an MPO boundary, the application must be certified by the MPO. The certification shall demonstrate that all actions necessary to include the project(s) in the Transportation Improvement Program for that MPO will be taken before the application may be approved.

6.00 FUNDING

- 6.01 The Department shall allocate to the Safe Routes to School Program any funds received from the federal or state government that designates funds for such program.
- 6.02 Applicants applying for funds through the Safe Routes to School program may also be eligible for other federal funds, but must compete for those funds using the criteria established under that program.
- 6.03 Costs of the Project exceeding the amount of the grant shall be borne by the Applicant.
- 6.04 Project funds that have not been encumbered within 2 years will be considered inactive and the remaining unencumbered funds may be revoked and returned to the program.

7.00 INCORPORATION BY REFERENCE

The Rules are intended to be consistent with and not be a replacement for the federal requirements contained in the National School Lunch Act, 42 U.S.C. § 1751 *et seq.* November 10, 1989, and its implementing regulations, 7 CFR 245, December 13, 2007, which are hereby incorporated into the Rules by this reference, and do not include any later amendments. All referenced laws and regulations shall be available for copying or public inspection during regular

business hours from the Office of Policy and Government Relations, Colorado Department of Transportation, 4201 E. Arkansas Avenue, Denver, Colorado 80222.

Permanent Rules Concerning the Implementation of the Safe Routes to School Program

Tracking Number 2014-00936

Hearing Date and Location:

October 24, 2014

10:00 a.m.

Colorado Department of Transportation Auditorium,

4201 E. Arkansas Ave.

Denver CO 80222

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**State of Colorado
Department of Law**

Office of the Attorney General

Tracking number: 2014-00937

**Opinion of the Attorney General rendered in connection with the rules adopted by the
Transportation Commission and Office of Transportation Safety**

on 09/04/2014

2 CCR 601-19

RULES CONCERNING THE IMPLEMENTATION OF THE SAFE ROUTES TO SCHOOL PROGRAM

The above-referenced rules were submitted to this office on 09/15/2014 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

September 17, 2014 15:01:21

Emergency Rules Adopted

Department

Department of State

Agency

Secretary of State

CCR number

8 CCR 1505-1

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8 CCR 1505-1 ELECTIONS 1 - eff 09/10/2014

Effective date

09/10/2014

COLORADO SECRETARY OF STATE

8 CCR 1505-1 Election Rules

Rules as Adopted – Clean September 10, 2014

Please note the following formatting key:

Font effect	Meaning
<i>Italic blue font text</i>	Publication notes and annotations

Amendments to Rule 20.1:

- 20.1 The county must submit its annual security plan on the form prescribed by the Secretary of State in accordance with section 1-5-616(5), C.R.S. A county must also submit a comprehensive procedure for ballot delivery in an emergency under section 1-7.5-115(1), C.R.S.

Amendments to Rule 20.2.2, regarding general requirements concerning chain-of-custody:

- 20.2.2 The county must maintain and document uninterrupted chain-of-custody for each voting device from the installation of trusted build to the present, throughout the county's ownership or leasing of the device. For optical scanners approved for use under section 1-5-613(2), C.R.S. but for which no trusted build exists, the county must maintain and document uninterrupted chain-of-custody for each voting device from the successful completion of acceptance testing conducted according to Rule 20.8.4.

Amendments to Rules 20.3.1 and 20.3.1(e), regarding physical locking mechanisms and seals for DREs and ballot marking devices:

- 20.3.1 DREs, ballot marking devices and Judge's Booth Controllers (JBCs)

- (e) In each voter service and polling center, the county must provide a minimum of one accessible DRE with a headset that has adjustable volume control.

Amendments to Rule 20.4:

- 20.4 Individuals with access to keys, door codes, and vault combinations

- 20.4.1 For employees with access to areas addressed in Rule 20.4.3, the county must state in the security plan each employee's title and the date of the criminal

background check performed under Rule 6.5. [Section 24-72-305.6, C.R.S.]

Amendments to Rule 20.5.2, regarding internal controls for the Voting System:

20.5.2 In addition to the access controls discussed in Rule 20.4, the county must change all passwords and limit access to the following areas:

- (a) The county must change all software passwords once per calendar year prior to the first election. This includes any boot or startup passwords in use, as well as any administrator and user passwords and remote device passwords.
- (b) The county must change all hardware passwords once per calendar year prior to the first election. This includes any encryption keys, key card tools, supervisor codes, poll worker passwords on smart cards, USB keys, tokens, and voting devices themselves as it applies to the specific system.
- (c) Administrative and user accounts for election management system and election databases.
 - (1) The county may use the administrative user account only to create individual user accounts for each election database.
 - (2) The county must create individual user accounts that are associated and identified with each individual authorized user of the election management system or election database.
 - (3) The county must restrict access to each individual user account with a unique password known only to each individual user. Authorized users must access the election management system and election database using his or her individual user account and unique password.
 - (4) The county may grant administrative privileges to no more than ten individual user accounts per election.
- (d) Other than for the purpose of programming the election, the voting system provider may not have administrative or user access to the county's election management system.
- (e) The county may not connect or allow a connection of any voting system component to the Internet.
- (f) If any component of the voting system is equipped with Wi-Fi capability or a wireless device, the county must disable the wireless capability or device.

- (g) The county may not connect any component of the voting system to another device by modem.
- (h) The county must include in its security plan the title and date of background checks for each employee with access to any of the areas or equipment set forth in this Rule. The county must maintain a storage facility access log that details employee name, date, and time of access to the storage facility in which the software, hardware, or components of any voting system are maintained. If access to the storage facility is controlled by use of key card or similar door access system that is capable of producing a printed paper log including the person's name and date and time of entry, such a log must meet the requirements of this Rule. [Section 24-72-305.6, C.R.S.]

Amendments to Rules 20.8.4 and 20.8.5; stylistic changes:

- 20.8.4 Upon completion of any maintenance, the county must verify or reinstate the trusted build and conduct a full acceptance test of equipment that must, at a minimum, include the hardware diagnostics test, as indicated in Rule 11, and a mock election in which an employee(s) must cast a minimum of five ballots on the device to ensure tabulation of votes is working correctly. The county must maintain all documentation of the results of the acceptance testing on file with the specific device.
- 20.8.5 The Secretary of State will annually inspect county maintenance and chain-of-custody records and verify the integrity of trusted build on a randomly selected basis.

Amendments to Rule 20.9.3(d):

- (d) If a seal is broken or chain-of-custody is unverifiable, the county clerk must investigate, document his or her findings, and report the incident to the Secretary of State, as appropriate.

New Rule 20.11.1(d), regarding VVPAT security:

- (d) If the DRE's trusted build is not capable of verification by reference to the hash value (MD5 or SHA-1) of the firmware or software, the county must secure the printer port on the DRE with tamper-evident seals when the VVPAT is not connected to the DRE's printer port.

Amendments to Rule 20.11.2:

- 20.11.2 Anonymity. The designated election official must implement measures to protect the anonymity of voters choosing to vote on DREs.

- (a) Measures to protect anonymity include:
 - (1) The county may not keep any record indicating the order in which people voted on the DRE, or which VVPAT record is associated with the voter.
 - (2) When more than one DRE is available at a voting location, the county must, to the extent practicable, allow the voter to choose the DRE he or she wishes to vote on.
- (b) The county clerk may not release a report generated from SCORE that includes a date and time stamp that could potentially identify a voter who cast a specific ballot.
- (c) At no time may an election official simultaneously access a VVPAT and the list of voters. If the VVPAT record requires inspection, at least two election officials must conduct the examination.
- (d) The county must arrange voter service and polling center DREs in a manner that prevents election officials and other voters from observing how a DRE voter marks or casts his or her ballot.

[Repeal of Rule 20.11.3(c), regarding VVPAT storage]

New Rules 20.17 through 20.20:

20.17 Voting system conditions for use

20.17.1 The county must use the voting system only on a closed network or in a standalone fashion.

20.17.2 Access logs.

- (a) In addition to the audit logs generated by the election management system, the county must maintain access logs that record the following:
 - (1) The date, time, and user's name for each instance that a user enters or exits the system or the system's report printing functions; and
 - (2) Modifications to the system's hardware, including insertion or removal of removable storage media, or changes to hardware drivers.
- (b) The county may create and maintain the access logs in the manner the county deems most suitable, including key stroke recording software, video surveillance recordings, manually or electronically written records, or a combination of these methods.

20.17.3 The county must create a backup copy of the election setup records on a read-only, write-once CD, immediately after completing the Logic and Accuracy Test.

- (a) The county must identify the master database name and date of election on the label of the backup CD.
- (b) The county must store the backup CD in a sealed container. Two election officials of different party affiliations must sign and date entries to the chain-of-custody log for the sealed container.

20.17.4 DREs

- (a) The county's election judges must:
 - (1) Test the VVPAT printer immediately after changing the VVPAT paper; and
 - (2) Lock and re-seal the VVPAT canister, and make appropriate entries on the VVPAT chain-of-custody log, before voting resumes on the DRE.
- (b) At least one DRE in each voter service and polling center must have a backup battery, or be connected to an uninterruptible power supply, sufficient to sustain continuous operation for a minimum of two hours in the event of power loss.
- (c) The county must maintain logs indicating administrator function use.

20.17.5 Optical scanners:

- (a) When issuing ballots, the county must provide in-person voters with a secrecy sleeve sufficient to conceal a voter's marked ballot from others in the polling location, including election officials.
- (b) The county must record the optical scanner serial number on all chain-of-custody logs and reports generated by the device.
- (c) Each optical scanner must have a backup battery, or be connected to an uninterruptible power supply sufficient to sustain continuous operation for a minimum of two hours in the event of power loss.
- (d) The county must maintain logs indicating administrator function use.
- (e) The county must program each optical scanner to permit an election judge to override rejection of overvoted ballots that cannot be duplicated in accordance with Rule 18.

20.18 ES&S voting system conditions

20.18.1 If the county must provide language minority assistance under section 203 of the Voting Rights Act (42 U.S.C. §§ 1973 to 1973bb-1), it may not use an ES&S voting system.

20.18.2 DREs. The county may only use the nine inch screen on the VVPAT.

20.18.3 For optical scanners with a zip disk drive, the county must save the cast vote records for each batch of tabulated ballots to a zip disk. A batch of tabulated ballots may consist of one or more SCORE absentee ballot batches.

20.19 Hart DRE conditions. If a county shortens a lengthy candidate name on the VVPAT, it must provide printed notice of the change to voters at the voter service and polling center.

20.20 Sequoia DRE conditions

20.20.1 The county must add clarifying text to the display screen during the VVPAT review process that instructs the voter to review his or her ballot choices.

20.20.2 The county must lock the activate button to prevent its use during an election.

20.20.3 A county may not modify the screen display using an override.ini file without approval from the Secretary of State.



Statement of Justification and Reasons for Adoption of Temporary Rules

Office of the Secretary of State Election Rules 8 CCR 1505-1

September 10, 2014

New Rules: 20.5.2(c), (d), (f), 20.11.1(d), 20.11.2(d), 20.17, 20.18, 20.19, and 20.20

Amended Rules: 20.1, 20.2.2, 20.3.1, 20.3.1(e), 20.4.1, 20.5.2, 20.8.4, 20.8.5, 20.9.3(d), and 20.11.2

Repealed Rules: 20.11.3(c)

In accordance with Colorado election law,¹ the Secretary of State finds that amendments and recodification of the election rules must be adopted and effective immediately to ensure the uniform and proper administration and enforcement of Colorado election laws.

Temporary adoption is necessary both to comply with law and to preserve the public welfare given the close proximity of the 2014 General Election. A public rulemaking hearing was conducted in accordance with the State Administrative Procedure Act² on July 17, 2014, to receive comment and testimony on the proposed rules concerning voting system conditions for use. Adoption of the rules on a temporary basis is necessary to provide clear guidance to interested parties, including: county clerks, vote system vendors, and electors.

For these reasons, and in accordance with the State Administrative Procedure Act, the Secretary of State finds that adoption and immediate effect of the amendments to existing election rules is imperatively necessary to comply with state and federal law and to promote public interests.³

¹ Sections 1-1-107(1)(c), 1-1-107(2)(a), 1-1.5-104(1)(e), C.R.S. (2013). The Secretary of State has the power “[t]o promulgate, publish, and distribute...such rules as [the Secretary] finds necessary for the proper administration and enforcement of the election laws” and “[t]he ‘Help America Vote Act of 2002’, 42 U.S.C. 15301-15545]....”

² Section 24-4-103(3)(a), C.R.S. (2013).

³ Section 24-4-103(3)(6), C.R.S. (2013).

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State of Colorado
Department of Law
Office of the Attorney General

Tracking number: 2014-00946

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

on 09/10/2014

8 CCR 1505-1

ELECTIONS

The above-referenced rules were submitted to this office on 09/10/2014 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.

September 30, 2014 14:10:41

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Emergency Rules Adopted

Department

Department of State

Agency

Secretary of State

CCR number

8 CCR 1505-1

Rule title

8 CCR 1505-1 ELECTIONS 1 - eff 09/10/2014

Effective date

09/10/2014

COLORADO SECRETARY OF STATE

8 CCR 1505-1

Election Rules

Rules as Adopted – Clean

September 10, 2014

Please note the following formatting key:

Font effect	Meaning
<i>Italic blue font text</i>	Publication notes and annotations

[Amendments to 8 CCR 1505-1]

Amendments to Current Rule 1:

[Current Rules 21.1.1, 21.1.2, 21.1.3, 21.1.4, 21.1.5, 21.1.6, 21.1.9, 21.1.10, 21.1.13, 21.1.18, 21.1.21 are amended and incorporated into Rule 1]

Rule 1. Definitions

1.1 As used in these Rules, unless stated otherwise:

- 1.1.1 “Audio ballot” means a voter interface containing the list of all candidates, ballot issues, and ballot questions upon which an eligible elector is entitled to vote in an election. It also provides the voter with audio stimuli and allows the voter to communicate voting intent to the voting system through vocalization or physical actions.
- 1.1.2 “Audit log” means a record generated by a voting system, in printed or electronic format, providing a record of activities and events relevant to initializing election management software and hardware, including the identification of files containing election parameters, initializing the tabulation process, processing voted ballots, and terminating the tabulation process.
- 1.1.3 “Ballot image” means a digitally captured image of a paper ballot or a representation in electronic form of the marks or vote positions of a cast ballot on a DRE.
- 1.1.4 “Ballot marking device” (BMD) means a device that may integrate components such as an optical scanner, printer, touch-screen monitor, audio output, and a navigational keypad and uses electronic technology to:

- (a) Mark a paper ballot at voter direction;

- (b) Interpret the ballot selections;
 - (c) Communicate the interpretation for voter verification; and
 - (d) Print a voter-verifiable ballot.
- 1.1.5 “Ballot measure” means a ballot issue or ballot question as defined in sections 1-1-104(2.3) and (2.7), C.R.S.
- 1.1.6 “Blank ballot” means a ballot on which the voter has made no marks in any voting position, has marked with an unreadable marker, or has consistently marked outside of the “read” area of the optical scanner.
- 1.1.7 “Ballot style” means a specific ballot layout or content for an election. The ballot style is the presentation of the unique combination of contests and candidates for which the voter is eligible to vote. It includes the order of contests and candidates, the list of ballot positions for each contest, and the binding of candidate names to ballot positions within the presentation. Multiple precincts may use a single ballot style. Multiple styles may appear in a single precinct where voters are split between two or more districts or other categories defining voter eligibility for particular contests and candidates.
- 1.1.8 “Canvass workers” means workers appointed or hired by the designated election official to assist in the preparation and conduct of the canvass.
- 1.1.9 “Central count” means the county’s principal ballot counting and processing location.
- 1.1.10 “Chain-of-custody log” means a written record documenting security, possession, and control of a voting system component, election record, or other election material.
- 1.1.11 “Closed network” means a network configuration in which voting system components connect to and communicate only with each other and not with the Internet or any other computer network.
- 1.1.12 “Damaged ballot” means a ballot that is torn, bent, or otherwise mutilated or rendered unreadable, so that it cannot be processed by the optical scanner ballot reader. Damaged ballots include:
 - (a) All ballots that contain a foreign substance that could interfere with the optical scanner (e.g. food, drink, etc.).
 - (b) Ballots that are marked in a medium or manner other than indicated in the ballot instructions.
 - (c) Ballots that the elector marked in a way that would disclose his or her

identity.

