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Introduction

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

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

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

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

Notice of Proposed Rulemaking

Tracking number

2017-00570

Department

200 - Department of Revenue

Agency

204 - Division of Motor Vehicles

CCR number

1 CCR 204-10

Rule title

TITLE AND REGISTRATION SECTION

Rulemaking Hearing

Date

02/06/2018

Time

10:00 AM

Location

1881 Pierce Street Lakewood CO 80214 RM 110

Subjects and issues involved

The purpose of this rule is to establish vehicle registration periods and methods of assessing taxes and fees.

Statutory authority

42-1-204, 42-3-102, 42-3-103, 42-3-104, 42-3-106, 42-3-107, 42-3-112, 42-3-114, 42-3-115, 42-3-116, 42-3-201, 42-3-202, 42-3-203, 42-3-211, 42-3-301, 42-3-304, 42-3-306, 43-4-506(1)(k), 43-4-804(1)(a)(I), 43-4-805(5)(g)(I), 42-12-301, and 42-12-401 C.R.S.

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DEPARTMENT OF REVENUE

Division of Motor Vehicles – Title and Registration Section~~s~~

1 CCR 204-10

RULE 2. ~~PERIODIC MOTOR~~ ESTABLISHING VEHICLE REGISTRATION PERIOD

Basis: ~~The statutory bases for this regulation are~~ This rule is promulgated under the authority of sections 42-1-204, 42-3-102, 42-3-103, 42-3-104, 42-3-106, 42-3-107, 42-3-112, 42-3-114, 42-3-115, 42-3-116, 42-3-201, 42-3-202, 42-3-203, ~~42-3-210,~~ 42-3-211, 42-3-301, 42-3-304, 42-3-306, 43-4-506(1)(k), 43-4-804(1)(a)(I), 43-4-805(5)(g)(I), 42-12-301, and 42-12-401 C.R.S.

Purpose: The ~~following rules and regulations are promulgated~~ purpose of this rule is to establish ~~criteria for the periodic registration of motor vehicles~~ vehicle registration periods and methods of assessing taxes and fees.

1.0 Definitions

~~1.1 "CSTARS" means the Colorado State Titling and Registration System used for all titling and registration of vehicles in Colorado pursuant to 42-1-211, C.R.S.~~

~~1.2 "Department" means the Department of Revenue of this state acting directly or through its duly authorized officers and agents.~~

1.~~3~~1 "Registration Expiration Date" means the expiration of the applicable registration period required in sections 42-3-102, 42-3-114, 42-12-301, and 42-12-401, C.R.S.

~~1.4 "Transaction Date" means the date the vehicle was registered evidenced by the transaction date on the registration receipt issued when completed.~~

1.2 "Validation Tabs" means devices issued by the Department pursuant to section 42-3-201, C.R.S., that are affixed to a license plate pursuant to section 42-3-202, C.R.S., to indicate the year and month Registration Expiration Date.

2.0 ~~Validating Tabs and Number of License Plates~~ Evidence of Vehicle Registration Period

2.1 Evidence of a vehicle registration period is provided by the issuance of a license plate with Validation Tabs affixed to it and the Registration Expiration Date printed on the registration receipt. For vehicles not required to display Validation Tabs in accordance with section 42-3-201(7), C.R.S., the Registration Expiration Date is printed on the registration receipt.

2.~~1~~2 The Department will issue two Validation Tabs for each ~~License plate(s)~~ ~~that~~ ~~are~~ license plate required to display ~~validation tabs~~ Validation Tabs ~~shall be issued and display two validating tabs Validating Tabs issued by the Department;. one~~ One ~~validation tab~~ Validation Tab ~~to~~ indicates the ~~expiration~~ month of the Registration Expiration Date ~~month~~ and one ~~validation tab~~ Validation Tab ~~to~~ indicates the year of the Registration Expiration Date ~~year of expiration,. except for those types of plates that are exempt from displaying validation tabs in accordance with 42-3-201(7), C.R.S. validating tabs~~ Validation Tabs ~~shall~~ must be displayed on the license plate pursuant to 42-3-202(1)(b), C.R.S.

2.~~23~~ ~~Vehicles~~ A vehicle ~~shall be required to~~ must display two license plates unless exempted ~~from displaying two license plates~~ pursuant to sections 42-3-201(1)(a)(I) and (II), C.R.S., ~~License plates shall be issued for multi-year use when the Department issues validation tab indicating the vehicles registration expiration year and month~~ and must be replaced only when damaged, rendered unreadable, or when lost or stolen.

3.0 Procedure to Establish Registration ~~Cycle~~ Period and~~,~~ Method for Assessment of Fees and Taxes

3.1 A vehicle's registration period is established when the vehicle owner applies to register the vehicle in Colorado.

3.2 ~~An application for~~ A vehicle ~~registration received for a vehicle~~ not previously registered in Colorado ~~in the applicant's name~~ will be registered by vehicle class for the ~~time~~ period required by section 42-3-102, C.R.S.~~, for that class of vehicle~~. The ~~registration shall expire~~ Registration Expiration Date will be ~~on~~ the last day of the month at the end of each registration period.

3.~~2~~3 Specific ownership tax ~~shall~~ will be determined in accordance with sections 42-3-106 and 42-3-107, C.R.S. Registration fees ~~shall~~ will be determined in accordance with Title 42, articles 1, 3, and 12, and ~~42-3-304 and 42-3-306,~~ sections 43-4-506(1)(k), 43-4-804(1)(a)(I), and 43-4-805(5)(g)(I) C.R.S., and ~~shall~~ will be assessed and collected for each registration period. Registration fees and specific ownership tax ~~may~~ will not be exempted unless specifically exempted pursuant to Colorado Revised Statutes.

3.~~3~~4 Specific ownership taxes will be collected for the period the vehicle was owned and located in Colorado, or when Colorado residency of the vehicle owner is established if prior to the date of ~~application~~ registration for the period the vehicle was owned by the resident the Registration will be through the month of ~~application~~ registration and for the appropriate registration period for the class of vehicle following the month of ~~application~~ registration. Consideration may be given for registrations ~~that~~ that require bonds, affidavits, court orders, or as determined by the Department.

3.~~4~~5 Registration fees will be collected for the appropriate registration period.

a. ~~Vehicle Registrations~~ A vehicle's registration expires on the last day of the month ~~as~~ indicated on the registration ~~certificate~~ receipt and ~~validating tab~~ Validation Tabs. All registrations will be evidenced by the issuance of ~~tabs~~ license plate(s), a registration receipt, and Validation Tabs, except for those vehicles exempted from the Validation Tab requirement ~~in accordance with~~ pursuant to section 42-3-201(7), C.R.S.

b. ~~Vehicle~~ So long as a vehicle's registration ~~applications~~ renewal submission ~~for renewal~~ is received on or before the last day of the month following the month of expiration, the registration will be renewed for the appropriate registration period following the previous registration period. Specific ownership taxes and registration fees ~~shall~~ will be calculated and collected for the appropriate registration period.

c. ~~Vehicle~~ A vehicle's registration renewal ~~applications~~ submission ~~for renewal~~ received after the last day of the month following the month of expiration will be processed as ~~new registration applications~~ a renewal following the previous registration period. The specific ownership taxes and registration fees will be collected for the ~~new~~ registration period for that class of vehicle. In addition, specific ownership taxes will be collected for the period the person registering the vehicle was the owner from the

date of expiration of the previous registration to the beginning of the ~~new~~ registration period in addition to any late fees pursuant to section 42-3-112, C.R.S.

d. A vehicle registration application not received within twelve months of the previous registration will be processed as a new registration. The specific ownership taxes and registration fees will be collected for the registration period for that class of vehicle. In addition, specific ownership taxes will be collected for the period beginning on the date of expiration of the previous registration and ending on the date registration is renewed, plus any late fee imposed pursuant to section 42-3-112, C.R.S.

~~d~~e. When a license plate~~s are~~ is ~~reissued or~~ transferred, the new registration will be issued to correspond with the appropriate registration period beginning with the month of application to transfer the license plates to the vehicle. Specific ownership taxes and registration fees will be collected the month following the month of purchase or the month following the date the vehicle was acquired by the owner and for the registration period for that class of vehicle. Credits will be given in accordance with sections 42-3-107(25) and 42-3-115(1), C.R.S., as determined by the Department, for fees and any specific ownership taxes previously paid ~~that~~ which remain on the vehicles previous registration period.

4.0 Exceptions to ~~renewal procedure~~ Registration Periods

4.1 ~~All vehicles~~A vehicle issued personalized plates ~~as authorized by~~ pursuant to section 42-3-211, C.R.S, ~~shall be renewed, reissued, or transferred with~~ will have a registration period that will expire on the same date the registration for the previously issued plates was set to expire, and have period of registration in accordance with section 42-3-102, C.R.S., from that point forward.

4.2 ~~All vehicles bearing~~ A vehicle issued horseless carriage license plates ~~as authorized by 42-12-301(3)(a), C.R.S. shall~~ will have a ~~set~~ five-year registration period pursuant to section 42-12-301(3)(a), C.R.S.

4.3 ~~All vehicles~~ A vehicle issued collector license plates ~~as authorized by 42-12-401(a), C.R.S., shall~~ will have a five-year registration period that begins the date of registration of the vehicle pursuant to section 42-12-401, C.R.S.

4.4 Pursuant to section 42-3-102(3)(a), C.R.S. the Department may register ~~vehicles~~ a vehicle that is not registered under the international registration plan at intervals of less than one year upon payment of the appropriate registration fees and specific ownership tax in order to allow the owner of more than one vehicle to provide for the owner's vehicle registrations to expire simultaneously. The owner ~~shall be~~ is permitted to select an expiration month ~~that~~ which coincides with a current registered vehicle in the owner's name. ~~Upon renewal of vehicles that were~~ Vehicles previously registered in intervals of less than one year will be renewed for ~~the~~ registration period~~s shall be pursuant to~~ as provided in section 42-3-102, C.R.S. and this ~~regulation~~ rule.

4.5 Pursuant to section 42-3-102(1)(b)(I), C.R.S., ~~Utility Trailers~~ utility trailers weighing less than 2,000 pounds may be registered in five-year intervals upon payment of five-year registration fees and five-year specific ownership tax. A five-year registration period is optional and shall not be required. ~~Five-year~~ The five-year registration period shall be evidenced with a standard trailer regular license plate with a five-year ~~validation year~~ Validation Tab ~~tab~~.

Notice of Proposed Rulemaking

Tracking number

2017-00573

Department

400 - Department of Natural Resources

Agency

404 - Oil and Gas Conservation Commission

CCR number

2 CCR 404-1

Rule title

PRACTICE AND PROCEDURE

Rulemaking Hearing

Date

01/08/2018

Time

08:30 AM

Location

1120 Lincoln St, Suite 801, Denver, CO 80203

Subjects and issues involved

Flowline Rulemaking

Statutory authority

34-60-105(1), 34-60-106(2)(a), 34-60-106(2)(d), 34-60-108

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BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF CHANGES TO THE RULES OF PRACTICE AND PROCEDURE OF THE OIL & GAS CONSERVATION COMMISSION OF THE STATE OF COLORADO	)	CAUSE NO. 1R
	)	DOCKET NO. 171200767
	)	TYPE: RULEMAKING

AMENDED NOTICE OF RULEMAKING HEARING

TO ALL INTERESTED PARTIES AND TO WHOM IT MAY CONCERN:

The Oil and Gas Conservation Commission of the State of Colorado ("Commission"), on its own motion, will consider additions and amendments to Commission Rules of Practice and Procedure, 2 C.C.R. 404-1 ("Rules"), 100-Series definitions; 216; 303; 306; 312; 313; 317B; 318A; 325; 328; 330; 602; 604; 605; 706; 711; 802; 906; 907; 1002; 1004; 1100-Series; 1203; 1204; and 1205, as part of its "Flowline Rulemaking." A clean version of the draft proposed rules is attached as **Appendix A.** A redline version of the draft proposed rules is attached as **Appendix B.** A clean version of the draft Statement of Basis, Specific Statutory Authority and Purpose is attached as **Appendix C**. A redline version of the draft Statement of Basis, Specific Statutory Authority and Purpose is attached as **Appendix D.** The Commission first noticed consideration of the draft proposed rules on October 15, 2017. As explained in the October 15, 2017 notice, the Commission is also exploring the North Dakota Industrial Commission rules adopted in Order Number 27865, amending reporting requirements, and any other necessary conforming changes. The draft proposed rules noticed here, incorporate additional changes as a result of a review of the North Dakota Industrial Commission rules, changes to the safety reporting requirements and such other conforming changes.

On August 22, 2017, Governor John Hickenlooper announced seven oil and gas policy initiatives, two of which required rulemaking by the Commission. This Flowline Rulemaking is in response to the Governor's announcement and the Commission's review of its Rules. The Commission has the authority to conduct this rulemaking pursuant to §§ 34-60-105(1), 34-60-106(2)(a), 34-60-106(2)(d), and 34-60-108, C.R.S.

NOTICE IS HEREBY GIVEN that the Commission has scheduled the above entitled matter for a rulemaking hearing commencing on:

Date:	Monday, January 8, 2018 Tuesday, January 9, 2018
Time:	8:30 a.m.

Place: Colorado Oil and Gas Conservation Commission
1120 Lincoln Street
Suite 801
Denver, CO 80203

Public Participation. The Commission encourages the public to participate in the rulemaking by commenting on the proposed rules in advance of or during the rulemaking hearing. Any person may submit written comments in advance of the hearing pursuant to the procedures described below. In addition, any person may participate in the process and offer oral testimony during the public comment period at the hearing. The Commission may place a time limit on public comments during the hearing depending on the number of people who wish to comment.

Persons or organizations who are not parties, but who would like to participate in the rulemaking process, may present their views to the Commission by submitting written comments in advance of or at the rulemaking hearing, or by speaking during the public comment period allotted during the hearing. Persons wishing to make oral comments at the hearing are encouraged to sign up in advance via emailing to DNR_COGCC.Rulemaking@state.co.us no later than **Wednesday, January 3, 2018, 5:00 p.m.** Those who sign-up in advance will be given priority during the public comment period. Organized groups of individuals are urged to identify one spokesperson. Speakers are asked to be as concise as possible and to avoid repeating comments made by others. Written comments should be emailed to DNR_COGCC.Rulemaking@state.co.us. Please note, written comments received after December 29 may not be delivered to the Commissioners prior to the hearing date.

Party Status. Persons or organizations wanting to participate in this rulemaking as a party, were required to file a written request for party status with the Commission on or before **Monday, October 30, 2017**. The Commission will compile a list of all parties with contact information and make it available on the Commission's website. Late requests for party status will not be accepted absent good cause for the delay.

Prehearing Statements and Party Filings. A party's prehearing statement must be filed with the Commission on or before the deadline established by the Hearing Officer. Prehearing statements are limited to 5 single spaced pages. Prehearing statements should summarize pertinent factual and legal issues and the submitting party's position on each issue. Parties are requested to include as an attachment to their prehearing statements a draft of their alternative rule language showing differences from the Staff's proposed rules in redline format. A party's response to prehearing statements, if any, is limited to 5 single spaced pages and must be filed with the Commission on or before the deadline established by the Hearing Officer. Parties are required to serve electronic copies of their prehearing statements and responses on all other parties. Parties must be able to participate in a prehearing conference that will be held (if needed) on **Wednesday, December 20, 2017, 2:00pm – 4:00pm**, at the Commission's Denver Office.

Filing and service. On or before the deadlines identified above, all written comments, requests for party status prehearing statements, and responses must be filed with the Commission via U.S. Mail in hard copy and electronic copy as follows:

1. The original and 2 copies delivered to Julie Prine, Hearings and Regulatory Affairs Manager, Docket No. 1717000767, Oil and Gas Conservation Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado, 80203; and

2. An electronic copy emailed, preferably in portable document format (*pdf*), to ***DNR_COGCC.Rulemaking@state.co.us***.

The Commission may modify or amend the rules described or proposed herein, and make conforming modifications to other rules, as it determines reasonably necessary through the course of the stakeholder process, comment period, and rulemaking hearing.

In accordance with the Americans with Disabilities Act, if any person requires special accommodations as a result of a disability for this hearing, please contact Margaret Humecki at (303) 894-2100 ext. 5139, prior to the hearing and arrangements will be made.

Copies of the proposed Rules and other information about the Flowline Rulemaking are available on the Commission's internet homepage at ***http://cogcc.state.co.us*** by following the "Flowline Rulemaking" hyperlink or upon request at the Commission offices, 1120 Lincoln Street, Suite 801, Denver, CO 80203.

This Amended Notice of Rulemaking Hearing supersedes previous Notices dated October 15, 2017 and October 31, 2017.

OIL AND GAS CONSERVATION COMMISSION OF THE STATE OF COLORADO

By: _____
Julie Spence Prine, Secretary

Dated: November 29, 2017

FLOWLINE RULEMAKING
INITIAL DRAFT OF PROPOSED RULES
(Please note that the redline below may in some instances show current rule language as newly proposed language because it has been moved between sections.)

DEFINITIONS
(100 Series)

BREAKOUT TANK means a tank used to either relieve surges in a liquid hydrocarbon pipeline system or receive and store liquid hydrocarbons transported by a pipeline for reinjection and continued transportation by pipeline.

CRUDE OIL TRANSFER LINE means a pipe or piping system that is not regulated by the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration pursuant to 49 C.F.R. § 195.2, and which transfers crude oil or condensate generated by more than one oil and gas facility to an offsite production or storage facility.

DOMESTIC TAP means an individual gas service line directly connected to a flowline.

FLOWLINE means a segment of pipe transferring oil, gas, or condensate between a wellhead and the point of delivery to a U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration or Colorado Public Utilities Commission regulated gathering line or a segment of pipe transferring produced water between a wellhead and the point of disposal, discharge, or loading. The different types of flowlines are:

Wellhead Line means a flowline that transmits well production fluids from an oil or gas well to process equipment (e.g., separator, production separator, tank, heater treater), not including pre-conditioning equipment such as sand traps and line heaters, that do not materially reduce line pressure.

Production Piping means a segment of pipe that transfers well production fluids from a wellhead line or production equipment to a gathering line or storage vessel and includes the following:

Production Line means a flowline connecting a separator to a meter, LACT, or gathering line;

Dump Line means a flowline that transfers produced water, crude oil, or condensate to a storage tank, or process vessel and operates at atmospheric pressure at the flowline's outlet;

Manifold Piping means a flowline that transfers fluids from lines that have been joined together to comingle fluids into a piece of production facility equipment; and

Process Piping means all other piping that is integral to oil and gas exploration and production related to an individual piece or a set of production facility equipment pieces.

Peripheral Piping means a flowline transferring fluids between oil and gas facilities for lease use, that may include, but is not limited to, fuel gas, lift gas, instrument gas, and power fluids.

Produced Water Flowline means a flowline used to transfer produced water for treatment, storage, discharge, injection or reuse for oil and gas operations.

Produced Water Transfer System means a pipe or piping system that transports produced water generated at more than one well.

A segment of pipe transferring only freshwater is not a flowline. A line that would otherwise satisfy the above definition will not be considered a flowline if all of the following are satisfied:

-the operator prospectively marks and tags the line as a support line;

-the line is not integral to production;
-the line is used infrequently to service or maintain production equipment;
-the line does not hold a constant pressure, and
-the line is isolated from a pressure source when not in use.

This definition does not include gathering lines.

GATHERING LINE means a gathering pipeline as defined by 4 C.C.R. § 723-4901 or a pipeline regulated by the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration pursuant to 49 C.F.R. §§ 195.2 or 192.8.

GRADE 1 GAS LEAK means a leak that represents an existing or probable hazard to persons or property and requires immediate repair or continuous action until the conditions are no longer hazardous.

LOCKOUT means installing a device, such as a blind plug, blank flange, or bolted slip blind, that prevents operation of an energy-isolating device, such as a valve, and ensures the equipment cannot be operated until the lockout device is removed.

MAXIMUM ANTICIPATED OPERATING PRESSURE means the highest operational pressure expected to be applied to a flowline when in service.

OFF-LOCATION FLOWLINE means a flowline from a well to a production facility that is not on the same oil and gas location as the well.

PIPELINE means a flowline, crude oil transfer line or gathering line as defined in these Rules.

RISER means the component of a flowline transitioning from below grade to above grade.

TAGOUT means securely fastening a tagout device to an energy-isolating device, such as a valve, to indicate that the energy-isolating device and the equipment being controlled may not be operated until the tagout device is removed.

TAGOUT DEVICE means a prominent warning device, such as a tag, that will not deteriorate or become illegible with exposure to weather conditions or wet and damp locations. The tagout device must: include an instruction to not operate the equipment; the date of the last successful integrity test; the reason for tagging out the equipment; and be color coded per ANSI/ASME A13.1.

FLOWLINE REGULATIONS
(1100 Series)

1101. Registration Requirements

a. **Registration of Off-Location Flowlines.** An operator of an off-location flowline must submit a Flowline Form, Form 44, to the Director after completing construction and must include the following information:

(1) GPS location points for the risers;

(2) pipe and bedding materials used in construction;

(3) flowline diameter;

(4) fluids that will be transferred;

(5) the maximum anticipated operating pressure and initial pressure test results;

(6) a schematic drawing of the flowline, associated oil and gas locations, and existing and proposed pipelines related to the oil and gas locations; and

(7) the COGCC Facility ID assigned to the associated oil and gas locations.

b. **Domestic Tap Registration.**

(1) Upon installation or discovery, operators must report to the Director the GPS location for the point of flowline connection and the address of the point of delivery of all domestic taps connected to an operator's flowline.

(2) For Domestic Taps installed after February 14, 2018, an operator must register the domestic tap pursuant to subpart (1) and ensure:

A. The domestic tap is locatable by a tracer line or location device placed adjacent to or in the trench of the domestic tap to facilitate locating it;

B. A licensed plumber properly installs:

i. properly-sized regulators on the domestic tap at the point it connects to the operator's flowline and at the point it delivers gas to the dwelling or structure where the gas is utilized; and

ii. all necessary piping to accommodate appropriate odorization, and gas utilization metering equipment;

C. All materials used for the domestic tap are designed for gas service and are installed using appropriate cover and bedding material in accordance with industry standards;

D. Markers are installed and maintained at the point the domestic tap connects to the operator's flowline and at the point it delivers gas to the dwelling or structure where the gas is utilized. Markers must include the language required by Rule 1102.f.(2); and

E. Odorant is supplied at the time of installation until abandonment of the domestic tap.

c. **Crude Oil Transfer Line Registration.** At least 30 days before beginning construction of a crude oil transfer line, an operator must submit a Form 12 to the Director that includes a schematic showing the gathering line's route, including its crossings of public by-ways, road crossings, sensitive wildlife habitats, sensitive areas and natural and manmade watercourses to the Director.

1102. FLOWLINE AND CRUDE OIL TRANSFER LINE INSTALLATION, OPERATIONS, MAINTENANCE, REPAIR AND RECLAMATION

a. **Material.** Materials for pipe and pipe components must be:

(1) Able to maintain the structural integrity of the flowline or crude oil transfer line under anticipated operating temperature, pressure, and other conditions; and

(2) Compatible with the substances to be transported.

b. **Design and Installation.**

(1) Each component of a flowline or crude oil transfer line must meet one of the following standards appropriate for the component:

A. American Society of Mechanical Engineers, Pipeline Transportation Systems for Liquids and Slurries, 2016 Edition (ASME B31.4-2016), and no later editions of the standard. ASME B31.4-2016 is available for public inspection during normal business hours from the Public Room Administrator at the office of the Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado 80203. Additionally, ASME B31.4-2016 may be examined at any state publications depository library and is available to purchase from the ASME. The ASME can be contacted at Two Park Avenue, New York, NY 10016-5990, 1-800-843-2763;

B. ASME Gas Transmission and Distribution Piping Systems, 2016 Edition (ASME B31.8-2016), and no later editions of the standard. ASME B31.8-2016 is available for public inspection during normal business hours from the Public Room Administrator at the office of the Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado 80203. Additionally, ASME B31.8-2016 may be examined at any state publications depository library and is available to purchase from the ASME. The ASME can be contacted at Two Park Avenue, New York, NY 10016-5990, 1-800-843-2763;

C. ASME Process Piping, 2016 Edition (ASME 31.3-2016), and no later editions of the standard. ASME 31.3-2016 is available for public inspection during normal business hours from the Public Room Administrator at the office of the Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado 80203. Additionally, ASME 31.3-2016 may be examined at any state publications depository library and is available to purchase from the ASME. The ASME can be contacted at Two Park Avenue, New York, NY 10016-5990, 1-800-843-2763; or

D. API Specification 15S, Spoolable Reinforced Plastic Line Pipe, Second Edition, March 2016 (API Specification 15S), and no later editions of the standard. API Specification 15S is available for public inspection during normal business hours from the Public Room Administrator at the office of the Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado 80203. In addition, API Specification 15S may be examined at any state publications depository library and is available from API at 1220 L Street, NW Washington, DC 20005-4070, 1-202-682-8000.

(2) Each component of a flowline or crude oil transfer line must be designed to:

A. Prevent failure from internal or external corrosion and the effects of transported fluids;

B. Withstand maximum anticipated operating pressures and other internal loadings without impairment;

C.D. Withstand anticipated external pressures and loads that will be imposed on the pipe after installation;and

D. Allow for line maintenance, periodic line cleaning, and integrity testing.

c. **Installation.**

(1) Installation crews must be trained in all flowline or crude oil transfer line installation practices

for which they are tasked to perform.

(2) No pipe or other component may be installed unless it has been visually inspected at the site of installation to ensure that it is not damaged.

(3) Flowlines or crude oil transfer lines must be installed in a manner that minimizes interference with agriculture, road and utility construction, the introduction of secondary stresses, and the possibility of damage to the pipe.

(4) The pipe must be handled in a manner that minimizes stress and avoids physical damage to the pipe during stringing, joining, or lowering in. During the lowering in process the pipe string must be properly supported so as not to induce excess stresses on the pipe or the pipe joints or cause weakening or damage to the outer surface of the pipe.

(5) Flowlines or crude oil transfer lines that cross a municipality, county, or state graded road must be bored unless the responsible governing agency specifically permits the owner to open cut the road.

(6) Unless the manufacturer's installation procedures and practices direct otherwise:

A. pipeline trenches must be constructed to allow the pipeline to rest on undisturbed native soil and provide continuous support along the length of the pipe;

B. trench bottoms must be free of rocks greater than two inches in diameter, debris, trash, and other foreign material not required for pipeline installation; and

C. over excavated trench bottoms must be backfilled with appropriate material and compacted prior to installation of the pipe to provide continuous support along the length of the pipe.

(7) The width of the trench must provide adequate clearance on each side of the pipe. Trench walls must be excavated to ensure minimal sluffing of sidewall material into the trench. Subsoil from the excavated trench must be stockpiled separately from previously stripped topsoil.

(8) A flowline or crude oil transfer line trench must be backfilled in a manner that provides firm support under the pipe and prevents damage to the pipe and pipe coating from equipment or from the backfill material. Sufficient backfill material must be placed in the pipe springlift of the pipe to provide long-term support for the pipe. Backfill material that will be within two feet of the pipe must be free of rocks greater than two inches in diameter and foreign debris. Backfilling material must be compacted as appropriate during placement in a manner that provides support for the pipe and reduces the potential for damage to the pipe and pipe joints.

(9) Flowlines and crude oil transfer lines must be installed as designed.

(10) Flowlines and crude oil transfer lines that traverse sensitive wildlife habitats or sensitive areas, such as wetlands, streams, or other surface waterbodies, must be installed in a manner that minimizes impacts to these areas.

d. **Cover.**

(1) All installed flowlines must have cover sufficient to protect them from damage. On cropland, all flowlines must have a minimum cover of three (3) feet.

(2) Where an underground structure, geologic, or other uncontrollable condition prevents a

flowline from being installed with minimum cover, or when there is a written agreement between the surface owner and the operator, a flowline may be installed with less than minimum cover or above ground.

(3) All installed crude oil transfer lines must have a minimum cover of three (3) feet.

e. **Excavation, backfill and reclamation.**

(1) When flowlines or crude oil transfer lines cross croplands, unless waived by the surface owner, the operator must segregate topsoil while trenching, and backfill trenches so that the soils must be returned to their original relative positions and contour. This requirement to segregate and backfill topsoil does not apply to trenches which are twelve (12) inches or less in width. Operator must make reasonable efforts to run flowlines or crude oil transfer lines parallel to crop irrigation rows on flood irrigated land.

(2) All trenches must be maintained in order to correct subsidence and reasonably minimize erosion.

(3) Interim and final reclamation, including revegetation, must be performed in accordance with the applicable 1000 Series rules.

f. **Marking.**

(1) In Designated Setback Locations, and where crossing public rights-of-way or utility easement, an operator must install and maintain a marker that identifies the location of flowlines or crude oil transfer lines.

(2) The marker must include the following language:

"Warning", "Caution" or "Danger" followed by the words "gas (or name of gas or fluid transported) flowline (or crude oil transfer line)" along with the name of the operator and the telephone number where the operator can be reached at all times. The letters must be legible, written on a background of sharply contrasting color and on each side with at least one (1) inch high with one-quarter (¼) inch stroke.

g. **Inspection.** All newly constructed crude oil transfer lines must be inspected by third-party independent inspectors to ensure the crude oil transfer line is installed as prescribed by the manufacturer's specifications and in accordance with the requirements of the 1100 series rules. An inspector must be trained, experienced and qualified in the phase of construction being inspected. A list of all third-party independent inspectors and a description of each independent inspector's qualifications, certifications, experience, and specific training must be provided to the Director upon request pursuant to Rule 205.

h. **Maintenance.**

(1) Each operator must take reasonable precautions to prevent failures, leakage and corrosion of flowlines and crude oil transfer lines.

(2) Whenever an operator discovers any condition that could adversely affect the safe and proper operation of a flowline or crude oil transfer line, it must correct it within a reasonable time. However, if the condition presents an immediate hazard to persons or property, the operator may not operate the affected part of the system until the operator has corrected the condition.

(3) Any flowline or crude oil transfer line not actively in use must have all valves locked or tagged out.

i. **Repair.**

(1) Each operator must, in repairing its flowlines or crude oil transfer line, make repairs in a safe manner that prevents injury to persons and damage to equipment and property.

(2) An operator may not use any pipe, valve, or fitting to repair a flowline or crude oil transfer line unless the components meet the installation requirements of the 1100 series rules. A flowline or crude oil transfer line installed prior to February 14, 2018, that undergoes a major modification or change in service after February 14, 2018, must satisfy all requirements of the 1100 series rules before an operator can place the flowline or crude oil transfer line in to service.

(3) An operator may not use any pipe, valve, or fitting, for replacement or repair of a flowline, unless it is designed to the maximum anticipated operating pressure.

(4) An operator must pressure test any repaired flowline or crude oil transfer line before returning it to service.

j. **Operating requirements.**

(1) No flowline or crude oil transfer line may be operated until it has demonstrated compliance with Rule 1103.

(2) The maximum operating pressure for a flowline or crude oil transfer line may not exceed the manufacturer's specifications of the pipe or the manufacturer's specifications of any other component of it, whichever is less. A flowline or crude oil transfer line must be equipped with adequate controls and protective equipment to prevent it from operating above the maximum operating pressure.

k. **Corrosion control.**

(1) All coated pipe must be electronically inspected prior to placement using coating deficiency (i.e. scratch, bubble, and "holiday") detectors to check for any faults not observable by visual examination. The detector must operate in accordance with manufacturer's instructions and at a voltage level appropriate for the electrical characteristics of the pipeline being tested. During installation all joints, fittings, and tie-ins must be coated with materials compatible with the coatings on the pipe. Coating materials must:

A. Be designed to mitigate corrosion of the buried pipeline;
B. Have sufficient adhesion to the metal surface to prevent under film migration of moisture;
C. Be sufficiently ductile to resist cracking;
D. Have enough strength to resist damage due to handling and soil stress;
E. Support any supplemental cathodic protection; and
F. If the coating is an insulating type, have low moisture absorption and provide high electrical resistance.

(2) Pipes must be locatable by a tracer line or location device placed adjacent to or in the trench of a buried nonmetallic flowline or crude oil transfer line.

(3) Cathodic protection systems must meet or exceed the minimum criteria set forth in the National Association of Corrosion Engineers standard practice Control of External Corrosion on Underground or Submerged Metallic Piping Systems.

(4) If internal corrosion is anticipated or detected, the flowline or crude oil transfer line operator

must take prompt remedial action to correct any deficiencies, such as increased pigging, use of corrosion inhibitors, internal coating of the pipeline (e.g. an epoxy paint or other plastic liner), or a combination of these methods.

l. **Crude oil transfer line as built.** For a crude oil transfer line placed into service after February 14, 2018, the operator must, within 30-days from the date of being placed into service, file with the Director a Form 44, and register with the Utility Notification Center of Colorado (UNCC). Operators must include the following information:

(1) a schematic layout of the facility that shows the location of all associated above ground equipment and the pipeline centerline from the point of origin to the termination point;

(2) a geographical information system layer utilizing North American datum 83 geographic coordinate system (GCS) in an environmental systems research institute (Esri) shape file format that has a completed attribute table containing the required data; and

(3) an affidavit of completion that that states the operator designed and installed the crude oil transfer line in compliance with the 1100 Series rules and submitted the ERSI shape file to the UNCC.

(4) the proposed pipe material (i.e., size, weight, grade, wall thickness, coating, and standard dimension ration);

(5) the type of fluid to be transported;

(6) the method for testing integrity;

(7) proposed burial depth of the crude oil transfer line; and

(8) the location and construction method proposed for all public by-ways, road crossings, sensitive wildlife habitats, sensitive areas and natural and manmade watercourses (i.e., bored and cased or bored only).

m. **Record Keeping.** An operator must keep records of flowline or crude oil transfer line size, route, materials, maximum anticipated operating pressure, pressure test results, and integrity management documentation for the life of the flowline. These records are available for inspection by the Director pursuant to Rule 205.

n. **One Call participation.** Every operator must become a Tier One member of the UNCC and participate in Colorado's One Call notification system, the requirements of which are established by §9-1.5-101., C.R.S. et seq.

(1) An operator must include its UNCC member code when filing an Operator Registration, Form 1, Change of Operator, Form 10, Gas Facility Registration, Form 12, or Flowline Form, Form 44.(2) Upon completing an asset purchase, transfer, construction or relocation of a flowline or crude oil transfer line, an operator must update within 30-days its location information with the UNCC.

(3) An operator's registration with the Commission grants the Director permission to access information the operator submits to UNCC about its oil and gas facilities.

o. **Notification.** The operator of a crude oil transfer line must submit a Form 42 notice of change to

the Director identifying any crude oil transfer line or portion thereof that has been removed from service for more than one year.

~~g.~~

1103. INTEGRITY MANAGEMENT

a. **Notification.** At least ten days before conducting an initial pressure test or an annual pressure test, an operator must submit a Form 42 to the Director to allow a representative of the Commission to witness the testing process and results.

b. **Initial Pressure Test Requirements.** After installation or being taken out of service and before operating a segment of flowline or crude oil transfer line, an operator must test the flowline or crude oil transfer line to maximum anticipated operating pressure and demonstrate integrity. In conducting tests, each operator must ensure that reasonable precautions are taken to protect its employees and the general public. The operator may conduct the test using wellhead pressure sources and well bore fluids, including gas.

c. **Off-Location Flowlines.** All off-location flowlines must be subject to one of the following integrity management programs:

   (1) Annual pressure test;

   (2) Continuous pressure monitoring; or

   (3) For aboveground flowlines, annual visual inspection.

d. **Belowground Dump Lines.** An operator must verify integrity of belowground dump lines by performing an annual static-head test.

e. **Aboveground Dump Lines and Small Diameter Peripheral Piping.** An operator must verify integrity of aboveground dump lines or peripheral piping by performing an annual visual inspection.

f. **Integrity Management for All Other Flowlines.** Any flowlines not subject to c. through e. above, must be subject to one of the following integrity management programs:

   (1) A pressure test every three years and annual visual inspection; or

   (2) Continuous pressure monitoring.

g. **Crude oil transfer lines.** All crude oil transfer lines are subject to one of the following integrity management programs:

   (1) Annual pressure test;

   (2) Continuous pressure monitoring; or

   (3) Smart pigging conducted every three years.

h. **Leak protection, detection, and monitoring.**

   (1) All crude oil transfer line operators must file with the Director any leak protection and monitoring plan prepared by the operator or required by the Director, pursuant to the Rule 205.

(2) All crude oil transfer line operators must develop and maintain a plan to share all inflow and outflow data. The data may include, but is not limited to, the flow and fluid properties of rate, volume, temperature, and pressure in order to perform a material balance computation. The plan must provide for data sharing between the production facility operator, the crude oil transfer line operator, and the operator at the point or points of disposal, storage, or sale. If a data discrepancy is observed, the party observing the data discrepancy is to notify all other parties and action must be taken to determine the cause. The crude oil transfer line operator is to retain a record of all data discrepancies. If requested, copies of such records must be filed with the Director pursuant to Rule 205.

i. **Pressure Test Requirements.** A pressure test must subject the flowline or crude oil transfer line to the maximum anticipated operating pressure and be conducted in accordance with one of the following:

(1) API RP 1110, Recommended Practice for the Pressure Testing of Steel Pipelines for the Transportation of Gas, Petroleum Gas, Hazardous Liquids, Highly Volatile Liquids or Carbon Dioxide (6th Ed., February 1, 2013) (API RP 1110), and no later editions of the standard. API RP 1110 is available for public inspection during normal business hours from the Public Room Administrator at the office of the Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado 80203. In addition, API RP 1110 may be examined at any state publications depository library and is available from API at 1220 L Street, NW Washington, DC 20005-4070, 1-202-682-8000.

(2) The American Society for Testing and Materials Standard Practice for Field Leak Testing of Polyethylene (PE) and Crosslinked Polyethylene (PEX) Pressure Piping Systems Using Hydrostatic Pressure (ASTM F2164 – 13), and no later editions of the standard. ASTM F2164 – 13 is available for public inspection during normal business hours from the Public Room Administrator at the office of the Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado 80203. In addition, ASTM F2164 – 13 may be examined at any state publications depository library and is available from ASTM at ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA, 19428-2959, 1-877-909-2786

j. **Continuous Pressure Monitoring Requirements.** An operator's continuous pressure monitoring program must ensure:

(1) Pressure data are monitored continuously, i.e., 24 hours, 7 days a week, and the monitoring is sufficiently sophisticated to identify integrity or pressure anomalies;

(2) Systems are capable of being shut-in for repairs immediately upon discovery of an anomaly, either through automation or through a documented, manual process;

(3) The operator documents the continuous monitoring program, including integrity anomalies and the documentation demonstrates how an operator will maintain and repair anomalies in flowlines or crude oil transfer lines; and

(4) A map of the flowline or crude oil transfer line system is available in ESRI shapefile format. The shapefile must show the flowline or crude oil transfer line alignments, location of isolation valves, and pressure-monitoring points.

k. **Visual Inspection Requirements.** An operator must perform a visual, aerial, or other survey of the entire flowline length to detect integrity failures, leaks, spills, or releases, or signs of a leak, spill, or release like stressed vegetation or soil discoloration. An operator may use audio, visual, or olfactory or other detection technology, like optical gas imaging or LASERs, to detect integrity failures. An operator must document the employee conducting the inspection, detection methodology, and date and time of the inspection.

1104. ABANDONMENT

a. A flowline or crude oil transfer line remains subject to all of the requirements in Rules 1101 through 1103 until the operator completes all abandonment requirements set forth below.

b. For abandonment, operators must permanently remove a flowline or crude oil transfer line from service by physically separating it from all sources of fluids or pressure and comply with one of the following:

(1) **Abandonment in place.** The operator must:

A. Purge the flowline or crude oil transfer line of any liquids;

B. Deplete the flowline or crude oil transfer line to atmospheric pressure;

C. Cut the flowline's or crude oil transfer line's risers to three (3) feet below grade or to the depth of the flowline or crude oil transfer line, whichever is shallower;

D. Seal the ends of the flowline or crude oil transfer line below grade; and

E. Remove cathodic protection and above-grade equipment associated with the riser.

(2) **Removal.** The operator must remove the flowline or crude oil transfer line and risers, and cathodic protection and above-grade equipment associated with the riser.

c. Once an operator removes a flowline or crude oil transfer line from service and is in the process of abandoning it, the operator must lockout and tagout the risers associated with the flowline or crude oil transfer line using appropriate devices.

d. Within 10 days of an operator completing abandonment requirements for a flowline or crude oil transfer line, the operator must file a Notice of Flowline Abandonment, Form 44, with the Director. If the operator abandons an Off-Location Flowline and has not submitted GPS location points for the flowline's risers, the Notice of Flowline Abandonment must include this information.

e. The Director will provide the filed Notice of Flowline Abandonment, Form 44 to the appropriate Local Governmental Designee and UNCC.

f. These abandonment requirements apply to compressor or gas plant feeder pipelines upon decommissioning or closure of a portion or all of a compressor station or gas plant.

DRILLING, DEVELOPMENT, PRODUCTION AND ABANDONMENT (300 Series)

312. COGCC Form 10. CERTIFICATE OF CLEARANCE AND/OR CHANGE OF OPERATOR

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i. A completed Form 10 is required for any change of operator for all oil and gas facilities, except for produced water transfer systems, gas gathering systems, gas processing plants, and underground gas storage facilities, which are governed by Rule 313B.

313A. COGCC Form 11. MONTHLY REPORT OF GASOLINE OR OTHER EXTRACTION PLANT

All operators of gasoline or other extraction plants must make monthly reports to the Director on a Form 11. Such forms must contain all information required thereon and must be filed with the Director on or before the twenty-fifth (25th) day of each month covering the preceding month.

313B. COGCC Form 12. PRODUCED WATER TRANSFER SYSTEM, AND GAS FACILITY REGISTRATION/CHANGE OF OPERATOR

a. An operator must submit a Form 12 to register a new produced water transfer system, gas gathering system, a new gas processing plant, or a new underground gas storage facility. The operator must attach a flowline layout drawing and a topographic map to the Form 12.

b. When an operator makes significant changes to an existing produced water transfer system, gas gathering system, gas processing plant, or underground gas storage facility, the operator must submit a Form 12 to update the Commission's records regarding the facility. The operator must attach an updated flowline layout drawing and an updated topographic map to the Form 12.

c. An operator must submit a Form 12 to change the operator of a produced water transfer system, gas gathering system, gas processing plant, or an underground gas storage facility. The operator must attach documentation confirming transfer of the asset(s) to the Form 12 for a change of operator.

d. At least 30 days before beginning construction of a gas gathering line with segments subject to safety regulation by the Office of Pipeline Safety, U.S. Department of Transportation, an operator must submit a Form 12 to the Director. The operator must attach a schematic showing the gathering line's route and its crossings of public by-ways and natural and manmade watercourses to the Form 12.

328. MEASUREMENT OF OIL

* * *

d. **Tank Gauging.** Measurement by tank gauging must be completed in accordance with industry standards as specified in:

i. The API Manual of Petroleum Measurement Standards, Chapter 3.1A Standard Practice for the Manual Gauging of Petroleum and Petroleum Products, (Second Edition, August 2005) and no later editions;

ii. The API Manual of Petroleum Measurement Standards, Chapter 3.1B Standard Practice for the Manual Gauging of Petroleum and Petroleum Products, (Second Edition, June 2001) and no later editions;

iii. The API Manual of Petroleum Measurement Standards, Chapter 3.1A Standard Practice for the Manual Gauging of Petroleum and Petroleum Products, (Second Edition, August 2005) and no later editions;

iv. The API Manual of Petroleum Measurement Standards Chapter 18.1 - Custody Transfer - Section 1-Measurement Procedures for Crude Oil Gathered from Small Tanks by Truck (Second Edition, April 1997) and no later editions, or

v. The API Manual of Petroleum Measurement Standards Chapter 18.2, Custody Transfer of Crude Oil from Lease Tanks Using Alternative Measurement Methods, (First Edition, July 2016) and no later editions.

The API Manuals identified in i. through v. above are available for public inspection during normal business hours from the Public Room Administrator at the office of the Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado 80203. In addition, the API Manuals may be examined at any state publications depository library and is available from API at 1220 L Street, NW Washington, DC 20005-4070, 1-202-682-8000.

* * *

SAFETY REGULATIONS
(600 Series)

602. GENERAL

The training and actions of an operator's employees, as well as the proper location and operation of equipment, are essential to any safety program.

a. Operators must familiarize their employees with these Rules as they relate to their job functions. Each new employee should have his or her job outlined, explained and demonstrated.

b. Employees must immediately report unsafe and potentially dangerous conditions to their supervisor and any such conditions shall be remedied as soon as practicable.

c. An operator must notify the Director of reportable safety events at an oil and gas facility. Reportable safety events include:

(1) Any fire, explosion, accidental detonation, or uncontrolled release of pressure.

(2) Any accident that involves a fatal injury.

(3) Any accident involving a major or life-threating injury.

(4) Any injury to the member of the general public that requires Medical Treatment.

(5) Any natural event or accident that results in an actual or threatened safety event.

d. Initial notification from the operator of a reportable safety event described in c. (1) -(7) above, must occur as soon as practicable, but no more than 24 hours after the safety event. An Accident Report, Form 22, must be submitted to the Director within 3-days of the accident.

(1) At the Director's request, the operator must submit a supplemental report that details the root cause analysis, information about any repairs, or other information related to the accident.

(2) At the Director's request, the operator must present its root cause analysis about the accident to the Commission or to an organization approved by the Director.

e. Where unsafe or potentially dangerous conditions exist and first responders are on-site, the owner or operator must respond as directed by first responders (such as sheriff, fire district director, etc.)

f. Vehicles of persons not involved in drilling, production, servicing, or seismic operations must be located a minimum distance of one hundred (100) feet from the wellbore, or a distance equal to the height of the derrick or mast, whichever is greater. Equivalent safety measures shall be taken where terrain, location or other conditions do not permit this minimum distance requirements.

g. Existing producing facilities are exempt from the provisions of these regulations with respect to minimum distance requirements and setbacks unless they are found by the Director to be unsafe.

h. Self-contained sanitary facilities shall be provided during drilling operations and at any other similarly staffed oil and gas operations facility

605. OIL AND GAS FACILITIES.

605.d. **Mechanical Conditions.** All valves, pipes and fittings must be securely fastened, inspected at regular intervals, and maintained in good mechanical condition. An operator must fully open and close all valves at least annually and repair or replace valves that are not fully operational. Any valve, flange, fitting or other component connected to a flowline must have a manufacturer's rating that is equal to or greater than the flowline's maximum anticipated operating pressure.

(1) A valve must be installed at each of the following locations:

A. On the suction end and the discharge end of a pump station in a manner that permits isolation of the pump station equipment in the event of an emergency;

B. On each flowline entering or leaving a breakout tank in a manner that permits isolation of the breakout tank from other facilities;

C. At locations along a flowline system that will minimize the likelihood or damage or pollution from accidental discharge of hydrocarbons or E&P Waste, as appropriate for the terrain in open country or for populated areas;

D. On each flowline to allow integrity testing of the flowline without interrupting fluid flow of other connected pipelines;

E. On each side of a flowline crossing a waterbody that is more than 100 feet (30 meters) wide from high-water mark to high-water mark; and

F. On each side of a flowline crossing a reservoir holding water for human consumption.

(2) Check Valves Required.

A. Where an operator produces two or more wells through a common flowline, separator, or manifold, the operator must equip each flowline leading from a well to the common flowline, separator, or manifold with a check valve or other means of shut-off. The check valve or other means of shut-off must be in the flowline serving the well. The check valve must be located between the wellhead and the point where the flowline connects with any other flowline, common separator, or common manifold.

i. For wells produced through a common flowline or separator, the operator must place the check valve or other means of shut-off in each flowline leading from a well as close to the wellhead connection as is practicable.

ii. For wells produced through a common manifold, the operator may place the check valve or other means of shut-off in each flowline from a well near a point where the flowline enters the manifold or as close to the wellhead connection as practicable.

B. The check valve or other means of shut-off must be installed to permit fluids moving from the well to the common flowline, separator, or manifold and to prevent any fluid from entering the well through the flowline.

C. The operator must keep the check valve or other means of shut-off in good working order.

D. Upon the Director's request, operators must test the operation of the check valve or other means of shut-off.

* * *

FINANCIAL ASSURANCE AND OIL AND GAS CONSERVATION AND ENVIRONMENTAL RESPONSE FUND (700 Series)

711. Produced water transfer systems, gas gathering, gas processing and underground gas storage facilities.

Operators of produced water transfer systems ,gas gathering, gas processing, or underground gas storage facilities must provide statewide blanket financial assurance to ensure compliance with the 900 Series rules in the amount of fifty thousand dollars ($50,000), or in an amount voluntarily agreed to with the Director, or in an amount determined by order of the Commission. Operators of small systems gathering or processing less than five (5) MMSCFD may provide individual financial assurance in the amount of five thousand dollars ($5,000).

E&P WASTE MANAGEMENT (900 Series)

906. SPILLS AND RELEASES

* * *

b. **Reporting spills or releases of E&P Waste or produced fluids.**

(1) Report to the Director. Operators shall report a spill or release of E&P Waste or produced fluids that meet any of the following criteria to the Director verbally or in writing as soon as practicable, but no more than twenty-four (24) hours after discovery (the "Initial Report").

A. A spills/release of any size that impacts or threatens to impact any waters of the state, a residence or occupied structure, livestock, or public byway;

B. A spill/release in which one (1) barrel or more of E&P Waste or produced fluids is spilled or released outside of berms or other secondary containment;

C. A spill/release of five (5) barrels or more regardless of whether the spill/release is completely contained within berms or other secondary containment; or

D. Any Grade 1 Gas Leak. Operators reporting a Grade 1 Gas Leak must use a Form 44 to submit the Initial Report or subsequent information required by this section.

The Initial Report to the Director shall include, at a minimum, the location of the spill/release and any information available to the Operator about the type and volume of waste involved.

If the Initial Report was not made by submitting a COGCC Spill/Release Report, Form 19 the Operator must submit a Form 19 with the Initial Report information as soon as practicable but not later than 72 hours after discovery of the spill/release unless extended by the Director.

In addition to the Initial Report to the Director, the Operator shall make a supplemental report on Form 19 not more than 10 calendar days after the spill/release is discovered that includes an 8 1/2 x 11 inch topographic map showing the governmental section and location of the spill or an aerial photograph showing the location of the spill; all pertinent information about the spill/release known to the Operator that has not been reported previously; and information relating to the initial mitigation, site investigation, and remediation measures conducted by the Operator.

The Director may require further supplemental reports or additional information.

* * *

CONFORMING CHANGES

DEFINITIONS
(100 Series)

OIL AND GAS FACILITY means equipment or improvements used or installed at an oil and gas location for the exploration, production, withdrawal, treatment, or processing of crude oil, condensate, E&P waste, or gas.

OIL AND GAS OPERATIONS means exploring for oil and gas, including conducting seismic operations and the drilling of test bores; siting, drilling, deepening, recompleting, reworking, or abandoning a well; producing operations related to any well, including installing flowlines; the generating, transporting, storing, treating, or disposing exploration and production wastes; and any constructing, site preparing, or reclaiming activities associated with such operations.

PLUGGING AND ABANDONMENT means the cementing of a well, the removal of its associated production facilities, the abandonment of its flowline(s), and the remediation and reclamation of the wellsite.

PRODUCTION FACILITY means any storage, separation, treating, dehydration, artificial lift, power supply, compression, pumping, metering, monitoring, flowline, and other equipment directly associated with a well.

PRODUCTION PITS means pits used after drilling operations and initial completion of a well, including pits related to produced water flowlines or associated with E&P waste from gas gathering, processing and storage facilities, which constitute:

> **SKIMMING/SETTLING PITS** used to provide retention time for settling of solids and separation of residual oil for the purposes of recovering the oil or fluid.
>
> **PRODUCED WATER PITS** used to temporarily store produced water prior to injection for enhanced recovery or disposal, off-site transport, or surface-water discharge.
>
> **PERCOLATION PITS** used to dispose of produced water by percolation and evaporation through the bottom or sides of the pits into surrounding soils.
>
> **EVAPORATION PITS** used to contain produced waters which evaporate into the atmosphere by natural thermal forces.

SPECIAL PURPOSE PITS means pits used in oil and gas operations, including pits related to produced water flowlines or associated with E&P waste from gas gathering, processing and storage facilities, which constitute:

> **BLOWDOWN PITS** used to collect material resulting from, including but not limited to, the emptying or depressurizing of wells, vessels, or flowlines, or E&P waste from gathering systems.
>
> **FLARE PITS** used exclusively for flaring gas.
>
> **EMERGENCY PITS** used to contain liquids during an initial phase of emergency response operations related to a spill/release or process upset conditions.
>
> **BASIC SEDIMENT/TANK BOTTOM PITS** used to temporarily store or treat the extraneous materials in crude oil which may settle to the bottoms of tanks or production vessels and which may contain residual oil.

WORKOVER PITS used to contain liquids during the performance of remedial operations on a producing well in an effort to increase production.

PLUGGING PITS used for containment of fluids encountered during the plugging process.

DRILLING, DEVELOPMENT, PRODUCTION AND ABANDONMENT (300 Series)

303. REQUIREMENTS FOR FORM 2, APPLICATION FOR PERMIT-TO-DRILL, DEEPEN, RE-ENTER, OR RECOMPLETE, AND OPERATE; FORM 2A, OIL AND GAS LOCATION ASSESSMENT.

* * *

303.b. **FORM 2A, OIL AND GAS LOCATION ASSESSMENT.**

* * *

(2) **Exemptions.** A new Form 2A shall not be required for the following:

A. Surface disturbance, other than for purposes described in subsections 303.b.(1) B and C. above, at an existing Oil and Gas Location within the originally disturbed area, even if interim reclamation has been performed;

B. For an Oil and Gas Location covered by an approved Comprehensive Drilling Plan and where such Comprehensive Drilling Plan contains information substantially equivalent to that which would be required for a Form 2A for the proposed Oil and Gas Location and the Comprehensive Drilling Plan has been subject to procedures substantially equivalent to those required for a Form 2A, including but not limited to consultation with Surface Owners, local governments, the Colorado Department of Public Health and Environment or Colorado Parks and Wildlife, where applicable, and public notice and opportunity to comment, and where the operator does not seek a variance from the Comprehensive Drilling Plan or a provision of these rules that is not addressed in the Plan;

C. Seismic operations;

D. Pipelines for oil, gas, or water; or

E. Roads.

* * *

317B. PUBLIC WATER SYSTEM PROTECTION

a. **Definitions.** For purposes of this Rule 317B:

(1) **Drilling, Completion, Production and Storage ("DCPS") Operations** means operations at (i) well sites for the drilling, completion, recompletion, workover, or stimulation of wells or chemical and production fluid storage, and (ii) any other oil and gas location at which production facilities are operated. DCPS Operations excludes roads, gathering lines, and routine operations and maintenance.

(2) **Existing Oil and Gas Location** means an oil and gas location, excluding roads, and gathering lines, permitted or constructed prior to the later of May 1, 2009 for federal land or April 1, 2009 for all other land or the date that the oil and gas location becomes subject to Rule 317B by virtue of its proximity to a Classified Water Supply Segment.

(3) **New Oil and Gas Location** means an oil and gas location, excluding roads and gathering lines, that is not an existing oil and gas location.

(4) **New Surface Disturbance** means surface disturbance that expands the area of surface covered by an oil and gas location beyond that initially disturbed in the construction of the oil and gas location.

(5) **Non-Exempt Linear Feature** means a road or gathering line that is not necessary to cross a stream or connect or access a well or a gathering line.

* * *

E&P WASTE MANAGEMENT
(900 Series)

907. MANAGEMENT OF E&P WASTE

* * *

f. **Other E&P Waste.** Other E&P waste such as workover fluids, tank bottoms, pigging wastes from pipelines , and gas gathering, processing, and storage wastes may be treated or disposed of as follows:
   (1) Disposal at a commercial solid waste disposal facility;
   (2) Treatment at a centralized E&P waste management facility permitted in accordance with Rule 908;
   (3) Injection into a Class II injection well permitted in accordance with Rule 325; or
   (4) An alternative method proposed in a waste management plan in accordance with rule 907.a.(3) and approved by the Director.

FLOWLINE RULEMAKING
INITIAL DRAFT OF PROPOSED RULES
(Please note that the redline below may in some instances show current rule language as newly proposed language because it has been moved between sections.)

DEFINITIONS
(100 Series)

BREAKOUT TANK means a tank used to either relieve surges in a liquid hydrocarbon pipeline system or receive and store liquid hydrocarbons transported by a pipeline for reinjection and continued transportation by pipeline.

CRUDE OIL TRANSFER LINE means a pipe or piping system that is not regulated by the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration pursuant to 49 C.F.R. § 195.2, and which transfers crude oil or condensate generated by more than one oil and gas facility to an offsite production or storage facility.

DOMESTIC TAP means an individual gas service line directly connected to a flowline.

FLOWLINES means a segment of pipe transferring oil, gas, or condensate between a wellhead and the point of delivery to a U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration or Colorado Public Utilities Commission regulated gathering line or a segment of pipe transferring produced water between a wellhead and the point of disposal, discharge, or loading. ~~shall mean those segments of pipe from the wellhead downstream through the production facilities ending at: in the case of gas lines, the gas metering equipment; or in the case of oil lines the oil loading point or LACT unit; or in the case of water lines, the water loading point, the point of discharge to a pit, the injection wellhead, or the permitted surface water discharge point.~~ The different types of flowlines are:

Wellhead Line means a flowline that transmits well production fluids from an oil or gas well to process equipment (e.g., separator, production separator, tank, heater treater), not including pre-conditioning equipment such as sand traps and line heaters, that do not materially reduce line pressure.

Production Piping means a segment of pipe that transfers well production fluids from a wellhead line or production equipment to a gathering line or storage vessel and includes the following:

Production Line means a flowline connecting a separator to a meter, LACT, or gathering line;

Dump Line means a flowline that transfers produced water, crude oil, or condensate to a storage tank, or process vessel and operates at atmospheric pressure at the flowline's outlet;

Manifold Piping means a flowline that transfers fluids from lines that have been joined together to comingle fluids into a piece of production facility equipment; and

Process Piping means all other piping that is integral to oil and gas exploration and production related to an individual piece or a set of production facility equipment pieces.

Peripheral Piping means a flowline transferring fluids between oil and gas facilities for lease use, that may include, but is not limited to, fuel gas, lift gas, instrument gas, and power fluids.

Produced Water Flowline means a flowline used to transfer produced water for treatment, storage, discharge, injection or reuse for oil and gas operations.

Produced Water Transfer System means a pipe or piping system that transports produced water generated at more than one well.

A segment of pipe transferring only freshwater is not a flowline. A line that would otherwise satisfy the above definition will not be considered a flowline if all of the following are satisfied:
-the operator prospectively marks and tags the line as a support line;
-the line is not integral to production;
-the line is used infrequently to service or maintain production equipment;
-the line does not hold a constant pressure, and
-the line is isolated from a pressure source when not in use.