- 1.1.13 “Data entry county” means a county using an election management system that exports a file to be uploaded to the Election Night Reporting system.
- 1.1.14 “Designated election official” or “DEO” includes the designated election official’s sworn, deputized designee.
- 1.1.15 “Direct Recording Electronic voting device” (DRE) means a voting device that visually displays or audibly presents a ballot and records an elector’s votes directly into electronic storage media.
- 1.1.16 “Duplicated ballot” means a ballot for which a true copy must be made for the ballot to be properly processed and counted because of damage, improper marking, or any issue that would prevent a ballot tabulating machine from accurately counting the ballot.
- 1.1.17 “Election complaint” means a complaint filed with the Secretary of State under Articles 1 through 13 of Title 1, C.R.S.
- 1.1.18 “Election management system” means the hardware and software applications used to configure, program, and report election results from one or more voting system components, including the ballot definition and the election reporting subsystem. The election management system may provide utilities for other election administration tasks, including maintaining equipment inventories, estimating ballot printing needs, and maintaining information on voter service and polling centers.
- 1.1.19 “Election media” means any device including a cartridge, card, memory device, or hard drive used in a voting system for the purposes of storing election setup records (ballot or card styles), recording voting results from electronic vote tabulating equipment, or any other data storage required by the voting system for a particular election function. The election management system typically downloads ballot style information to the election media and uploads results and ballot images from the election media.
- 1.1.20 “Election setup records” means the electronic records, often in the form of a database or a set of databases, generated by election management software to create and define ballots, tabulation instruction, and other functions related to the election.
- 1.1.21 “Election management software” means the software for election equipment or computers that controls election setup vote recording, vote tabulation, and reporting.
- 1.1.22 “Electronic ballot” means a non-paper ballot such as on a touch screen or through

audio feedback. After a voter casts an electronic ballot, the voter's choices must be:

- (a) Marked and printed on a paper ballot for subsequent counting by an optical scanner; or
- (b) Digitally recorded and counted by the touch screen device, commonly referred to as a Direct Recording Electronic (DRE) device.

1.1.23 "Electronic Transmission" means:

- (a) For the purpose of sending an unvoted ballot by fax, email, or online delivery to:
 - (1) A military or overseas elector under Article 8.3 of Title 1, C.R.S.
 - (2) An elector requesting a replacement for an emergency under section 1-7.5-115, C.R.S.
 - (3) An affected elector requesting a ballot because of a disaster emergency.
- (b) For the purpose of returning a voted ballot to the county clerk fax or email.

1.1.24 "Firmware" means computer programs stored on read-only memory devices or other electronic circuitry in voting devices that control the basic operation and function of those devices.

1.1.25 "Help America Vote Act complaint" or "HAVA complaint" means a complaint filed with the Secretary of State under Title III of the Help America Vote Act (HAVA) and Article 1.5 of Title 1, C.R.S.

1.1.26 "Immediate voting area" means the area that is within six feet of the voting equipment, voting booths, and the ballot box.

1.1.27 "Manual entry county" means a county that does not use an election management system to export data to the Election Night Results system.

1.1.28 "Official Observer" means either an observer appointed by the Secretary of State or an observer appointed by the federal government and approved by the Secretary of State. Official Observers may be present in all phases of the election process and perform duties as may be assigned by the Secretary of State, but are subject to Rules and regulations as prescribed by the Secretary of State.

1.1.29 "Optical scanner" means an optical or digital ballot scanner.

- 1.1.30 “Overvote” means an instance where the elector marked votes for more than the maximum number of candidates or responses for a ballot measure.
- 1.1.31 “Qualified political organization” means an organization that has placed a candidate for congressional or state office on the ballot in a congressional vacancy or general election, whose officers have filed proof of organization with the Secretary of State, and that continues to meet the requirements of Rules 3.3 and 3.4. [*Baer v. Meyer*, 728 F.2d 471 (10th Cir. 1984)]
- 1.1.32 “Related to the second degree” means spouse, civil union partner, parents, children, brothers and sisters, grandparents, and grandchildren.
- 1.1.33 “Removable card or cartridge” means a programming card or cartridge, except a voter activation card, that stores firmware, software, or data.
- 1.1.34 “SCORE” means the centralized statewide registration system and the computerized statewide voter registration list described in Part 3 of Article 2 of Title 1.
- 1.1.35 “Seal” means a serial-numbered tamper-evident device that, if broken or missing, indicates that the chain-of-custody is broken and a device is not secure.
- 1.1.36 “Split precinct” means a precinct that has a geographical divide between one or more political jurisdictions which results in each jurisdiction within the precinct to be assigned different ballot styles for a specific election.
- 1.1.37 “Statement of Ballots Form” means the form used at the polling location that accounts for all ballots at that location and includes all information required by Rule 10.
- 1.1.38 “Target area” means the square, oval, incomplete line, or incomplete arrow corresponding to the candidate’s name or ballot response (examples: “Yes”, “No”, “For” or “Against”) on a paper ballot.
- 1.1.39 “Teleprocessing lines” means secure, dedicated communication transmission facilities used for the purpose of accessing SCORE, and ensuring the security and integrity of voting information so that no deviation can go undetected.
- 1.1.40 “Trusted build” means the write-once installation disk or disks for software and firmware for which the Secretary of State has established the chain-of-custody to the building of the disk(s), which is then used to establish or re-establish the chain-of-custody of any component of a voting system that contains firmware or software. The trusted build is the origin of the chain-of-custody for any software and firmware component of the voting system.
- 1.1.41 “Undervote” means an instance where the voter marked votes for fewer than the

maximum number of candidates or responses for a ballot measure.

1.1.42 “Video security surveillance recording” means video monitoring by a device that continuously records a designated location or a system using motion detection that records one frame, or more, per minute until detection of motion triggers continuous recording.

1.1.43 “Voting system” as defined in section 1-1-104(50.8), C.R.S., means:

- (a) The total combination of mechanical, electromechanical, or electronic equipment (including the software, firmware, and documentation required to program, control, and support the equipment) that is used to:
 - (1) Define ballots;
 - (2) Cast and count votes;
 - (3) Report or display election results; and
 - (4) Maintain and produce any audit trail information.
- (b) The practices and associated documentation used to:
 - (1) Identify system components and versions of such components;
 - (2) Test the system during its development and maintenance;
 - (3) Maintain records of system errors and defects;
 - (4) Determine specific system changes to be made to a system after the initial qualification of the system; and
 - (5) Make available any materials to the voter (such as notices, instructions, forms, or paper ballots).
- (c) “Voting system” does not include any other component of election administration, such as voter registration applications or systems, electronic pollbooks, ballot delivery and retrieval systems, signature verification and envelope sorting devices, ballot on demand printers, election night reporting and other election reporting systems, and other components used throughout the election process that do not capture and tabulate votes.

1.1.44 “Voting system test laboratory” (VSTL) means a federally accredited entity that conducts certification testing for voting systems.

1.1.45 “VVPAT” has the same meaning as in section 1-1-104(50.6), C.R.S.

1.1.46 “Watcher” has the same meaning as in section 1-1-104(51), C.R.S.

- (a) A watcher may be appointed for a recall election in the same manner as in a primary election.
- (b) For the purpose of appointing a watcher, the proponent or opponent of a ballot measure means a registered issue committee supporting or opposing the ballot measure.
- (c) A designated watcher need not be a resident of the county he or she is designated in as long as he or she is an eligible elector in the State of Colorado.

1.1.47 “Write-in vote” means a vote where the voter physically writes in the name of a qualified write-in candidate in the space reserved on the ballot for write-in votes and properly marks the target area according to voter instructions.

1.1.48 “Zero tape” means a printout of the internal data registers in electronic vote-tabulating equipment indicating a zero value before any ballots are tabulated on that machine.

Rule 2.1 is amended as follows:

Rule 2. Voter Registration

2.1 Submission of voter registration forms

- 2.1.1 An applicant may submit a properly executed voter registration form to the county clerk in person, by mail, by fax, by online voter registration, or as an email attachment.
- 2.1.2 If any portion of a mail application is illegible, the county clerk must notify the applicant of the additional information required in accordance with section 1-2-509, C.R.S.
- 2.1.3 For submitting applications by fax, email, or online voter registration, close of business is 11:59 p.m. MT.
- 2.1.4 Under section 1-2-508, C.R.S., the effective date of a voter registration application received by the Secretary of State is the date of the postmark, if legible. If there is no legible postmark, the effective date is the date the application is received.
- 2.1.5 The county clerk must implement a data entry review process to ensure that the county accurately processes voter registration applications in SCORE.

Amendments to Current Rule 2.2:

2.2 For purposes of precinct caucus lists the elector's duration of residency is based upon the date the elector moved to his or her current residence address, as provided by the elector in his or her application. [Section 1-3-101, C.R.S.]

2.2.1 In SCORE, the county clerk must enter the date provided by the elector that he or she moved to his or her current residence address.

2.2.2 If the elector submits an application and does not include the date he or she moved, the county clerk must use the date the application is received or postmarked, whichever is earlier, as the date moved. If the elector submits the application during the 22 days before election day and does not provide the date he or she moved, the county clerk must use as the date moved the twenty-second day before election day based upon the affidavit.

Amendments to Current Rule 2.3.3; corrected numbering:

2.3.2 As used in section 1-1-104(19.5)(a)(VII), C.R.S., current means that the date of the document is within 60 days of the date submitted for identification purposes unless the document states a longer billing cycle.

New Rule 2.3.3:

2.3.3 Documents issued under section 42-2-505, C.R.S., are not acceptable forms of identification for any purpose under the Uniform Election Code of 1992 and these rules.

Current Rule 2.5.4 is repealed.

Current Rule 2.10 is repealed.

Rules 2.11 through 2.17 are renumbered accordingly.

Amendments to Current Rule 2.12.1 concerning voter registration confidentiality:

2.11.1 Information about an agency's name and location for an application completed at a voter registration agency or driver's license office is confidential. [42 USC §§ 1973gg-3(c)(2)(D)(iii)]

Amendments to Current Rule 2.13.2 through 2.13.5 (concerning list maintenance under section 8 of the National Voter Registration Act of 1993):

2.12.2 The Secretary of State will provide monthly National Change of Address (NCOA) data under section 1-2-302.5, C.R.S., to the county clerk by the fifth of each month.

(a) The county must process the data to update registration records and send notifications in accordance with section 1-2-302.5, C.R.S., by the end of

each month.

- (1) The county may not change a residential address to a non-residential address, like a post office box, based on the information in the NCOA data.
 - (2) If the county clerk has previously mailed a confirmation card to an elector whose record is marked inactive for any reason, the county clerk is not required to mail another confirmation card to the elector at the same address.
 - (3) If an elector moves within a county, the county may not mark the elector's record "active" based on the NCOA data if the record is incomplete, pending, or canceled.
- (b) When the county updates a voter registration record using NCOA data, the county must use the NCOA transaction source.

2.12.3 In accordance with section 1-2-605(7), C.R.S., no later than 90 days following a General Election, the county clerk in each county must cancel the registrations of electors:

- (a) Whose records have been marked "Inactive – returned mail", "Inactive – undeliverable ballot", or "Inactive – NCOA";
- (b) Who have been mailed a confirmation card; and
- (c) Who have since failed to vote in two consecutive general elections.

2.12.4 The county must process all records designated for cancelation by the Secretary of State within 21 days of receipt.

2.12.5 The county must process and mail all confirmation cards using SCORE so that the elector's voter registration record audit log shows the date on which the county printed or extracted the confirmation card.

2.12.6 To the extent a county has records of confirmation cards it has generated and sent outside of SCORE, the county must retain those records as election records under section 1-7-802, C.R.S.

Amendments to Current Rule 2.14:

2.13 Voter registration at a voter service and polling center

2.13.1 A person registering voters or updating voter registration information in a voter service and polling center must:

- (a) Be a permanent or temporary county employee, state employee, or temporary staff hired by the county clerk;
- (b) Successfully pass the criminal background check described in Rule 6.5; and

The deleted portion of Current Rule 2.14.1(b) moved to New Rule 6.5.

- (c) Complete a training course provided by the Secretary of State.

[Other than renumbering, Current Rule 2.14.2 is retained; unaltered]

Amendments to Current Rule 2.15:

2.14 Voter registration records and data

- 2.14.1 Notwithstanding the retention timelines specified in section 1-2-227, C.R.S., the county clerk may destroy paper voter registration records as soon as they have been digitally recorded in SCORE. The SCORE system must retain digital images of voter registration applications in perpetuity in accordance with section 1-5-301, C.R.S.

[Other than renumbering, Current rules 2.15.2 through 2.15.4 are retained; unaltered]

New Rule 4.1.3 concerning participation in coordinated elections:

- 4.1.3 The designated election official of each participating political subdivision must certify the completeness and accuracy of the SCORE address library for addresses within the district no later than the 70th day before election day. For special district elections, the designated election official of each district must certify to the county clerk the list of electors eligible to vote under section 32-1-806, C.R.S.

[The last sentence of New Rule 4.1.3 is language moved from Current Rule 7.2.3(c)]

Amendments to Current Rule 4.8.3(a):

4.8.3 Printing primary election ballots

- (a) If a major political party, as defined in section 1-1-104(22.5), C.R.S., nominates more than one candidate for any office, the county clerk must conduct the primary election for all major political parties.
 - (1) The county clerk must include on the ballot all offices to which candidates may be nominated in the primary election.
 - (2) If there are no candidates for any particular office, the county clerk must print on the ballot “There are no candidates for this office”.