This definition does not include gathering lines.

GATHERING LINE means a gathering pipeline as defined by 4 C.C.R. § 723-4901 or a pipeline regulated by the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration pursuant to 49 C.F.R. §§ 195.2 or 192.8~~shall mean a pipeline and equipment described below that transports gas from a production facility (ordinarily commencing downstream of the final production separator at the inlet flange of the custody transfer meter) to a natural gas processing plant or transmission line or main. The term "gathering line" includes valves, metering equipment, communication equipment, cathodic protection facilities, and pig launchers and receivers, but does not include dehydrators, treaters, tanks, separators, or compressors located downstream of the final production facilities and upstream of the natural gas processing plants, transmission lines, or main lines~~.

GRADE 1 GAS LEAK means a leak that represents an existing or probable hazard to persons or property and requires immediate repair or continuous action until the conditions are no longer hazardous.

LOCKOUT means installing a device, such as a blind plug, blank flange, or bolted slip blind, that prevents operation of an energy-isolating device, such as a valve, and ensures the equipment cannot be operated until the lockout device is removed.

MAXIMUM ANTICIPATED OPERATING PRESSURE means the highest operational pressure expected to be applied to a flowline when in service.

OFF-LOCATION FLOWLINE means a flowline from a well to a production facility that is not on the same oil and gas location as the well.

PIPELINE means a flowline, crude oil transfer line or gathering line as defined in these Rules.

RISER means the component of a flowline transitioning from below grade to above grade.

TAGOUT means securely fastening a tagout device to an energy-isolating device, such as a valve, to indicate that the energy-isolating device and the equipment being controlled may not be operated until the tagout device is removed.

TAGOUT DEVICE means a prominent warning device, such as a tag, that will not deteriorate or become illegible with exposure to weather conditions or wet and damp locations. The tagout device must: include an instruction to not operate the equipment; the date of the last successful integrity test; the reason for tagging out the equipment; and be color coded per ANSI/ASME A13.1.

1101. Registration Requirements

a. **Registration of Off-Location Flowlines.** An operator of an off-location flowline must submit a Flowline Form, Form 44, to the Director after completing construction and must include the following information:

(1) GPS location points for the risers;

(2) pipe and bedding materials used in construction;

(3) flowline diameter;

(4) fluids that will be transferred;

(5) the maximum anticipated operating pressure and initial pressure test results;

(6) a schematic drawing of the flowline, associated oil and gas locations, and existing and proposed pipelines related to the oil and gas locations; and

(7) the COGCC Facility ID assigned to the associated oil and gas locations.

b. **Domestic Tap Registration.**

(1) Upon installation or discovery, operators must report to the Director the GPS location for the point of flowline connection and the address of the point of delivery of all domestic taps connected to an operator's flowline.

(2) For Domestic Taps installed after February 14, 2018, an operator must register the domestic tap pursuant to subpart (1) and ensure:

A. The domestic tap is locatable by a tracer line or location device placed adjacent to or in the trench of the domestic tap to facilitate locating it;

B. A licensed plumber properly installs:

i. properly-sized regulators on the domestic tap at the point it connects to the operator's flowline and at the point it delivers gas to the dwelling or structure where the gas is utilized; and

ii. all necessary piping to accommodate appropriate odorization, and gas utilization metering equipment;

C. All materials used for the domestic tap are designed for gas service and are installed using appropriate cover and bedding material in accordance with industry standards;

D. Markers are installed and maintained at the point the domestic tap connects to the operator's flowline and at the point it delivers gas to the dwelling or structure where the gas is utilized. Markers must include the language required by Rule 1102.f.(2); and

E. Odorant is supplied at the time of installation until abandonment of the domestic tap.

c. **Crude Oil Transfer Line Registration.** At least 30 days before beginning construction of a crude oil transfer line, an operator must submit a Form 12 to the Director that includes a schematic

showing the gathering line's route, including its crossings of public by-ways, road crossings, sensitive wildlife habitats, sensitive areas and natural and manmade watercourses to the Director.

1102. FLOWLINE AND CRUDE OIL TRANSFER LINE INSTALLATION, OPERATIONS, MAINTENANCE, ~~AND~~ REPAIR AND RECLAMATION

a. **Material.** Materials for pipe and pipe ~~other~~ components ~~of pipelines shall~~ must be:

(1)~~A.~~ Able to maintain the structural integrity of the ~~pipeline~~ flowline or crude oil transfer line under anticipated operating temperature, pressure, and other conditions ~~that may be anticipated~~; and

(2)~~B.~~ Compatible with the substances to be transported.

~~C. Locatable by a tracer line or location device placed adjacent to or in the trench of all buried nonmetallic pipelines to facilitate the location of such pipelines.~~

b. **Design and Installation.**

(1) Each component of a flowline or crude oil transfer line must meet one of the following standards appropriate for the component:

A. American Society of Mechanical Engineers, Pipeline Transportation Systems for Liquids and Slurries, 2016 Edition (ASME B31.4-2016), and no later editions of the standard. ASME B31.4-2016 is available for public inspection during normal business hours from the Public Room Administrator at the office of the Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado 80203. Additionally, ASME B31.4-2016 may be examined at any state publications depository library and is available to purchase from the ASME. The ASME can be contacted at Two Park Avenue, New York, NY 10016-5990, 1-800-843-2763;

B. ASME Gas Transmission and Distribution Piping Systems, 2016 Edition (ASME B31.8-2016), and no later editions of the standard. ASME B31.8-2016 is available for public inspection during normal business hours from the Public Room Administrator at the office of the Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado 80203. Additionally, ASME B31.8-2016 may be examined at any state publications depository library and is available to purchase from the ASME. The ASME can be contacted at Two Park Avenue, New York, NY 10016-5990, 1-800-843-2763;

C. ASME Process Piping, 2016 Edition (ASME 31.3-2016), and no later editions of the standard. ASME 31.3-2016 is available for public inspection during normal business hours from the Public Room Administrator at the office of the Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado 80203. Additionally, ASME 31.3-2016 may be examined at any state publications depository library and is available to purchase from the ASME. The ASME can be contacted at Two Park Avenue, New York, NY 10016-5990, 1-800-843-2763; or

D. API Specification 15S, Spoolable Reinforced Plastic Line Pipe, Second Edition, March 2016 (API Specification 15S), and no later editions of the standard. API Specification 15S is available for public inspection during normal business hours from the Public Room Administrator at the office of the Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado 80203. In addition, API Specification 15S may be examined at any state publications depository library and is available from API at 1220 L Street, NW Washington, DC 20005-4070, 1-202-682-8000.

(2) Each component of a ~~pipeline~~ flowline or crude oil transfer line must~~shall~~ be designed ~~and installed~~ to:

A. ~~prevent~~ Prevent failure from internal or external corrosion and the effects of transported fluids;

B. ~~and to w~~Withstand maximum anticipated operating pressures and other internal loadings without impairment ~~of its serviceability;~~

C. ~~The pipe shall~~D. h~~H~~ave ~~sufficient wall thickness or be installed with adequate protection to W~~withstand anticipated external pressures and loads that will be imposed on the pipe after installation;and.

D. Allow for line maintenance, periodic line cleaning, and integrity testing.

c. **Installation.**

(1) Installation crews must be trained in all flowline or crude oil transfer line installation practices for which they are tasked to perform.

(2) No pipe or other component may be installed unless it has been visually inspected at the site of installation to ensure that it is not damaged.

(3) Flowlines or crude oil transfer lines must be installed in a manner that minimizes interference with agriculture, road and utility construction, the introduction of secondary stresses, and the possibility of damage to the pipe.

(4) The pipe must be handled in a manner that minimizes stress and avoids physical damage to the pipe during stringing, joining, or lowering in. During the lowering in process the pipe string must be properly supported so as not to induce excess stresses on the pipe or the pipe joints or cause weakening or damage to the outer surface of the pipe.

(5) Flowlines or crude oil transfer lines that cross a municipality, county, or state graded road must be bored unless the responsible governing agency specifically permits the owner to open cut the road.

(6) Unless the manufacturer's installation procedures and practices direct otherwise:

A. pipeline trenches must be constructed to allow the pipeline to rest on undisturbed native soil and provide continuous support along the length of the pipe;

B. trench bottoms must be free of rocks greater than two inches in diameter, debris, trash, and other foreign material not required for pipeline installation; and

C. over excavated trench bottoms must be backfilled with appropriate material and compacted prior to installation of the pipe to provide continuous support along the length of the pipe.

(7) The width of the trench must provide adequate clearance on each side of the pipe. Trench walls must be excavated to ensure minimal sluffing of sidewall material into the trench. Subsoil from the excavated trench must be stockpiled separately from previously stripped topsoil.

(8) A flowline or crude oil transfer line trench must be backfilled in a manner that provides firm

support under the pipe and prevents damage to the pipe and pipe coating from equipment or from the backfill material. Sufficient backfill material must be placed in the pipe springlift of the pipe to provide long-term support for the pipe. Backfill material that will be within two feet of the pipe must be free of rocks greater than two inches in diameter and foreign debris. Backfilling material must be compacted as appropriate during placement in a manner that provides support for the pipe and reduces the potential for damage to the pipe and pipe joints.

(9) Flowlines and crude oil transfer lines must be installed as designed.

(10) Flowlines and crude oil transfer lines that traverse sensitive wildlife habitats or sensitive areas, such as wetlands, streams, or other surface waterbodies, must be installed in a manner that minimizes impacts to these areas.

~~c.~~d. **Cover.**

(1) All installed ~~pipelines~~ flowlines must~~shall~~ have cover sufficient to protect them from damage. On ~~crop land~~ cropland, all ~~pipelines~~ flowlines ~~shall~~ must have a minimum cover of three (3) feet.

(2) Where an underground structure, geologic, ~~economic~~ or other uncontrollable condition prevents ~~pipelines~~ a flowline from being installed with minimum cover, or when there is a written agreement between the surface owner and the operator, ~~the~~ a flowline ~~line~~ may be installed with less than minimum cover or above ground.

(3) All installed crude oil transfer lines must have a minimum cover of three (3) feet.

~~f.~~e. **Excavation, backfill and reclamation.**

(1) When ~~pipelines~~ flowlines or crude oil transfer lines cross ~~crop lands~~ croplands, unless waived by the surface owner, the operator ~~shall~~ must segregate topsoil while trenching, and ~~trenches shall be~~ backfill~~ed~~ trenches so that the soils ~~can~~ ~~shall~~ must be returned to their original relative positions and contour. This requirement to segregate and backfill topsoil ~~shall~~ does not apply to trenches which are twelve (12) inches or less in width. Operator must make ~~R~~reasonable efforts ~~shall be made~~ to run ~~pipelines~~ flowlines or crude oil transfer lines parallel to crop irrigation rows on flood irrigated land.

(2) ~~On crop lands and non-crop lands, pipeline~~ All trenches must ~~shall~~ be maintained in order to correct subsidence and reasonably minimize erosion.

~~(2)~~(3) Interim and final reclamation, including revegetation, must ~~shall~~ be performed in accordance with the applicable 1000 Series rules.

f. **Marking.**

(1) In Designated Setback Locations, and where crossing public rights-of-way or utility easement, an operator must install and maintain a marker that identifies the location of ~~pipelines~~flowlines or crude oil transfer lines.

(2) The marker must include the following language:

"Warning", "Caution" or "Danger" followed by the words "gas (or name of ~~natural~~ gas or ~~petroleum~~ fluid transported) ~~pipeline~~flowline (or crude oil transfer line)" along with the name of the operator and the telephone number where the operator can be reached at all times. The

letters must be legible, written on a background of sharply contrasting color and on each side with at least one (1) inch high with one-quarter (¼) inch stroke.

g. **Inspection**. All newly constructed crude oil transfer lines must be inspected by third-party independent inspectors to ensure the crude oil transfer line is installed as prescribed by the manufacturer's specifications and in accordance with the requirements of the 1100 series rules. An inspector must be trained, experienced and qualified in the phase of construction being inspected. A list of all third-party independent inspectors and a description of each independent inspector's qualifications, certifications, experience, and specific training must be provided to the Director upon request pursuant to Rule 205.

h. **Maintenance.**

(1) Each operator must take reasonable precautions to prevent failures, leakage and corrosion of ~~pipelines~~flowlines and crude oil transfer lines.

(2) Whenever an operator discovers any condition that could adversely affect the safe and proper operation of ~~its a pipeline~~flowline or crude oil transfer line, it must correct it within a reasonable time. However, if the condition presents an immediate hazard to persons or property, the operator may not operate the affected part of the system until the operator has corrected the condition.

(3) Any flowline or crude oil transfer line not actively in use must have all valves locked or tagged out.

i. **Repair.**

(1) Each operator must, in repairing its ~~pipelines~~flowlines or crude oil transfer line, make repairs in a safe manner that- prevents injury to persons and damage to equipment and property.

(2) An operator may not use any pipe, valve, or fitting to repair a flowline or crude oil transfer line unless the components meet the installation requirements of the 1100 series rules. A flowline or crude oil transfer line installed prior to February 14, 2018, that undergoes a major modification or change in service after February 14, 2018, must satisfy all requirements of the 1100 series rules before an operator can place the flowline or crude oil transfer line in to service.

(3) An operator may not use any pipe, valve, or fitting, for replacement or repair of a flowline, unless it is designed to the maximum anticipated operating pressure.

(4) An operator must pressure test any repaired flowline or crude oil transfer line before returning it to service.

j. **Operating requirements.**

(1) No flowline or crude oil transfer line may be operated until it has demonstrated compliance with Rule 1103.

(2) The maximum operating pressure for a flowline or crude oil transfer line may not exceed the manufacturer's specifications of the pipe or the manufacturer's specifications of any other component of it, whichever is less. A flowline or crude oil transfer line must be equipped with adequate controls and protective equipment to prevent it from operating above the maximum

operating pressure.

k. **Corrosion control.**

(1) All coated pipe must be electronically inspected prior to placement using coating deficiency (i.e. scratch, bubble, and "holiday") detectors to check for any faults not observable by visual examination. The detector must operate in accordance with manufacturer's instructions and at a voltage level appropriate for the electrical characteristics of the pipeline being tested. During installation all joints, fittings, and tie-ins must be coated with materials compatible with the coatings on the pipe. Coating materials must:

A. Be designed to mitigate corrosion of the buried pipeline;
B. Have sufficient adhesion to the metal surface to prevent under film migration of moisture;
C. Be sufficiently ductile to resist cracking;
D. Have enough strength to resist damage due to handling and soil stress;
E. Support any supplemental cathodic protection; and
F. If the coating is an insulating type, have low moisture absorption and provide high electrical resistance.

(2) Pipes must be locatable by a tracer line or location device placed adjacent to or in the trench of a buried nonmetallic flowline or crude oil transfer line.

(3) Cathodic protection systems must meet or exceed the minimum criteria set forth in the National Association of Corrosion Engineers standard practice Control of External Corrosion on Underground or Submerged Metallic Piping Systems.

(4) If internal corrosion is anticipated or detected, the flowline or crude oil transfer line operator must take prompt remedial action to correct any deficiencies, such as increased pigging, use of corrosion inhibitors, internal coating of the pipeline (e.g. an epoxy paint or other plastic liner), or a combination of these methods.

l. **Crude oil transfer line as built.** For a crude oil transfer line placed into service after February 14, 2018, the operator must, within 30-days from the date of being placed into service, file with the Director a Form 44, and register with the Utility Notification Center of Colorado (UNCC). Operators must include the following information:

(1) a schematic layout of the facility that shows the location of all associated above ground equipment and the pipeline centerline from the point of origin to the termination point;

(2) a geographical information system layer utilizing North American datum 83 geographic coordinate system (GCS) in an environmental systems research institute (Esri) shape file format that has a completed attribute table containing the required data; and

(3) an affidavit of completion that that states the operator designed and installed the crude oil transfer line in compliance with the 1100 Series rules and submitted the ERSI shape file to the UNCC.

(4) the proposed pipe material (i.e., size, weight, grade, wall thickness, coating, and standard dimension ration);

(5) the type of fluid to be transported;

(6) the method for testing integrity;

(7) proposed burial depth of the crude oil transfer line; and

(8) the location and construction method proposed for all public by-ways, road crossings, sensitive wildlife habitats, sensitive areas and natural and manmade watercourses (i.e., bored and cased or bored only).

m. **Record Keeping.** An operator must keep records of flowline or crude oil transfer line size, route, materials, maximum anticipated operating pressure, pressure test results, and integrity management documentation for the life of the flowline. These records are available for inspection by the Director pursuant to Rule 205.

~~j.~~n. **One Call participation.** ~~As to any pipelines over which the Commission has jurisdiction, each~~ Every operator ~~shall~~must become a Tier One member of the UNCC and participate in Colorado's One Call notification system, the requirements of which are established by §9-1.5-101., C.R.S. et seq.

(1) An operator must include its UNCC member code when filing an Operator Registration, Form 1, Change of Operator, Form 10, Gas Facility Registration, Form 12, or Flowline Form, Form 44.

(2) Upon completing an asset purchase, transfer, construction or relocation of a flowline or crude oil transfer line, an operator must update within 30-days its location information with the UNCC.

(3) An operator's registration with the Commission grants the Director permission to access information the operator submits to UNCC about its oil and gas facilities.

o. **Notification.** The operator of a crude oil transfer line must submit a Form 42 notice of change to the Director identifying any crude oil transfer line or portion thereof that has been removed from service for more than one year.

~~g. **Pressure testing of flowlines.**~~

~~1102~~1103. ~~**OPERATIONS, MAINTENANCE, AND REPAIR**~~ **INTEGRITY MANAGEMENT**

a. **Notification.** At least ten days before conducting an initial pressure test or an annual pressure test, an operator must submit a Form 42 to the Director to allow a representative of the Commission to witness the testing process and results.

b. **Initial Pressure Test Requirements.** After installation or being taken out of service and b~~B~~efore operating a segment of flowline or crude oil transfer line, an operator must test the flowline or crude oil transfer line ~~it shall be tested~~ to maximum anticipated operating pressure and demonstrate integrity. In conducting tests, each operator must~~shall~~ ensure that reasonable precautions are taken to protect its employees and the general public. The operator may conduct the test ~~testing may be conducted~~ using ~~well head~~ wellhead pressure sources and well bore fluids, including ~~natural~~ gas. ~~Such pressure tests shall be repeated once each calendar year to maximum anticipated operating pressure, and operators shall maintain records of such testing for Commission inspection for at least three (3) years.~~

c. **Off-Location Flowlines.** All off-location flowlines must be subject to one of the following integrity management programs:

(1) Annual pressure test;

(2) Continuous pressure monitoring; or

(3) For aboveground flowlines, annual visual inspection.

d. **Belowground Dump Lines.** An operator must verify integrity of belowground dump lines by performing an annual static-head test.

e. **Aboveground Dump Lines and Small Diameter Peripheral Piping.** An operator must verify integrity of aboveground dump lines or peripheral piping by performing an annual visual inspection.

f. **Integrity Management for All Other Flowlines.** Any flowlines not subject to c. through e. above, must be subject to one of the following integrity management programs:

(1) A pressure test every three years and annual visual inspection; or

(2) Continuous pressure monitoring.

g. **Crude oil transfer lines.** All crude oil transfer lines are subject to one of the following integrity management programs:

(1) Annual pressure test;

(2) Continuous pressure monitoring; or

(3) Smart pigging conducted every three years.

h. **Leak protection, detection, and monitoring.**

(1) All crude oil transfer line operators must file with the Director any leak protection and monitoring plan prepared by the operator or required by the Director, pursuant to the Rule 205.

(2) All crude oil transfer line operators must develop and maintain a plan to share all inflow and outflow data. The data may include, but is not limited to, the flow and fluid properties of rate, volume, temperature, and pressure in order to perform a material balance computation. The plan must provide for data sharing between the production facility operator, the crude oil transfer line operator, and the operator at the point or points of disposal, storage, or sale. If a data discrepancy is observed, the party observing the data discrepancy is to notify all other parties and action must be taken to determine the cause. The crude oil transfer line operator is to retain a record of all data discrepancies. If requested, copies of such records must be filed with the Director pursuant to Rule 205.

i. **Pressure Test Requirements.** A pressure test must subject the flowline or crude oil transfer line to the maximum anticipated operating pressure and be conducted in accordance with one of the following:

(1) -API RP 1110, Recommended Practice for the Pressure Testing of Steel Pipelines for the Transportation of Gas, Petroleum Gas, Hazardous Liquids, Highly Volatile Liquids or Carbon Dioxide (6th Ed., February 1, 2013) (API RP 1110), and no later editions of the standard. API RP 1110 is available for public inspection during normal business hours from the Public Room Administrator at the office of the Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado 80203. In addition, API RP 1110 may be examined at any state publications depository library and is available from API at 1220 L Street, NW Washington, DC 20005-

4070, 1-202-682-8000.

~~(1)~~

(2) The American Society for Testing and Materials Standard Practice for Field Leak Testing of Polyethylene (PE) and Crosslinked Polyethylene (PEX) Pressure Piping Systems Using Hydrostatic Pressure (ASTM F2164 – 13), and no later editions of the standard. ASTM F2164 – 13 is available for public inspection during normal business hours from the Public Room Administrator at the office of the Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado 80203. In addition, ASTM F2164 – 13 may be examined at any state publications depository library and is available from ASTM at ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA, 19428-2959, 1-877-909-2786

j. **Continuous Pressure Monitoring Requirements.** An operator's continuous pressure monitoring program must ensure:

(1) Pressure data are monitored continuously, i.e., 24 hours, 7 days a week, and the monitoring is sufficiently sophisticated to identify integrity or pressure anomalies;

(2) Systems are capable of being shut-in for repairs immediately upon discovery of an anomaly, either through automation or through a documented, manual process;

(3) The operator documents the continuous monitoring program, including integrity anomalies and the documentation demonstrates how an operator will maintain and repair anomalies in flowlines or crude oil transfer lines; and

(4) A map of the flowline or crude oil transfer line system is available in ESRI shapefile format. The shapefile must show the flowline or crude oil transfer line alignments, location of isolation valves, and pressure-monitoring points.

k. **Visual Inspection Requirements.** An operator must perform a visual, aerial, or other survey of the entire flowline length to detect integrity failures, leaks, spills, or releases, or signs of a leak, spill, or release like stressed vegetation or soil discoloration. An operator may use audio, visual, or olfactory or other detection technology, like optical gas imaging or LASERs, to detect integrity failures. An operator must document the employee conducting the inspection, detection methodology, and date and time of the inspection.

~~a. Flowline segments operating at less than fifteen (15) psig are excepted from pressure testing requirements.~~

1103~~4~~. ABANDONMENT

~~Each pipeline abandoned in place shall be disconnected from all sources and supplies of natural gas and petroleum, purged of liquid hydrocarbons, depleted to atmospheric pressure, and cut off three (3) feet below ground surface, or the depth of the pipeline, whichever is less and sealed at the ends. This requirement shall also apply to compressor or gas plant feeder pipelines upon decommissioning or closure of a portion or all of a compressor station or gas plant. Notice of such abandonment shall be filed with the Commission and with the local governmental designee or local government jurisdiction.~~

a. A flowline or crude oil transfer line remains subject to all of the requirements in Rules 1101 through 1103 until the operator completes all abandonment requirements set forth below.

b. For abandonment, operators must permanently remove a flowline or crude oil transfer line from service by physically separating it from all sources of fluids or pressure and comply with one of the following:

(1) **Abandonment in place.** The operator must:

A. Purge the flowline or crude oil transfer line of any liquids;

B. Deplete the flowline or crude oil transfer line to atmospheric pressure;

C. Cut the flowline's or crude oil transfer line's risers to three (3) feet below grade or to the depth of the flowline or crude oil transfer line, whichever is shallower;

D. Seal the ends of the flowline or crude oil transfer line below grade; and

E. Remove cathodic protection and above-grade equipment associated with the riser.

(2) **Removal.** The operator must remove the flowline or crude oil transfer line and risers, and cathodic protection and above-grade equipment associated with the riser.

c. Once an operator removes a flowline or crude oil transfer line from service and is in the process of abandoning it, the operator must lockout and tagout the risers associated with the flowline or crude oil transfer line using appropriate devices.

d. Within 10 days of an operator completing abandonment requirements for a flowline or crude oil transfer line, the operator must file a Notice of Flowline Abandonment, Form 44, with the Director. If the operator abandons an Off-Location Flowline and has not submitted GPS location points for the flowline's risers, the Notice of Flowline Abandonment must include this information.

e. The Director will provide the filed Notice of Flowline Abandonment, Form 44 to the appropriate Local Governmental Designee and UNCC.

f. These abandonment requirements apply to compressor or gas plant feeder pipelines upon decommissioning or closure of a portion or all of a compressor station or gas plant.

DRILLING, DEVELOPMENT, PRODUCTION AND ABANDONMENT (300 Series)

312. COGCC Form 10. CERTIFICATE OF CLEARANCE AND/OR CHANGE OF OPERATOR

* * *

i. A completed Form 10 is ~~shall be~~ required for any change of operator for all oil and gas facilities, ~~excluding~~ except for produced water transfer systems, gas gathering systems, gas processing plants, and underground gas storage facilities ~~as those shall be changed with a Form 12, Gas Facility Registration/Change of Operator~~, which are governed by Rule 313B.

313A. COGCC Form 11. MONTHLY REPORT OF GASOLINE OR OTHER EXTRACTION PLANT

All operators of gasoline or other extraction plants ~~shall~~ must make monthly reports to the Director on a Form 11. Such forms ~~shall~~ must contain all information required thereon and ~~shall~~ must be filed with the Director on or before the twenty-fifth (25th) day of each month covering the preceding month.

313B. COGCC Form 12. PRODUCED WATER TRANSFER SYSTEM, AND GAS FACILITY REGISTRATION/CHANGE OF OPERATOR

a. An operator must submit a Form 12 to register a new produced water transfer system, gas gathering system, a new gas processing plant, or a new underground gas storage facility. The operator must attach a flowline layout drawing and a topographic map to the Form 12.

b. When an operator makes significant changes to an existing produced water transfer system, gas gathering system, gas processing plant, or underground gas storage facility, the operator must submit a Form 12 to update the Commission's records regarding the facility. The operator must attach an updated flowline layout drawing and an updated topographic map to the Form 12.

c. An operator must submit a Form 12 to change the operator of a produced water transfer system, gas gathering system, gas processing plant, or an underground gas storage facility. The operator must attach documentation confirming transfer of the asset(s) to the Form 12 for a change of operator.

d. At least 30 days before beginning construction of a gas gathering line with segments subject to safety regulation by the Office of Pipeline Safety, U.S. Department of Transportation, an operator must submit a Form 12 to the Director. The operator must attach a schematic showing the gathering line's route and its crossings of public by-ways and natural and manmade watercourses to the Form 12.

328. MEASUREMENT OF OIL

* * *

d. **Tank Gauging.** Measurement by tank gauging ~~shall~~ must be completed in accordance with industry standards as specified in:

i. The API Manual of Petroleum Measurement Standards, Chapter 3.1A Standard Practice for the Manual Gauging of Petroleum and Petroleum Products, (Second Edition, August 2005) and no later editions;

ii. The API Manual of Petroleum Measurement Standards, Chapter 3.1B Standard Practice for the Manual Gauging of Petroleum and Petroleum Products, (Second Edition, June 2001) and no later editions;

iii. The API Manual of Petroleum Measurement Standards, Chapter 3.1A Standard Practice for the Manual Gauging of Petroleum and Petroleum Products, (Second Edition, August 2005) and no later editions;

iv. The API Manual of Petroleum Measurement Standards Chapter 18.1 - Custody Transfer - Section 1-Measurement Procedures for Crude Oil Gathered from Small Tanks by Truck (Second Edition, April 1997) and no later editions, or

v. The API Manual of Petroleum Measurement Standards Chapter 18.2, Custody Transfer of Crude Oil from Lease Tanks Using Alternative Measurement Methods, (First Edition, July 2016) and no later editions.

The API Manuals identified in i. through v. above are available for public inspection during normal business hours from the Public Room Administrator at the office of the Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado 80203. In addition, the API Manuals may be examined at any state publications depository library and is available from API at 1220 L Street, NW Washington, DC 20005-4070, 1-202-682-8000.

* * *

602. GENERAL

The training and actions of an operator's employees, as well as the proper location and operation of equipment, are essential to any safety program.

a. Operators must familiarize their employees ~~Employees shall be familiarized~~ with these Rules ~~as provided herein~~ as they relate to their job functions. Each new employee should have his or her job outlined, explained and demonstrated.

b. Employees ~~shall~~ must immediately report unsafe and potentially dangerous conditions to their supervisor and any such ~~these~~ conditions shall be remedied as soon as practicable.

c. An operator must notify the Director of reportable safety events at an oil and gas facility. Reportable safety events include:

(1) Any fire, explosion, accidental detonation, or uncontrolled release of pressure.

(2) Any accident that involves a fatal injury.

(3) Any accident involving a major or life-threating injury.

(4) Any injury to the member of the general public that requires Medical Treatment.

(5) Any natural event or accident that results in an actual or threatened safety event.

d. Initial notification from the operator of a reportable safety event described in c. (1) -(7) above, must occur as soon as practicable, but no more than 24 hours after the safety event. An Accident Report, Form 22, must be submitted to the Director within 3-days of the accident.

(1) At the Director's request, the operator must submit a supplemental report that details the root cause analysis, information about any repairs, or other information related to the accident.