[Sections 1-4-101 and 1-4-104.5, C.R.S.; Election Rule 10.1.1]

[Current Rule 4.8.3(b) is retained; unaltered]

Amendments to Current Rule 4.8.4(a) and (b):

4.8.4 Use of unique numbers on ballots

- (a) Except for ballots sent to military or overseas electors by electronic transmission under Rule 16.2, a county may not print a ballot for use in a state or federal election that has a unique number, or a barcode containing a unique number, that is specific to a single ballot.
 - (1) A county that uses rotating numbers must print at least ten ballots of each ballot style for each number.
 - (2) Nothing in this Rule prohibits a county from printing a unique number or barcode on a removable stub.
- (b) After an election official dissociates a voted ballot from its envelope and removes the stub, if any, the county may write or print unique numbers on the voted ballot for auditing and accounting purposes, including duplication of damaged ballots and risk limiting audits.

[Current Rule 4.8.4(c) is retained; unaltered]

Amendments to Current Rule 5:

Rule 5. Nonpartisan Elections not Coordinated by the County Clerk

- 5.1 The designated election official must send notice of the election to the clerk of the county in which the election will be held. The notice must include the date by which the list of registered electors must be submitted to the political subdivision.
- 5.2 For multi-county political subdivisions, the notice sent to each clerk must also include the names of all other counties in which the election will be held.
- 5.3 If a political subdivision coordinates with the county clerk, the designated election official is not required to submit a separate mail ballot plan for the election.

[Current Rules 5.2.2 through 5.8 are repealed]

New Rules 5.4 through 5.6:

5.4 Registration list for a special district election

- 5.4.1 If a special district requests a registration list under section 1-13.5-203(1), C.R.S.,

the county clerk must provide to the designated election official:

- (a) A list of registered electors as of the 40th day before the election to be delivered on the 30th day before the election, followed by a list of all registered electors as of the close of business on the 22nd day before the election to be delivered on the 20th day before the election; or
- (b) A complete list of registered electors as of the sixth day before the election.

5.4.2 Upon request, the county must provide the designated election official a list of UOCAVA electors who reside within the special district.

5.4.3 Beginning the 40th day before the date of election and through election day, the county must stay current with all voter registration data entry.

5.4.4 For every registration list sent to the special district, the county clerk must inform the designated election official of the proper procedures for handling protected or confidential elector information. [Section 24-72-204(3.5), (8), and Part 21, Article 30, Title 24, C.R.S.]

5.5 Registration lists for municipal elections

5.5.1 If a municipality is conducting a mail ballot election, the county clerk must provide the municipality with:

- (a) A preliminary list of all eligible electors no later than the 30th day before the election; and
- (b) A supplemental list of electors no later than the 20th day before the election. The list must contain the names of all eligible electors in the municipality who were not on the 30-day list and who registered on or before the 22nd day before the election.

5.5.2 The county clerk must provide the municipality with a registration list no later than the fifth day before the election. If provided on the fifth day, the list must include all registered electors in the municipality as of the sixth day before the election.

5.5.3 Beginning the 40th day before the election and through election day, the county clerk must stay current with all voter registration data entry.

5.5.4 For every registration list sent to the municipality, the county clerk must inform the designated election official of the proper procedures for handling protected or confidential elector information. [Section 24-72-204(3.5), (8), and Part 21, Article 30, Title 24, C.R.S.]

- 5.6 If an eligible elector attempts to register or update his or her registration at the county clerk's office, the county must process the request and ensure that the elector appears on the next registration list provided to the municipality or issue the elector a certificate of registration.

Amendments to Rules 6.4 and 6.5 concerning election judges:

- 6.4 A supervisor judge in a voter service and polling center must:
- 6.4.1 Successfully pass the criminal background check described in Rule 6.5. Any person who has been convicted of an election offense or an offense with an element of fraud is prohibited from handling voter registration applications or conducting voter registration and list maintenance activities.
 - 6.4.2 Complete a training course provided by the Secretary of State.
- 6.5 The county clerk must arrange for a criminal background check on a supervisor judge and each staff member conducting voter registration activities.
- (a) The criminal background check must be conducted by or through the Colorado Bureau of Investigation, the county sheriff's department in accordance with section 24-72-305.6(3), C.R.S., or similar state or federal agency.
 - (b) A person convicted of an election offense or an offense containing an element of fraud may not:
 - (1) Handle voter registration applications or conduct voter registration and list maintenance activities; or
 - (2) Have access to a code, combination, password, or encryption key for the voting equipment, ballot storage area, counting room, or tabulation workstation.

Amendments to Rule 7.1.1 (concerning mail ballot plans for elections conducted by the county clerk and recorder):

- 7.1.1 The county clerk must submit a mail ballot plan to the Secretary of State by email no later than 90 days before every election. The county clerk must submit with the mail ballot plan the voter instructions and secrecy sleeve that the clerk intends to use in the election.

Amendments to Rule 7.2.3(c) (concerning ballots and ballot packets for elections conducted by the county clerk and recorder):

- (c) In coordinated elections, the county clerk must mail ballots to all active eligible electors of each political subdivision.

[The last sentence of Current Rule 7.2.3(c) moved to New Rule 4.1.3.]

Amendments to Rule 7.2.4(2)(b) and (c); numbering corrections:

- (A) If the county mails its own ballots, the county clerk must remove all voided ballots before mailing.
- (B) If the county processes the change to the elector's record after it mails ballots, the county must count the first ballot returned by the elector in accordance with section 1-7.5-107(6), C.R.S., except where an elector changed his or her affiliation, the county must count the ballot issued for the elector's new party affiliation.

New Rule 7.2.5 and 7.2.6 (concerning mail ballot and ballot packets):

- 7.2.5 Effective January 1, 2015, each mail ballot return envelope and mail ballot instruction must include a statement informing voters that it is a violation of law to drop off more than ten ballots in any election.
- 7.2.6 Effective January 1, 2015, each mail ballot return envelope must include the following: "For third party delivery: I am voluntarily giving my ballot to (name and address) for delivery. I have marked and sealed my ballot in private and have not allowed any person to observe the marking of the ballot, except for those authorized to assist voters under state or federal law."

Amendments to Rule 7.4.6:

- 7.4.6 Upon receipt of the ballot, election judges must verify the signature on the affidavit under Rule 7.8. After the signature on the affidavit has been verified, a bipartisan team of election judges must duplicate the ballot following the procedures outlined in Rule 18. Duplicating judges must not reveal how the elector has cast his or her ballot.

[Rule 7.4.7, concerning emergency ballot transmission, is repealed (this information is currently addressed by section 1-7.5-115, C.R.S.)]

New Rule 7.5.1(c) and (d) concerning receipt and processing of ballots:

- (c) Signage at each drop-off location must inform voters that it is a violation of law to drop off more than ten ballots in any election.
- (d) The minimum number of drop-off locations must be open during reasonable business hours as defined in Rule 7.8.1(a) and from 7:00 a.m. through 7:00 p.m. on election day.

New Rule 7.5.7 concerning disassociating voted ballots from mail ballot return envelopes:

- 7.5.7 After election judges verify the elector's eligibility and signature, the county clerk must dissociate and segregate the mail ballot return envelope from the secrecy sleeve and a voted ballot in a manner that ensures no person is able to determine how an individual voted.

[Current Rule 7.5.7 is renumbered as Rule 7.5.8]

Amendments to Current Rule 7.5.8:

- 7.5.9 The county clerk must dissociate any batch number that could trace a ballot back to the specific voter who cast it from the counted ballots or any reports generated by the tabulation software no later than the final certification of the abstract of votes cast.

New Rule 7.5.10 concerning ballots received by the wrong county:

- 7.5.10 If an elector delivers a ballot to the wrong county, that county must date stamp the ballot envelope and forward it to the correct county. The correct county must treat the ballot as received as of the date and time of the date stamp.

New Rule 7.6 (amended and relocated current Temporary Rule 7.13; adopted on 6/24/2014):

7.6 Ballot returned in unofficial envelope

- 7.6.1 If the county timely receives a mail ballot from an eligible elector in an envelope other than the official ballot return envelope for that particular election, the county must contact the elector in writing within three calendar days of receiving the ballot but no later than two calendar days after election day. The county must use the letter and affidavit prescribed by the Secretary of State and keep a copy as part of the official election record. If the county receives the completed affidavit no later than the eighth day after election day, the county must count the ballot.

[Current Rules 7.6 through 7.7.8 are renumbered accordingly]

New Rule 7.8.9 concerning voter service and polling centers:

- 7.8.9 Signage at each voter service and polling center must indicate that it is a violation of law to drop off more than ten ballots in any election.

[Current Rule 7.8 is renumbered as Rule 7.9]

Amendments to Current Rule 7.9:

- 7.10 The county clerk must complete an accessibility survey for all drop-off and voter service and polling center locations annually before designating a location for use, and no later than 90 days before an election, the county clerk must designate drop-off locations and voter service and polling centers.

- 7.10.1 For the first survey of a location, the county clerk must complete the full ADA Checklist for voter service and polling centers. The county clerk must complete the Annual Voter Service and Polling Center Accessibility Survey form for each location designated for use in an election year after the initial survey is completed. [Section 1-5-703, C.R.S.]
- 7.10.2 If a location fails to meet the minimum accessibility requirements outlined in the ADA Checklist, the county clerk must develop a barrier removal plan outlining the modifications that the county clerk will implement to bring the site into compliance. The county clerk must indicate on the survey whether the modifications are temporary or permanent.
- 7.10.3 The Secretary of State may deny an application for accessibility grant funds if a county clerk fails to assess locations, timely file complete accessibility surveys, or develop and implement necessary barrier removal plans in accordance with this Rule. The Secretary will conduct site visits to assess compliance and identify accessibility barriers. The Secretary will seek injunctive action or other penalties under section 1-1-107(2)(d), C.R.S., as necessary to remedy violations of this Rule.

[Current Rule 7.10 is renumbered as Rule 7.11]

Amendments to Current Rule 7.10.3:

- 7.11.3 Every voter service and polling center designated by the county clerk must meet the minimum security procedures for transmitting voter registration data as outlined in section 1-5-102.9, C.R.S., and Rule 2.16.

[Renumbering and amendments to Current Rules 7.11 and 7.12:]

7.12 Assisting voters with disabilities in a voter service and polling center

- 7.12.1 The designated election official must post a sign at the voter service and polling center that states:

NOTICE

VOTING ASSISTANCE FOR ELECTORS WITH DISABILITIES

Colorado law protects a voter's legal right to assistance in voting if assistance is needed because of a disability.

- 1. If you require assistance, please inform an election judge.*
- 2. Any person, including an election judge, may assist you.*
- 3. If you select a person other than an election judge, he or she must complete a*

Voter Assistance Form, which includes an oath that states:

I, ..., certify that I am the individual chosen by the elector to assist the elector in casting a ballot. I further certify that I will not in any way attempt to persuade or induce the elector to vote in a particular manner, nor will I cast the elector's vote other than as directed by the elector I am assisting.

4. *The person you select may provide any assistance you need, including entering the voting booth, preparing the ballot, or operating the voting machine.*
5. *The person assisting you may not seek to persuade you or induce you to vote in a particular manner.*
6. *The election judge must record the name of each voter who receives assistance and the name of the person who provides assistance on the signature card.*

7.12.2 If a voter has spoiled two ballots and requests a third ballot, an election official must offer assistance in voting procedures and casting the ballot.

7.13 Voter history

7.13.1 After the canvass, the designated election official must give vote credit to each voter who voted in the election.

7.13.2 If the voter history records do not match the number of voters who voted at that election, the designated election official must ensure the following:

- (a) Each voter received credit for voting; and
- (b) All signature cards are accounted for.

7.13.3 All research concerning discrepancies must be explained and documented.

[Current Rule 10.10 is relocated and incorporated into New Rule 7.13 as shown above]

7.14 Reimbursement to counties for state ballot measure elections. No later than 90 days after an election, the county must submit a completed request for reimbursement under section 1-5-505.5, C.R.S. The county must submit the request using the form provided by the Secretary of State.

[Current Temporary Rule 7.13 is amended and relocated to New Rule 7.6]

Amendments to Rule 8.6:

8.6 A watcher may not:

8.6.1 Personally interrupt or disrupt the processing, verification, and counting of any

ballots or any other stage of the election.

[Current rules 8.6.2 through 8.6.7 are retained; unaltered. New Rules 8.6.8 through 8.6.10 follow:]

8.6.8 Attempt to determine how any elector voted.

8.6.9 Disclose or record any confidential voter information as defined in section 24-72-204(8), C.R.S., that he or she may observe.

8.6.10 Disclose any results before the polls have closed.

Amendments to Rule 9

Rule 9. Voting Challenges

9.1 Challenging an in-person voter

9.1.1 Under Section 1-9-201, C.R.S., an election official, watcher, or eligible elector of the precinct may challenge an elector's right to vote. A person whose eligibility is challenged while voting in-person, must be offered a regular ballot by an election judge if the person satisfactorily answers the applicable challenge questions specified in section 1-9-203, C.R.S., and this Rule. If the person challenged provides unsatisfactory answers or refuses to answer the challenge questions, an election judge must offer the person a provisional ballot.

9.1.2 Citizenship. The election judge must ask the elector, "Are you a citizen of the United States?"

9.1.3 Residency. The election judge must ask the elector the following questions:

(a) "Will you have resided in Colorado for the 22 days before election day?"

(b) "Do you reside at the address stated in your voter registration record?"

(c) "Have you been absent from Colorado during the past 22 days?" If the elector responds that he or she was absent during the 22-day period, the election judge must also ask the following questions:

(1) "Have you been absent for a temporary purpose with the intent of returning, or did you intend to remain outside Colorado?"

(2) "While you were absent, did you consider Colorado to be your home or did you maintain a home or domicile elsewhere?"

(3) "While you were absent, did you vote in any other state or territory of the United States?"

- 9.1.4 Age. The election judge must ask the elector, "Will you be 18 years of age or older on election day?"
- 9.2 If an individual challenges a mail ballot under section 1-9-207, C.R.S., the election judge must forward the ballot to two other election judges of different political party affiliations who must review the elector's eligibility to vote.
- 9.2.1 If both election judges determine the elector is not eligible under section 1-9-207, C.R.S., the judges must follow the procedures in section 1-7.5-107.3(2), C.R.S.
- 9.2.2 If both election judges determine the elector is eligible and that elector's signature is valid, the election judges must count the elector's ballot.

Amendments to Rule 10:

Rule 10. Canvassing and Recount

[Current Rule 10.1 is relocated to New Rule 10.2]

[New Rule 10.1 includes relocated portions of Current Rules 10.3, 10.4, and 10.5 as shown below]

- 10.1 Precanvass accounting
- 10.1.1 Detailed Ballot Log. The designated election official must keep a detailed ballot log that accounts for every ballot issued and received beginning when ballots are ordered and received. The election officials must reconcile the log at the conclusion of each workday.
- 10.1.2 Daily voter service and polling center ballot accounting. The designated election official must supply each polling location with a Statement of Ballots Form. Election judges must record the following information on a separate statement of ballots form for each day that the polling location is open:
- (a) The name or number of the polling location;
 - (b) The number of ballots provided to or printed on-demand at the polling location;
 - (c) The number of ballots cast;
 - (d) The number of unvoted ballots;
 - (e) The number of damaged or spoiled ballots;
 - (f) The number of voted provisional ballots; and

- (g) The date.