(2) At the Director's request, the operator must present its root cause analysis about the accident to the Commission or to an organization approved by the Director.

e. Where unsafe or potentially dangerous conditions exist and first responders are on-site, the owner or operator must respond as directed by first responders (such as sheriff, fire district director, etc.)

f. Vehicles of persons not involved in drilling, production, servicing, or seismic operations must ~~shall~~ be located a minimum distance of one hundred (100) feet from the wellbore, or a distance equal to the height of the derrick or mast, whichever is greater. Equivalent safety measures shall be taken where terrain, location or other conditions do not permit this minimum distance requirements.

~~g. Existing wells are exempt from the provisions of these regulations as they relate to the location of the well.~~

~~h.~~g. Existing producing facilities ~~shall be~~ are exempt from the provisions of these regulations with respect to minimum distance requirements and setbacks unless they are found by the Director to be unsafe.

h. Self-contained sanitary facilities shall be provided during drilling operations and at any other similarly staffed oil and gas operations facility

605. OIL AND GAS FACILITIES.

605.d. **Mechanical Conditions.** All valves, pipes and fittings ~~shall~~ must be securely fastened, inspected at regular intervals, and maintained in good mechanical condition. An operator must fully open and close all valves at least annually and repair or replace valves that are not fully operational. Any valve, flange, fitting or other component connected to a flowline must have a manufacturer's rating that is equal to or greater than the flowline's maximum anticipated operating pressure.

(1) A valve must be installed at each of the following locations:

A. On the suction end and the discharge end of a pump station in a manner that permits isolation of the pump station equipment in the event of an emergency;

B. On each flowline entering or leaving a breakout tank in a manner that permits isolation of the breakout tank from other facilities;

C. At locations along a flowline system that will minimize the likelihood or damage or pollution from accidental discharge of hydrocarbons or E&P Waste, as appropriate for the terrain in open country or for populated areas;

D. On each flowline to allow integrity testing of the flowline without interrupting fluid flow of other connected pipelines;

E. On each side of a flowline crossing a waterbody that is more than 100 feet (30 meters) wide from high-water mark to high-water mark; and

F. On each side of a flowline crossing a reservoir holding water for human consumption.

(2) Check Valves Required.

A. Where an operator produces two or more wells through a common flowline, separator, or manifold, the operator must equip each flowline leading from a well to the common flowline, separator, or manifold with a check valve or other means of shut-off. The check valve or other means of shut-off must be in the flowline serving the well. The check valve must be located between the wellhead and the point where the flowline connects with any other f~~F~~lowline, common separator, or common manifold.

i. For wells produced through a common flowline or separator, the operator must place the check valve or other means of shut-off in each flowline leading from a well as close to the wellhead connection as is practicable.

ii. For wells produced through a common manifold, the operator may place the check valve or other means of shut-off in each flowline from a well near a point where the flowline enters the manifold or as close to the wellhead connection as practicable.

B. The check valve or other means of shut-off must be installed to permit fluids moving from the well to the common flowline, separator, or manifold and to prevent any fluid from entering the well through the flowline.

C. The operator must keep the check valve or other means of shut-off in good working order.

D. Upon the Director's request, operators must test the operation of the check valve or other means of shut-off.

* * *

FINANCIAL ASSURANCE AND OIL AND GAS CONSERVATION AND ENVIRONMENTAL RESPONSE FUND (700 Series)

711. ~~Natural g~~ Produced water transfer systems, gas gathering, ~~natural~~ gas processing and underground ~~natural~~ gas storage facilities.

Operators of produced water transfer systems ,~~natural~~ gas gathering, ~~natural~~ gas processing, or underground ~~natural~~ gas storage facilities ~~shall~~ must ~~be required to~~ provide statewide blanket financial assurance to ensure compliance with the 900 Series rules in the amount of fifty thousand dollars ($50,000), or in an amount voluntarily agreed to with the Director, or in an amount ~~to be~~ determined by order of the Commission. Operators of small systems gathering or processing less than five (5) MMSCFD may provide individual financial assurance in the amount of five thousand dollars ($5,000).

E&P WASTE MANAGEMENT (900 Series)

906. SPILLS AND RELEASES

* * *

b. **Reporting spills or releases of E&P Waste or produced fluids.**

(1) Report to the Director. Operators shall report a spill or release of E&P Waste or produced fluids that meet any of the following criteria to the Director verbally or in writing as soon as practicable, but no more than twenty-four (24) hours after discovery (the "Initial Report").

A. A spills/release of any size that impacts or threatens to impact any waters of the state, a residence or occupied structure, livestock, or public byway;

B. A spill/release in which one (1) barrel or more of E&P Waste or produced fluids is spilled or released outside of berms or other secondary containment;

C. A spill/release of five (5) barrels or more regardless of whether the spill/release is completely contained within berms or other secondary containment~~.~~ ; or

D. Any Grade 1 Gas Leak. Operators reporting a Grade 1 Gas Leak must use a Form 44 to submit the Initial Report or subsequent information required by this section.

The Initial Report to the Director shall include, at a minimum, the location of the spill/release and any information available to the Operator about the type and volume of waste involved.

If the Initial Report was not made by submitting a COGCC Spill/Release Report, Form 19 the Operator must submit a Form 19 with the Initial Report information as soon as practicable but not later than 72 hours after discovery of the spill/release unless extended by the Director.

In addition to the Initial Report to the Director, the Operator shall make a supplemental report on Form 19 not more than 10 calendar days after the spill/release is discovered that includes an 8 1/2 x 11 inch topographic map showing the governmental section and location of the spill or an aerial photograph showing the location of the spill; all pertinent information about the spill/release known to the Operator that has not been reported previously; and information relating to the initial mitigation, site investigation, and remediation measures conducted by the Operator.

The Director may require further supplemental reports or additional information.

* * *

CONFORMING CHANGES

DEFINITIONS
(100 Series)

OIL AND GAS FACILITY ~~shall~~ means equipment or improvements used or installed at an oil and gas location for the exploration, production, withdrawal~~, gathering~~, treatment, or processing of crude oil, condensate, E&P waste, or ~~natural~~ gas.

OIL AND GAS OPERATIONS means explor~~ingration~~ for oil and gas, including ~~the~~ conduct~~ing of~~ seismic operations and the drilling of test bores; ~~the~~ siting, drilling, deepening, recompletion, reworking, or ~~abandonment~~ abandoning ~~of~~ a well~~n oil and gas well, underground injection well, or gas storage well~~; producition operations related to any ~~such~~ well, including ~~the~~ installation ~~of~~ing flowlines ~~and gathering systems~~; the generation, ~~transportation~~transporting, ~~storage~~storing, ~~treatment~~treating, or ~~disposal~~ disposing~~of~~ exploration and production wastes; and any construction, site preparation, or reclaim~~ingation~~ activities associated with such operations.

PLUGGING AND ABANDONMENT ~~shall~~ means the cementing of a well, the removal of its associated production facilities, the ~~removal or~~ abandonment ~~in place~~ of its flowline(s), and the remediation and reclamation of the wellsite.

PRODUCTION FACILITY ~~shall~~ means any storage, separation, treating, dehydration, artificial lift, power supply, compression, pumping, metering, monitoring, flowline, and other equipment directly associated with a well~~ oil wells, gas wells, or injection wells~~.

PRODUCTION PITS ~~shall~~ means ~~those~~ pits used after drilling operations and initial completion of a well, including pits related to produced water flowlines or associated with E&P waste from~~at natural~~ gas gathering, processing and storage facilities, which constitute:

> **SKIMMING/SETTLING PITS** used to provide retention time for settling of solids and separation of residual oil for the purposes of recovering the oil or fluid.
>
> **PRODUCED WATER PITS** used to temporarily store produced water prior to injection for enhanced recovery or disposal, off-site transport, or surface-water discharge.
>
> **PERCOLATION PITS** used to dispose of produced water by percolation and evaporation through the bottom or sides of the pits into surrounding soils.
>
> **EVAPORATION PITS** used to contain produced waters which evaporate into the atmosphere by natural thermal forces.

SPECIAL PURPOSE PITS ~~shall~~ means ~~those~~ pits used in oil and gas operations, including pits related to produced water flowlines or associated with E&P waste ~~at~~ from ~~natural~~ gas gathering, processing and storage facilities, which constitute:

> **BLOWDOWN PITS** used to collect material resulting from, including but not limited to, the emptying or depressurizing of wells, vessels, or flowlines, or E&P waste from ~~gas~~ gathering systems.
>
> **FLARE PITS** used exclusively for flaring gas.
>
> **EMERGENCY PITS** used to contain liquids during an initial phase of emergency response operations related to a spill/release or process upset conditions.

BASIC SEDIMENT/TANK BOTTOM PITS used to temporarily store or treat the extraneous materials in crude oil which may settle to the bottoms of tanks or production vessels and which may contain residual oil.

WORKOVER PITS used to contain liquids during the performance of remedial operations on a producing well in an effort to increase production.

PLUGGING PITS used for containment of fluids encountered during the plugging process.

DRILLING, DEVELOPMENT, PRODUCTION AND ABANDONMENT (300 Series)

303. REQUIREMENTS FOR FORM 2, APPLICATION FOR PERMIT-TO-DRILL, DEEPEN, RE-ENTER, OR RECOMPLETE, AND OPERATE; FORM 2A, OIL AND GAS LOCATION ASSESSMENT.

* * *

303.b. **FORM 2A, OIL AND GAS LOCATION ASSESSMENT.**

* * *

(2) **Exemptions.** A new Form 2A shall not be required for the following:

A. Surface disturbance, other than for purposes described in subsections 303.b.(1) B and C. above, at an existing Oil and Gas Location within the originally disturbed area, even if interim reclamation has been performed;

B. For an Oil and Gas Location covered by an approved Comprehensive Drilling Plan and where such Comprehensive Drilling Plan contains information substantially equivalent to that which would be required for a Form 2A for the proposed Oil and Gas Location and the Comprehensive Drilling Plan has been subject to procedures substantially equivalent to those required for a Form 2A, including but not limited to consultation with Surface Owners, local governments, the Colorado Department of Public Health and Environment or Colorado Parks and Wildlife, where applicable, and public notice and opportunity to comment, and where the operator does not seek a variance from the Comprehensive Drilling Plan or a provision of these rules that is not addressed in the Plan;

~~C. Gathering lines;~~

~~D~~C. Seismic operations;

~~E~~D. Pipelines for oil, gas, or water; or

~~F~~E. Roads.

* * *

317B. PUBLIC WATER SYSTEM PROTECTION

a. **Definitions.** For purposes of this Rule 317B:

(1) **Drilling, Completion, Production and Storage ("DCPS") Operations** ~~shall~~ means operations at (i) well sites for the drilling, completion, recompletion, workover, or stimulation of wells or chemical and production fluid storage, and (ii) any other oil and gas location at which production

facilities are operated. DCPS Operations ~~shall~~ excludes roads, gathering lines~~, pipelines~~, and routine operations and maintenance.

(2) **Existing Oil and Gas Location** ~~shall~~ means an oil and gas location, excluding roads~~, pipelines~~, and gathering lines, permitted or constructed prior to the later of May 1, 2009 for federal land or April 1, 2009 for all other land or the date that the oil and gas location becomes subject to Rule 317B by virtue of its proximity to a Classified Water Supply Segment.

(3) **New Oil and Gas Location** ~~shall~~ means an oil and gas location, excluding roads~~, pipelines,~~ and gathering lines, that is not an existing oil and gas location.

(4) **New Surface Disturbance** ~~shall~~ means surface disturbance that expands the area of surface covered by an oil and gas location beyond that initially disturbed in the construction of the oil and gas location.

(5) **Non-Exempt Linear Feature** ~~shall~~ means a road, or gathering line~~, or pipeline~~ that is not necessary to cross a stream or connect or access a well or a gathering line.

* * *

E&P WASTE MANAGEMENT
(900 Series)

907. MANAGEMENT OF E&P WASTE

* * *

f. **Other E&P Waste.** Other E&P waste such as workover fluids, tank bottoms, pigging wastes from pipelines ~~gathering and flow lines~~, and ~~natural~~ gas gathering, processing, and storage wastes may be treated or disposed of as follows:
   (1) Disposal at a commercial solid waste disposal facility;
   (2) Treatment at a centralized E&P waste management facility permitted in accordance with Rule 908;
   (3) Injection into a Class II injection well permitted in accordance with Rule 325; or
   (4) An alternative method proposed in a waste management plan in accordance with rule 907.a.(3) and approved by the Director.

APPENDIX C

Statement of Basis, Specific Statutory Authority, and Purpose
New Rules and Amendments to Current Rules of the Colorado Oil and Gas Conservation Commission, 2 CCR 404-1

Cause No. IR Docket No. 171200767
Flowline Rulemaking

This statement sets forth the basis, specific statutory authority, and purpose for new rules and amendments ("Flowline Rules") to the Colorado Oil and Gas Conservation Commission ("Commission") Rules of Practice and Procedure, 2 CCR 404-1 ("Rules"). The Commission promulgated the Flowline Rules on December 11 & 12, 2017.

In adopting amendments to the Rules, the Commission relied upon the entire administrative record for this Rulemaking proceeding, which formally began on October 15, 2017, when the Commission submitted its Notice of Rulemaking to the Colorado Secretary of State.

Background

On August 22, 2017, Governor John Hickenlooper announced the state's seven policy initiatives following the state's review of oil and gas operations that included stakeholder meetings. The Commission's swift review was in response to the tragic home explosion in Firestone, Colorado on April 17, 2017, that killed two people and injured a third. The Governor called for the review on May 2, 2017, after the Frederick Firestone Fire Protection District completed its investigation into the home explosion. The investigation identified an abandoned oil and gas flowline connected to an active well as the cause of the explosion. The Rulemaking implements changes to the Commission's flowline and safety rules in accordance with the state's review and Governor's announcement.

Stakeholder and Public Participation.

On September 8, 2017, the Commission issued a Rulemaking scoping document that identified proposed changes to existing flowline rules. The scoping document solicited stakeholders to submit comments regarding the scope of the proposed flowline Rulemaking on or before September 29, 2017. Comments to the scoping document were received in writing, and in person at two stakeholder meetings that were held on September 21 and 25, 2017. More than 50 persons or parties attended the stakeholder meetings and the Commission received written comments during the stakeholder process. Among those in attendance at the stakeholder meetings were citizens, representatives of local governments, and industry groups.

The Commission encouraged public participation in the Rulemaking by allowing the public to comment on the proposed rules in advance of or during the hearing. Persons or organizations desiring to do so could also participate in the Rulemaking as a party. Parties could submit prehearing statements and comments, including alternative

rules or amendments, and respond to the prehearing statements and comments submitted by other parties.

Statutory Authority.

The Commission's authority to promulgate amendments to the Rules is derived from the following sections of the Colorado Oil and Gas Conservation Act ("Act"), §§ 34-60-101 - 130, C.R.S.:

- Section 34-60-105(1), C.R.S. (Commission has the power to make and enforce rules);
- Section 34-60-106(2)(a), C.R.S. (Commission has the authority to regulate the drilling, producing, and plugging of wells and all other operations for the production of oil or gas);
- Section 34-60-106(2)(d), C.R.S. (Commission has authority to regulate "Oil and gas operations so as to prevent and mitigate significant adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations to the extent necessary to protect public health, safety, and welfare, including protection of the environment and wildlife resources, taking into consideration cost-effectiveness and technical feasibility."); and
- Section 34-60-108, C.R.S. (Commission has authority and procedure to adopt rules).

Identification of New and Amended Rules.

In response to the Governor's directive to review its flowline regulations, consistent with its statutory authority and its legislative mandates, and in accord with the administrative record, the Commission added or amended the following Rules:

- 100-Series Rules: definitions of Breakout Tank, Domestic Tap, Flowline, Wellhead Line, Oil Transfer Line, Production Piping, Production Line, Dump Line, Manifold Piping, Process Piping, Peripheral Piping, Produced Water Flowline, Gathering Line, Grade 1 Gas Leak, Lockout, Maximum Anticipated Operating Pressure, Off-Location Flowline, Pipeline, Riser, Tagout and Tagout Device.
- 300-Series Rules: 312, 313A, 313B, and 328.d.;
- 600-Series Rules: 602 and 605.d.;
- 700-Series Rules: 711;
- 1100-Series Rules; and

- The Commission also adopted conforming or clarifying changes to Rules affected by flowline or related changes. 100-Series (Blowdown Pits, Oil and Gas Facility, Oil and Gas Operations, Plugging and Abandonment, Production Facility, Production Pits, and Special Purpose Pits); 303.b.; 317B; 318A; 328; 325; 330; 604; 706; 802; 907; 1002; 1004; 1203; 1204; and 1205.

Overview of Purpose and Intent.

On September 11, 2017, the Commissioners directed Staff to implement the two announced policy initiatives that require Commission rulemaking. The seven policy initiatives Governor Hickenlooper announced were:

- Strengthening the Commission's Flowline regulations;
- Enhancing the 8-1-1 "one-call" program;
- Creating a nonprofit orphan well fund to plug and abandon orphan wells and provide refunds for in-home methane monitors;
- Prohibiting future domestic gas taps;
- Creating a technical workgroup to improve safety training;
- Requesting peer-review of certain Commission regulations; and
- Exploring an ambient methane leak detection pilot program.

Of these seven policy initiatives, the Commission can address two through rulemaking: strengthening the flowline regulations and improving the uniformity of operator participation in the 8-1-1 "one-call" program. In addition, the Commission can complement the Governor's domestic tap initiative by improving safety oversight of oil and gas operations through the requirement of domestic tap reporting.

First, the Governor's call to update the Commission's flowline regulations stems from the information received by the Commission in response to its May 2, 2017 Notice to Operators (NTO) as well as the Commission's own review of its flowline rules. The NTO required operators to, over the course of two months: identify, locate, and pressure test certain flowlines and submit that information to the Commission; and identify, mark, and lock out/tag out risers for abandoned flowlines and then, consistent with abandonment requirements, cut those risers to three-feet below grade. The Commission received new data on approximately 120,000 flowlines and associated risers, which data was the first step for the Commission to develop a relational database that uses flowline riser location to interrelate oil and gas locations.

While operators were working through the NTO requirements and submitting data about flowlines during the summer of 2017, the Commission continued - with an elevated priority - its review of the flowline regulatory regime. Beginning in 2015, the Commission started reviewing its flowline program based upon recommendations contained within its 2014 Risk Based Inspections report prepared for the Colorado General Assembly. In 2015, the Commission established a Flowline Integrity Group within the Engineering Unit dedicated to enforcing the Commission's flowline regulations. The Commission has also reviewed its own and other state and federal rules regulating pipelines to ascertain areas where Colorado's flowline regulations could be improved. During this review, Staff identified regulatory changes that the Commission adopted in Order lR-103. However, not all of the changes identified in Order 1R-103 were incorporated into the Rules; this Rulemaking corrects that oversight. Thus, the changes adopted by the Commission in the Flowline Rules reflect the research and findings made since 2015, as well as input from the stakeholders received before and during the Rulemaking.

Second, the Commission intends to improve the uniformity of operator participation in the Utility Notification Center of Colorado (UNCC), Colorado's "one-call" or "8-1-1" program. This reflects an improved collaboration between the Commission, the UNCC, and operators. In the wake of the Firestone tragedy, many people asked that the Commission create a database that maps all flowlines in Colorado. During the course of stakeholder meetings, the opportunity to partner with UNCC became the Commission's preferred option for housing increased, more specific information about flowlines. Requiring operators to become Tier One members and to supply UNCC with digital information about an operator's belowground operations (i.e., vertical portions of wells and flowlines) provides an elegant, efficient, and effective option for a state-wide organization to host information about belowground oil and gas operations. UNCC has an existing database that citizens and businesses rely on every day when preparing to dig. The team at UNCC is uniquely prepared with the expertise, staff, and existing database to incorporate information from operators that may change week-to-week and provide the updated information to the people who most need it - property owners preparing to dig. Relying on UNCC to host this information also provides a centralized information source for all Colorado citizens, local governments, and businesses of all underground facilities-not just oil and gas exploration and production facilities. To enhance this collaboration, the Commission imposed increased requirements for operators' participation in the UNCC program.

In addition, the Commission also amended specific regulatory requirements in an effort to prevent fluid releases from pipelines and empower the Commission to respond in the event of an exploration and production fluid release. First, the Commission clarified and enhanced provisions related to its oversight of lines transporting produced water, and gas gathering lines to ensure the Commission can adequately respond to a release of exploration and production waste. Second, the Commission included an additional method to gauge tanks that provides accurate and reliable data, and does not require opening hatches, thus preventing the release of

gases. Third, the Commission imposed specific requirements for check valves. Check valves operate to allow fluid flow in only one direction and serve an important purpose where reversing flow could cause damage.

The changes adopted by the Commission also require reviewing the entire set of Rules to make conforming changes, which are reflected in the amended rules.

Amendments and Additions to Rules.

100 Series Rules: Amended Definitions.

The definitions of "flowline" and "gathering line" were amended from a technical, narrative description to a description that reflects the different spheres of authority held by the Commission and the Colorado Public Utilities Commission (PUC) or the Pipeline and Hazardous Materials Safety Administration (PHMSA), a federal agency within the U.S. Department of Transportation. An additional source of guidance that assists in determining jurisdiction between the Commission and PUC or PHMSA is API RP 80, Guidelines for the Definition of Onshore Gas Gathering Lines, 1st Edition, April 1, 2000. Respecting the extent of PHMSA regulation, the Commission created a definition of crude oil transfer line to implement construction, operation, and other standards for these lines to ensure appropriate regulatory oversight. The Commission also added a definition of "pipeline" to create a term that encompasses both flowlines, crude oil transfer lines, and gathering lines as some provisions in the Rules need to apply to both categories of lines. The Commission also added descriptions of types of flowlines to assist in understanding the different installation or integrity management needs of these various lines. Focused, technical stakeholder comments from the Colorado Petroleum Council and Colorado Oil and Gas Association were integral to the Commission's development of these definitions. The Commission's amendments distinguish between flowlines that exist on a single oil and gas location and those flowlines that leave one location to transport fluids to a different location, what are defined as "Off-Location Flowlines".

Notably, the Commission added a definition of a Grade 1 Gas Leak. This definition is included to assist in the reporting of gas leaks to the Commission. Additionally, the Commission added definitions to clarify terminology, such as riser, dump lines, and maximum anticipated operating pressure. These definitions are incorporated to assist the public understanding of oil and gas operations as well as operator compliance with the amended Rules.

1100 Series Rules: Revised Flowline Regulations.

The 1100 Series were revised and reorganized to clearly delineate the life cycle of a flowline, from its registration with the Commission, through construction and installation, to integrity management and finally abandonment. In revising the 1100 Series, the following section changes were made:

Rule 1101. Registration Requirements
Rule 1102. Installation, Operations, Maintenance, Repair and Reclamation
Rule 1103. Flowline Integrity Management
Rule 1104. Abandonment

The details contained within each of these sections is discussed below.

1. Rule 1101.

The changes to Rule 1101 focused on gaining increased information about specific types of lines. The Commission imposed a registration requirement for flowlines that convey fluids away from an oil and gas location and to a different site. This regulation ensures the Commission continues to continually collect updated and new data gathered from operators responding to the NTO. Operators must now submit information about the off-location Flowlines, including GPS endpoints of risers, materials used to construct, related locations (by COGCC Facility Number), and fluid conveyed. This information will build into the relational database the Commission is creating to better inform staff, the public, and operators about the movement of exploration and production fluids.

The Commission also required the registration of all known domestic taps. In the furtherance of public safety associated with oil and gas operations, operators are required to report to the Director the GPS location of the point a domestic tap connects to a flowline and the address of the location of where the tap delivers gas. The Commission also imposed installation requirements for future domestic taps to ensure improved protection of public health, safety, and welfare and the environment. La Plata County raised this concern during the stakeholder process. The safety and integrity of domestic taps are not regulated by the Commission. Rather, PHMSA requires the testing of all pressure regulating or similar devices on domestic taps every 3 calendar years. *See* 49 CFR § 192.740(a). This addresses some concerns raised to the Commission including Boulder County's stakeholder comments.

Third the Commission requires the registration before construction of a crude oil transfer line. This is to provide the Commission with initial information about these lines, which are subject to other requirements in other sections. A similar registration provision for gas gathering lines is included in 313B.

2. Rule 1102.

Rule 1102 establishes the standards operators must follow and employ when designing and installing flowlines as well as crude oil transfer lines, as appropriate. As the Commission found during its review, having more specific installation and construction standards - that are tested and established by third-parties - would

create a more uniform and improved regulatory regime as well as provide greater certainty for the regulated industry. The Commission included in the Flowline Rules industry standards that operators must follow when designing and installing their lines. Industry stakeholder comments supported using improved standards established by third parties.

Operators are also required to conduct repairs and maintenance on flowlines and crude oil transfer lines so as to prevent failures, leaks and corrosion of lines and injury to persons and property. In furtherance of the Commission's expectation that flowlines and crude oil transfer lines will be properly maintained so as to ensure safety to persons and property, the Commission required that all flowlines not in active use have all valves locked or tagged out. This requirement is integral to protecting public safety.

Operators are also now required to become Tier One members of the UNCC and to participate in Colorado's One Call notification system. Rule 1102 requires operators to include their UNCC member code on their Operator Registration, Form 1, Form 10 or Form 12 that are filed with the Commission. With the Commission registration, operators are granting the Director permission to access information the UNCC has on file for that operator, including the location of underground oil and gas facilities. Operators are also required to submit and update information with UNCC to ensure that the UNCC database is accurate.

Rule 1102 also requires operators to maintain accurate records relating to maintenance, repairs, testing and other related data so operators have a living history of management for each flowline or crude oil transfer line. In accordance with Rule 205, the Director has the authority to inspect these records. Maintaining these records is imperative to ensuring that operators are maintaining compliance with Section 1100. Boulder County's stakeholder comments encouraged and recognized the importance of this requirement.

3. Rule 1103.

The purpose of Rule 1103 was to establish a comprehensive Integrity Management program that requires testing of all flowlines or crude oil transfer lines both prior to being put into service and after. All new flowlines or crude oil transfer lines, including flowlines that have been repaired, are required to be tested to their maximum anticipated operating pressure in accordance with the appropriate industry standard, e.g., API RP 1110, Recommended Practice for the Pressure Testing of Steel Pipelines for the Transportation of Gas, Petroleum Gas, Hazardous Liquids, Highly Volatile Liquids or Carbon Dioxide (6th Ed., February 1, 2013). Consistent with the NTO, flowlines that must be tested to their maximum anticipated operating pressure include: Wellhead Lines, Oil Transfer Lines, all Production Piping except Dump Lines, Peripheral Piping and Produced Water

Flowlines.

Once in service, flowlines and crude oil transfer lines are required to be tested for integrity on a periodic basis. Rule 1103 allows operators to select from several testing options, such as continuous pressure monitoring and optical gas imaging to satisfy the testing requirements. These options include industry accepted technologies, some of which are used to comply with other regulatory programs such as the Colorado Department of Public Health and Environment, Air Quality Control Commission, Regulation No. 3 (5 C.C.R. 1001-5), and Regulation No. 7 Section XVII.B.1 (a-c) and Section XII.

Because an operator likely does not have control over the surface lands, Rule 1103 provides for increased oversight of off-location flowlines and crude oil transfer lines because they move produced fluids between two or more different oil and gas locations. Off-location flowlines must demonstrate integrity through annual pressure test, continuous pressure monitoring or annual visual inspection if it is an above ground off-location flowline.

The Commission recognizes that dump lines may not be suitable for a pressure test. These lines may not be designed or intended for internal pressure such as vacuum systems, or they may contain parts that cannot be isolated. Additionally, it may be impractical to conduct pressure testing on lines that cannot be temporarily closed to isolate the test section. Line systems that are not suitable for applied pressure testing, are nonetheless required to maintain mechanical integrity. For belowground dump lines, operators must conduct a static head test every three years. For above ground dump lines, operators must conduct an annual visual inspection. Inspections will include visual examination of joint appearance, mechanical checks of bolts and joint tightness, and such other relevant examinations and methods to verify integrity.

4. Rule 1104.

In the Flowline Rulemaking, the Commission moved the abandonment provisions of Rule 1103 to a new Rule 1104. The abandonment provisions were also revised by the Commission to clarify and specify that all flowlines and crude oil transfer lines are considered active, and thus subject to Rules 1102 and 1103, unless the line has been abandoned. This means that even if a flowline or crude oil transfer line is not in active use, operators must still test the line, in accordance with Rule 1103, for integrity. Rule 1104 specifies the steps that must be taken to fully abandon a line, which now include lockout and tagout of all risers associated with the line, if it is not being used, but not yet abandoned.

Additionally, the Commission required in Rule 1104, that upon abandonment of a flowline or crude oil transfer line, operators must notify the Director by filing a Form 44. The Notice of Flowline Abandonment on Form 44 will be provided to the local

government designee and the UNCC.

Other Rule Additions and Amendments

The Commission made the following additions and amendments to the below-listed rules. These changes were primarily designed to clarify specific details of these rules or to conform them to the amendments to the 1100 Series Rules.

100 Series Rules: Definitions

The 100 Series definitions were amended to make conforming changes to defined terms.

200 Series Rules: Revised Comprehensive Drilling Plans

Rule 216 was amended to make conforming changes to defined terms.

300 Series Rules: Revised Registration and Fluid Management Requirements

Rule 313B was added by the Commission to require the registration of all produced water flowline transfer systems. In registering a produced water flowline transfer system, the operator must provide a facility layout drawing and topographic map. The registration requirements for produced water flowline transfer systems also apply to new gas processing plants and new underground gas storage facilities. In furtherance of public health, safety and welfare the Commission believed it was imperative to have the registration information called for in Rule 313B for these facilities. Additionally, in furtherance of public health, safety and welfare the Commission believed it was imperative to have the registration information for gas gathering lines.