10.1.3 After a polling location closes for the day election judges must complete the following tasks:

- (a) Reconcile the total number of voted ballots with the number of voters who voted.
- (b) Verify that the total number of voted ballots, spoiled or damaged ballots, provisional ballots, and unvoted ballots is the same as the number of total ballots supplied to or printed at the polling location.
- (c) Reconcile the number of people who signed signature cards to the total number of ballots cast.
- (d) Provide a written explanation of any discrepancy in the numbers on the Statement of Ballots form, (for example, the voter signed in but left the polling location without voting, etc.).

10.1.4 After the voter service and polling center closes on election night, election judges must return the completed Statement of Ballots form for each day the location was open along with all voted ballots to one of the election offices designated in the mail ballot plan.

10.1.5 Designated Election Official's disposition of forms

- (a) The designated election official must review the Statement of Ballots forms for completion and accuracy.
- (b) If the designated election official or the canvass board discovers a problem with a Statement of Ballots form that cannot be easily resolved, they may contact the election judges for an explanation or correction.

[Current Rules 10.1 and 10.9 are amended and renumbered as New Rule 10.2 as follows:]

10.2 Appointment to the Canvass Board

10.2.1 In all cases, the canvass board must consist of an odd number of members, and each member has equal voting rights.

10.2.2 For a partisan election, each major party may have no more than two representatives on the canvass board. The board must include an equal number of representatives from each major party, unless a major party fails to certify representatives for appointment.

10.2.3 Each major party representative on the canvass board must be registered to vote in the county where the representative will serve and affiliated with the party he or

she represents.

10.2.4 A candidate for office and members of the candidate's immediate family may not serve on the canvass board.

10.2.5 Appointment of Canvass Workers. The designated election official may appoint canvass workers to help prepare and conduct the canvass.

[Current Rules 10.2 and 10.12 are amended renumbered as New Rule 10.3 as follows:]

10.3 Duties of the Canvass Board

10.3.1 The canvass board must make its determinations by majority vote in accordance with section 1-10-101.5(1)(c), C.R.S.

10.3.2 The canvass board's duties are to:

- (a) Conduct the canvass in accordance with section 1-10-101.5, C.R.S., including:
 - (1) Account and balance the election and certify the official abstract of votes;
 - (2) Reconcile the number of ballots counted to the number of ballots cast; and
 - (3) Reconcile the number of ballots cast to the number of voters who voted by reviewing the reconciled detailed ballot logs and Statement of Ballots.
- (b) Observe the post-election audit in accordance with section 1-7-514(4), C.R.S., and Election Rule 11.3.3(k);
- (c) In coordination with the county clerk, investigate and report discrepancies found in the audit under section 1-7-514(2), C.R.S.; and
- (d) Conduct any recount in accordance with section 1-10.5-107, C.R.S., and this Rule. The canvass board's role in conducting a recount includes selecting ballots for the random test, observing the recounting of ballots, and certifying the results.

10.3.3 If the board identifies a discrepancy in a Statement of Ballots form, the board may review the particular ballots at issue to identify, correct, and account for the error.

10.3.4 The canvass board may not perform duties typically reserved for election judges, including:

- (a) Determining voter intent;
- (b) Evaluating voter eligibility; and
- (c) Requesting new logs or reports that were not created to conduct the election.

10.3.5 Role of Watchers. Watchers appointed under section 1-10-101(1)(a), C.R.S., may observe the board while it performs its duties, subject to Rule 8.

Current Rule 10.3 is amended and renumbered as New Rule 10.1.1.

Current Rules 10.4 and 10.4.1 are amended and renumbered as New Rule 10.1.2.

Current Rule 10.4.2 is amended and renumbered as New Rule 10.1.3.

Current Rule 10.5 is amended and renumbered as New Rule 10.1.4.

Current Rules 10.6, 10.7.2(e)-(7) and 10.11 are amended and renumbered as New Rule 10.4 as follows:

10.4 Procedures for the day of the Canvass

10.4.1 The designated election official must provide the following information to the canvass board:

- (a) The name of each candidate, office, and votes received;
- (b) The number or letter of each ballot issue or question and votes received;
- (c) The number of ballots cast, including the number of accepted and rejected mail ballots;
- (d) The number of provisional ballots cast, including the number accepted and rejected;

[Current Rules 10.7.2(e)-(h) are relocated to this New Rule 10.4.1 (e)-(h) as follows:]

- (e) The number of mail ballots counted and the number rejected;
- (f) The number of in-person ballots counted;
- (g) The number of provisional ballots counted and the number rejected listed by each rejection code; and
- (h) The number of damaged and spoiled ballots.

10.4.2 Any written documentation regarding official results must be included as part of the canvass.

10.4.3 Written Complaints

- (a) The designated election official must provide the canvass board with any written complaint submitted by a registered elector about a voting device.
- (b) If the complaint is resolved, the designated election official must provide the details of the resolution.
- (c) If the complaint is pending resolution when the board meets to conduct the canvass, the designated election official must provide a proposal for how the issue will be resolved.

10.5 Official Abstract and Reporting to the Secretary of State

[Current Election Rule 10.7.1 is incorporated into New Rule 10.5.2.]

10.5.1 The official county abstract must include, by precinct or ballot style, where applicable:

- (a) The total number of active registered electors on election day;
- (b) The total number of registered electors (active and inactive) on election day;
- (c) The statement of votes counted by race and ballot question or issue; and
- (d) The total number of ballots cast in the election.

[Current Election Rules 10.7.2(e)-(h) are relocated to New Rules 10.4.1(e)-(h).]

10.5.2 The state portion of the abstract, which the county must use the format approved by the Secretary of State and transmit to the Secretary of State, must include:

- (a) The total number of active registered electors on election day;
- (b) The total number of registered electors (active and inactive) on election day;
- (c) The summary of votes cast for each state race and each ballot question or issue;
- (d) The total number of ballots cast in the election; and
- (e) The Canvass ENR upload required under Rule 11.10.4.

10.6 The County Abstract is the Official Permanent Record

10.6.1 The designated election official must keep all official canvass reports and forms as part of the official permanent election record.

10.6.2 Once the canvass board certifies the abstract it may not withdraw the certification. In the event of a recount, the canvass board may only affirm or amend the abstract.

Current Rule 10.9 is renumbered as New Rule 10.2.5.

Current Rule 10.10 is relocated and incorporated into New Rule 7.13

Current Rule 10.11 is renumbered as New Rule 10.4.3.

Current Rule 10.12 is renumbered as New Rule 10.3.5.

10.7 Role of the Secretary of State

10.7.1 As part of the Secretary's duties under section 1-1-107, C.R.S., the Secretary may provide guidance and investigate imperfections as outlined below.

10.7.2 The county clerk or the canvass board may request that the Secretary of State provide guidance and support to the canvass board in the exercise of the board's duties.

10.7.3 If, in the course of assisting a canvass board, the Secretary of State discovers an imperfection that the Secretary believes may affect the conduct of other canvass boards, the Secretary may provide notice to other counties regarding the nature of the imperfection.

[Current Rule 10.13.4 is repealed; this information is addressed by Article 10, of Title 1, C.R.S.]

10.8 Recount generally

10.8.1 The purpose of a recount is to re-tabulate the ballots.

10.8.2 For statewide or federal races, ballot issues or ballot questions, the county clerk must coordinate scheduling the recount through the Secretary of State's office so that it can ensure adequate observer coverage.

10.9 Recount cost estimates and reimbursements

10.9.1 A county must submit a request for reimbursement for a mandatory recount of a state or federal race or ballot measure using the Secretary of State approved form. The county may not request reimbursement for meals or normal overhead costs or

regular employee compensation. The county must include itemized costs for reasonable expenditures, including:

- (a) Mailings and notices;
- (b) Election judges, temporary staff, canvass board pay, and overtime pay; and
- (c) Copies and other office expenses related to the recount.

10.9.2 Requested recounts

- (a) The county clerk must provide an itemized cost estimate in accordance with section 1-10.5-106, C.R.S., upon submission of a formal request for a recount.
- (b) In preparing a cost estimate for a requested recount, the county must use the Secretary of State approved form. The estimate must include reasonable itemized costs for conducting the recount. The county may not request reimbursement for normal overhead costs.
- (c) The county clerk must submit a cost estimate to the Secretary of State when the clerk provides it to a requesting party.

10.10 In accordance with section 1-10.5-107, C.R.S., and Rule 10.3.2(d), the canvass board's role in conducting a recount includes selecting ballots for the test, observing the recounting of ballots, and certifying the results.

10.11 Watchers and observers during a recount

10.11.1 The Secretary of State may appoint official observers in any recount.

10.11.2 Each candidate or the candidate's watcher, media observers, and official observers, may be present and witness the recount in accordance with Rule 8.

10.11.3 The recount board must take the canvass board oath, assisting election judges must take the election judge's oath, and any person observing the recount must take a watcher's oath.

10.11.4 Complaints. A watcher may submit a complaint in writing to the county clerk or designee. Written complaints during a recount will be addressed in accordance with Rule 13.

10.12 Testing recount equipment

10.12.1 The canvass board must review the post-election audit before selecting the equipment for testing under section 1-10.5-102(3), C.R.S. To the extent feasible,

the board must select equipment for testing that was not included in the post-election audit.

10.12.2 The county clerk must test all optical scanners that will be used in the recount. The purpose of the test is to ensure that the tabulation machines are counting properly.

(a) The test deck must include 50 ballots or 1% of the total number of ballots cast in the election, whichever is greater, except that the total number of ballots tested may not exceed the total number of ballots comprising the county's test deck for the Logic and Accuracy test before the election. The ballots must be marked to test every option for the race or measure that will be recounted.

(1) In a mandatory recount, the canvass board must select the ballots to be tested from the county's test deck for the Public Logic and Accuracy test.

(2) In a requested recount, the person requesting the recount may mark up to 25 ballots. Any other candidate in the race may also mark up to 25 ballots. The canvass board must randomly select ballots from the county's test deck for the Public Logic and Accuracy test to ensure the minimum number of test ballots required by this Rule.

(b) Sworn judges or staff must hand tally the test ballots for comparison to the tabulation results.

(c) The test is limited to the race or measure that is recounted.

10.12.3 The county clerk must test the VVPAT records from 1% of the DREs that had votes cast for the race or measure being recounted.

(a) Sworn judges or staff must manually verify the results on the machines selected for the test.

(b) The test is limited to the race or measure that is recounted.

10.13 Counting ballots during a recount

10.13.1 In accordance with section 1-10.5-102(3)(b), C.R.S., if there are no discrepancies in the test under Rule 10.12, the recount must be conducted in the same manner as the ballots were counted in the election except as outlined in this Rule. If there are unresolvable discrepancies in the test, the recount must be conducted as a hand count under Rule 10.13.5.

10.13.2 A clear audit trail must be maintained throughout the recount including, but not

limited to, a log of seal numbers on transfer cases or ballot boxes, and the corresponding numbered seal for each transfer case or ballot box.

10.13.3 Ballots must be reviewed for voter intent using the standards in Rule 18.

- (a) Every over-vote or under-vote in the race(s) or measure(s) subject to the recount must be reviewed for voter intent under Rule 18.
- (b) The judges conducting the voter intent review may resolve the intent differently than the judges in the election.

10.13.4 To recount ballots using “Ballot Now”:

- (a) Back up the official election database.
- (b) Open Ballot Now with an unused Mobile Ballot Box (MBB) from the election and create a Ballot Now recount database.
- (c) Scan and resolve all recount ballots according to this Rule 10.
- (d) Save all recount Cast Vote Records to the MBBs after verifying that the number of ballots processed matches the number of ballots cast in the recount contest.
- (e) Open a new recount election in “Tally” and process the recount MBBs following the tabulation procedures above.
- (f) Compare recount results to original results and document any differences.
- (g) Backup the test database and the official recount database.

10.13.5 To recount ballots by hand count.

- (a) If the tabulation of the original count was conducted by hand count, the recount must be conducted by hand count.
- (b) Ballots must be counted in batches of 25 to ensure that the number of ballots recounted matches the number originally counted.
- (c) Votes must be counted by individual hash marks in 25-count sections by two different judges.

10.13.6 For tabulation of DREs, if there are no discrepancies in the test under Rule 10.12.3, the county clerk must upload the memory cards.

10.13.7 Tabulation of ballots cast must be completed through a precise, controlled process that ensures each container of ballots is retabulated and resealed before tabulation

of the next container begins.

10.13.8 The number of ballots counted according to the final results for that race or measure must be available during the recount for comparison purposes.

10.14 Canvass and reporting results for a recount

10.14.1 Totals of recounted ballots must be reported in summary form as follows:

- (a) Sum total of votes cast for each race or measure recounted, under-votes, and over-votes for each location;
- (b) The totals must be a combined total, not totaled by individual precincts or location, unless the tabulation system allows.

10.14.2 In accordance with section 1-10.5-107, C.R.S., and this Rule 10, the canvass board must amend, if necessary, and re-submit the abstract of votes cast.

Amendments to Current Rule 11.3.2 concerning voting systems:

11.3.2 Logic and Accuracy Test

[Current Rules 11.3.2(a) and (b) are amended and renumbered as New Rules 11.3.2(c)(1) and (2). Current Rules 11.3.2(c) and (d) are amended and renumbered as New Rules 11.3.2(a) and (b):]

- (a) The county clerk must conduct the public Logic and Accuracy Test no later than the 18th day before election day.
- (b) The county must ensure that the Logic and Accuracy Test is open to the extent allowable in accordance with section 1-7-509(2)(b), C.R.S. The county clerk may limit the number of representatives from each group because of space limitations.

Current Rules 11.3.2(a), (b), (e) through (g) are amended and renumbered as New Rules 11.3.2(c)(1) through (5):

(c) Preparing for the Logic and Accuracy Test

- (1) The county must prepare a sufficient number of test ballots that represent every ballot style and precinct, if applicable, allow for a sufficient number of ballots to mark every vote position for every candidate on every race including write-in candidates, allow for situations where a race may permit an elector to vote for two or more positions, where applicable, and include overvotes and undervotes for each race.

- (2) The county must create a Testing Board of one registered elector from each of the major political parties, if appointed. Testing Board members must be registered to vote in the county.

[Current Rules 11.3.2(c) and (d) are amended and renumbered as New Rules 11.3.2(a) and (b) as shown above.]

- (3) The county must provide at least 25 ballots that are clearly marked as test ballots to each Testing Board member.
- (4) Testing Board members must secretly vote their ballots following the instructions printed on the ballots and retain a record of the tally.
- (5) The Testing Board must test the ballots on each type of voting device used in the election and each type of ballot including audio ballots.