As amended, Rule 328 incorporates an alternate method of tank gauging that requires the volume of oil produced to be measured before removal. This requirement is more protective of public health, safety, and the environment because it does not require opening a hatch, and thus prevents gas emissions. In addition, the Commission has historically approved variances allowing for operators to use this methodology, thus demonstrating its efficacy. This amendment allows operators to use an equally effective gauging method that is safer without seeking a variance.

The Commission made conforming changes to Rules 303, 312, 313 and 317B.

600 Series: Required Accident Reporting, Annual Valve Checks, and Installation of Check Valves.

The Commission amended Rule 602's accident reporting requirements to ensure accidents are appropriately reported to the Commission, and clarify what information the Commission may seek from an operator about the accident. Stakeholders indicated concern and interest in improving this regulation.

Rule 605.d. has been revised to require annual valve checks and to require the installation of valves on flowlines at certain locations, including certain water crossing areas. Additionally, Rule 605.d., now requires check valves on flowlines when two or more wells produce through that flowline. This requirement is more protective of public health, safety, and the environment because it allows for the shutting down of a flowline in the event of a failure, thus significantly decreasing the volume of produced fluids that may have otherwise escaped from the flowline.

700 Series: Revised Bonding for E&P Waste from Water or Gas Gathering.

Rule 711 was amended to make conforming changes to defined terms. Additionally, an operator of a produced water flowline transfer systems must provide a financial assurance. The Commission determined that it was necessary to require a bond for produced water flowline transfer systems due to the potential health and safety hazards associated with a failure of a produced water flowline transfer system and release of E&P Waste.

900 Series Rules: Addition of Grade 1 Gas Leak Reporting.

Rule 906 was amended to include the mandatory reporting of any Grade 1 Gas Leak.

Rule 907 was amended to make conforming changes to defined terms.

Effective Date.

The Commission adopted the proposed amendments in accordance with the Governor's announced initiatives, which added to and amended definitions in the Rule 100 Series, revised the 1100 Series, and amended 303, 312, 313, 317B, 328, 602, 605, 711, 906, and 907, at its hearing on December 11-12, 2017, in Cause No. IR, Docket No. 171200767. These amendments will become effective, per Section 24-4-103, C.R.S., twenty days after publication in the Colorado Register.

APPENDIX D

Statement of Basis, Specific Statutory Authority, and Purpose
New Rules and Amendments to Current Rules of the Colorado Oil and Gas Conservation Commission, 2 CCR 404-1

Cause No. IR Docket No. 171200767
Flowline Rulemaking

This statement sets forth the basis, specific statutory authority, and purpose for new rules and amendments ("Flowline Rules") to the Colorado Oil and Gas Conservation Commission ("Commission") Rules of Practice and Procedure, 2 CCR 404-1 ("Rules"). The Commission promulgated the Flowline Rules on December 11 & 12, 2017.

In adopting amendments to the Rules, the Commission relied upon the entire administrative record for this Rulemaking proceeding, which formally began on October 15, 2017, when the Commission submitted its Notice of Rulemaking to the Colorado Secretary of State.

Background

On August 22, 2017, Governor John Hickenlooper announced the state's seven policy initiatives following the state's~~a~~ review of oil and gas operations that included stakeholder meetings. The Commission's swift review was in response to the tragic home explosion in Firestone, Colorado on April 17, 2017, that killed two people and injured a third. The Governor called for the review on May 2, 2017, after the Frederick Firestone Fire Protection District completed its investigation into the home explosion. The investigation identified an abandoned oil and gas flowline connected to an active well as the cause of the explosion. The Rulemaking implements changes to the Commission's flowline and safety rules in accordance with the state's review and Governor's announcement.

Stakeholder and Public Participation.

On September 8, 2017, the Commission issued a Rulemaking scoping document that identified proposed changes to existing flowline rules. The scoping document solicited stakeholders to submit comments regarding the scope of the proposed flowline Rulemaking on or before September 29, 2017. Comments to the scoping document were received in writing, and in person at two stakeholder meetings that were held on September 21 and 25, 2017. More than 50 persons or parties attended the stakeholder meetings and the Commission received written comments during the stakeholder process. Among those in attendance at the stakeholder meetings were citizens, representatives of local governments, and industry groups.

The Commission encouraged public participation in the Rulemaking by allowing the public to comment on the proposed rules in advance of or during the hearing. Persons or organizations desiring to do so could also participate in the Rulemaking as a party. Parties could submit prehearing statements and comments, including alternative

rules or amendments, and respond to the prehearing statements and comments submitted by other parties.

Statutory Authority.

The Commission's authority to promulgate amendments to the Rules is derived from the following sections of the Colorado Oil and Gas Conservation Act ("Act"), §§ 34-60-101 - 130, C.R.S.:

- Section 34-60-105(1), C.R.S. (Commission has the power to make and enforce rules);
- Section 34-60-10~~5~~6(2)(a), C.R.S. (Commission has the authority to regulate the drilling, producing, and plugging of wells and all other operations for the production of oil or gas);
- Section 34-60-106(2)(d), C.R.S. (Commission has authority to regulate "Oil and gas operations so as to prevent and mitigate significant adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations to the extent necessary to protect public health, safety, and welfare, including protection of the environment and wildlife resources, taking into consideration cost-effectiveness and technical feasibility."); and
- Section 34-60-108, C.R.S. (Commission has authority and procedure to adopt rules).

Identification of New and Amended Rules.

In response to the Governor's directive to review its flowline regulations, consistent with its statutory authority and its legislative mandates, and in accord with the administrative record, the Commission added or amended the following Rules:

- 100-Series Rules: definitions of Breakout Tank, Domestic Tap, Flowline, Wellhead Line, Oil Transfer Line, Production Piping, Production Line, Dump Line, Manifold Piping, Process Piping, Peripheral Piping, Produced Water Flowline, Gathering Line, Grade 1 Gas Leak, Lockout, Maximum Anticipated Operating Pressure, Off-Location Flowline, Pipeline, Riser, Tagout and Tagout Device.
- 300-Series Rules: 312, 313A, 313B, and 328.d.;
- 600-Series Rules: 602 and 605.d.;
- 700-Series Rules: 711;
- 1100-Series Rules; and

- The Commission also adopted conforming or clarifying changes to Rules affected by flowline or related changes. 100-Series (Blowdown Pits, Oil and Gas Facility, Oil and Gas Operations, Plugging and Abandonment, Production Facility, Production Pits, and Special Purpose Pits); 303.b.; 317B; 318A; 328; 325; 330; ~~602;~~ 604; 706; 802; 907; 1002; 1004; 1203; 1204; and 1205.

Overview of Purpose and Intent.

On September 11, 2017, the Commissioners directed Staff to implement the two announced policy initiatives that require Commission rulemaking. The seven policy initiatives Governor Hickenlooper announced were:

- Strengthening the Commission's Flowline regulations;
- Enhancing the 8-1-1 "one-call" program;
- Creating a nonprofit orphan well fund to plug and abandon orphan wells and provide refunds for in-home methane monitors;
- Prohibiting future domestic gas taps;
- Creating a technical workgroup to improve safety training;
- Requesting peer-review of certain Commission regulations; and
- Exploring an ambient methane leak detection pilot program.

Of these seven policy initiatives, the Commission can address two through rulemaking: strengthening the flowline regulations and improving the uniformity of operator participation in the 8-1-1 "one-call" program. In addition, the Commission can complement the Governor's domestic tap initiative by improving safety oversight of oil and gas operations through the requirement of domestic tap reporting.

First, the Governor's call to update the Commission's flowline regulations stems from the information received by the Commission in response to its May 2, 2017 Notice to Operators (NTO) as well as the Commission's own review of its flowline rules. The NTO required operators to, over the course of two months: identify, locate, and pressure test certain flowlines and submit that information to the Commission; and identify, mark, and lock out/tag out risers for abandoned flowlines and then, consistent with abandonment requirements, cut those risers to three-feet below grade. The Commission received new data on approximately 120,000 flowlines and associated risers, which data was the first step for the Commission to develop a relational database that uses flowline riser location to interrelate oil and gas locations.

While operators were working through the NTO requirements and submitting data about flowlines during the summer of 2017, the Commission continued - with an elevated priority - its review of the flowline regulatory regime. Beginning in 2015, the Commission started reviewing its flowline program based upon recommendations contained within its 2014 Risk Based Inspections report prepared for the Colorado General Assembly. In 2015, the Commission established a Flowline Integrity Group within the Engineering Unit dedicated to enforcing the Commission's flowline regulations. The Commission has also reviewed its own and other state and federal rules regulating pipelines to ascertain areas where Colorado's flowline regulations could be improved. During this review, Staff identified regulatory changes that the Commission adopted in Order 1R-103. However, not all of the changes identified in Order 1R-103 were incorporated into the Rules; this Rulemaking corrects that oversight. Thus, the changes adopted by the Commission in the Flowline Rules reflect the research and findings made since 2015, as well as input from the stakeholders received before and during the Rulemaking.

Second, the Commission intends to improve the uniformity of operator participation in the Utility Notification Center of Colorado (UNCC), Colorado's "one-call" or "8-1-1" program. This reflects an improved collaboration between the Commission, the UNCC, and operators. In the wake of the Firestone tragedy, many people asked that the Commission create a database that maps all flowlines in Colorado. During the course of stakeholder meetings, the opportunity to partner with UNCC became the Commission's preferred option for housing increased, more specific information about flowlines. Requiring operators to become Tier One members and to supply UNCC with digital information about an operator's belowground operations (i.e., vertical portions of wells and flowlines) provides an elegant, efficient, and effective option for a state-wide organization to host information about belowground oil and gas operations. UNCC has an existing database that citizens and businesses rely on every day when preparing to dig. The team at UNCC is uniquely prepared with the expertise, staff, and existing database to incorporate information from operators that may change week-to-week and provide the updated information to the people who most need it - property owners preparing to dig. Relying on UNCC to host this information also provides a centralized information source for all Colorado citizens, local governments, and businesses of all underground facilities-not just oil and gas exploration and production facilities. To enhance this collaboration, the Commission imposed increased requirements for operators' participation in the UNCC program.

In addition, the Commission also amended specific regulatory requirements in an effort to prevent fluid releases from pipelines and empower the Commission to respond in the event of an exploration and production fluid release. First, the Commission clarified and enhanced provisions related to its oversight of lines transporting produced water, and gas gathering lines to ensure the Commission can adequately respond to a release of exploration and production waste. Second, the Commission included an additional method to gauge tanks that provides accurate and reliable data, and does not require opening hatches, thus preventing the release of

gases. Third, the Commission imposed specific requirements for check valves. Check valves operate to allow fluid flow in only one direction and serve an important purpose where reversing flow could cause damage.

The changes adopted by the Commission also require reviewing the entire set of Rules to make conforming changes, which are reflected in the amended rules.

Amendments and Additions to Rules.

100 Series Rules: Amended Definitions.

The definitions of "flowline" and "gathering line" were amended from a technical, narrative description to a description that reflects the different spheres of authority held by the Commission and the Colorado Public Utilities Commission (PUC) or the Pipeline and Hazardous Materials Safety Administration (PHMSA), a federal agency within the U.S. Department of Transportation. An additional source of guidance that assists in determining jurisdiction between the Commission and PUC or PHMSA is API RP 80, Guidelines for the Definition of Onshore Gas Gathering Lines, 1st Edition, April 1, 2000. Respecting the extent of PHMSA regulation, the Commission created a definition of crude oil transfer line to implement construction, operation, and other standards for these lines to ensure appropriate regulatory oversight. The Commission also added a definition of "pipeline" to create a term that encompasses both flowlines, crude oil transfer lines, and gathering lines as some provisions in the Rules need to apply to both categories of lines. The Commission also added descriptions of types of flowlines to assist in understanding the different installation or integrity management needs of these various lines. Focused, technical stakeholder comments from the Colorado Petroleum Council and Colorado Oil and Gas Association were integral to the Commission's development of these definitions. The Commission's amendments distinguish between flowlines that exist on a single oil and gas location and those flowlines that leave one location to transport fluids to a different location, what are defined as "Off-Location Flowlines".

Notably, the Commission added a definition of a Grade 1 Gas Leak. This definition is included to assist in the reporting of gas leaks to the Commission. Additionally, the Commission added definitions to clarify terminology, such as riser, dump lines, and maximum anticipated operating pressure. These definitions are incorporated to assist the public understanding of oil and gas operations as well as operator compliance with the amended Rules.

1100 Series Rules: Revised Flowline Regulations.

The 1100 Series were revised and reorganized to clearly delineate the life cycle of a flowline, from its registration with the Commission, through construction and installation, to integrity management and finally abandonment. In revising the 1100 Series, the following section changes were made:

Rule 1101. Registration Requirements
Rule 1102. Installation, Operations, Maintenance, Repair and Reclamation
Rule 1103. Flowline Integrity Management
Rule 1104. Abandonment

The details contained within each of these sections is discussed below.

1. Rule 1101.

The changes to Rule 1101 focused on gaining increased information about specific types of lines. The Commission imposed a registration requirement for flowlines that convey fluids away from an oil and gas location and to a different site. This regulation ensures the Commission continues to continually collect updated and new data gathered from operators responding to the NTO. Operators must now submit information about the off-location Flowlines, including GPS endpoints of risers, materials used to construct, related locations (by COGCC Facility Number), and fluid conveyed. This information will build into the relational database the Commission is creating to better inform staff, the public, and operators about the movement of exploration and production fluids.

The Commission also required the registration of all known domestic taps. In the furtherance of public safety associated with oil and gas operations, operators are required to report to the Director the GPS location of the point a domestic tap connects to a flowline and the address of the location of where the tap delivers gas. The Commission also imposed installation requirements for future domestic taps to ensure improved protection of public health, safety, and welfare and the environment. La Plata County raised this concern during the stakeholder process. The safety and integrity of domestic taps are not regulated by the Commission. Rather, PHMSA requires the testing of all pressure regulating or similar devices on domestic taps every 3 calendar years. *See* 49 CFR § 192.740(a). This addresses some concerns raised to the Commission including Boulder County's stakeholder comments.

Third the Commission requires the registration before construction of a~~n~~ crude oil ~~gathering~~ transfer line. This is to provide the Commission with ~~an understanding of how fluids are moving and in the event of a release provide proper agency response~~initial information about these lines, which are subject to other requirements in other sections. A similar registration provision for gas gathering lines is included in 313B.

2. Rule 1102.

Rule 1102 establishes the standards operators must follow and employ when designing and installing flowlines as well as crude oil transfer lines, as appropriate.

As the Commission found during its review, having more specific installation and construction standards - that are tested and established by third-parties - would create a more uniform and improved regulatory regime as well as provide greater certainty for the regulated industry. The Commission included in the Flowline Rules industry standards that operators must follow when designing and installing their lines. Industry stakeholder comments supported using improved standards established by third parties.

Operators are also required to conduct repairs and maintenance on flowlines and crude oil transfer lines so as to prevent failures, leaks and corrosion of lines and injury to persons and property. In furtherance of the Commission's expectation that flowlines and crude oil transfer lines will be properly maintained so as to ensure safety to persons and property, the Commission required that all flowlines not in active use have all valves locked or tagged out. This requirement is integral to protecting public safety.

Operators are also now required to become Tier One members of the UNCC and to participate in Colorado's One Call notification system. Rule 1102 requires operators to include their UNCC member code on their Operator Registration, Form 1, Form 10 or Form 12 that are filed with the Commission. With the Commission registration, operators are granting the Director permission to access information the UNCC has on file for that operator, including the location of underground oil and gas facilities. Operators are also required to submit and update information with UNCC to ensure that the UNCC database is accurate.

Rule 1102 also requires operators to maintain accurate records relating to ~~flowline~~ maintenance, repairs, testing and other related data so operators have a living history of management for each flowline~~'s management~~ or crude oil transfer line. In accordance with Rule 205, the Director has the authority to inspect these records. Maintaining these records is imperative to ensuring that operators are maintaining compliance with Section 1100. Boulder County's stakeholder comments encouraged and recognized the importance of this requirement.

3. Rule 1103.

The purpose of Rule 1103 was to establish a comprehensive ~~Flowline~~ Integrity Management program that requires testing of all flowlines or crude oil transfer lines both prior to being put into service and after. All new flowlines or crude oil transfer lines, including flowlines that have been repaired, are required to be tested to their maximum anticipated operating pressure in accordance with the appropriate industry standard, e.g., API RP 1110, Recommended Practice for the Pressure Testing of Steel Pipelines for the Transportation of Gas, Petroleum Gas, Hazardous Liquids, Highly Volatile Liquids or Carbon Dioxide (6th Ed., February 1, 2013). Consistent with the NTO, flowlines that must be tested to their maximum

anticipated operating pressure include: Wellhead Lines, Oil Transfer Lines, all Production Piping except Dump Lines, Peripheral Piping and Produced Water Flowlines.

Once in service, ~~Flowlines~~ flowlines and crude oil transfer lines are required to be tested for integrity on a periodic basis. Rule 1103 allows operators to select from several testing options, such as continuous pressure monitoring and optical gas imaging to satisfy the testing requirements. These options include industry accepted technologies, some of which are used to comply with other regulatory programs such as the Colorado Department of Public Health and Environment, Air Quality Control Commission, Regulation No. 3 (5 C.C.R. 1001-5), and Regulation No. 7 Section XVII.B.1 (a-c) and Section XII.

Because an operator likely does not have control over the surface lands, Rule 1103 provides for increased oversight of off-location flowlines and crude oil transfer lines ~~that~~ because they move produced fluids between two or more different oil and gas locations. Off-location flowlines must demonstrate integrity through annual pressure test, continuous pressure monitoring or annual visual inspection if it is an above ground off-location flowline.

The Commission recognizes that dump lines may not be suitable for a pressure test. These lines may not be designed or intended for internal pressure such as vacuum systems, or they may contain parts that cannot be isolated. Additionally, it may be impractical to conduct pressure testing on lines that cannot be temporarily closed to isolate the test section. Line systems that are not suitable for applied pressure testing, are nonetheless required to maintain mechanical integrity. For belowground dump lines, operators must conduct a static head test every three years. For above ground dump lines, operators must conduct an annual visual inspection. Inspections will include visual examination of joint appearance, mechanical checks of bolts and joint tightness, and such other relevant examinations and methods to verify integrity.

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Additionally, the Commission required in Rule 1104, that upon abandonment of a

flowline or crude oil transfer line, operators must notify the Director by filing a Form 44. The Notice of Flowline Abandonment on Form 44 will be provided to the local government designee and the UNCC.

Other Rule Additions and Amendments

The Commission made the following additions and amendments to the below-listed rules. These changes were primarily designed to clarify specific details of these rules or to conform them to the amendments to the 1100 Series Rules.

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The 100 Series definitions were amended to make conforming changes to defined terms.

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Rule 907 was amended to make conforming changes to defined terms.

Effective Date.

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Notice of Proposed Rulemaking

Tracking number

2017-00589

Department

400 - Department of Natural Resources

Agency

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

CCR number

2 CCR 405-1

Rule title

CHAPTER P-1 - PARKS AND OUTDOOR RECREATION LANDS

Rulemaking Hearing

Date

01/10/2018

Time

08:30 AM

Location

Hunter Education Building, 6060 Broadway, Denver, CO 80216

Subjects and issues involved

Chapter P-1 - Parks and Outdoor Recreation Lands - see attached

Statutory authority

See attached

Contact information

Name

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Title

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November 30, 2017

RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
JANUARY 10-11, 2018

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 **January 10-11, 2018. The Parks and Wildlife Commission meeting will be held at the offices of Colorado Parks and Wildlife, Hunter Education Building, 6060 Broadway, Denver, CO 80216. The following regulatory subjects and issues shall be considered** pursuant to the Commission's authority in sections 33-9-101 to 111, C.R.S. ("Administration of Parks and Wildlife"), in sections 33-1-101 to 33-6-209, C.R.S. (the "Wildlife Act"), and especially 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 - **January 10-11, 2018,** beginning **at 8:30 a.m.***

EFFECTIVE DATE OF REGULATIONS approved during the January 2018 Parks and Wildlife Commission meeting: March 2, 2018, unless otherwise noted.

FINAL REGULATIONS

PARK REGULATIONS

Chapter P-8 - "Aquatic Nuisance Species" 2 CCR 405-8

Open for consideration of changes to regulations including, but not limited to, the following:

- Adding "foldable plastic boats without an engine attached" to the list of exempted vessels that can be hand launched without a boat inspection within the definition of "Vessels or other floating device."

WILDLIFE REGULATIONS

Chapter W-0 - "General Provisions" 2 CCR 406-0 and those related provisions of Chapter W-2 ("Big Game" 2 CCR 406-2) 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, the following:

- Implementing an antler and horn collection closure on public lands west of I-25 from January 1 through April 30 annually.
- Creating an antler and horn collection license required for collection from May 1- May 31st only, on an annual basis.

**Please reference the Commission agenda, to be posted on or after January 3, 2018, 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.*

- Removing existing antler collection closures for the Gunnison Basin and Eagle/Roaring Fork valleys in Chapter W-2.

Chapter W-2 - "Big Game" 2 CCR 406-2 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) and 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-2

Open for consideration of regulations including, but not limited to, the following:

- Annual changes to season dates, limited license areas, quotas and manner of take provisions for bighorn sheep and 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 processes.
- Updating muzzleloader caliber requirements when hunting with round ball ammunition.
- Allowing Youth Outreach Licenses to be issued on both public and private lands in the state.
- Removing the preference point hunt code restrictions for Director's Dream Hunt licenses.
- Implementing pay-after-you draw provisions for big game limited licenses and allowing nonresidents to apply by phone or online for sheep, goat, and moose licenses.
- Creating a second ram rifle season in combined sheep units S40 and S58 as well as in unit S1.
- Implementing a new archery bighorn ram season in combined units S26 and S70.
- Creating a split season for ram rifle hunting in unit S61.
- Closing the rifle goat season in unit G18.
- Creating a private land only (PLO) bear hunt code for Game Management Units (GMU) 20, 29, and 38.
- Creating a PLO bear hunt code for GMUs 39, 391, 46, 461, 50, 51, 500, 501, and 104.
- Changing all bear hunt codes in Data Analysis Unit (DAU) B-4 from List A to List B.
- Making hunt codes DF038P5R and DF038L1R List C licenses.
- Amending the boundaries for PLO buck and doe hunt codes in GMU 38, with a new western boundary of Hwy 119.
- Making PLO doe licenses in GMUs 391 and 461 List C.
- Removing antlerless deer hunt codes in DAUs D-22 and D-25.
- Adding a 4th season for buck hunting in DAU D-34.
- Changing the season dates for the Air Force Academy deer hunts to October 1-December 31st.
- Extending the season dates for antlerless PLO licenses in DAUs E-8 and E-13 to run from September 1-January 31st.
- Changing the season dates for the late antlerless elk licenses in GMUs 50, 500, and 501 to open the Saturday before Christmas and run for nine consecutive days.
- Converting regular antlerless elk licenses in GMU 54 from List B to List A.
- Removing PLO hunt code EF065P5R.
- Removing GMU 521 from hunt code EF053P5R.
- Changing all either-sex muzzleloader and first rifle elk licenses in GMUs 71, 72, 73, 74, 75, 77, 78, 711, 741, 751, and 771 to antlered or antlerless licenses.
- Adding a PLO pronghorn season in DAU A-37.

- Adding in GMUs 49 and 500 to the pronghorn muzzleloader and rifle seasons in DAU A-30.
- Creating a regular rifle season for pronghorn hunting in GMUs 15, 26, and 231.
- Reinstating doe pronghorn hunting in GMUs 101 and 102.
- Reorganizing the GMU groupings for the pronghorn muzzleloader season in DAU A-9 by grouping GMUs 3 and 301 together, 4 and 5 together, 214 and 441 together and 13 and 131 as standalone units.
- Changing the season dates for the antlerless moose rifle hunt in GMUs 41, 42, and 421 to coincide with the 3rd and 4th rifle seasons for deer and elk.
- Creating separate antlerless moose hunt codes for GMUs 20 and 29.
- Separating GMUs in moose DAU M-12 into two hunt code groupings with GMUs 48, 481, 56, and 561 in one grouping and GMUs 55 and 551 in the other grouping.

Chapter W-12 - "Lake Licenses" 2 CCR 406-12 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) and Chapter W-1 ("Fishing" 2 CCR 406-1) necessary to accommodate changes to or ensure consistency with Chapter W-12

Open for consideration of regulations including, but not limited to, the following:

- Creating two aquatic species possession lists which outline the aquatic species that may be possessed by the public and those aquatic species that can be possessed by food production facilities.
- Allowing only certified triploid grass carp for stocking statewide.
- Modifying the definition of minnow.
- Changing the term for a private lake license from a lifetime to a ten-year license.
- Modifying the term "facility" in regards to viral hemorrhagic septicemia virus testing.

CITIZEN PETITIONS:

WILDLIFE REGULATIONS

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-9 – "Wildlife Properties" 2 CCR 406-9

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

- A Citizen Petition for Rulemaking requesting that the Commission allow the launching of paragliders from Smelter Mountain within the Bodo State Wildlife Area.

Chapter W-11- "Wildlife Parks and Unregulated Wildlife" 2 CCR 406-11

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

- A Citizen Petition for Rulemaking requesting that the Commission create a new type of wildlife educators license with associated restrictions.

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

ISSUES IDENTIFICATION

PARK REGULATIONS

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

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to registration and required safety equipment of snowmobiles.

WILDLIFE REGULATIONS

Chapter W-3 - "Furbearers and Small Game, Except Migratory Birds" 2 CCR 406-3, and those related provisions of Chapter W-9 ("Wildlife Properties" - 2 CCR 406-9) necessary to accommodate changes to or ensure consistency with Chapter W-3

Open for consideration of annual changes to game bird seasons, excluding turkey, and other small game seasons and related provisions, including season dates, bag and possession limits and manner of take provisions, and other related regulatory changes to Chapter W-9 necessary to accommodate changes to or to ensure consistency with Chapter W-3.

Chapter W-5 - "Small Game -Migratory Game Birds" - 2 CCR 406-5, and those related provisions of Chapter W-9 ("Division Properties" – 2 CCR 406-9) and Chapter P-1 ("Parks and Outdoor Recreation Lands" - 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-5

Open for consideration of annual changes to waterfowl and migratory bird hunting seasons and related provisions, including season dates, bag and possession limits and manner of take provisions.

Chapter W-9 - "Wildlife Properties" 2 CCR 406-9 and those related provisions of Chapter W-1 ("Fishing" 2 CCR 406-1) necessary to accommodate changes to or ensure consistency with Chapter W-9

Open for annual review of the entire chapter including, but not limited to, generally applicable and property-specific requirements for, or restrictions on use of, wildlife properties controlled by the Division of Parks and Wildlife, including State Trust Lands leased by the Division.

Chapter W-11 - "Wildlife Parks and Unregulated Wildlife" 2 CCR 406-11

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to wildlife parks, sanctuaries and unregulated wildlife.

Chapter W-16 - "Procedural Rules" 2 CCR 406-16

Open for correction to regulations based on changes to Colorado Revised Statutes pertaining to license suspensions.

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

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

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

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

December 28, 2017, for mailing by the Division of Parks and Wildlife to the Parks and Wildlife Commission on **December 29, 2017.**

Comments received by the Division between noon on **December 28, 2017** and noon on **January 5, 2018,** will be provided to the Commission two business days before 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.

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 **January 3, 2018**.

Notice of Proposed Rulemaking

Tracking number

2017-00590

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

01/10/2018

Time

08:30 AM

Location

Hunter Education Building, 6060 Broadway, Denver, CO 80216

Subjects and issues involved

Chapter P-4 - Snowmobile Regulations - see attached

Statutory authority

See attached

Contact information

Name

Danielle Isenhart

Title

Regulations Manager

Telephone

303-866-3203 ex 4625

Email

danielle.isenhart@state.co.us

November 30, 2017

RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
JANUARY 10-11, 2018

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 **January 10-11, 2018. The Parks and Wildlife Commission meeting will be held at the offices of Colorado Parks and Wildlife, Hunter Education Building, 6060 Broadway, Denver, CO 80216. The following regulatory subjects and issues shall be considered** pursuant to the Commission's authority in sections 33-9-101 to 111, C.R.S. ("Administration of Parks and Wildlife"), in sections 33-1-101 to 33-6-209, C.R.S. (the "Wildlife Act"), and especially 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 - **January 10-11, 2018,** beginning **at 8:30 a.m.***

EFFECTIVE DATE OF REGULATIONS approved during the January 2018 Parks and Wildlife Commission meeting: March 2, 2018, unless otherwise noted.

FINAL REGULATIONS

PARK REGULATIONS

Chapter P-8 - "Aquatic Nuisance Species" 2 CCR 405-8

Open for consideration of changes to regulations including, but not limited to, the following:

- Adding "foldable plastic boats without an engine attached" to the list of exempted vessels that can be hand launched without a boat inspection within the definition of "Vessels or other floating device."

WILDLIFE REGULATIONS

Chapter W-0 - "General Provisions" 2 CCR 406-0 and those related provisions of Chapter W-2 ("Big Game" 2 CCR 406-2) 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, the following:

- Implementing an antler and horn collection closure on public lands west of I-25 from January 1 through April 30 annually.
- Creating an antler and horn collection license required for collection from May 1- May 31st only, on an annual basis.

**Please reference the Commission agenda, to be posted on or after January 3, 2018, 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.*

- Removing existing antler collection closures for the Gunnison Basin and Eagle/Roaring Fork valleys in Chapter W-2.