Current Rule 11.3.2(h) is amended and renumbered as New Rule 11.3.2(d):

(d) Conducting the Test

- (1) The county and Testing Board must observe the tabulation of all test ballots, compare the tabulation with the previously retained records of the test vote count, and correct any discrepancies before the device is used in the election.
- (2) The county must reset the public counter to zero on all devices and present zero tapes to the Testing Board for verification. For any device capable of producing or verifying the trusted build hash value (MD5 or SHA-1) of the firmware or software, the county clerk must verify and document the accuracy of the value for the device.
- (3) The county must make an appropriate number of voting devices available and the Testing Board may witness the programming and/or downloading of memory devices necessary for the test.
- (4) The Testing Board and designated election official must count the test ballots as follows:
 - (A) Optical Scanners:
 - (i) The Testing Board must count test ballots on at least one, but not more than five, central count optical scanners and at least one optical scanner

used at a voter service and polling center, if applicable.

- (ii) The Testing Board must randomly select the machines to test.
- (iii) The Testing Board must count the board and county's test ballot batches separately and generate reports to verify that the machine count is identical to the predetermined tally.

(B) DREs:

- (i) The Testing Board must count the test ballots on at least one, but not more than five, DREs.
- (ii) The Testing Board must randomly select the machines to test.
- (iii) The Testing Board must identify and test two ballots as audio ballots.
- (iv) The Testing Board must count at least 50 of the board's ballots and a random sampling of at least 25 of the county's test ballots separately and generate reports to verify that the machine count is identical to the predetermined tally. For DREs with VVPAT devices, the Testing Board must manually count the paper record to verify that the pre-determined totals of the Testing Board and county test ballot batches match the VVPAT total.

Current Rules 11.3.2(h)(4)(B)(v), (vi), and (viii) are re-codified as New Rules 11.3.2(e)(1), (2), and (3):

(e) Completing the Test

- (1) The county must keep all test materials, when not in use, in a durable, secure box. Each member of the Testing Board must verify the seals and initial the chain-of-custody log maintained by the county clerk. If the records are opened for inspection, at least two election officials must verify the seals and initial the chain-of-custody log.
- (2) After testing, the Testing Board must watch the county reset and seal each voting device.

- (3) The Testing Board and the county clerk must sign a written statement attesting to the qualification of each device successfully tested, the number of the seal attached to the voting device at the end of the test, any problems discovered, and any other documentation necessary to provide a full and accurate account of the condition of a given device.
- (4) After testing, the testing board must watch the county create a backup copy of the election database.
- (5) The county may not change the programming of any voting device after completing the logic and accuracy test for an election, except as required to conduct a recount or as authorized by the Secretary of State.

Amendments to Current rule 11.4:

- 11.4 The county must submit election setup records by regular mail no later than 5:00 p.m. on the seventh day before election day.

Amendments to Current rule 11.10:

- 11.10 Election Night Reporting (ENR). The county must report election night results for all primary, general, coordinated and recall elections.

11.10.1 A data entry county must program the election to support the exporting of election night results in accordance with the following upload requirements:

- (a) List contest names and candidate names exactly as provided on the certified list.
- (b) For counties that use the ES&S and Premier voting systems, arrange the contests in the order prescribed by section 1-5-403(5), C.R.S.
- (c) Capitalize candidate names (e.g., John A. Smith).
- (d) Present a precinct name as a ten-digit precinct number.
- (e) For counties that use the Hart voting systems, use the “Split_name” field for split precinct naming purposes.
- (f) Create a “Provisional” precinct.
- (g) Use only the party codes certified by the Secretary of State.
- (h) Do not include the party name or code in the candidate name field.

11.10.2 No later than 14 days before the election, a county must send the following information to the Secretary of State, at the address in Rule 11.6:

- (a) A data entry county must email a sample or “zero” file.
- (b) A manual entry county must send a list of all ballot content.

11.10.3 Manual entry counties must produce preliminary election results and upload them to the ENR system once counting is completed. All other counties must export or produce preliminary election results and upload them to the ENR system a minimum of three times on election night:

- (a) After the close of polls but no later than 8:00 p.m.
- (b) At or around 9:00 p.m.
- (c) The county must indicate that reporting is complete in the ENR system for election day after the county uploads the last results on election night.

11.10.4 The county must export or produce official election results, and check the appropriate box in the ENR system to indicate that the canvass upload is complete, not later than close of business of the first business day after the statutory deadline for completing the canvass.

Current Rule 12.1 is repealed. Rule 12 is reserved:

Rule 12. Recall

[Reserved]

Amendments to Current Rule 13:

Rule 13. Election and HAVA Complaints

13.1 Election complaint procedures

13.1.1 Any individual who personally witnesses a violation of the Uniform Election Code of 1992 may file an election complaint.

[Current Rule 13.1.2 is retained; unaltered]

13.1.3 Processing and docketing election complaints

- (a) Within three business days of receiving a complaint, the Secretary’s designee will review the complaint to determine if it satisfies Rule 13.1.2 and sufficiently alleges a violation of the Uniform Election Code of 1992.

- (1) If the complaint does not meet the requirements of Rule 13.1.3(a), the Secretary's designee will notify the complainant of the deficiency.
 - (2) If a complaint meets the criteria, the Secretary's designee will assign a complaint number, notify the complainant, and send a copy of the complaint to the person or entity alleged to have committed a violation.
- (b) After notification, the person or entity alleged to have committed the violation will have 15 business days to submit a written response to the Secretary of State's office.

[Current Rule 13.1.4 is retained; unaltered]

[Current Rules 13.1.5 (a), (b), and (d) are retained; unaltered.] Rule 13.1.5(c) is amended as follows:

13.1.5 Investigation

- (c) Depending on the violation alleged, the Secretary's designee may:
- (1) Review documents;
 - (2) Visit the county;
 - (3) Conduct interviews;
 - (4) Test equipment;
 - (5) Take other steps necessary; or
 - (6) Convene a hearing and take testimony from interested parties.

Amendments to Current Rule 13.1.6:

13.1.6 Resolution of election complaints

- (a) After an investigation and hearing, if applicable, the Secretary's designee will:
- (1) Dismiss the complaint as not supported by credible evidence;
 - (2) Refer the complaint to a prosecuting authority under Article 13 of Title 1, C.R.S.; or
 - (3) Find a violation, recommend a resolution, and forward the

recommendation for resolution to the Secretary of State.

[Current Rules 13.1.7 through 13.2.2 are retained; unaltered]

New Rule 13.2.3 through 13.2.5:

13.2.3 A complainant must allege a HAVA violation with particularity and refer to the section of HAVA that has been violated.

13.2.4 A complaint must be filed no later than one year from the date of either the occurrence of the alleged violation or of the election giving rise to the violation, whichever is later.

13.2.5 Each complaint must be in writing and notarized, signed, and sworn by the person filing the complaint.

Amendments to Current Rule 13.2.3:

13.2.6 Processing and docketing HAVA complaints

- (a) Within three business days of receiving a complaint, the Secretary's designee will review the complaint to determine if it satisfies Rules 13.2.2 through 13.2.5.
 - (1) If the complaint does not include a cover sheet the Secretary's designee will notify the complainant of the discrepancy.
 - (2) If a complaint meets the criteria, the Secretary's designee will assign a complaint number, notify the complainant, and send a copy of the complaint to the person or entity alleged to have committed a violation.
- (b) After notification, the person or entity alleged to have committed the violation will have 15 business days to submit a written response to the Secretary of State's office.
- (c) The Secretary's designee may consolidate two or more HAVA complaints.

Other than renumbering, Current Rule 13.2.4 is retained, unaltered]

Current Rule 13.2.5 is renumbered accordingly. The cross-reference included in Current Rule 13.2.5(a) (renumbered as Rule 13.2.8(a)) is amended as follows:

- (a) After the response period outlined in Rule 13.2.6, the Secretary's designee will investigate the complaint.

Amendments to Current Rules 13.2.6 and 13.2.7. New Rule 13.2.10:

13.2.9 Hearing and Resolution of HAVA complaints

- (a) If the complainant requests, the Secretary of State or his or her designee will hold a hearing.
- (b) After the investigation and hearing, if any, the Secretary's designee will:
 - (1) Dismiss the complaint as not supported by credible evidence;
 - (2) Refer the complaint to a prosecuting authority under Article 13 of Title 1, C.R.S.; or
 - (3) Find a violation, recommend a resolution, and forward the recommendation for resolution to the Secretary of State.

13.2.10 Alternative Dispute Resolution under section 1-1.5-105(2)(j), C.R.S.

- (a) If the Secretary of State does not resolve the complaint within 90 days of the date that it was filed and the complainant does not consent to an extension of time, the Secretary of State will transfer the complaint to the Office of Administrative Courts (OAC).
- (b) The Secretary of State will provide the record and any other materials from the proceedings to the OAC.
- (c) The Secretary of State will consider the initial determination by the OAC and issue a final determination within 60 days of the date the determination is received by the Secretary.

13.2.11 The Secretary of State's determination is a final agency action.

New Rule 13.2.12:

13.2.12 The Secretary of State may recover the costs of proceeding against any complainant that files a frivolous, groundless, or vexatious complaint.

New Rule 14.4.6 concerning Voter Registration Drives:

14.4.6 A VRD organizer or circulator may not highlight or otherwise mark the approved voter registration drive application form other than to write the VRD number and circulator information.

Amendments to Current Rule 15:

Rule 15. Preparation, Filing, and Verification of Petitions

Current Rule 15.1 is amended and renumbered as New Rule 15.2. Current Rules 15.5.7, 15.6,

and 15.8, are amended and re-codified as New Rule 15.1 as follows:

15.1 The following requirements apply to candidate, statewide initiative, recall, and referendum petitions, unless otherwise specified.

15.1.1 The Secretary of State or DEO will not accept or count additional signatures after proponents file the original petition or addendum.

15.1.2 Circulator affidavit

- (a) If a petition section does not have a completed circulator affidavit, the Secretary of State or DEO will reject the entire section.
- (b) If a petition section does not have a completed notary clause, or if the date of the notary clause differs from the date the circulator signed the affidavit, the Secretary of State or DEO will reject the entire section.

15.1.3 Verifying individual entries

- (a) Staff will check each individual entry against the information contained in SCORE.
- (b) Staff will create and maintain a master record of each accepted and rejected entry, along with the reason code for each rejected entry.
- (c) If an entry does not match the signor's current information in SCORE, staff must check the signor's information in SCORE as of the date the signor signed the petition.
- (d) Secretary of State or DEO staff will reject the entry if:
 - (1) The name on the entry is not in SCORE;
 - (2) The middle initial or middle name on the entry does not match the middle initial or middle name in SCORE;
 - (3) The address on the entry does not match the address in SCORE;
 - (4) The address on the entry is a post office box;
 - (5) The entry is incomplete;
 - (6) The signer completed the entry before the designated election official approved the petition format;
 - (7) The signer was not an eligible elector at the time he or she completed the entry;

- (8) The signer completed the entry after the date on the circulator affidavit;
 - (9) Evidence exists that some other person assisted the signer in completing the entry but no statement of assistance accompanies the entry;
 - (10) The name and signature on the entry is illegible and cannot be verified in SCORE;
 - (11) The entry is a duplicate of a previously accepted entry on the same petition; or
 - (12) For a candidate petition where an elector may sign only one petition for the same office, the entry is a duplicate of a previously accepted entry on a previously filed petition for the same office.
- (e) Secretary of State or DEO staff will accept the entry if:
- (1) The name on an entry matches or is substantially similar to the information in SCORE, or if the signature on an entry is a common variant of the name;
 - (2) A middle initial or middle name is present on the entry but not in SCORE, or present in SCORE but not on the entry;
 - (3) A name suffix is present on the entry but not in SCORE, or present in SCORE but not on the entry; or
 - (4) The address on the entry is missing an apartment letter or number or a street direction.

Current Rules 15.1 and 15.2 are amended and renumbered as New Rules 15.2 and 15.3 as follows:

15.2 Petition entity license, registration, filing, and circulation

15.2.1 A petition entity that intends to pay petition circulators must obtain a petition entity license, pay a fee, and register with the Secretary of State before circulating petitions. The license application must include:

- (a) The petition entity's name, address, telephone number, and email address;
- (b) The designated agent's name; and
- (c) An affirmation that the designated agent has read and understands Article 40 of Title 1, C.R.S., and has completed the Secretary of State's circulator

training program.

15.2.2 Before compensating a circulator, the designated agent must register with the Secretary of State by submitting a signed form that includes a list of the proposed initiatives the petition entity will circulate.

15.2.3 If a petition entity fails to register a proposed initiative over any two-year period, the license expires. The Secretary of State will notify a petition entity that its license has expired within 30 days after the date of expiration.

15.2.4 A petition entity may renew an expired license without a fee by submitting a new license application.

Current Rule 15.2 is repealed. Subsequent Rules are renumbered accordingly and otherwise amended as follows:

15.3 Statewide initiative petition circulation

15.3.1 Petition circulation may begin after the title board's final decision, including disposition of any rehearing motion, after the time for filing a rehearing motion, and after the Secretary of State has approved the petition format. If an appeal is filed with the Supreme Court, the six-month period specified in section 1-40-108(1), C.R.S., begins on the date the petition is first signed or on the date the Supreme Court's decision becomes final, whichever is first. Signatures gathered outside of this period are invalid.

15.3.2 The petition circulator must provide a permanent residence address on the circulator affidavit. If the circulator is not a permanent Colorado resident, the circulator must also provide the Colorado address where he or she temporarily lives.

(a) For purposes of Article 40 of Title 1, C.R.S., and this Rule, a circulator's permanent "residence" or "domicile" means his or her principal or primary home or place of abode in which a circulator's habitation is fixed and to which the circulator, whenever absent, has the present intention of returning after a departure or absence, regardless of the duration of the absence. A permanent "residence" or "domicile" is a permanent building or part of a building and may include a house, condominium, apartment, room in house, or mobile home. Except as provided in paragraph (b) of this Rule, a vacant lot, business address, or post office box is not a permanent "residence" or "domicile". (Sections 1-2-102(1)(a)(i) and 1-40-121(1)(b), C.R.S.)

(b) A homeless circulator must provide the address or location where he or she is living the date the affidavit is signed. The circulator must provide a physical location; a post office box may not be provided.

- (c) For the purposes of sections 1-40-106(4)(b), 1-40-111(3)(a), 1-40-121(2)(a), and 1-40-135(2)(c), C.R.S., a circulator's permanent residence address that does not comply with this Rule 15.4.2 is a "false address".

15.3.3 Proponents may file a petition or addendum only once, and may not supplement additional signatures after filing the petition or addendum, even if the additional signatures are offered before the deadline to submit the original petition or addendum.

15.4 Statewide initiative petition receipt by Secretary of State

15.4.1 The Secretary of State will not accept a petition that lists proponents other than those authorized by law.

[Current Rules 15.5.2 through 15.5.6 are renumbered accordingly but retained unaltered]

[Current Rule 15.5.7 moved to New Rule 15.1.1]

[Current Rule 15.6 is amended and renumbered as New Rule 15.1.2.]