Chapter W-2 - "Big Game" 2 CCR 406-2 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) and 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-2

Open for consideration of regulations including, but not limited to, the following:

- Annual changes to season dates, limited license areas, quotas and manner of take provisions for bighorn sheep and 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 processes.
- Updating muzzleloader caliber requirements when hunting with round ball ammunition.
- Allowing Youth Outreach Licenses to be issued on both public and private lands in the state.
- Removing the preference point hunt code restrictions for Director's Dream Hunt licenses.
- Implementing pay-after-you draw provisions for big game limited licenses and allowing nonresidents to apply by phone or online for sheep, goat, and moose licenses.
- Creating a second ram rifle season in combined sheep units S40 and S58 as well as in unit S1.
- Implementing a new archery bighorn ram season in combined units S26 and S70.
- Creating a split season for ram rifle hunting in unit S61.
- Closing the rifle goat season in unit G18.
- Creating a private land only (PLO) bear hunt code for Game Management Units (GMU) 20, 29, and 38.
- Creating a PLO bear hunt code for GMUs 39, 391, 46, 461, 50, 51, 500, 501, and 104.
- Changing all bear hunt codes in Data Analysis Unit (DAU) B-4 from List A to List B.
- Making hunt codes DF038P5R and DF038L1R List C licenses.
- Amending the boundaries for PLO buck and doe hunt codes in GMU 38, with a new western boundary of Hwy 119.
- Making PLO doe licenses in GMUs 391 and 461 List C.
- Removing antlerless deer hunt codes in DAUs D-22 and D-25.
- Adding a 4th season for buck hunting in DAU D-34.
- Changing the season dates for the Air Force Academy deer hunts to October 1-December 31st.
- Extending the season dates for antlerless PLO licenses in DAUs E-8 and E-13 to run from September 1-January 31st.
- Changing the season dates for the late antlerless elk licenses in GMUs 50, 500, and 501 to open the Saturday before Christmas and run for nine consecutive days.
- Converting regular antlerless elk licenses in GMU 54 from List B to List A.
- Removing PLO hunt code EF065P5R.
- Removing GMU 521 from hunt code EF053P5R.
- Changing all either-sex muzzleloader and first rifle elk licenses in GMUs 71, 72, 73, 74, 75, 77, 78, 711, 741, 751, and 771 to antlered or antlerless licenses.
- Adding a PLO pronghorn season in DAU A-37.

- Adding in GMUs 49 and 500 to the pronghorn muzzleloader and rifle seasons in DAU A-30.
- Creating a regular rifle season for pronghorn hunting in GMUs 15, 26, and 231.
- Reinstating doe pronghorn hunting in GMUs 101 and 102.
- Reorganizing the GMU groupings for the pronghorn muzzleloader season in DAU A-9 by grouping GMUs 3 and 301 together, 4 and 5 together, 214 and 441 together and 13 and 131 as standalone units.
- Changing the season dates for the antlerless moose rifle hunt in GMUs 41, 42, and 421 to coincide with the 3rd and 4th rifle seasons for deer and elk.
- Creating separate antlerless moose hunt codes for GMUs 20 and 29.
- Separating GMUs in moose DAU M-12 into two hunt code groupings with GMUs 48, 481, 56, and 561 in one grouping and GMUs 55 and 551 in the other grouping.

Chapter W-12 - "Lake Licenses" 2 CCR 406-12 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) and Chapter W-1 ("Fishing" 2 CCR 406-1) necessary to accommodate changes to or ensure consistency with Chapter W-12

Open for consideration of regulations including, but not limited to, the following:

- Creating two aquatic species possession lists which outline the aquatic species that may be possessed by the public and those aquatic species that can be possessed by food production facilities.
- Allowing only certified triploid grass carp for stocking statewide.
- Modifying the definition of minnow.
- Changing the term for a private lake license from a lifetime to a ten-year license.
- Modifying the term "facility" in regards to viral hemorrhagic septicemia virus testing.

CITIZEN PETITIONS:

WILDLIFE REGULATIONS

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-9 – "Wildlife Properties" 2 CCR 406-9

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

- A Citizen Petition for Rulemaking requesting that the Commission allow the launching of paragliders from Smelter Mountain within the Bodo State Wildlife Area.

Chapter W-11- "Wildlife Parks and Unregulated Wildlife" 2 CCR 406-11

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

- A Citizen Petition for Rulemaking requesting that the Commission create a new type of wildlife educators license with associated restrictions.

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

ISSUES IDENTIFICATION

PARK REGULATIONS

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

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to registration and required safety equipment of snowmobiles.

WILDLIFE REGULATIONS

Chapter W-3 - "Furbearers and Small Game, Except Migratory Birds" 2 CCR 406-3, and those related provisions of Chapter W-9 ("Wildlife Properties" - 2 CCR 406-9) necessary to accommodate changes to or ensure consistency with Chapter W-3

Open for consideration of annual changes to game bird seasons, excluding turkey, and other small game seasons and related provisions, including season dates, bag and possession limits and manner of take provisions, and other related regulatory changes to Chapter W-9 necessary to accommodate changes to or to ensure consistency with Chapter W-3.

Chapter W-5 - "Small Game -Migratory Game Birds" - 2 CCR 406-5, and those related provisions of Chapter W-9 ("Division Properties" – 2 CCR 406-9) and Chapter P-1 ("Parks and Outdoor Recreation Lands" - 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-5

Open for consideration of annual changes to waterfowl and migratory bird hunting seasons and related provisions, including season dates, bag and possession limits and manner of take provisions.

Chapter W-9 - "Wildlife Properties" 2 CCR 406-9 and those related provisions of Chapter W-1 ("Fishing" 2 CCR 406-1) necessary to accommodate changes to or ensure consistency with Chapter W-9

Open for annual review of the entire chapter including, but not limited to, generally applicable and property-specific requirements for, or restrictions on use of, wildlife properties controlled by the Division of Parks and Wildlife, including State Trust Lands leased by the Division.

Chapter W-11 - "Wildlife Parks and Unregulated Wildlife" 2 CCR 406-11

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to wildlife parks, sanctuaries and unregulated wildlife.

Chapter W-16 - "Procedural Rules" 2 CCR 406-16

Open for correction to regulations based on changes to Colorado Revised Statutes pertaining to license suspensions.

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

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

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

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

December 28, 2017, for mailing by the Division of Parks and Wildlife to the Parks and Wildlife Commission on **December 29, 2017.**

Comments received by the Division between noon on **December 28, 2017** and noon on **January 5, 2018,** will be provided to the Commission two business days before 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.

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 **January 3, 2018**.

Notice of Proposed Rulemaking

Tracking number

2017-00591

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

01/10/2018

Time

08:30 AM

Location

Hunter Education Building, 6060 Broadway, Denver, CO 80216

Subjects and issues involved

Chapter P-8 - Aquatic Nuisance Species (ANS)- see attached

Statutory authority

See attached

Contact information

Name

Danielle Isenhart

Title

Regulations Manager

Telephone

303-866-3203 ex 4625

Email

danielle.isenhart@state.co.us

November 30, 2017

RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
JANUARY 10-11, 2018

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 **January 10-11, 2018. The Parks and Wildlife Commission meeting will be held at the offices of Colorado Parks and Wildlife, Hunter Education Building, 6060 Broadway, Denver, CO 80216. The following regulatory subjects and issues shall be considered** pursuant to the Commission's authority in sections 33-9-101 to 111, C.R.S. ("Administration of Parks and Wildlife"), in sections 33-1-101 to 33-6-209, C.R.S. (the "Wildlife Act"), and especially 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 - **January 10-11, 2018,** beginning **at 8:30 a.m.***

EFFECTIVE DATE OF REGULATIONS approved during the January 2018 Parks and Wildlife Commission meeting: March 2, 2018, unless otherwise noted.

FINAL REGULATIONS

PARK REGULATIONS

Chapter P-8 - "Aquatic Nuisance Species" 2 CCR 405-8

Open for consideration of changes to regulations including, but not limited to, the following:

- Adding "foldable plastic boats without an engine attached" to the list of exempted vessels that can be hand launched without a boat inspection within the definition of "Vessels or other floating device."

WILDLIFE REGULATIONS

Chapter W-0 - "General Provisions" 2 CCR 406-0 and those related provisions of Chapter W-2 ("Big Game" 2 CCR 406-2) 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, the following:

- Implementing an antler and horn collection closure on public lands west of I-25 from January 1 through April 30 annually.
- Creating an antler and horn collection license required for collection from May 1- May 31st only, on an annual basis.

**Please reference the Commission agenda, to be posted on or after January 3, 2018, 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.*

- Removing existing antler collection closures for the Gunnison Basin and Eagle/Roaring Fork valleys in Chapter W-2.

Chapter W-2 - "Big Game" 2 CCR 406-2 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) and 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-2

Open for consideration of regulations including, but not limited to, the following:

- Annual changes to season dates, limited license areas, quotas and manner of take provisions for bighorn sheep and 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 processes.
- Updating muzzleloader caliber requirements when hunting with round ball ammunition.
- Allowing Youth Outreach Licenses to be issued on both public and private lands in the state.
- Removing the preference point hunt code restrictions for Director's Dream Hunt licenses.
- Implementing pay-after-you draw provisions for big game limited licenses and allowing nonresidents to apply by phone or online for sheep, goat, and moose licenses.
- Creating a second ram rifle season in combined sheep units S40 and S58 as well as in unit S1.
- Implementing a new archery bighorn ram season in combined units S26 and S70.
- Creating a split season for ram rifle hunting in unit S61.
- Closing the rifle goat season in unit G18.
- Creating a private land only (PLO) bear hunt code for Game Management Units (GMU) 20, 29, and 38.
- Creating a PLO bear hunt code for GMUs 39, 391, 46, 461, 50, 51, 500, 501, and 104.
- Changing all bear hunt codes in Data Analysis Unit (DAU) B-4 from List A to List B.
- Making hunt codes DF038P5R and DF038L1R List C licenses.
- Amending the boundaries for PLO buck and doe hunt codes in GMU 38, with a new western boundary of Hwy 119.
- Making PLO doe licenses in GMUs 391 and 461 List C.
- Removing antlerless deer hunt codes in DAUs D-22 and D-25.
- Adding a 4th season for buck hunting in DAU D-34.
- Changing the season dates for the Air Force Academy deer hunts to October 1-December 31st.
- Extending the season dates for antlerless PLO licenses in DAUs E-8 and E-13 to run from September 1-January 31st.
- Changing the season dates for the late antlerless elk licenses in GMUs 50, 500, and 501 to open the Saturday before Christmas and run for nine consecutive days.
- Converting regular antlerless elk licenses in GMU 54 from List B to List A.
- Removing PLO hunt code EF065P5R.
- Removing GMU 521 from hunt code EF053P5R.
- Changing all either-sex muzzleloader and first rifle elk licenses in GMUs 71, 72, 73, 74, 75, 77, 78, 711, 741, 751, and 771 to antlered or antlerless licenses.
- Adding a PLO pronghorn season in DAU A-37.

- Adding in GMUs 49 and 500 to the pronghorn muzzleloader and rifle seasons in DAU A-30.
- Creating a regular rifle season for pronghorn hunting in GMUs 15, 26, and 231.
- Reinstating doe pronghorn hunting in GMUs 101 and 102.
- Reorganizing the GMU groupings for the pronghorn muzzleloader season in DAU A-9 by grouping GMUs 3 and 301 together, 4 and 5 together, 214 and 441 together and 13 and 131 as standalone units.
- Changing the season dates for the antlerless moose rifle hunt in GMUs 41, 42, and 421 to coincide with the 3rd and 4th rifle seasons for deer and elk.
- Creating separate antlerless moose hunt codes for GMUs 20 and 29.
- Separating GMUs in moose DAU M-12 into two hunt code groupings with GMUs 48, 481, 56, and 561 in one grouping and GMUs 55 and 551 in the other grouping.

Chapter W-12 - "Lake Licenses" 2 CCR 406-12 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) and Chapter W-1 ("Fishing" 2 CCR 406-1) necessary to accommodate changes to or ensure consistency with Chapter W-12

Open for consideration of regulations including, but not limited to, the following:

- Creating two aquatic species possession lists which outline the aquatic species that may be possessed by the public and those aquatic species that can be possessed by food production facilities.
- Allowing only certified triploid grass carp for stocking statewide.
- Modifying the definition of minnow.
- Changing the term for a private lake license from a lifetime to a ten-year license.
- Modifying the term "facility" in regards to viral hemorrhagic septicemia virus testing.

CITIZEN PETITIONS:

WILDLIFE REGULATIONS

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-9 – "Wildlife Properties" 2 CCR 406-9

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

- A Citizen Petition for Rulemaking requesting that the Commission allow the launching of paragliders from Smelter Mountain within the Bodo State Wildlife Area.

Chapter W-11- "Wildlife Parks and Unregulated Wildlife" 2 CCR 406-11

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

- A Citizen Petition for Rulemaking requesting that the Commission create a new type of wildlife educators license with associated restrictions.

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

ISSUES IDENTIFICATION

PARK REGULATIONS

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

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to registration and required safety equipment of snowmobiles.

WILDLIFE REGULATIONS

Chapter W-3 - "Furbearers and Small Game, Except Migratory Birds" 2 CCR 406-3, and those related provisions of Chapter W-9 ("Wildlife Properties" - 2 CCR 406-9) necessary to accommodate changes to or ensure consistency with Chapter W-3

Open for consideration of annual changes to game bird seasons, excluding turkey, and other small game seasons and related provisions, including season dates, bag and possession limits and manner of take provisions, and other related regulatory changes to Chapter W-9 necessary to accommodate changes to or to ensure consistency with Chapter W-3.

Chapter W-5 - "Small Game -Migratory Game Birds" - 2 CCR 406-5, and those related provisions of Chapter W-9 ("Division Properties" – 2 CCR 406-9) and Chapter P-1 ("Parks and Outdoor Recreation Lands" - 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-5

Open for consideration of annual changes to waterfowl and migratory bird hunting seasons and related provisions, including season dates, bag and possession limits and manner of take provisions.

Chapter W-9 - "Wildlife Properties" 2 CCR 406-9 and those related provisions of Chapter W-1 ("Fishing" 2 CCR 406-1) necessary to accommodate changes to or ensure consistency with Chapter W-9

Open for annual review of the entire chapter including, but not limited to, generally applicable and property-specific requirements for, or restrictions on use of, wildlife properties controlled by the Division of Parks and Wildlife, including State Trust Lands leased by the Division.

Chapter W-11 - "Wildlife Parks and Unregulated Wildlife" 2 CCR 406-11

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to wildlife parks, sanctuaries and unregulated wildlife.

Chapter W-16 - "Procedural Rules" 2 CCR 406-16

Open for correction to regulations based on changes to Colorado Revised Statutes pertaining to license suspensions.

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

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

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

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

December 28, 2017, for mailing by the Division of Parks and Wildlife to the Parks and Wildlife Commission on **December 29, 2017.**

Comments received by the Division between noon on **December 28, 2017** and noon on **January 5, 2018,** will be provided to the Commission two business days before 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.

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 **January 3, 2018**.

Notice of Proposed Rulemaking

Tracking number

2017-00580

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

01/10/2018

Time

08:30 AM

Location

Hunter Education Building, 6060 Broadway, Denver, CO 80216

Subjects and issues involved

Chapter W-0 - General Provisions- see attached

Statutory authority

See attached

Contact information

Name

Danielle Isenhart

Title

Regulations Manager

Telephone

303-866-3203 ex 4625

Email

danielle.isenahrt@state.co.us

November 30, 2017

RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
JANUARY 10-11, 2018

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 **January 10-11, 2018. The Parks and Wildlife Commission meeting will be held at the offices of Colorado Parks and Wildlife, Hunter Education Building, 6060 Broadway, Denver, CO 80216. The following regulatory subjects and issues shall be considered** pursuant to the Commission's authority in sections 33-9-101 to 111, C.R.S. ("Administration of Parks and Wildlife"), in sections 33-1-101 to 33-6-209, C.R.S. (the "Wildlife Act"), and especially 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 - **January 10-11, 2018,** beginning **at 8:30 a.m.***

EFFECTIVE DATE OF REGULATIONS approved during the January 2018 Parks and Wildlife Commission meeting: March 2, 2018, unless otherwise noted.

FINAL REGULATIONS

PARK REGULATIONS

Chapter P-8 - "Aquatic Nuisance Species" 2 CCR 405-8

Open for consideration of changes to regulations including, but not limited to, the following:

- Adding "foldable plastic boats without an engine attached" to the list of exempted vessels that can be hand launched without a boat inspection within the definition of "Vessels or other floating device."

WILDLIFE REGULATIONS

Chapter W-0 - "General Provisions" 2 CCR 406-0 and those related provisions of Chapter W-2 ("Big Game" 2 CCR 406-2) 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, the following:

- Implementing an antler and horn collection closure on public lands west of I-25 from January 1 through April 30 annually.
- Creating an antler and horn collection license required for collection from May 1- May 31st only, on an annual basis.

**Please reference the Commission agenda, to be posted on or after January 3, 2018, 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.*

- Removing existing antler collection closures for the Gunnison Basin and Eagle/Roaring Fork valleys in Chapter W-2.

Chapter W-2 - "Big Game" 2 CCR 406-2 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) and 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-2

Open for consideration of regulations including, but not limited to, the following:

- Annual changes to season dates, limited license areas, quotas and manner of take provisions for bighorn sheep and 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 processes.
- Updating muzzleloader caliber requirements when hunting with round ball ammunition.
- Allowing Youth Outreach Licenses to be issued on both public and private lands in the state.
- Removing the preference point hunt code restrictions for Director's Dream Hunt licenses.
- Implementing pay-after-you draw provisions for big game limited licenses and allowing nonresidents to apply by phone or online for sheep, goat, and moose licenses.
- Creating a second ram rifle season in combined sheep units S40 and S58 as well as in unit S1.
- Implementing a new archery bighorn ram season in combined units S26 and S70.
- Creating a split season for ram rifle hunting in unit S61.
- Closing the rifle goat season in unit G18.
- Creating a private land only (PLO) bear hunt code for Game Management Units (GMU) 20, 29, and 38.
- Creating a PLO bear hunt code for GMUs 39, 391, 46, 461, 50, 51, 500, 501, and 104.
- Changing all bear hunt codes in Data Analysis Unit (DAU) B-4 from List A to List B.
- Making hunt codes DF038P5R and DF038L1R List C licenses.
- Amending the boundaries for PLO buck and doe hunt codes in GMU 38, with a new western boundary of Hwy 119.
- Making PLO doe licenses in GMUs 391 and 461 List C.
- Removing antlerless deer hunt codes in DAUs D-22 and D-25.
- Adding a 4th season for buck hunting in DAU D-34.
- Changing the season dates for the Air Force Academy deer hunts to October 1-December 31st.
- Extending the season dates for antlerless PLO licenses in DAUs E-8 and E-13 to run from September 1-January 31st.
- Changing the season dates for the late antlerless elk licenses in GMUs 50, 500, and 501 to open the Saturday before Christmas and run for nine consecutive days.
- Converting regular antlerless elk licenses in GMU 54 from List B to List A.
- Removing PLO hunt code EF065P5R.
- Removing GMU 521 from hunt code EF053P5R.
- Changing all either-sex muzzleloader and first rifle elk licenses in GMUs 71, 72, 73, 74, 75, 77, 78, 711, 741, 751, and 771 to antlered or antlerless licenses.
- Adding a PLO pronghorn season in DAU A-37.

- Adding in GMUs 49 and 500 to the pronghorn muzzleloader and rifle seasons in DAU A-30.
- Creating a regular rifle season for pronghorn hunting in GMUs 15, 26, and 231.
- Reinstating doe pronghorn hunting in GMUs 101 and 102.
- Reorganizing the GMU groupings for the pronghorn muzzleloader season in DAU A-9 by grouping GMUs 3 and 301 together, 4 and 5 together, 214 and 441 together and 13 and 131 as standalone units.
- Changing the season dates for the antlerless moose rifle hunt in GMUs 41, 42, and 421 to coincide with the 3rd and 4th rifle seasons for deer and elk.
- Creating separate antlerless moose hunt codes for GMUs 20 and 29.
- Separating GMUs in moose DAU M-12 into two hunt code groupings with GMUs 48, 481, 56, and 561 in one grouping and GMUs 55 and 551 in the other grouping.

Chapter W-12 - "Lake Licenses" 2 CCR 406-12 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) and Chapter W-1 ("Fishing" 2 CCR 406-1) necessary to accommodate changes to or ensure consistency with Chapter W-12

Open for consideration of regulations including, but not limited to, the following:

- Creating two aquatic species possession lists which outline the aquatic species that may be possessed by the public and those aquatic species that can be possessed by food production facilities.
- Allowing only certified triploid grass carp for stocking statewide.
- Modifying the definition of minnow.
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- Modifying the term "facility" in regards to viral hemorrhagic septicemia virus testing.

CITIZEN PETITIONS:

WILDLIFE REGULATIONS

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-9 – "Wildlife Properties" 2 CCR 406-9

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

- A Citizen Petition for Rulemaking requesting that the Commission allow the launching of paragliders from Smelter Mountain within the Bodo State Wildlife Area.

Chapter W-11- "Wildlife Parks and Unregulated Wildlife" 2 CCR 406-11

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

- A Citizen Petition for Rulemaking requesting that the Commission create a new type of wildlife educators license with associated restrictions.

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

ISSUES IDENTIFICATION

PARK REGULATIONS

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

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to registration and required safety equipment of snowmobiles.

WILDLIFE REGULATIONS

Chapter W-3 - "Furbearers and Small Game, Except Migratory Birds" 2 CCR 406-3, and those related provisions of Chapter W-9 ("Wildlife Properties" - 2 CCR 406-9) necessary to accommodate changes to or ensure consistency with Chapter W-3

Open for consideration of annual changes to game bird seasons, excluding turkey, and other small game seasons and related provisions, including season dates, bag and possession limits and manner of take provisions, and other related regulatory changes to Chapter W-9 necessary to accommodate changes to or to ensure consistency with Chapter W-3.

Chapter W-5 - "Small Game -Migratory Game Birds" - 2 CCR 406-5, and those related provisions of Chapter W-9 ("Division Properties" – 2 CCR 406-9) and Chapter P-1 ("Parks and Outdoor Recreation Lands" - 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-5

Open for consideration of annual changes to waterfowl and migratory bird hunting seasons and related provisions, including season dates, bag and possession limits and manner of take provisions.

Chapter W-9 - "Wildlife Properties" 2 CCR 406-9 and those related provisions of Chapter W-1 ("Fishing" 2 CCR 406-1) necessary to accommodate changes to or ensure consistency with Chapter W-9

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Chapter W-11 - "Wildlife Parks and Unregulated Wildlife" 2 CCR 406-11

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to wildlife parks, sanctuaries and unregulated wildlife.

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Open for correction to regulations based on changes to Colorado Revised Statutes pertaining to license suspensions.

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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 **January 3, 2018**.

Notice of Proposed Rulemaking

Tracking number

2017-00581

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

01/10/2018

Time

08:30 AM

Location

Hunter Education Building, 6060 Broadway, Denver, CO 80216

Subjects and issues involved

Chapter W-1 - Fishing- See attached

Statutory authority

See attached

Contact information

Name

Danielle Isenhart

Title

Regulations Manager

Telephone

303-866-3203 ex 4625

Email

danielle.isenahrt@state.co.us

November 30, 2017

RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
JANUARY 10-11, 2018

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 **January 10-11, 2018. The Parks and Wildlife Commission meeting will be held at the offices of Colorado Parks and Wildlife, Hunter Education Building, 6060 Broadway, Denver, CO 80216. The following regulatory subjects and issues shall be considered** pursuant to the Commission's authority in sections 33-9-101 to 111, C.R.S. ("Administration of Parks and Wildlife"), in sections 33-1-101 to 33-6-209, C.R.S. (the "Wildlife Act"), and especially 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 - **January 10-11, 2018,** beginning **at 8:30 a.m.***

EFFECTIVE DATE OF REGULATIONS approved during the January 2018 Parks and Wildlife Commission meeting: March 2, 2018, unless otherwise noted.

FINAL REGULATIONS

PARK REGULATIONS

Chapter P-8 - "Aquatic Nuisance Species" 2 CCR 405-8

Open for consideration of changes to regulations including, but not limited to, the following:

- Adding "foldable plastic boats without an engine attached" to the list of exempted vessels that can be hand launched without a boat inspection within the definition of "Vessels or other floating device."

WILDLIFE REGULATIONS

Chapter W-0 - "General Provisions" 2 CCR 406-0 and those related provisions of Chapter W-2 ("Big Game" 2 CCR 406-2) 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, the following:

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- Creating an antler and horn collection license required for collection from May 1- May 31st only, on an annual basis.

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- Adding in GMUs 49 and 500 to the pronghorn muzzleloader and rifle seasons in DAU A-30.
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Chapter W-12 - "Lake Licenses" 2 CCR 406-12 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) and Chapter W-1 ("Fishing" 2 CCR 406-1) necessary to accommodate changes to or ensure consistency with Chapter W-12

Open for consideration of regulations including, but not limited to, the following:

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CITIZEN PETITIONS:

WILDLIFE REGULATIONS

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

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

ISSUES IDENTIFICATION

PARK REGULATIONS

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

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to registration and required safety equipment of snowmobiles.

WILDLIFE REGULATIONS

Chapter W-3 - "Furbearers and Small Game, Except Migratory Birds" 2 CCR 406-3, and those related provisions of Chapter W-9 ("Wildlife Properties" - 2 CCR 406-9) necessary to accommodate changes to or ensure consistency with Chapter W-3

Open for consideration of annual changes to game bird seasons, excluding turkey, and other small game seasons and related provisions, including season dates, bag and possession limits and manner of take provisions, and other related regulatory changes to Chapter W-9 necessary to accommodate changes to or to ensure consistency with Chapter W-3.

Chapter W-5 - "Small Game -Migratory Game Birds" - 2 CCR 406-5, and those related provisions of Chapter W-9 ("Division Properties" – 2 CCR 406-9) and Chapter P-1 ("Parks and Outdoor Recreation Lands" - 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-5

Open for consideration of annual changes to waterfowl and migratory bird hunting seasons and related provisions, including season dates, bag and possession limits and manner of take provisions.

Chapter W-9 - "Wildlife Properties" 2 CCR 406-9 and those related provisions of Chapter W-1 ("Fishing" 2 CCR 406-1) necessary to accommodate changes to or ensure consistency with Chapter W-9

Open for annual review of the entire chapter including, but not limited to, generally applicable and property-specific requirements for, or restrictions on use of, wildlife properties controlled by the Division of Parks and Wildlife, including State Trust Lands leased by the Division.

Chapter W-11 - "Wildlife Parks and Unregulated Wildlife" 2 CCR 406-11

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to wildlife parks, sanctuaries and unregulated wildlife.

Chapter W-16 - "Procedural Rules" 2 CCR 406-16

Open for correction to regulations based on changes to Colorado Revised Statutes pertaining to license suspensions.

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

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

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

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

December 28, 2017, for mailing by the Division of Parks and Wildlife to the Parks and Wildlife Commission on **December 29, 2017.**

Comments received by the Division between noon on **December 28, 2017** and noon on **January 5, 2018,** will be provided to the Commission two business days before 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.

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 **January 3, 2018**.

Notice of Proposed Rulemaking

Tracking number

2017-00582

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

01/10/2018

Time

08:30 AM

Location

Hunter Education Building, 6060 Broadway, Denver, CO 80216

Subjects and issues involved

Chapter W-2 - Big Game- see attached

Statutory authority

See attached

Contact information

Name

Danielle Isenhart

Title

Regulations Manager

Telephone

303-866-3203 ex 4625

Email

danielle.isenahrt@state.co.us

November 30, 2017

RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
JANUARY 10-11, 2018

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 **January 10-11, 2018. The Parks and Wildlife Commission meeting will be held at the offices of Colorado Parks and Wildlife, Hunter Education Building, 6060 Broadway, Denver, CO 80216. The following regulatory subjects and issues shall be considered** pursuant to the Commission's authority in sections 33-9-101 to 111, C.R.S. ("Administration of Parks and Wildlife"), in sections 33-1-101 to 33-6-209, C.R.S. (the "Wildlife Act"), and especially 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 - **January 10-11, 2018,** beginning **at 8:30 a.m.***

EFFECTIVE DATE OF REGULATIONS approved during the January 2018 Parks and Wildlife Commission meeting: March 2, 2018, unless otherwise noted.

FINAL REGULATIONS

PARK REGULATIONS

Chapter P-8 - "Aquatic Nuisance Species" 2 CCR 405-8

Open for consideration of changes to regulations including, but not limited to, the following:

- Adding "foldable plastic boats without an engine attached" to the list of exempted vessels that can be hand launched without a boat inspection within the definition of "Vessels or other floating device."

WILDLIFE REGULATIONS

Chapter W-0 - "General Provisions" 2 CCR 406-0 and those related provisions of Chapter W-2 ("Big Game" 2 CCR 406-2) 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, the following:

- Implementing an antler and horn collection closure on public lands west of I-25 from January 1 through April 30 annually.
- Creating an antler and horn collection license required for collection from May 1- May 31st only, on an annual basis.

**Please reference the Commission agenda, to be posted on or after January 3, 2018, 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.*

- Removing existing antler collection closures for the Gunnison Basin and Eagle/Roaring Fork valleys in Chapter W-2.