15.5 Statewide initiative petition verification

15.5.1 Verification by random sample.

15.5.2 Preliminary count and random number generation.

- (a) After counting the entries on each petition section, Secretary of State staff will enter the petition identification number, the petition section number, the page number, and the number of entries on the page into the database.
- (b) Staff will then create a record for each entry that contains the petition identification number, petition section number, page number, and the entry number. Staff will tally the total number of entries.
- (c) If the number of entries is less than the total number of signatures required to certify the measure to the ballot, the Secretary of State will issue a statement of insufficiency.

15.5.3 Random sample. The database will generate a series of random numbers equal to 4,000 signatures or five percent of the total number of signatures, whichever is greater. Staff will check the validity of the random signatures in accordance with this Rule. Staff will maintain a master record of each accepted and rejected entry, along with the reason code for each rejected entry.

[Current Rule 15.8 is amended and renumbered as New Rule 15.1.3.]

15.6 Curing insufficient statewide initiative petitions

- 15.6.1 If petition proponents submit additional signatures within the permitted time, Secretary of State staff will verify the additional signatures in accordance with this Rule 15.
- 15.6.2 If the Secretary of State found the original submission insufficient based on the random sample verification, staff will add the number of additional valid signatures to the number of projected valid signatures in the original submission.
- (a) If the new projected number of valid signatures equals 110% or more of the required signatures, the Secretary of State will issue a statement of sufficiency.
 - (b) If the new projected number of valid signatures equals more than 90% but less than 110% of the required signatures, staff will verify all previously submitted signatures. Staff will add the total number of valid signatures in the original petition to the number of additional valid signatures submitted in the addendum in order to determine sufficiency.
- 15.6.3 If the initial verification was of every signature, staff will add the number of additional valid signatures to the number of valid signatures in the original submission in order to determine sufficiency.
- 15.6.4 Staff will issue a new statement of insufficiency or sufficiency that reports the total number of valid signatures submitted.

[Current Rule 15.10 is repealed]

15.7 Referendum petitions

- 15.7.1 This Rule applies to statewide referendum petitions under Article V, Section 1 (3) of the Colorado Constitution.
- 15.7.2 Except where this Rule states otherwise, any statutory or constitutional provision that applies specifically to initiative petitions also applies to referendum petitions.
- 15.7.3 Proponents may submit a referendum petition to the Secretary of State for approval at any time after the General Assembly has passed the bill. The Secretary of State will not issue final approval of the referendum petition form until the bill has become law under Article IV, Section 11 of the Colorado Constitution.
- 15.7.4 Each referendum petition section must consist of the following, in the order listed:
- [New Rules 15.7.4 (a)-(g), formerly numbered 15.11.5 (a)-(g), are retained; unaltered]*
- 15.7.5 A referendum petition section must include only the matters required by Article

40, Title 1, C.R.S., and this Rule, and no extraneous material.

- 15.7.6 The ballot title must consist of the title of the act on which the referendum is demanded, followed by the bill number, in substantially the following form, in which the underlined material is only for example:

“An Act concerning registration requirements for motor vehicles, and, in connection therewith, authorizing two- and five-year registration periods and authorizing discretionary vehicle identification number inspections, and making an appropriation, being House Bill No. 02-1010.”

- 15.7.7 When referendum is demanded on less than an entire Act of the General Assembly, the ballot title and submission clause must consist of the ballot title preceded by words in substantially the following form, in which the underscored material is only for example, and ending in a question mark:

“Shall Section 3 (concerning definition of terms) and Section 4 (eliminating licensing requirements for motor vehicle dealers) of the following Act of the General Assembly be approved:” The material in parentheses shall correctly and fairly summarize the subject or the effect of the portion of the Act referenced.

Amendments to Current Rule 16.1 concerning military and overseas voters (UOCAVA):

16.1 General Rules concerning voting by military and overseas electors

- 16.1.1 For the purposes of this Rule 16, elector means a covered voter as defined in section 1-8.3-102(2), C.R.S.
- 16.1.2 In accordance with the Help America Vote Act of 2002 and this Rule 16, each county clerk’s office must have a dedicated fax machine for the purpose of fax ballot transmission.
- 16.1.3 The county clerk must mail or electronically transmit a ballot to all active eligible electors. An elector who requests covered-voter status must submit an application affirming his or her eligibility to do so in accordance with section 1-8.3-102(2), C.R.S.
- 16.1.4 If an unregistered elector submits a Federal Write-in Absentee Ballot (FWAB) by the deadline set forth in sections 1-8.3-111 and 1-8.3-113, C.R.S., the FWAB is a timely application for registration and ballot request.
- 16.1.5 In accordance with sections 1-8.3-111 and 1-8.3-113, C.R.S., all ballots cast must be voted and mailed or electronically transmitted no later than 7:00 p.m. MT on election day, and received by the county clerk or the Secretary of State no later than the close of business on the eighth day after election day.

16.1.6 Ballots received by the Secretary of State

- (a) If the Secretary of State timely receives a ballot under section 1-8.3-113, C.R.S., and Rule 16, the Secretary of State will immediately notify the appropriate county clerk and forward the ballot by the most efficient means available no later than the next business day.
- (b) To ensure voter secrecy, any county notified that the Secretary of State has received a ballot must retain a minimum of ten voted ballots to be counted with the ballot received by the State.

16.1.7 The county clerk must send a minimum of one correspondence no later than 60 days before the Primary Election to each elector whose record is marked “Inactive.” The correspondence may be sent by email or mail and, at a minimum, must notify the electors of:

- (a) The status of the elector’s record and ballot request;
- (b) The upcoming federal elections;
- (c) How to update the elector’s mailing information and request a ballot; and
- (d) Any other information the county clerk deems appropriate.

16.1.8 No later than 45 days before an election, the county clerk must report to the Secretary of State the number ballots transmitted to military and overseas electors by the 45-day deadline.

16.1.9 Failure to meet the 45-day ballot transmission deadline in section 1-8.3-110, C.R.S.

- (a) If a county fails to meet the 45-day ballot transmission deadline provided for any state or federal election, the county clerk must immediately report the failure and reason for the failure to the Secretary of State.
- (b) The county clerk must provide a plan to the Secretary of State for complying with the deadline in the next state or federal election.
 - (1) The county must submit the plan to the Secretary of State no later than 60 days before the transmission deadline.
 - (2) The county must provide a weekly progress report on implementing the plan to the Secretary of State beginning 50 days before the transmission deadline.
 - (3) The county clerk must provide a daily progress report to the Secretary of State beginning five days before the transmission

deadline.

Amendments to Current Rule 16.2.1 concerning electronic transmission for military and overseas voters (UOCAVA):

16.2.1 In accordance with sections 1-8.3-110 and 1-8.3-113, C.R.S., an elector may request to receive and return his or her ballot by electronic transmission.

[Current Rules 16.2.1 (a) and (b) are retained; unaltered]

- (c) In accordance with section 1-8.3-113(1), C.R.S., an elector who chooses to receive his or her unvoted ballot by online ballot delivery may return his or her ballot by fax or email.
- (d) To return a voted ballot and self-affirmation by email, the elector must scan and return the documents as an email attachment.
- (e) If an elector requests to receive his or her ballot by electronic transmission, the county clerk must transmit the elector's ballot electronically for all covered elections until the elector requests otherwise or the elector's electronic transmission method becomes undeliverable.

Amendments to Rule 16.2.6:

16.2.6 Upon receipt of a voted ballot sent by electronic transmission, the county clerk must verify the elector's signature in accordance with Rule 7.8. After the affidavit has been verified, a bipartisan team of judges must duplicate the ballot. Duplicating judges must not reveal how the elector voted.

Amendments to Current Rule 18.3.2(d)(6) concerning sequence of resolution procedures for central count optical scanners:

- (6) The county must separately log the seal number of each box containing one or more valid write-in votes.

Amendments to Current Rule 21 concerning voting system standards for certification:

Current Rule 21.1.1 is moved to New Rule 1.1.1.

Current Rule 21.1.2 is amended and moved to New Rule 1.1.2.

Current Rule 21.1.3 is amended and moved to New Rule 1.1.3.

Current Rule 21.1.4 is amended and moved to New Rule 1.1.4.

Current Rule 21.1.5 is amended and moved to New Rule 1.1.7.

Current Rule 21.1.6 is amended and move to New Rule 1.1.11.

Current Rule 21.1.8 is repealed.

Current Rule 21.1.9 is amended and moved to New Rule 1.1.18.

Current Rule 21.1.10 moved to New Rule 1.1.19.

Current Rules 21.1.11 and 21.1.12 are repealed.

Current Rule 21.1.13 is amended and moved to New Rule 1.1.29.

Current Rules 21.1.14 through 21.1.17 are repealed.

Current Rule 21.1.18 is amended and moved to New Rule 1.1.36.

Current Rules 21.1.19 and 21.1.20 are repealed.

Current Rule 21.1.21 is amended and moved to New Rule 1.1.44.

21.1 Introduction

- 21.1.1 For Colorado purposes, no single component of a voting system, or device, meets the definition of a voting system except that nothing in this Rule requires the testing of an entire modified system if the Secretary of State determines in accordance with section 1-5-618, C.R.S., that a modification to any certified voting system requires testing for security and accuracy. Only the modification and any affected features or capabilities must be tested to ensure compliance with this Rule.
- 21.1.2 Sufficient components must be assembled to create a configuration that allows the system or modification as a whole to meet the requirements as described for a voting system in this Rule.
- 21.1.3 The certification of a voting system is not a requirement that a county purchase or lease all of the components of the voting system. Counties may choose to configure and use a subset of the certified voting system and may use the services of a vendor or third party to provide ballot definition and election programming of memory cards. Counties are not required to use a paper ballot tabulation device if they choose to manually tabulate the election results.

21.2 Certification Process Overview and Timeline

- 21.2.1 The voting system will be considered as a unit, and all components tested at once, unless the circumstances necessitate otherwise. Any change made to individual components of a voting system will require the entire voting system to be recertified unless the change is a modification that can be approved under section

1-5-618(1.5), C.R.S.

21.2.2 For a voting system to be certified, the voting system provider must successfully complete all phases of the certification process. The certification process includes: submission of a complete application, a documentation review, a public demonstration of the system, and functional testing.

21.2.3 The flow of each phase of certification is as follows:

- (a) Phase I – The voting system provider must submit an application and all documentation required in Rule 21.3. The Secretary of State will review the application and inform the voting system provider whether or not the application is complete. If the application is incomplete, the Secretary of State will identify the deficiencies and the voting system provider will have 30 days to remedy the deficiencies and make the application complete. When the application is complete, the Secretary of State will make arrangements with the voting system provider for a public demonstration.
- (b) Phase II – The Secretary of State will review the submitted documentation, VSTL reports from previous testing, and evaluations provided by other states.
- (c) Phase III – The Secretary of State will prepare a certification test plan. If a VSTL is contracted to test the voting system, the VSTL will work with the Secretary of State to prepare a certification test plan. The certification test plan will be presented to the voting system provider for review before execution of the test plan.
- (d) Phase IV– Upon receipt of the voting system provider’s agreement to the certification test plan, the Secretary of State or the VSTL will execute the test plan.
- (e) Phase V – The Secretary of State will review the test results and determine whether the voting system substantially meets the requirements for certification. Within 30 days of a decision, the Secretary of State will post the certification test report for the voting system on its website.

21.2.4 The Secretary of State will certify voting systems that substantially comply with the requirements in this Rule 21, Colorado Election Code, and any additional testing the Secretary of State finds necessary.

21.3 Application Procedure

21.3.1 Any voting system provider may apply to the Secretary of State for certification at any time.

- 21.3.2 A voting system provider that desires to submit a voting system for certification must complete the Secretary of State's "Application for Certification of Voting System" that is available on the Secretary of State's website.
- 21.3.3 The Secretary of State, in accordance with section 24-21-104(1)(a), C.R.S., will charge the voting system provider all direct and indirect costs associated with the testing of a voting system submitted for certification. The Secretary of State will provide an estimate of costs for certification testing before the certification process begins. In order to begin testing, the voting system provider must provide a written approval of the cost estimate. The voting system provider must pay all costs before the Secretary of state will issue a final determination.
- 21.3.4 Along with the application, the voting system provider must submit all documentation required in this Rule 21 in electronic format.
- 21.3.5 The vendor must identify any material it asserts is exempt from public disclosure under the Colorado Open Records Act, Part 2, Article 72 of Title 24, C.R.S., together with a citation to the specific grounds for exemption before beginning Phase III of the certification process.
- 21.3.6 The voting system provider must coordinate with the Secretary of State for the establishment of the trusted build. The voting system provider must submit all documentation and instructions necessary for the creation and guided installation of files contained in the trusted build which will be created at the start of functional testing and will be the model tested. At a minimum, the trusted build must include a compilation of files placed on write-once media, and an established hash file distributed from a VSTL or the National Software Reference Library to compare federally certified versions. The trusted build disks should all be labeled with identification of the voting system provider's name and release version.
- 21.3.7 All materials submitted to the Secretary of State must remain in the custody of the Secretary of State as follows:
- (a) For certified systems, until the certification is permanently revoked, or until no components of the certified system are used in the State of Colorado; and
 - (b) For systems that are not certified, a period of 25 months.

21.4 Voting System Standards

- 21.4.1 The 2002 Voting Systems Standards are incorporated by reference. Material incorporated by reference in the Election Rules does not include later amendments or editions of the incorporated material. Copies of the material incorporated by reference may be obtained by contacting the Federal Election

Commission, 999 E Street NW, Washington, DC, 20463, 800-424-9530. Copies are also available online at http://www.eac.gov/testing_and_certification/voluntary_voting_system_guidelines.aspx.

21.4.2 All voting systems must meet the 2002 Voting System Standards.

21.4.3 The voting system provider must document that all voting system software, hardware, and firmware meet all requirements of federal law that address accessibility for the voter interface of the voting system. These laws include:

- (a) The Help America Vote Act,
- (b) The Americans with Disabilities Act, and
- (c) The Federal Rehabilitation Act.

21.4.4 Independent Analysis. Before completion of functional testing, all voting system providers submitting a voting system must complete an independent analysis of the system, which includes:

- (a) An application penetration test conducted to analyze the system for potential vulnerabilities that may result from poor or improper system configuration, known or unknown hardware or software flaws, or operational weaknesses in process or technical countermeasures. The test must involve active exploitation of security vulnerabilities of the voting system, whether or not the vulnerabilities can be mitigated through compensating controls.
- (b) A source code evaluation conducted in accordance with Software Design and Coding Standards of the 2002 Voting System Standard or the most current version of the Voluntary Voting System Guidelines approved after January 1, 2008.
- (c) A complete report detailing all findings and recommended compensating controls for vulnerabilities and deficiencies identified.
- (d) The voting system provider must use at least one of the following to perform the independent analysis:
 - (1) An EAC approved VSTL;
 - (2) Testing conducted in another state; or
 - (3) Some combination of such VSTL and state testing that meets the requirements of this Rule.