Chapter W-2 - "Big Game" 2 CCR 406-2 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) and 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-2

Open for consideration of regulations including, but not limited to, the following:

- Annual changes to season dates, limited license areas, quotas and manner of take provisions for bighorn sheep and 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 processes.
- Updating muzzleloader caliber requirements when hunting with round ball ammunition.
- Allowing Youth Outreach Licenses to be issued on both public and private lands in the state.
- Removing the preference point hunt code restrictions for Director's Dream Hunt licenses.
- Implementing pay-after-you draw provisions for big game limited licenses and allowing nonresidents to apply by phone or online for sheep, goat, and moose licenses.
- Creating a second ram rifle season in combined sheep units S40 and S58 as well as in unit S1.
- Implementing a new archery bighorn ram season in combined units S26 and S70.
- Creating a split season for ram rifle hunting in unit S61.
- Closing the rifle goat season in unit G18.
- Creating a private land only (PLO) bear hunt code for Game Management Units (GMU) 20, 29, and 38.
- Creating a PLO bear hunt code for GMUs 39, 391, 46, 461, 50, 51, 500, 501, and 104.
- Changing all bear hunt codes in Data Analysis Unit (DAU) B-4 from List A to List B.
- Making hunt codes DF038P5R and DF038L1R List C licenses.
- Amending the boundaries for PLO buck and doe hunt codes in GMU 38, with a new western boundary of Hwy 119.
- Making PLO doe licenses in GMUs 391 and 461 List C.
- Removing antlerless deer hunt codes in DAUs D-22 and D-25.
- Adding a 4th season for buck hunting in DAU D-34.
- Changing the season dates for the Air Force Academy deer hunts to October 1-December 31st.
- Extending the season dates for antlerless PLO licenses in DAUs E-8 and E-13 to run from September 1-January 31st.
- Changing the season dates for the late antlerless elk licenses in GMUs 50, 500, and 501 to open the Saturday before Christmas and run for nine consecutive days.
- Converting regular antlerless elk licenses in GMU 54 from List B to List A.
- Removing PLO hunt code EF065P5R.
- Removing GMU 521 from hunt code EF053P5R.
- Changing all either-sex muzzleloader and first rifle elk licenses in GMUs 71, 72, 73, 74, 75, 77, 78, 711, 741, 751, and 771 to antlered or antlerless licenses.
- Adding a PLO pronghorn season in DAU A-37.

- Adding in GMUs 49 and 500 to the pronghorn muzzleloader and rifle seasons in DAU A-30.
- Creating a regular rifle season for pronghorn hunting in GMUs 15, 26, and 231.
- Reinstating doe pronghorn hunting in GMUs 101 and 102.
- Reorganizing the GMU groupings for the pronghorn muzzleloader season in DAU A-9 by grouping GMUs 3 and 301 together, 4 and 5 together, 214 and 441 together and 13 and 131 as standalone units.
- Changing the season dates for the antlerless moose rifle hunt in GMUs 41, 42, and 421 to coincide with the 3rd and 4th rifle seasons for deer and elk.
- Creating separate antlerless moose hunt codes for GMUs 20 and 29.
- Separating GMUs in moose DAU M-12 into two hunt code groupings with GMUs 48, 481, 56, and 561 in one grouping and GMUs 55 and 551 in the other grouping.

Chapter W-12 - "Lake Licenses" 2 CCR 406-12 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) and Chapter W-1 ("Fishing" 2 CCR 406-1) necessary to accommodate changes to or ensure consistency with Chapter W-12

Open for consideration of regulations including, but not limited to, the following:

- Creating two aquatic species possession lists which outline the aquatic species that may be possessed by the public and those aquatic species that can be possessed by food production facilities.
- Allowing only certified triploid grass carp for stocking statewide.
- Modifying the definition of minnow.
- Changing the term for a private lake license from a lifetime to a ten-year license.
- Modifying the term "facility" in regards to viral hemorrhagic septicemia virus testing.

CITIZEN PETITIONS:

WILDLIFE REGULATIONS

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-9 – "Wildlife Properties" 2 CCR 406-9

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

- A Citizen Petition for Rulemaking requesting that the Commission allow the launching of paragliders from Smelter Mountain within the Bodo State Wildlife Area.

Chapter W-11- "Wildlife Parks and Unregulated Wildlife" 2 CCR 406-11

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

- A Citizen Petition for Rulemaking requesting that the Commission create a new type of wildlife educators license with associated restrictions.

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

ISSUES IDENTIFICATION

PARK REGULATIONS

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

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to registration and required safety equipment of snowmobiles.

WILDLIFE REGULATIONS

Chapter W-3 - "Furbearers and Small Game, Except Migratory Birds" 2 CCR 406-3, and those related provisions of Chapter W-9 ("Wildlife Properties" - 2 CCR 406-9) necessary to accommodate changes to or ensure consistency with Chapter W-3

Open for consideration of annual changes to game bird seasons, excluding turkey, and other small game seasons and related provisions, including season dates, bag and possession limits and manner of take provisions, and other related regulatory changes to Chapter W-9 necessary to accommodate changes to or to ensure consistency with Chapter W-3.

Chapter W-5 - "Small Game -Migratory Game Birds" - 2 CCR 406-5, and those related provisions of Chapter W-9 ("Division Properties" – 2 CCR 406-9) and Chapter P-1 ("Parks and Outdoor Recreation Lands" - 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-5

Open for consideration of annual changes to waterfowl and migratory bird hunting seasons and related provisions, including season dates, bag and possession limits and manner of take provisions.

Chapter W-9 - "Wildlife Properties" 2 CCR 406-9 and those related provisions of Chapter W-1 ("Fishing" 2 CCR 406-1) necessary to accommodate changes to or ensure consistency with Chapter W-9

Open for annual review of the entire chapter including, but not limited to, generally applicable and property-specific requirements for, or restrictions on use of, wildlife properties controlled by the Division of Parks and Wildlife, including State Trust Lands leased by the Division.

Chapter W-11 - "Wildlife Parks and Unregulated Wildlife" 2 CCR 406-11

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to wildlife parks, sanctuaries and unregulated wildlife.

Chapter W-16 - "Procedural Rules" 2 CCR 406-16

Open for correction to regulations based on changes to Colorado Revised Statutes pertaining to license suspensions.

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

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

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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 **January 3, 2018**.

Notice of Proposed Rulemaking

Tracking number

2017-00583

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

01/10/2018

Time

08:30 AM

Location

Hunter Education Building, 6060 Broadway, Denver, CO 80216

Subjects and issues involved

Chapter W-3- Furbearers and Small Game Except Migratory Birds - see attached

Statutory authority

See attached

Contact information

Name

Danielle Isenhart

Title

Regulations Manager

Telephone

303-866-3203 ex 4625

Email

danielle.isenahrt@state.co.us

November 30, 2017

RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
JANUARY 10-11, 2018

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 **January 10-11, 2018. The Parks and Wildlife Commission meeting will be held at the offices of Colorado Parks and Wildlife, Hunter Education Building, 6060 Broadway, Denver, CO 80216. The following regulatory subjects and issues shall be considered** pursuant to the Commission's authority in sections 33-9-101 to 111, C.R.S. ("Administration of Parks and Wildlife"), in sections 33-1-101 to 33-6-209, C.R.S. (the "Wildlife Act"), and especially 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 - **January 10-11, 2018,** beginning **at 8:30 a.m.***

EFFECTIVE DATE OF REGULATIONS approved during the January 2018 Parks and Wildlife Commission meeting: March 2, 2018, unless otherwise noted.

FINAL REGULATIONS

PARK REGULATIONS

Chapter P-8 - "Aquatic Nuisance Species" 2 CCR 405-8

Open for consideration of changes to regulations including, but not limited to, the following:

- Adding "foldable plastic boats without an engine attached" to the list of exempted vessels that can be hand launched without a boat inspection within the definition of "Vessels or other floating device."

WILDLIFE REGULATIONS

Chapter W-0 - "General Provisions" 2 CCR 406-0 and those related provisions of Chapter W-2 ("Big Game" 2 CCR 406-2) 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, the following:

- Implementing an antler and horn collection closure on public lands west of I-25 from January 1 through April 30 annually.
- Creating an antler and horn collection license required for collection from May 1- May 31st only, on an annual basis.

**Please reference the Commission agenda, to be posted on or after January 3, 2018, 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.*

- Removing existing antler collection closures for the Gunnison Basin and Eagle/Roaring Fork valleys in Chapter W-2.

Chapter W-2 - "Big Game" 2 CCR 406-2 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) and 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-2

Open for consideration of regulations including, but not limited to, the following:

- Annual changes to season dates, limited license areas, quotas and manner of take provisions for bighorn sheep and 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 processes.
- Updating muzzleloader caliber requirements when hunting with round ball ammunition.
- Allowing Youth Outreach Licenses to be issued on both public and private lands in the state.
- Removing the preference point hunt code restrictions for Director's Dream Hunt licenses.
- Implementing pay-after-you draw provisions for big game limited licenses and allowing nonresidents to apply by phone or online for sheep, goat, and moose licenses.
- Creating a second ram rifle season in combined sheep units S40 and S58 as well as in unit S1.
- Implementing a new archery bighorn ram season in combined units S26 and S70.
- Creating a split season for ram rifle hunting in unit S61.
- Closing the rifle goat season in unit G18.
- Creating a private land only (PLO) bear hunt code for Game Management Units (GMU) 20, 29, and 38.
- Creating a PLO bear hunt code for GMUs 39, 391, 46, 461, 50, 51, 500, 501, and 104.
- Changing all bear hunt codes in Data Analysis Unit (DAU) B-4 from List A to List B.
- Making hunt codes DF038P5R and DF038L1R List C licenses.
- Amending the boundaries for PLO buck and doe hunt codes in GMU 38, with a new western boundary of Hwy 119.
- Making PLO doe licenses in GMUs 391 and 461 List C.
- Removing antlerless deer hunt codes in DAUs D-22 and D-25.
- Adding a 4th season for buck hunting in DAU D-34.
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- Extending the season dates for antlerless PLO licenses in DAUs E-8 and E-13 to run from September 1-January 31st.
- Changing the season dates for the late antlerless elk licenses in GMUs 50, 500, and 501 to open the Saturday before Christmas and run for nine consecutive days.
- Converting regular antlerless elk licenses in GMU 54 from List B to List A.
- Removing PLO hunt code EF065P5R.
- Removing GMU 521 from hunt code EF053P5R.
- Changing all either-sex muzzleloader and first rifle elk licenses in GMUs 71, 72, 73, 74, 75, 77, 78, 711, 741, 751, and 771 to antlered or antlerless licenses.
- Adding a PLO pronghorn season in DAU A-37.

- Adding in GMUs 49 and 500 to the pronghorn muzzleloader and rifle seasons in DAU A-30.
- Creating a regular rifle season for pronghorn hunting in GMUs 15, 26, and 231.
- Reinstating doe pronghorn hunting in GMUs 101 and 102.
- Reorganizing the GMU groupings for the pronghorn muzzleloader season in DAU A-9 by grouping GMUs 3 and 301 together, 4 and 5 together, 214 and 441 together and 13 and 131 as standalone units.
- Changing the season dates for the antlerless moose rifle hunt in GMUs 41, 42, and 421 to coincide with the 3rd and 4th rifle seasons for deer and elk.
- Creating separate antlerless moose hunt codes for GMUs 20 and 29.
- Separating GMUs in moose DAU M-12 into two hunt code groupings with GMUs 48, 481, 56, and 561 in one grouping and GMUs 55 and 551 in the other grouping.

Chapter W-12 - "Lake Licenses" 2 CCR 406-12 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) and Chapter W-1 ("Fishing" 2 CCR 406-1) necessary to accommodate changes to or ensure consistency with Chapter W-12

Open for consideration of regulations including, but not limited to, the following:

- Creating two aquatic species possession lists which outline the aquatic species that may be possessed by the public and those aquatic species that can be possessed by food production facilities.
- Allowing only certified triploid grass carp for stocking statewide.
- Modifying the definition of minnow.
- Changing the term for a private lake license from a lifetime to a ten-year license.
- Modifying the term "facility" in regards to viral hemorrhagic septicemia virus testing.

CITIZEN PETITIONS:

WILDLIFE REGULATIONS

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-9 – "Wildlife Properties" 2 CCR 406-9

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

- A Citizen Petition for Rulemaking requesting that the Commission allow the launching of paragliders from Smelter Mountain within the Bodo State Wildlife Area.

Chapter W-11- "Wildlife Parks and Unregulated Wildlife" 2 CCR 406-11

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

- A Citizen Petition for Rulemaking requesting that the Commission create a new type of wildlife educators license with associated restrictions.

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

ISSUES IDENTIFICATION

PARK REGULATIONS

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

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to registration and required safety equipment of snowmobiles.

WILDLIFE REGULATIONS

Chapter W-3 - "Furbearers and Small Game, Except Migratory Birds" 2 CCR 406-3, and those related provisions of Chapter W-9 ("Wildlife Properties" - 2 CCR 406-9) necessary to accommodate changes to or ensure consistency with Chapter W-3

Open for consideration of annual changes to game bird seasons, excluding turkey, and other small game seasons and related provisions, including season dates, bag and possession limits and manner of take provisions, and other related regulatory changes to Chapter W-9 necessary to accommodate changes to or to ensure consistency with Chapter W-3.

Chapter W-5 - "Small Game -Migratory Game Birds" - 2 CCR 406-5, and those related provisions of Chapter W-9 ("Division Properties" – 2 CCR 406-9) and Chapter P-1 ("Parks and Outdoor Recreation Lands" - 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-5

Open for consideration of annual changes to waterfowl and migratory bird hunting seasons and related provisions, including season dates, bag and possession limits and manner of take provisions.

Chapter W-9 - "Wildlife Properties" 2 CCR 406-9 and those related provisions of Chapter W-1 ("Fishing" 2 CCR 406-1) necessary to accommodate changes to or ensure consistency with Chapter W-9

Open for annual review of the entire chapter including, but not limited to, generally applicable and property-specific requirements for, or restrictions on use of, wildlife properties controlled by the Division of Parks and Wildlife, including State Trust Lands leased by the Division.

Chapter W-11 - "Wildlife Parks and Unregulated Wildlife" 2 CCR 406-11

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to wildlife parks, sanctuaries and unregulated wildlife.

Chapter W-16 - "Procedural Rules" 2 CCR 406-16

Open for correction to regulations based on changes to Colorado Revised Statutes pertaining to license suspensions.

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

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

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

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

December 28, 2017, for mailing by the Division of Parks and Wildlife to the Parks and Wildlife Commission on **December 29, 2017.**

Comments received by the Division between noon on **December 28, 2017** and noon on **January 5, 2018,** will be provided to the Commission two business days before 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.

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 **January 3, 2018**.

Notice of Proposed Rulemaking

Tracking number

2017-00584

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 - SMALL GAME - MIGRATORY BIRDS

Rulemaking Hearing

Date

01/10/2018

Time

08:30 AM

Location

Hunter Education Building, 6060 Broadway, Denver, CO 80216

Subjects and issues involved

Chapter W-5- Small Game, Migratory Birds - see attached

Statutory authority

See attached

Contact information

Name

Danielle Isenhart

Title

Regulations Manager

Telephone

303-866-3203 ex 4625

Email

danielle.isenahrt@state.co.us

November 30, 2017

RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
JANUARY 10-11, 2018

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 **January 10-11, 2018. The Parks and Wildlife Commission meeting will be held at the offices of Colorado Parks and Wildlife, Hunter Education Building, 6060 Broadway, Denver, CO 80216. The following regulatory subjects and issues shall be considered** pursuant to the Commission's authority in sections 33-9-101 to 111, C.R.S. ("Administration of Parks and Wildlife"), in sections 33-1-101 to 33-6-209, C.R.S. (the "Wildlife Act"), and especially 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 - **January 10-11, 2018,** beginning **at 8:30 a.m.***

EFFECTIVE DATE OF REGULATIONS approved during the January 2018 Parks and Wildlife Commission meeting: March 2, 2018, unless otherwise noted.

FINAL REGULATIONS

PARK REGULATIONS

Chapter P-8 - "Aquatic Nuisance Species" 2 CCR 405-8

Open for consideration of changes to regulations including, but not limited to, the following:

- Adding "foldable plastic boats without an engine attached" to the list of exempted vessels that can be hand launched without a boat inspection within the definition of "Vessels or other floating device."

WILDLIFE REGULATIONS

Chapter W-0 - "General Provisions" 2 CCR 406-0 and those related provisions of Chapter W-2 ("Big Game" 2 CCR 406-2) 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, the following:

- Implementing an antler and horn collection closure on public lands west of I-25 from January 1 through April 30 annually.
- Creating an antler and horn collection license required for collection from May 1- May 31st only, on an annual basis.

**Please reference the Commission agenda, to be posted on or after January 3, 2018, 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.*

- Removing existing antler collection closures for the Gunnison Basin and Eagle/Roaring Fork valleys in Chapter W-2.

Chapter W-2 - "Big Game" 2 CCR 406-2 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) and 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-2

Open for consideration of regulations including, but not limited to, the following:

- Annual changes to season dates, limited license areas, quotas and manner of take provisions for bighorn sheep and 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 processes.
- Updating muzzleloader caliber requirements when hunting with round ball ammunition.
- Allowing Youth Outreach Licenses to be issued on both public and private lands in the state.
- Removing the preference point hunt code restrictions for Director's Dream Hunt licenses.
- Implementing pay-after-you draw provisions for big game limited licenses and allowing nonresidents to apply by phone or online for sheep, goat, and moose licenses.
- Creating a second ram rifle season in combined sheep units S40 and S58 as well as in unit S1.
- Implementing a new archery bighorn ram season in combined units S26 and S70.
- Creating a split season for ram rifle hunting in unit S61.
- Closing the rifle goat season in unit G18.
- Creating a private land only (PLO) bear hunt code for Game Management Units (GMU) 20, 29, and 38.
- Creating a PLO bear hunt code for GMUs 39, 391, 46, 461, 50, 51, 500, 501, and 104.
- Changing all bear hunt codes in Data Analysis Unit (DAU) B-4 from List A to List B.
- Making hunt codes DF038P5R and DF038L1R List C licenses.
- Amending the boundaries for PLO buck and doe hunt codes in GMU 38, with a new western boundary of Hwy 119.
- Making PLO doe licenses in GMUs 391 and 461 List C.
- Removing antlerless deer hunt codes in DAUs D-22 and D-25.
- Adding a 4th season for buck hunting in DAU D-34.
- Changing the season dates for the Air Force Academy deer hunts to October 1-December 31st.
- Extending the season dates for antlerless PLO licenses in DAUs E-8 and E-13 to run from September 1-January 31st.
- Changing the season dates for the late antlerless elk licenses in GMUs 50, 500, and 501 to open the Saturday before Christmas and run for nine consecutive days.
- Converting regular antlerless elk licenses in GMU 54 from List B to List A.
- Removing PLO hunt code EF065P5R.
- Removing GMU 521 from hunt code EF053P5R.
- Changing all either-sex muzzleloader and first rifle elk licenses in GMUs 71, 72, 73, 74, 75, 77, 78, 711, 741, 751, and 771 to antlered or antlerless licenses.
- Adding a PLO pronghorn season in DAU A-37.

- Adding in GMUs 49 and 500 to the pronghorn muzzleloader and rifle seasons in DAU A-30.
- Creating a regular rifle season for pronghorn hunting in GMUs 15, 26, and 231.
- Reinstating doe pronghorn hunting in GMUs 101 and 102.
- Reorganizing the GMU groupings for the pronghorn muzzleloader season in DAU A-9 by grouping GMUs 3 and 301 together, 4 and 5 together, 214 and 441 together and 13 and 131 as standalone units.
- Changing the season dates for the antlerless moose rifle hunt in GMUs 41, 42, and 421 to coincide with the 3rd and 4th rifle seasons for deer and elk.
- Creating separate antlerless moose hunt codes for GMUs 20 and 29.
- Separating GMUs in moose DAU M-12 into two hunt code groupings with GMUs 48, 481, 56, and 561 in one grouping and GMUs 55 and 551 in the other grouping.

Chapter W-12 - "Lake Licenses" 2 CCR 406-12 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) and Chapter W-1 ("Fishing" 2 CCR 406-1) necessary to accommodate changes to or ensure consistency with Chapter W-12

Open for consideration of regulations including, but not limited to, the following:

- Creating two aquatic species possession lists which outline the aquatic species that may be possessed by the public and those aquatic species that can be possessed by food production facilities.
- Allowing only certified triploid grass carp for stocking statewide.
- Modifying the definition of minnow.
- Changing the term for a private lake license from a lifetime to a ten-year license.
- Modifying the term "facility" in regards to viral hemorrhagic septicemia virus testing.

CITIZEN PETITIONS:

WILDLIFE REGULATIONS

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-9 – "Wildlife Properties" 2 CCR 406-9

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

- A Citizen Petition for Rulemaking requesting that the Commission allow the launching of paragliders from Smelter Mountain within the Bodo State Wildlife Area.

Chapter W-11- "Wildlife Parks and Unregulated Wildlife" 2 CCR 406-11

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

- A Citizen Petition for Rulemaking requesting that the Commission create a new type of wildlife educators license with associated restrictions.

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

ISSUES IDENTIFICATION

PARK REGULATIONS

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

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to registration and required safety equipment of snowmobiles.

WILDLIFE REGULATIONS

Chapter W-3 - "Furbearers and Small Game, Except Migratory Birds" 2 CCR 406-3, and those related provisions of Chapter W-9 ("Wildlife Properties" - 2 CCR 406-9) necessary to accommodate changes to or ensure consistency with Chapter W-3

Open for consideration of annual changes to game bird seasons, excluding turkey, and other small game seasons and related provisions, including season dates, bag and possession limits and manner of take provisions, and other related regulatory changes to Chapter W-9 necessary to accommodate changes to or to ensure consistency with Chapter W-3.

Chapter W-5 - "Small Game -Migratory Game Birds" - 2 CCR 406-5, and those related provisions of Chapter W-9 ("Division Properties" – 2 CCR 406-9) and Chapter P-1 ("Parks and Outdoor Recreation Lands" - 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-5

Open for consideration of annual changes to waterfowl and migratory bird hunting seasons and related provisions, including season dates, bag and possession limits and manner of take provisions.

Chapter W-9 - "Wildlife Properties" 2 CCR 406-9 and those related provisions of Chapter W-1 ("Fishing" 2 CCR 406-1) necessary to accommodate changes to or ensure consistency with Chapter W-9

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Open for annual review of the entire chapter including, but not limited to, regulations pertaining to wildlife parks, sanctuaries and unregulated wildlife.

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Notice of Proposed Rulemaking

Tracking number

2017-00585

Department

400 - Department of Natural Resources

Agency

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

CCR number

2 CCR 406-9

Rule title

CHAPTER W-9 - WILDLIFE PROPERTIES

Rulemaking Hearing

Date

01/10/2018

Time

08:30 AM

Location

Hunter Education Building, 6060 Broadway, Denver, CO 80216

Subjects and issues involved

Chapter W-9 - Wildlife Properties- see attached

Statutory authority

See attached

Contact information

Name

Danielle Isenhart

Title

Regulations Manager

Telephone

303-866-3203 ex 4625

Email

danielle.isenhart@state.co.us

November 30, 2017

RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
JANUARY 10-11, 2018

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 **January 10-11, 2018. The Parks and Wildlife Commission meeting will be held at the offices of Colorado Parks and Wildlife, Hunter Education Building, 6060 Broadway, Denver, CO 80216. The following regulatory subjects and issues shall be considered** pursuant to the Commission's authority in sections 33-9-101 to 111, C.R.S. ("Administration of Parks and Wildlife"), in sections 33-1-101 to 33-6-209, C.R.S. (the "Wildlife Act"), and especially 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 - **January 10-11, 2018,** beginning **at 8:30 a.m.***

EFFECTIVE DATE OF REGULATIONS approved during the January 2018 Parks and Wildlife Commission meeting: March 2, 2018, unless otherwise noted.

FINAL REGULATIONS

PARK REGULATIONS

Chapter P-8 - "Aquatic Nuisance Species" 2 CCR 405-8

Open for consideration of changes to regulations including, but not limited to, the following:

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WILDLIFE REGULATIONS

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- Creating an antler and horn collection license required for collection from May 1- May 31st only, on an annual basis.

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Open for consideration of regulations including, but not limited to, the following:

- Annual changes to season dates, limited license areas, quotas and manner of take provisions for bighorn sheep and mountain goat.
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- Changing the season dates for the antlerless moose rifle hunt in GMUs 41, 42, and 421 to coincide with the 3rd and 4th rifle seasons for deer and elk.
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Chapter W-12 - "Lake Licenses" 2 CCR 406-12 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) and Chapter W-1 ("Fishing" 2 CCR 406-1) necessary to accommodate changes to or ensure consistency with Chapter W-12

Open for consideration of regulations including, but not limited to, the following:

- Creating two aquatic species possession lists which outline the aquatic species that may be possessed by the public and those aquatic species that can be possessed by food production facilities.
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- Modifying the term "facility" in regards to viral hemorrhagic septicemia virus testing.

CITIZEN PETITIONS:

WILDLIFE REGULATIONS

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ISSUES IDENTIFICATION

PARK REGULATIONS

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WILDLIFE REGULATIONS

Chapter W-3 - "Furbearers and Small Game, Except Migratory Birds" 2 CCR 406-3, and those related provisions of Chapter W-9 ("Wildlife Properties" - 2 CCR 406-9) necessary to accommodate changes to or ensure consistency with Chapter W-3

Open for consideration of annual changes to game bird seasons, excluding turkey, and other small game seasons and related provisions, including season dates, bag and possession limits and manner of take provisions, and other related regulatory changes to Chapter W-9 necessary to accommodate changes to or to ensure consistency with Chapter W-3.

Chapter W-5 - "Small Game -Migratory Game Birds" - 2 CCR 406-5, and those related provisions of Chapter W-9 ("Division Properties" – 2 CCR 406-9) and Chapter P-1 ("Parks and Outdoor Recreation Lands" - 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-5

Open for consideration of annual changes to waterfowl and migratory bird hunting seasons and related provisions, including season dates, bag and possession limits and manner of take provisions.

Chapter W-9 - "Wildlife Properties" 2 CCR 406-9 and those related provisions of Chapter W-1 ("Fishing" 2 CCR 406-1) necessary to accommodate changes to or ensure consistency with Chapter W-9

Open for annual review of the entire chapter including, but not limited to, generally applicable and property-specific requirements for, or restrictions on use of, wildlife properties controlled by the Division of Parks and Wildlife, including State Trust Lands leased by the Division.

Chapter W-11 - "Wildlife Parks and Unregulated Wildlife" 2 CCR 406-11

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to wildlife parks, sanctuaries and unregulated wildlife.

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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:**

December 28, 2017, for mailing by the Division of Parks and Wildlife to the Parks and Wildlife Commission on **December 29, 2017.**

Comments received by the Division between noon on **December 28, 2017** and noon on **January 5, 2018,** will be provided to the Commission two business days before 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.

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 **January 3, 2018**.

Notice of Proposed Rulemaking

Tracking number

2017-00586

Department

400 - Department of Natural Resources

Agency

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

CCR number

2 CCR 406-11

Rule title

CHAPTER W-11 - WILDLIFE PARKS AND UNREGULATED WILDLIFE

Rulemaking Hearing

Date

01/10/2018

Time

08:30 AM

Location

Hunter Education Building, 6060 Broadway, Denver, CO 80216

Subjects and issues involved

Chapter W-11 - Wildlife Parks and Unregulated Wildlife - see attached

Statutory authority

See attached

Contact information

Name

Danielle Isenhart

Title

Regulations Manager

Telephone

303-866-3203 ex 4625

Email

danielle.isenhart@state.co.us

November 30, 2017

RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
JANUARY 10-11, 2018

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 **January 10-11, 2018. The Parks and Wildlife Commission meeting will be held at the offices of Colorado Parks and Wildlife, Hunter Education Building, 6060 Broadway, Denver, CO 80216. The following regulatory subjects and issues shall be considered** pursuant to the Commission's authority in sections 33-9-101 to 111, C.R.S. ("Administration of Parks and Wildlife"), in sections 33-1-101 to 33-6-209, C.R.S. (the "Wildlife Act"), and especially 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 - **January 10-11, 2018,** beginning **at 8:30 a.m.***

EFFECTIVE DATE OF REGULATIONS approved during the January 2018 Parks and Wildlife Commission meeting: March 2, 2018, unless otherwise noted.

FINAL REGULATIONS

PARK REGULATIONS

Chapter P-8 - "Aquatic Nuisance Species" 2 CCR 405-8

Open for consideration of changes to regulations including, but not limited to, the following:

- Adding "foldable plastic boats without an engine attached" to the list of exempted vessels that can be hand launched without a boat inspection within the definition of "Vessels or other floating device."

WILDLIFE REGULATIONS

Chapter W-0 - "General Provisions" 2 CCR 406-0 and those related provisions of Chapter W-2 ("Big Game" 2 CCR 406-2) 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, the following:

- Implementing an antler and horn collection closure on public lands west of I-25 from January 1 through April 30 annually.
- Creating an antler and horn collection license required for collection from May 1- May 31st only, on an annual basis.

**Please reference the Commission agenda, to be posted on or after January 3, 2018, 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.*

- Removing existing antler collection closures for the Gunnison Basin and Eagle/Roaring Fork valleys in Chapter W-2.