- (e) The Secretary of State or VSTL will conduct a quality review of all work under this section. The review may include an examination of the testing records, interviews of the individuals who performed the work, or both. Review of testing records may be conducted at the VSTL, the state in which the testing was conducted, or at the site of any contractor or subcontractor utilized by another state to conduct the testing.
- (f) The Secretary of State may reject any evaluation if not satisfied with the work product and to require additional analysis to meet the requirements of section 1-5-608.5, C.R.S., and this Rule.

21.4.5 Functional Requirements

- (a) Functional requirements must address all detailed operations of the voting system related to the management and controls required to successfully conduct an election.
- (b) The voting system must provide for appropriately authorized users to:
 - (1) Set up and prepare ballots for an election;
 - (2) Lock and unlock system to prevent or allow changes to ballot design;
 - (3) Conduct hardware diagnostic testing;
 - (4) Conduct logic and accuracy testing;
 - (5) Conduct an election and meet requirements as identified in this Rule 21 for procedures for voting, auditing information, inventory control where applicable, counting ballots, opening and closing polls, recounts, reporting and accumulating results;
 - (6) Conduct the post-election audit; and
 - (7) Preserve the system for future election use.
- (c) The voting system must integrate election day voting results with mail and provisional ballot results.
- (d) The election management system must provide authorized users with the capability to produce electronic files including election results in either ASCII (both comma-delimited and fixed-width) or web-based format. The software must provide authorized users with the ability to generate these files on an “on-demand” basis. After creating such files, the authorized users must have the capability to copy the files to diskette, tape, CD-ROM or other media type.

- (1) Exports necessary for the Secretary of State must conform to a format approved by the Secretary of State. The format must be compatible with a commercially available data management program such as a spreadsheet, database, or report generator.
- (e) The voting system must include hardware or software to enable the closing of the voting location and disabling the acceptance of ballots on all vote tabulation devices to allow for the following:
 - (1) Printout of the time the voting system was closed.
 - (2) Printout of the public counter and protective counter upon closing the ballot casting functionality.
 - (3) Ability to print a report which must contain:
 - (A) Names of the offices;
 - (B) Names of the candidates and party, when applicable;
 - (C) A tabulation of votes from ballots of different political parties at the same voting location in a primary election;
 - (D) Ballot titles;
 - (E) Submission clauses of all initiated, referred or other ballot issues or questions;
 - (F) The number of votes counted for or against each candidate or ballot issue;
 - (G) Date of election (day, month and year);
 - (H) Precinct number (ten digit format);
 - (I) County or jurisdiction name;
 - (J) “State of Colorado”;
 - (K) Count of votes for each contest; and
 - (L) An election judge’s certificate with an area for judges’ signatures with the words similar to: “Certified by us”, and “Election Judges”. Space must allow for a minimum of two signatures.
 - (4) Votes counted by a summary of the voting location and by

individual precincts.

- (5) Ability to produce multiple copies of the unofficial results at the close of the election.
- (f) The election management system must ensure that an election setup may not be changed once ballots are printed and/or election media devices are downloaded without proper authorization and acknowledgement by the application administrative account. The application and database audit transaction logs must accurately reflect the name of the system operator making the change(s), the date and time of the change(s), and the “old” and “new” values of the change(s).
- (g) All DRE or BMD voting devices must use technology providing visual or auditory ballot display and selection methods used by people with disabilities.
- (h) All electronic voting devices supplied by the voting system provider and used at voter service and polling centers must have the capability to continue all normal voting operations and provide continuous device availability during a 2-hour period of electrical outage without any loss of election data.
- (i) The voting system must provide capabilities to protect the anonymity of ballot choices.
 - (1) All optical scanners, associated ballot boxes, and VVPAT storage devices must provide physical locks and procedures during and after the vote casting operation.
 - (2) All DRE devices must provide randomization of all voter choices and stored electronic ballot information during and after storage of the voters’ ballot selections.

21.4.6 Physical and design characteristics

[Rules 21.4.6 (a) and (b), formerly numbered 21.5.6 (a) and (b), are retained; unaltered]

21.4.7 Ballot Definition Subsystem

[Rules 21.4.7 (a)-(d), formerly numbered 21.5.7 (a)-(d), are retained; unaltered]

- 21.4.8 Trusted Build. The voting system must allow the operating system administrative account to verify that the software installed is the certified software by comparing it to the trusted build or other reference information.

21.4.9 Audit Capacity

[Rules 21.4.9 (a)-(d), formerly numbered 21.5.9 (a)-(d), are retained; unaltered]

21.4.10 Security requirements. All voting systems must meet the following minimum system security requirements:

- (a) The voting system must meet the following requirements to accommodate a general system of access by least privilege and role-based access control:
 - (1) Operating system administrative accounts may not have access to read or write data to the database;
 - (2) Operating system user/operator accounts must be able to be created that are restricted from the following aspects of the operating system:
 - (A) No access to system root directory;
 - (B) No access to operating system specific folders;
 - (C) No access to install or remove programs; and
 - (D) No access to modify other user accounts on the system.
 - (3) Application administrative accounts must have full access and rights to the application and database;
 - (4) Application user/operator accounts must have limited rights specifically designed to perform functional operation within the scope of the application. This user/operator must be restricted in the creation or modification of any user/operator accounts.
- (b) The voting system must meet the following requirements for network security:
 - (1) All network-applicable components of the voting system must have the ability to operate on a closed network dedicated to the voting system;
 - (2) All network-applicable components of the voting system must include the limited use of non-routable IP address configurations for any device connected to the closed network. For the purposes of this requirement, non-routable IP addresses are those defined in the RFC 1918 Address base; and
 - (3) The voting system must include provisions for updating security

patches, software and/or service packs without access to the open network.

- (c) All voting systems that use databases must: Have databases hardened to specifications developed by the voting system provider. Documentation included with the application must provide a detailed procedure for hardening according to current industry standards. Any government or industry guidelines adopted in whole, or in part, are to be identified in the documentation.
- (d) The voting system must meet the following requirements for operating system security:
 - (1) All voting systems must have all operating systems hardened to specifications developed by the voting system provider according to current industry standards. Documentation included with the application must provide a detailed procedure for hardening. Any government or industry guidelines adopted in whole, or in part, are to be identified in the documentation.
 - (2) The voting system provider must configure the voting system operating system of the workstation and server used for the election management software to the following requirements:
 - (A) The ability for the system to take an action upon inserting a removable media (auto run) must be disabled; and
 - (B) The operating system must only boot from the drive or device identified as the primary drive.
 - (3) The voting system provider must use a virus protection/prevention application on the election management server(s)/workstations which must be capable of manual updates without the use of direct connection to the internet.
- (e) The voting system must meet the following requirements for password security:
 - (1) All passwords must be stored and used in a non-reversible format;
 - (2) Passwords to the database must not be stored in the database;
 - (3) Password to the database must be owned and only known by the application;
 - (4) The application's database management system must require

separate passwords for the administrative account and each operator account;

- (5) The system must be designed in such a way to ensure that the use of the administrative account password is not required for normal operating functions;
 - (6) The system must allow users to change passwords;
 - (7) The use of blank or empty passwords must not be permitted at any time with the exception of a limited one-time use startup password which requires a new password to be assigned before the system can be used; and
 - (8) All voting systems must have all components of the voting system capable of supporting passwords of a minimum of eight characters, and must be capable of including numeric, alpha and special characters in upper case or lower case used in any combination.
- (f) All modules of the system must meet the 2002 voting system standards requirements for installation of software, including hardware with embedded firmware:
- (1) Where the system includes a feature to interpret and control execution using data from a script, code tokens, or other form of control data file separate from the source code, the human-readable source information must be made available as part of a source code review.
 - (2) Security features and procedures must be defined and implemented to prevent any changes of interpreted data files after the initial election testing of the final election definition Replacement of the interpreted data files with tested and approved files from the trusted build must be by authorized personnel before the election definition is finalized for an election.
 - (3) The introduction of interpreted data during execution must not be permitted unless defined as a predefined set of commands or actions subject to security review and the interpretation function provides security edits on input to prevent the introduction of other commands or the modification or replacement of existing code.
 - (4) The application must not allow users to open database tables for direct editing.
- (g) All voting systems must meet the following minimum requirements for

removable storage media with data controls:

- (1) All voting data stored that includes, ballot images, tally data and cast vote records must be authenticated and validated.
- (2) All non-voting data stored must be authenticated, encrypted, and validated.
- (3) All removable media, upon insertion on server and/or workstations hosting the elections management software, must automatically be scanned by antivirus software.

21.4.11 Telecommunications requirements

[Rules 21.4.11 (a)-(g), formerly numbered 21.5.11 (a)-(g), are retained; unaltered]

21.4.12 Voter-verifiable paper record requirements

[Rules 21.4.12 (a)-(d), formerly numbered 21.5.12 (a)-(d), are retained; unaltered]

21.4.13 Documentation Requirements

[Rules 21.4.13 (a)-(c), formerly numbered 21.5.13 (a)-(c), are retained; unaltered]

- (d) For the review of VSTL or other state testing in Rule 21.4.12(a) copies of all VSTL or state qualification reports, test logs and technical data packages must be provided to the Secretary of State.
 - (1) The voting system provider must execute and submit any necessary releases for the applicable VSTL, state or EAC to discuss any and all procedures and findings relevant to the voting system with the Secretary of State and allow the review by the Secretary of State of any documentation, data, reports, or similar information upon which the VSTL or other state relied in performing its testing. The voting system provider must provide a copy of the documentation to the Secretary of State.
 - (2) The voting system provider, the VSTL, the state or the EAC will identify to the Secretary of State any specific sections of documents for which they assert a legal requirement for redaction.

[Rules 21.4.13 (e)-(r), formerly numbered 21.5.13 (e)-(r), are retained; unaltered]

21.5 Testing preparation procedures

21.5.1 Voting system provider demonstration

[Rules 21.5.1 (a)-(p), formerly numbered 21.6.1 (a)-(p), are retained; unaltered]

- (q) Functional testing must be completed according to the phases identified in Rule 21.2.3.

[Rules 21.5.1 (r) and (s), formerly numbered 21.6.1 (r) and (s), are retained; unaltered]

- (t) The Secretary of State will maintain records of the test procedures in accordance with Rule 21.3.7. The records must identify the system and all components by voting system provider name, make, model, serial number, software version, firmware version, date tested, test number, test plan, requirements matrix, test team notes, and other supplemental information, and results of test. The test environment conditions must be described.

[Rules 21.5.1 (u), formerly numbered 21.6.1 (u), is retained; unaltered]

21.5.2 General testing procedures and instructions

[Rules 21.5.2 (a)-(i), formerly numbered 21.6.2 (a)-(i), are retained; unaltered]

21.6 Temporary use

- 21.6.1 If a voting system provider has a system that has not yet been approved for certification through the Secretary of State, the voting system provider or the designated election official may apply to the Secretary of State for temporary approval of the system to be used for up to one year.

- 21.6.2 Upon approval of temporary use, a jurisdiction may use the voting system, or enter into a contract to rent or lease the voting system for a specific election upon receiving written notice from the Secretary of State's office. At no time may a jurisdiction enter into a contract to purchase a voting system that has been approved for temporary use.

- 21.6.3 Temporary use does not supersede the certification requirements or process, and may be revoked at any time at the discretion of the Secretary of State.

21.7 Decertification

- 21.7.1 If, after any time the Secretary of State has certified a voting system, it is determined that the voting system fails to substantially meet the standards set forth in this Rule 21, the Secretary of State will notify any jurisdictions in the State of Colorado and the voting system provider of that particular voting system that the certification of that system for future use and sale in Colorado is to be withdrawn.

21.7.2 Certification of a voting system may be revoked or suspended at the discretion of the Secretary of State based on information that may be provided after the completion of the initial certification. This information may come from any of the following sources:

[Rules 21.7.2 (a)-(i), formerly numbered 21.8.2 (a)-(i), are retained; unaltered]

21.7.3 If any voting system provider, provides for use, installs, or causes to be installed an uncertified and decertified voting system or component, the Secretary of State may suspend use of the component or the voting system.

21.7.4 In accordance with section 1-5-621, C.R.S., the Secretary of State will hold a public hearing to consider the decision to decertify a voting system.

21.8 Modifications and reexamination. Any modification, change or other alteration to a certified voting system requires certification or review of the modification under section 1-5-618, C.R.S., unless the voting system provider decides to present the modified system for certification under this Rule.

21.9 Acceptance Testing by Jurisdictions

21.9.1 Whenever a jurisdiction acquires voting equipment, the jurisdiction must perform acceptance tests of the system before it may be used to cast or count votes at any election. The voting system must be operating correctly, pass all tests as directed by the acquiring jurisdiction's project manager or contract negotiator and must be identical to the voting system certified by the Secretary of State.

21.9.2 The voting system provider must provide all manuals and training necessary for the proper operation of the system to the jurisdiction.

21.9.3 The election jurisdiction must perform functional and programming tests for all functions of the voting system at their discretion.

21.10 Escrow of voting system software and firmware by voting system provider. The voting system provider must meet the requirement for software escrow per the following:

21.10.1 The voting system provider must place in escrow a copy of the election management software, firmware, and supporting documentation being certified with either the Secretary of State or an independent escrow agent approved by the Secretary of State. [Section 1-7-511, C.R.S.]

21.10.2 Within ten days of the voting system provider receiving notification of examination of voting equipment as part of the certification process, the voting system provider must arrange for the completion of escrow requirements as indicated by this Rule.

- 21.10.3 The voting system provider must sign a sworn affidavit that the election management software in escrow is the same as the election management software used in its voting systems in this state.
- 21.10.4 A complete copy of the certified election management software including any and all subsystems of the certified software will be maintained in escrow.
- 21.10.5 Any changes to current configurations or new installations must be approved through the certification program of the Secretary of State.
- 21.10.6 In addition to the requirements listed below, the voting system provider must include a cover/instructions sheet for any escrow material to include the voting system provider, address and pertinent contact information, software version, hardware version, firmware revision number, and other uniquely identifying numbers of the software submitted for certification.
- 21.10.7 Election management software source code, maintained in escrow, must contain internal documentation such that a person reasonably proficient in the use of the programming language can efficiently use the documentation to understand the program structure, control techniques, and error processing logic in order to maintain the source code should it be removed from escrow for any reason.
- 21.10.8 System documentation will include instructions for converting the escrowed source code into object code, organized and configured to produce an executable system, if warranted.
- 21.10.9 System documentation will include technical architecture design, analysis, detail design, testing and an installation and configuration guide.
- 21.10.10 A set of schematics and drawings on electronic vote casting and counting equipment purchased or in use by the county clerk must be filed with the Secretary of State.
- 21.10.11 All parties must treat as confidential the terms of this Rule including all escrow materials and any other related information that comes into their possession, control or custody in accordance with this section.
- 21.10.12 Copies of electronic media and supporting documentation for escrow within the Secretary of State will be sent to:
- Colorado Secretary of State
Attn: Voting Systems Specialist
1700 Broadway – Suite 200
Denver, CO 80290
- 21.10.13 Any cost of using an alternative third party escrow agent must be borne by

the voting system provider.



Statement of Justification and Reasons for Adoption of Temporary Rules

Office of the Secretary of State Election Rules 8 CCR 1505-1

September 10, 2014

New Rules: 2.1.5; 2.3.3; 2.12.2(a)(3); 2.12.4; 2.12.5; 2.12.6; 4.1.3; 5.4 through 5.6; 6.5(b); 7.2.5; 7.2.6; 7.5.1(c) and (d); 7.5.7; 7.5.10; 7.6; 7.8.9; 8.6.8 through 8.6.10; 9.2; 11.3.2(e)(4),(5); 13.2.3 through 13.2.5; 13.2.10; 13.2.12; 14.4.6; 16.2.1(e)

Amended Rules: Numerous amendments to Rules 1; 2; 4; 5; 6.4; 6.5; 7; 8.6; 9; 10; 11; 13; 15; 16.1; 16.2.1; 16.2.6; 18.3.2(d)(6); 21

Repealed Rules: 2.1.2; 2.1.6; 2.1.7; 2.2.3; 2.5.4; 2.10; 2.13.2(2); 2.13.4; 2.13.5; 5.2.2 through 5.8; 7.1.1(a); 7.4.7; 10.13.4; 11.3.2(e)(4) and (5); 11.10.1(b); 12 [reserved]; 15.2; 15.10; 15.11.3; 15.11.9; 16.1.4; 21.1.8; 21.1.11; 21.1.12; 21.1.14 through 21.1.17; 21.1.19; 21.1.20; 21.5.5(d)

In accordance with Colorado election law,¹ the Secretary of State finds that amendments and recodification of the election rules must be adopted and effective immediately to ensure the uniform and proper administration and enforcement of Colorado election laws.

Temporary adoption is necessary both to comply with law and to preserve the public welfare given the close proximity of the 2014 General Election. A public rulemaking hearing was conducted in accordance with the State Administrative Procedure Act² on August 14, 2014, to receive comment and testimony on the proposed rules. Adoption of the rules on a temporary basis is necessary to provide clear guidance to interested parties, including: county clerks, political parties, election judges, watchers, and electors.

For these reasons, and in accordance with the State Administrative Procedure Act, the Secretary of State finds that adoption and immediate effect of the amendments to existing election rules is imperatively necessary to comply with state and federal law and to promote public interests.³

¹ Sections 1-1-107(1)(c), 1-1-107(2)(a), 1-1.5-104(1)(e), C.R.S. (2013). The Secretary of State has the power “[t]o promulgate, publish, and distribute...such rules as [the Secretary] finds necessary for the proper administration and enforcement of the election laws” and “[t]he ‘Help America Vote Act of 2002’, 42 U.S.C. 15301-15545]...”

² Section 24-4-103(3)(a), C.R.S. (2013).

³ Section 24-4-103(3)(6), C.R.S. (2013).

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**State of Colorado
Department of Law
Office of the Attorney General**

Tracking number: 2014-00943

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

on 09/10/2014

8 CCR 1505-1

ELECTIONS

The above-referenced rules were submitted to this office on 09/10/2014 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 "DD", is written over a light blue rectangular background.

John W. Suthers

Attorney General

by Daniel D. Domenico

Solicitor General

September 30, 2014 14:02:50

Emergency Rules Adopted

Department

Department of Human Services

Agency

Food Assistance Program (Volume 4B)

CCR number

10 CCR 2506-1

Rule title

10 CCR 2506-1 RULE MANUAL VOLUME 4B, FOOD ASSISTANCE 1 - eff 10/01/2014

Effective date

10/01/2014

Tracking# 2014-00xxx
Emergency adoption 9/5/14, eff. 10/1/14

I:/14081201.doc_Submittal

(10 CCR 2506-1)

[Instructions: insert the following paragraph at the end of the Statement of Basis and Purpose.]

Revisions to Sections 4.207.3, 4.401.1, 4.407.1, and 4.407.3 through 4.407.31 were adopted on an emergency basis at the 9/5/2014 State Board meeting (Rule-making# 14-8-12-1), 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.

[Instructions: replace the following section.]

4.207.3 Benefit Allotment [Rev. eff. 10/1/14]

- 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 E. below.
- D. 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.
- E. 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 OCTOBER 1, 2014
1	\$194

2	\$357
3	\$511
4	\$649
5	\$771
6	\$925
7	\$1,022
8	\$1,169
EACH ADDITIONAL PERSON	+ \$146

HOUSEHOLD SIZE	MINIMUM MONTHLY ALLOTMENT EFFECTIVE OCTOBER 1, 2014
1-2	\$16

[Instructions: replace the following section.]

4.401.1 Gross Income Eligibility Determination [Rev. eff. 10/1/14]

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 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

[Instructions: replace the following section.]

4.401.2 Net Income Eligibility Determination [Rev. eff. 10/1/14]

- 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

[Instructions: replace the following section.]

4.407.1 Standard Deduction [Rev. eff. 10/1/14]

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, 2014	\$155	\$165	\$193	\$221

[Instructions: replace the following section.]

4.407.3 Excess Shelter Deduction [Rev. eff. 10/1/14]

- 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.

SHELTER DEDUCTION CAP	
Effective October 1, 2014	\$490

- 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 [Rev. eff. 10/1/14]

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, 2014	\$462

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, 2014	\$291

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, 2014	\$55

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, 2014	\$74

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

Phone: 303-866-4328

E-Mail: karen.dyke@state.co.us

(as amended)

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 1st. 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 and to remove prior year's standards.
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) and to remove prior year's standards.
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 and to remove prior year's standards.
4. Revise Section 4.407.1, "Standard Deduction," to incorporate the FFY15 standard deduction and to remove prior year's standards.
5. Revise Section 4.407.3, B, "Excess Shelter Deduction," to incorporate the FFY15 shelter deduction cap and to remove prior year's standards.

Initial Review 09/05/2014

Final Adoption 10/03/2014

Proposed Effective Date 10/01/2014

EMERGENCY Adoption 09/05/2014

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

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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		FFY15
Heating and Cooling Utility Allowance (HCUA)	Section 4.407.31, A, 4		\$462
Basic Utility Allowance (BUA)	Section 4.407.31, B, 3		\$291
One Utility Allowance (OUA)	Section 4.407.31, C, 3		\$55
Telephone Allowance	Section 4.407.31, D, 2		\$74

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: 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.

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.

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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.

Does the rule incorporate material by reference?

☐	Yes	☒	No

Does this rule repeat language found in statute?

☐	Yes	☒	No

If yes, please explain.

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

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.

Title of Proposed Rule: Food Assistance Federal Fiscal Year 2015 Standard Utility Allowance Update and Cost of Living Adjustments

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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 and remove prior year's standards	—	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 remove prior year's standards	—	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 remove prior year's standards	—	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 and remove prior year's standards	—	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 and remove prior year's standards	—	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 and remove prior year's standards	—	Yes	<u>X</u>	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 and remove prior year's standards	—	Yes	<u>X</u>	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 and remove prior year's standards	—	Yes	<u>X</u>	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 and remove prior year's standards	—	Yes	<u>X</u>	No

Title of Proposed Rule: Food Assistance Federal Fiscal Year 2015 Standard Utility Allowance Update and Cost of Living Adjustments

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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

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:

Household Size	130% Gross Income Level	200% Gross Income Level	165% Gross Income Level
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:

Household Size	130% Gross Income Level	200% Gross Income Level	165% Gross Income Level
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

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~~
EFFECTIVE OCTOBER 1, 2014	\$155	\$165	\$193	\$221

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.

SHELTER DEDUCTION CAP	
~~Effective October 1, 2012~~	~~\$469~~
~~Effective October 1, 2013~~	~~\$478~~
EFFECTIVE OCTOBER 1, 2014	\$490

- 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~~
EFFECTIVE OCTOBER 1, 2014	\$462

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~~
EFFECTIVE OCTOBER 1, 2014	\$291

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~~
EFFECTIVE OCTOBER 1, 2014	\$55

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~~
EFFECTIVE OCTOBER 1, 2014	\$74

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: 2014-00938

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

State Board of Human Services: #14-8-12-1: Food Assistance FFY 2015 Standard Utility Allowance Update and Cost of Living Adjustments

on 09/05/2014

10 CCR 2506-1

RULE MANUAL VOLUME 4B, FOOD ASSISTANCE

The above-referenced rules were submitted to this office on 09/09/2014 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.

September 17, 2014 15:09:08

John W. Suthers

Attorney General

by Daniel D. Domenico

Solicitor General

Terminated Rulemaking

Department

Department of Revenue

Agency

Taxpayer Service Division - Tax Group

CCR number

1 CCR 201-1

Tracking number

2014-00908

Termination date

09/25/2014

Reason for termination

noticed for wrong date. Will move to November hearing.

Calendar of Hearings

Hearing Date/Time	Agency	Location
10/31/2014 08:00 AM	Colorado Bureau of Investigation	690 Kipling Street, Lakewood, CO 1st floor conference room
11/03/2014 09:00 AM	Division of Real Estate	1560 Broadway, Suite 1250-C, Denver, CO
11/03/2014 09:00 AM	Division of Real Estate	1560 Broadway, Suite 1250-C, Denver, CO
11/03/2014 09:00 AM	Division of Real Estate	1560 Broadway, Suite 1250-C, Denver, CO
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11/03/2014 09:00 AM	Division of Real Estate	1560 Broadway, Suite 1250-C, Denver, CO
11/03/2014 09:00 AM	Division of Real Estate	1560 Broadway, Suite 1250-C, Denver, CO
11/04/2014 02:00 PM	Division of Labor (Includes 1103 Series)	Colorado Division of Labor 633 17th Street, Second Floor, Suite 200 Denver, CO 80202
11/04/2014 02:00 PM	Division of Labor (Includes 1103 Series)	Colorado Division of Labor 633 17th Street, Second Floor, Suite 200 Denver, CO 80202
11/05/2014 09:00 AM	Taxpayer Service Division - Tax Group	1375 Sherman St., Room 127, Denver, CO 80261
11/05/2014 09:00 AM	Taxpayer Service Division - Tax Group	1375 Sherman St., Room 127, Denver, CO 80261
11/05/2014 10:00 AM	Division of Insurance	1560 Broadway, Ste 850, Denver CO 80202
11/05/2014 10:00 AM	Division of Insurance	1560 Broadway, Ste 850, Denver CO 80202
11/05/2014 10:00 AM	Division of Insurance	1560 Broadway, Ste 850, Denver CO 80202
11/05/2014 01:00 PM	Division of Fire Prevention and Control	690 Kipling St. Lakewood, CO 80215 First Floor Conference Room
11/06/2014 09:00 AM	Division of Real Estate	1560 Broadway, Suite 1250-C, Denver, CO
11/06/2014 09:00 AM	Division of Real Estate	1560 Broadway, Suite 1250-C, Denver, CO
11/06/2014 09:00 AM	Division of Real Estate	1560 Broadway, Suite 1250-C, Denver, CO
11/06/2014 09:00 AM	Division of Real Estate	1560 Broadway, Suite 1250-C, Denver, CO
11/06/2014 09:00 AM	Division of Real Estate	1560 Broadway, Suite 1250-C, Denver, CO
11/07/2014 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
11/07/2014 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
11/12/2014 09:00 AM	Division of Workers' Compensation	633 17th St, Denver CO 80214
11/12/2014 09:00 AM	Division of Workers' Compensation	633 17th St. Denver, CO 80214
11/12/2014 10:00 AM	Colorado State Board of Education	CDE, State Board Room, 201 E. Colfax Avenue, Denver, CO 80203
11/12/2014 11:00 AM	Colorado State Board of Education	Colorado Department of Education, State Board Room, 201 E. Colfax Ave, Denver, CO 80203
11/12/2014 01:00 PM	Colorado State Board of Education	CDE, State Board Room, 201 E. Colfax Ave., Denver, CO
11/12/2014 01:30 PM	Colorado State Board of Education	Colorado Department of Education, State Board Room, 201 E. Colfax Ave., Denver, CO 80203
11/12/2014 02:00 PM	Colorado State Board of Education	Colorado Department of Education, State Board Room, 201 E. Colfax Ave., Denver, CO 80203
11/12/2014 02:30 PM	Colorado State Board of Education	Colorado Department of Education, State Board Room; 201 E. Colfax Ave, Denver, CO 80203
11/13/2014 08:30 AM	Colorado Parks and Wildlife (405 Series, Parks)	Burlington Community and Education Center, 340 S 14th St, Burlington, CO 80807
11/13/2014 08:30 AM	Colorado Parks and Wildlife (405 Series, Parks)	at Burlington Community and Education Center, 340 S 14th St, Burlington, CO 80807
11/13/2014 08:30 AM	Colorado Parks and Wildlife (405 Series, Parks)	Burlington Community and Education Center, 340 S 14th St, Burlington, CO 80807
11/13/2014 08:30 AM	Colorado Parks and Wildlife (405 Series, Parks)	Burlington Community and Education Center, 340 S 14th St, Burlington, CO 80807
11/13/2014 08:30 AM	Colorado Parks and Wildlife (406 Series, Wildlife)	Burlington Community and Education Center, 340 S 14th St, Burlington, CO 80807
11/13/2014 08:30 AM	Colorado Parks and Wildlife (406 Series, Wildlife)	Burlington Community and Education Center, 340 S 14th St, Burlington, CO 80807

Calendar of Hearings

Hearing Date/Time	Agency	Location
11/13/2014 08:30 AM	Colorado Parks and Wildlife (406 Series, Wildlife)	Burlington Community and Education Center, 340 S 14th St, Burlington, CO 80807
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11/13/2014 08:30 AM	Colorado Parks and Wildlife (406 Series, Wildlife)	Burlington Community and Education Center, 340 S 14th St, Burlington, CO 80807
11/13/2014 01:30 PM	Transportation Commission and Office of Transportation Safety	CO Department of Transportation Headquarters Auditorium, 4201 E. Arkansas Ave., Denver, CO 80222
11/14/2014 09:00 AM	Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)	303 East 17th Avenue, 7th Floor, Denver, CO 80203
11/18/2014 01:00 PM	Motor Vehicle Dealer Board	Department of Revenue offices, Entrance B, Room 110, Board Commission Meeting Room, 1881 Pierce Street, Lakewood, Colorado
11/18/2014 01:00 PM	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
11/24/2014 09:00 AM	Division of Professions and Occupations - State Electrical Board	1560 Broadway, Suite 1250-C, Denver CO 80202
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
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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 11:45 AM	Water Quality Control Commission (1002 Series)	Florence Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246
12/08/2014 01:30 PM	Water Quality Control Commission (1002 Series)	Florence Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246
01/12/2015 10:00 AM	Water Quality Control Commission (1002 Series)	Florence Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246