Chapter W-2 - "Big Game" 2 CCR 406-2 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) and 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-2

Open for consideration of regulations including, but not limited to, the following:

- Annual changes to season dates, limited license areas, quotas and manner of take provisions for bighorn sheep and 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 processes.
- Updating muzzleloader caliber requirements when hunting with round ball ammunition.
- Allowing Youth Outreach Licenses to be issued on both public and private lands in the state.
- Removing the preference point hunt code restrictions for Director's Dream Hunt licenses.
- Implementing pay-after-you draw provisions for big game limited licenses and allowing nonresidents to apply by phone or online for sheep, goat, and moose licenses.
- Creating a second ram rifle season in combined sheep units S40 and S58 as well as in unit S1.
- Implementing a new archery bighorn ram season in combined units S26 and S70.
- Creating a split season for ram rifle hunting in unit S61.
- Closing the rifle goat season in unit G18.
- Creating a private land only (PLO) bear hunt code for Game Management Units (GMU) 20, 29, and 38.
- Creating a PLO bear hunt code for GMUs 39, 391, 46, 461, 50, 51, 500, 501, and 104.
- Changing all bear hunt codes in Data Analysis Unit (DAU) B-4 from List A to List B.
- Making hunt codes DF038P5R and DF038L1R List C licenses.
- Amending the boundaries for PLO buck and doe hunt codes in GMU 38, with a new western boundary of Hwy 119.
- Making PLO doe licenses in GMUs 391 and 461 List C.
- Removing antlerless deer hunt codes in DAUs D-22 and D-25.
- Adding a 4th season for buck hunting in DAU D-34.
- Changing the season dates for the Air Force Academy deer hunts to October 1-December 31st.
- Extending the season dates for antlerless PLO licenses in DAUs E-8 and E-13 to run from September 1-January 31st.
- Changing the season dates for the late antlerless elk licenses in GMUs 50, 500, and 501 to open the Saturday before Christmas and run for nine consecutive days.
- Converting regular antlerless elk licenses in GMU 54 from List B to List A.
- Removing PLO hunt code EF065P5R.
- Removing GMU 521 from hunt code EF053P5R.
- Changing all either-sex muzzleloader and first rifle elk licenses in GMUs 71, 72, 73, 74, 75, 77, 78, 711, 741, 751, and 771 to antlered or antlerless licenses.
- Adding a PLO pronghorn season in DAU A-37.

- Adding in GMUs 49 and 500 to the pronghorn muzzleloader and rifle seasons in DAU A-30.
- Creating a regular rifle season for pronghorn hunting in GMUs 15, 26, and 231.
- Reinstating doe pronghorn hunting in GMUs 101 and 102.
- Reorganizing the GMU groupings for the pronghorn muzzleloader season in DAU A-9 by grouping GMUs 3 and 301 together, 4 and 5 together, 214 and 441 together and 13 and 131 as standalone units.
- Changing the season dates for the antlerless moose rifle hunt in GMUs 41, 42, and 421 to coincide with the 3rd and 4th rifle seasons for deer and elk.
- Creating separate antlerless moose hunt codes for GMUs 20 and 29.
- Separating GMUs in moose DAU M-12 into two hunt code groupings with GMUs 48, 481, 56, and 561 in one grouping and GMUs 55 and 551 in the other grouping.

Chapter W-12 - "Lake Licenses" 2 CCR 406-12 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) and Chapter W-1 ("Fishing" 2 CCR 406-1) necessary to accommodate changes to or ensure consistency with Chapter W-12

Open for consideration of regulations including, but not limited to, the following:

- Creating two aquatic species possession lists which outline the aquatic species that may be possessed by the public and those aquatic species that can be possessed by food production facilities.
- Allowing only certified triploid grass carp for stocking statewide.
- Modifying the definition of minnow.
- Changing the term for a private lake license from a lifetime to a ten-year license.
- Modifying the term "facility" in regards to viral hemorrhagic septicemia virus testing.

CITIZEN PETITIONS:

WILDLIFE REGULATIONS

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-9 – "Wildlife Properties" 2 CCR 406-9

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

- A Citizen Petition for Rulemaking requesting that the Commission allow the launching of paragliders from Smelter Mountain within the Bodo State Wildlife Area.

Chapter W-11- "Wildlife Parks and Unregulated Wildlife" 2 CCR 406-11

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

- A Citizen Petition for Rulemaking requesting that the Commission create a new type of wildlife educators license with associated restrictions.

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

ISSUES IDENTIFICATION

PARK REGULATIONS

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

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to registration and required safety equipment of snowmobiles.

WILDLIFE REGULATIONS

Chapter W-3 - "Furbearers and Small Game, Except Migratory Birds" 2 CCR 406-3, and those related provisions of Chapter W-9 ("Wildlife Properties" - 2 CCR 406-9) necessary to accommodate changes to or ensure consistency with Chapter W-3

Open for consideration of annual changes to game bird seasons, excluding turkey, and other small game seasons and related provisions, including season dates, bag and possession limits and manner of take provisions, and other related regulatory changes to Chapter W-9 necessary to accommodate changes to or to ensure consistency with Chapter W-3.

Chapter W-5 - "Small Game -Migratory Game Birds" - 2 CCR 406-5, and those related provisions of Chapter W-9 ("Division Properties" – 2 CCR 406-9) and Chapter P-1 ("Parks and Outdoor Recreation Lands" - 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-5

Open for consideration of annual changes to waterfowl and migratory bird hunting seasons and related provisions, including season dates, bag and possession limits and manner of take provisions.

Chapter W-9 - "Wildlife Properties" 2 CCR 406-9 and those related provisions of Chapter W-1 ("Fishing" 2 CCR 406-1) necessary to accommodate changes to or ensure consistency with Chapter W-9

Open for annual review of the entire chapter including, but not limited to, generally applicable and property-specific requirements for, or restrictions on use of, wildlife properties controlled by the Division of Parks and Wildlife, including State Trust Lands leased by the Division.

Chapter W-11 - "Wildlife Parks and Unregulated Wildlife" 2 CCR 406-11

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to wildlife parks, sanctuaries and unregulated wildlife.

Chapter W-16 - "Procedural Rules" 2 CCR 406-16

Open for correction to regulations based on changes to Colorado Revised Statutes pertaining to license suspensions.

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

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

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

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

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Notice of Proposed Rulemaking

Tracking number

2017-00587

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

01/10/2018

Time

08:30 AM

Location

Hunter Education Building, 6060 Broadway, Denver, CO 80216

Subjects and issues involved

Chapter W-12 - Lake Licenses- see attached

Statutory authority

See attached

Contact information

Name

Danielle Isenhart

Title

Regulations Manager

Telephone

303-866-3203 ex 4625

Email

danielle.isenhart@state.co.us

November 30, 2017

RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
JANUARY 10-11, 2018

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EFFECTIVE DATE OF REGULATIONS approved during the January 2018 Parks and Wildlife Commission meeting: March 2, 2018, unless otherwise noted.

FINAL REGULATIONS

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WILDLIFE REGULATIONS

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

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- Adding in GMUs 49 and 500 to the pronghorn muzzleloader and rifle seasons in DAU A-30.
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- Reinstating doe pronghorn hunting in GMUs 101 and 102.
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- Changing the season dates for the antlerless moose rifle hunt in GMUs 41, 42, and 421 to coincide with the 3rd and 4th rifle seasons for deer and elk.
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- Separating GMUs in moose DAU M-12 into two hunt code groupings with GMUs 48, 481, 56, and 561 in one grouping and GMUs 55 and 551 in the other grouping.

Chapter W-12 - "Lake Licenses" 2 CCR 406-12 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) and Chapter W-1 ("Fishing" 2 CCR 406-1) necessary to accommodate changes to or ensure consistency with Chapter W-12

Open for consideration of regulations including, but not limited to, the following:

- Creating two aquatic species possession lists which outline the aquatic species that may be possessed by the public and those aquatic species that can be possessed by food production facilities.
- Allowing only certified triploid grass carp for stocking statewide.
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CITIZEN PETITIONS:

WILDLIFE REGULATIONS

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ISSUES IDENTIFICATION

PARK REGULATIONS

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

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to registration and required safety equipment of snowmobiles.

WILDLIFE REGULATIONS

Chapter W-3 - "Furbearers and Small Game, Except Migratory Birds" 2 CCR 406-3, and those related provisions of Chapter W-9 ("Wildlife Properties" - 2 CCR 406-9) necessary to accommodate changes to or ensure consistency with Chapter W-3

Open for consideration of annual changes to game bird seasons, excluding turkey, and other small game seasons and related provisions, including season dates, bag and possession limits and manner of take provisions, and other related regulatory changes to Chapter W-9 necessary to accommodate changes to or to ensure consistency with Chapter W-3.

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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.

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 **January 3, 2018**.

Notice of Proposed Rulemaking

Tracking number

2017-00588

Department

400 - Department of Natural Resources

Agency

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

CCR number

2 CCR 406-16

Rule title

CHAPTER W-16 - PARKS AND WILDLIFE PROCEDURAL RULES

Rulemaking Hearing

Date

01/10/2018

Time

08:30 AM

Location

Hunter Education Building, 6060 Broadway, Denver, CO 80216

Subjects and issues involved

Chapter W-16- Parks and Wildlife Procedural Rules- see attached

Statutory authority

See attached

Contact information

Name

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Title

Regulations Manager

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November 30, 2017

RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
JANUARY 10-11, 2018

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 **January 10-11, 2018. The Parks and Wildlife Commission meeting will be held at the offices of Colorado Parks and Wildlife, Hunter Education Building, 6060 Broadway, Denver, CO 80216. The following regulatory subjects and issues shall be considered** pursuant to the Commission's authority in sections 33-9-101 to 111, C.R.S. ("Administration of Parks and Wildlife"), in sections 33-1-101 to 33-6-209, C.R.S. (the "Wildlife Act"), and especially 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 - **January 10-11, 2018,** beginning **at 8:30 a.m.***

EFFECTIVE DATE OF REGULATIONS approved during the January 2018 Parks and Wildlife Commission meeting: March 2, 2018, unless otherwise noted.

FINAL REGULATIONS

PARK REGULATIONS

Chapter P-8 - "Aquatic Nuisance Species" 2 CCR 405-8

Open for consideration of changes to regulations including, but not limited to, the following:

- Adding "foldable plastic boats without an engine attached" to the list of exempted vessels that can be hand launched without a boat inspection within the definition of "Vessels or other floating device."

WILDLIFE REGULATIONS

Chapter W-0 - "General Provisions" 2 CCR 406-0 and those related provisions of Chapter W-2 ("Big Game" 2 CCR 406-2) 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, the following:

- Implementing an antler and horn collection closure on public lands west of I-25 from January 1 through April 30 annually.
- Creating an antler and horn collection license required for collection from May 1- May 31st only, on an annual basis.

**Please reference the Commission agenda, to be posted on or after January 3, 2018, 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.*

- Removing existing antler collection closures for the Gunnison Basin and Eagle/Roaring Fork valleys in Chapter W-2.

Chapter W-2 - "Big Game" 2 CCR 406-2 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) and 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-2

Open for consideration of regulations including, but not limited to, the following:

- Annual changes to season dates, limited license areas, quotas and manner of take provisions for bighorn sheep and 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 processes.
- Updating muzzleloader caliber requirements when hunting with round ball ammunition.
- Allowing Youth Outreach Licenses to be issued on both public and private lands in the state.
- Removing the preference point hunt code restrictions for Director's Dream Hunt licenses.
- Implementing pay-after-you draw provisions for big game limited licenses and allowing nonresidents to apply by phone or online for sheep, goat, and moose licenses.
- Creating a second ram rifle season in combined sheep units S40 and S58 as well as in unit S1.
- Implementing a new archery bighorn ram season in combined units S26 and S70.
- Creating a split season for ram rifle hunting in unit S61.
- Closing the rifle goat season in unit G18.
- Creating a private land only (PLO) bear hunt code for Game Management Units (GMU) 20, 29, and 38.
- Creating a PLO bear hunt code for GMUs 39, 391, 46, 461, 50, 51, 500, 501, and 104.
- Changing all bear hunt codes in Data Analysis Unit (DAU) B-4 from List A to List B.
- Making hunt codes DF038P5R and DF038L1R List C licenses.
- Amending the boundaries for PLO buck and doe hunt codes in GMU 38, with a new western boundary of Hwy 119.
- Making PLO doe licenses in GMUs 391 and 461 List C.
- Removing antlerless deer hunt codes in DAUs D-22 and D-25.
- Adding a 4th season for buck hunting in DAU D-34.
- Changing the season dates for the Air Force Academy deer hunts to October 1-December 31st.
- Extending the season dates for antlerless PLO licenses in DAUs E-8 and E-13 to run from September 1-January 31st.
- Changing the season dates for the late antlerless elk licenses in GMUs 50, 500, and 501 to open the Saturday before Christmas and run for nine consecutive days.
- Converting regular antlerless elk licenses in GMU 54 from List B to List A.
- Removing PLO hunt code EF065P5R.
- Removing GMU 521 from hunt code EF053P5R.
- Changing all either-sex muzzleloader and first rifle elk licenses in GMUs 71, 72, 73, 74, 75, 77, 78, 711, 741, 751, and 771 to antlered or antlerless licenses.
- Adding a PLO pronghorn season in DAU A-37.

- Adding in GMUs 49 and 500 to the pronghorn muzzleloader and rifle seasons in DAU A-30.
- Creating a regular rifle season for pronghorn hunting in GMUs 15, 26, and 231.
- Reinstating doe pronghorn hunting in GMUs 101 and 102.
- Reorganizing the GMU groupings for the pronghorn muzzleloader season in DAU A-9 by grouping GMUs 3 and 301 together, 4 and 5 together, 214 and 441 together and 13 and 131 as standalone units.
- Changing the season dates for the antlerless moose rifle hunt in GMUs 41, 42, and 421 to coincide with the 3rd and 4th rifle seasons for deer and elk.
- Creating separate antlerless moose hunt codes for GMUs 20 and 29.
- Separating GMUs in moose DAU M-12 into two hunt code groupings with GMUs 48, 481, 56, and 561 in one grouping and GMUs 55 and 551 in the other grouping.

Chapter W-12 - "Lake Licenses" 2 CCR 406-12 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) and Chapter W-1 ("Fishing" 2 CCR 406-1) necessary to accommodate changes to or ensure consistency with Chapter W-12

Open for consideration of regulations including, but not limited to, the following:

- Creating two aquatic species possession lists which outline the aquatic species that may be possessed by the public and those aquatic species that can be possessed by food production facilities.
- Allowing only certified triploid grass carp for stocking statewide.
- Modifying the definition of minnow.
- Changing the term for a private lake license from a lifetime to a ten-year license.
- Modifying the term "facility" in regards to viral hemorrhagic septicemia virus testing.

CITIZEN PETITIONS:

WILDLIFE REGULATIONS

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-9 – "Wildlife Properties" 2 CCR 406-9

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

- A Citizen Petition for Rulemaking requesting that the Commission allow the launching of paragliders from Smelter Mountain within the Bodo State Wildlife Area.

Chapter W-11- "Wildlife Parks and Unregulated Wildlife" 2 CCR 406-11

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

- A Citizen Petition for Rulemaking requesting that the Commission create a new type of wildlife educators license with associated restrictions.

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

ISSUES IDENTIFICATION

PARK REGULATIONS

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

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to registration and required safety equipment of snowmobiles.

WILDLIFE REGULATIONS

Chapter W-3 - "Furbearers and Small Game, Except Migratory Birds" 2 CCR 406-3, and those related provisions of Chapter W-9 ("Wildlife Properties" - 2 CCR 406-9) necessary to accommodate changes to or ensure consistency with Chapter W-3

Open for consideration of annual changes to game bird seasons, excluding turkey, and other small game seasons and related provisions, including season dates, bag and possession limits and manner of take provisions, and other related regulatory changes to Chapter W-9 necessary to accommodate changes to or to ensure consistency with Chapter W-3.

Chapter W-5 - "Small Game -Migratory Game Birds" - 2 CCR 406-5, and those related provisions of Chapter W-9 ("Division Properties" – 2 CCR 406-9) and Chapter P-1 ("Parks and Outdoor Recreation Lands" - 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-5

Open for consideration of annual changes to waterfowl and migratory bird hunting seasons and related provisions, including season dates, bag and possession limits and manner of take provisions.

Chapter W-9 - "Wildlife Properties" 2 CCR 406-9 and those related provisions of Chapter W-1 ("Fishing" 2 CCR 406-1) necessary to accommodate changes to or ensure consistency with Chapter W-9

Open for annual review of the entire chapter including, but not limited to, generally applicable and property-specific requirements for, or restrictions on use of, wildlife properties controlled by the Division of Parks and Wildlife, including State Trust Lands leased by the Division.

Chapter W-11 - "Wildlife Parks and Unregulated Wildlife" 2 CCR 406-11

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to wildlife parks, sanctuaries and unregulated wildlife.

Chapter W-16 - "Procedural Rules" 2 CCR 406-16

Open for correction to regulations based on changes to Colorado Revised Statutes pertaining to license suspensions.

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

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

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

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

December 28, 2017, for mailing by the Division of Parks and Wildlife to the Parks and Wildlife Commission on **December 29, 2017.**

Comments received by the Division between noon on **December 28, 2017** and noon on **January 5, 2018,** will be provided to the Commission two business days before 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.

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 **January 3, 2018**.

Notice of Proposed Rulemaking

Tracking number

2017-00568

Department

400 - Department of Natural Resources

Agency

410 - Ground Water Commission

CCR number

2 CCR 410-1

Rule title

RULES AND REGULATIONS FOR THE MANAGEMENT AND CONTROL OF DESIGNATED GROUND WATER

Rulemaking Hearing

Date

06/18/2018

Time

09:00 AM

Location

1313 Sherman Street, Room 318, Denver, CO 80203

Subjects and issues involved

The purpose of amending Rules 5.6 and 5.8 is to provide for more detail and clarity on the Commission's requirements and standards for approval of replacement plans, including aquifer storage and recovery plans.

Statutory authority

Section 37-90-111(1)(h), C.R.S.

Contact information

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5.6 Replacement Plans – New appropriations of designated ground water from aquifers which are otherwise overappropriated or where such appropriations may result in an unreasonable impairment to existing water rights, and operation of aquifer storage and recovery plans, may be allowed pursuant to a detailed replacement plan.

5.6.1 Requirements for approval of all replacement plans. The applicant shall have the burden of proving the adequacy of the plan in all respects.

A. The plan must not cause any material injury to water rights of other appropriators.

B. The plan must not cause unreasonable impairment of water quality. There shall be a presumption of no unreasonable impairment if the source of replacement water or source of water to be stored in an aquifer storage and recovery plan complies with one of the criteria listed below. The applicant has the burden of proving that no unreasonable impairment will occur.

1. If the source has a Colorado Department of Public Health, Water Quality Control Division permit authorizing discharges into the aquifer, and the applicant demonstrates the source is in compliance with the Water Quality Control Division discharge permit, using the points of compliance established in the permit; or

2. If the source has an onsite wastewater treatment system permitted by a local health agency, and the applicant demonstrates the source is in compliance with that permit; or

3. If the source is neither permitted through the Water Quality Control Division's ground water discharge permitting program nor a local health agency's on site wastewater treatment permitting system, and the applicant demonstrates that the source meets the applicable ground water quality standards contained in the Department of Public Health and Environment, Water Quality Control Commission's Regulations Nos. 41 (5 CCR 1002-41) and 42 (5 CCR 1002-42), using as the point of compliance the point at which the water is introduced into the aquifer.

C. The plan must not be speculative under Colorado law.

D. The plan must be able to be operated and administered on an ongoing and reliable basis.

1. Replacement water consisting of designated ground water must be diverted from its source and delivered into the aquifer for which the replacement water must be provided using a structure or method acceptable to the Commission. Delivery of replacement water to an aquifer by way of claiming credit for not diverting a proposed source of replacement water out of an aquifer is not allowed.

2. Flow or other measurement devices must be required on all wells, replacement or storage water delivery structures, and any other structure involved in the plan unless the Commission finds that such devices would be unnecessary or impractical.

3. Water quality sampling and monitoring of replacement water, water to be stored in the aquifer, and ground water must be required as needed to ensure that the plan operates as approved.

4. Recording, maintenance of records, and submission to the Commission and Ground Water Management District must be required as needed of all information and accounting pertaining to operation of the plan. A report must be provided on forms acceptable to the Commission, and on a schedule determined by the Commission but no less than on an annual basis.

E. A copy of the approved plan must be recorded by the applicant in the clerk and recorder's records of the county in which structures that recharge and withdraw water involved in the plan are located so that a title examination of the land on which such structures are located reveals the existence of the plan.

5.6.2 Requirements for approval of a replacement plan for new appropriations of designated ground water from aquifers which are otherwise overappropriated, or where such appropriations may result in an unreasonable impairment to existing water rights, have the following requirements in addition to those listed under 5.6.1.

A. Diversions must be limited to the extent necessary to ensure that the potential for material injury caused by the diversions will be prevented by sources of replacement water that are legally available for use as replacement water under the plan at the time the diversions occur.

B. Any source of replacement water identified for use in the plan that is not legally available for use as replacement water in the plan at the time the plan is approved must become legally available for such use prior to actually being put to such use. If a source of replacement water is identified in the plan that is not legally available for use as replacement water in the plan at the time the plan is approved, the plan must provide procedures for notifying the Commission, and all parties to any hearing process approving the replacement plan, that the source has become legally available. Notification must include identification of the amount of water available for replacement use in the plan, as well as providing documentation as to how the source became legally available for such use, including copies of all decrees, permits, findings and orders and determinations issued by the Commission and Courts.

C. A plan may provide procedures to allow additional or alternate sources of replacement water that are not identified in the plan at the time the plan is approved to be added to the plan after the plan has been approved.

5.6.3 An aquifer storage and recovery plan consisting of a detailed program that artificially recharges water into an aquifer, stores that water in an aquifer, and subsequently recovers that water from the aquifer so as to increase the supply of water available for beneficial use within a designated groundwater basin, is a replacement plan. Aquifer storage and recovery plans have the following requirements for approval, in addition to those listed under 5.6.1.

A. The aquifer must be capable of accommodating the water being artificially recharged and stored without the water appearing on ground surface or within any subsurface structure.

B. Any source of water identified for use in the plan that is not legally available for storage, recovery, and subsequent use pursuant to the plan at the time the plan is approved must become legally available for storage, recovery, and subsequent use pursuant to the plan prior to actually being stored in the aquifer under the plan. If a source of water is identified

in the plan that is not legally available for storage, recovery, and subsequent use pursuant to the plan at the time the plan is approved, the plan must provide procedures for notifying the Commission, and all parties to any hearing process approving the plan, that the source has become legally available. Notification must include identification of the amount available for storage, recovery, and subsequent use pursuant to the plan, as well as providing documentation as to how the source became legally available, including copies of all decrees, permits, findings and orders and determinations issued by the Commission and Courts.

C. A plan may provide procedures to allow additional or alternate sources of water that are not identified in the plan at the time the plan is approved to be added to the plan after the plan has been approved.

D. The plan may contain methods or man-made structures to confine or restrict the water artificially recharged and stored in the aquifer from moving within the aquifer and/or mingling with the water previously existing in the aquifer, but such methods or structures are not required. Water that is recovered under the plan does not have to consist of the same molecules that were artificially recharged.

E. Water that is artificially recharged, stored, and recovered retains the same classification (e.g. designated ground water, waters of the state, nontributary groundwater, not-nontributary ground water) as it had prior to being artificially recharged, unless the stored water moves away from the ability to be recovered by the recovery wells identified in the plan, in which case it becomes designated ground water available to other appropriators within the basin. Water stored in plans that are subject to Rule 5.6.4 shall not be considered to move away from the ability to be recovered by the recovery wells identified in the plan.

F. Stored water that is pumped by wells other than the recovery wells identified in the plan is not available for recovery by the applicant. This Rule 5.6.3(F) does not apply to water stored in plans that are subject to Rule 5.6.4.

5.6.4 Aquifer storage and recovery plans in aquifers for which appropriations are determined pursuant to Rule 5.3 or 5.4 have the following requirements for approval, in addition to those contained in 5.6.1 and 5.6.3

A. Definitions

1. “Contiguous Recovery Parcel” means a parcel that is in contact with itself so that no part is totally separated, and that overlies naturally occurring ground water to which the applicant has the right of withdrawal or to which the applicant has separate title.

2. “Remote Recovery Well” means the recovery of artificially recharged water from a well other than a well through which the volume of water to be recovered was artificially recharged.

B. Wells used for Artificial Recharge and/or recovery must have their producing zone completed in a single aquifer, being the aquifer the water is intended to be stored in.

C. Recovery well locations - No recovery well shall be located closer than one (1) mile to any point of contact between any natural stream including its alluvium and the outcrop/subcrop of the aquifer from which the water would be extracted.

D. Recovery from a Confined Aquifer.

1. Recovery of artificially recharged water from a confined aquifer within a designated basin shall be through the same well through which the water was injected, or shall be through a Remote Recovery Well located within the same Contiguous Recovery Parcel, but in no case shall the Remote Recovery Well be located more than five (5) miles from the farthest artificial recharge well within the same Contiguous Recovery Parcel. If, prior to or during recovery, the aquifer becomes unconfined at any point between any artificial recharge well and the Remote Recovery Well, as determined by the Commission, recovery of artificially recharged water from the Remote Recovery Well must be subject to the provisions of recovery from an unconfined aquifer under Rule 5.6.4.E.

2. No Remote Recovery Well withdrawing artificially recharged water from a confined aquifer shall be located within the cylinder of appropriation, as calculated pursuant to Rule 4.2.15, for any existing or permitted well owned by other than the applicant, and authorized to withdraw water from the same aquifer, without the written permission of the owner of the well.

E. Recovery from an Unconfined Aquifer. Recovery of artificially recharged water from an unconfined aquifer shall be through the same well through which the water was recharged, or shall be through a Remote Recovery Well located down hydraulic gradient from the artificial recharge well(s) and within the same Contiguous Recovery Parcel, but in no case shall the Remote Recovery Well be located more than one thousand (1,000) feet from the farthest artificial recharge well.

F. Amount of Artificially Recharged Water Available for Recovery. The maximum amount of artificially recharged water that may be recovered from an aquifer through any one recovery well in any one calendar year shall not exceed five (5) times the maximum amount of water artificially recharged into that aquifer in any one calendar year, and in no case shall the amount of water recovered exceed the total amount of water artificially recharged into that aquifer less any amounts previously recovered.

G. Banking. Artificially recharged water may be retained in the aquifer indefinitely by the person who has artificially recharged the water. Nothing in these rules shall limit the right of any person to withdraw naturally occurring ground water which has been “banked” pursuant to Rule 5.3.2.5.

5.6.5 Applications for replacement plans.

A. Applications for all replacement plans must contain the following.

1. Name, mailing address, email address and telephone number of applicant(s).

2. Name of designated basin in which plan will be located, and management district, if any.

3. Information regarding other water rights diverted from the structures involved in the plan.

4. Complete statement of replacement plan. Mark the locations of all structures involved and places of use on a USGS topographic map (or other appropriate map) and attach to the application.

5. Sufficient information to demonstrate that the requirements of Rule 5.6.1 are met.

6. If required by the Commission, a ground water model that demonstrates that no material injury will result from operation of the plan, and that demonstrates that the water stored in an aquifer storage and recovery plan does not move away so as to prevent recovery by the recovery wells identified in the plan and is not pumped by wells other than the recovery wells identified in the plan.

7. A detailed description of the proposed use of the new appropriation of designated ground water, or of the recovered water stored in an aquifer, which would result under the plan.

8. Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which structures that recharge and withdraw water involved in the plan are located. The applicant must notify these owners that the applicant is applying for this replacement plan, and provide proof to the Commission that the applicant has done so, no later than 14 days after filing the application.

B. Applications for plans subject to Rule 5.6.2 must contain the following in addition to what is required by Rule 5.6.5.A.

1. Sufficient information to demonstrate that the requirements of Rules 5.6.1 and 5.6.2 are met.

2. Identification of structures causing depletions that will be replaced under the plan, including legal descriptions of their locations, and identification and copies of all decrees, permits, findings and orders and determinations issued by the Commission and Courts involving the structures.

3. A detailed description of the proposed location, timing and amount of diversions and depletions caused by the new appropriation of designated ground water which would result under the plan.

4. A detailed description of the physical and legal sources of all proposed replacement water. Identify the amount of water available for replacement use from each source and provide copies of all decrees, permits, findings and orders and determinations issued by the Commission and Courts. If a source of replacement water is not legally available for use as replacement water in the replacement plan at the time the application is submitted, the applicant must identify any applications it has or is submitting or actions it has or is taking to make the source legally available.

5. A detailed description of the method, location, timing and amount of delivery of replacement water into the aquifer, and of the quality of the replacement water.

6. Information demonstrating the applicant's interest in all proposed sources of replacement water.

C. Applications for plans subject to Rule 5.6.3 must contain the following in addition to what is required by Rule 5.6.5.A.

1. Sufficient information to demonstrate that the requirements of Rules 5.6.1 and 5.6.3 are met.

2. Identification of each aquifer applicant will utilize to recharge and store water, the amount of storage space available in each aquifer, and the amount of that available storage space the plan will utilize.

3. A detailed description of the physical and legal sources of all water proposed to be stored in the aquifer, identifying the amount of water available from each source and providing copies of all decrees, permits, findings and orders and determinations issued by the Commission and Courts. If a source of water to be stored in the aquifer is not legally available for storage, recovery, and subsequent use in the aquifer storage and recovery plan at the time the application is submitted, the applicant must identify any applications it has or is submitting or actions it has or is taking to make the water legally available.

4. Information demonstrating the applicant's interest in all proposed sources water to be stored under the plan.

5. A detailed description of the method, location, timing and amount of the Artificial Recharge of the water into the aquifer (i.e. placed into storage), and of the quality of the water to be stored in the aquifer.

6. Identification of structures that will recover the stored water, including legal descriptions of their locations, and identification and copies of all decrees, permits, findings and orders and determinations issued by the Commission and Courts involving the structures.

7. A detailed description of the method, location, timing, and amount of recovery of the stored water.

D. Applications for plans subject to Rule 5.6.4 must contain the following in addition to what is required by Rule 5.6.5.A.

1. Sufficient information to demonstrate that the requirements of Rules 5.6.1, 5.6.3 and 5.6.4 are met.

2. The items required by Rules 5.6.5.C.2, 3, 4, 5, 6, and 7.

3. A report summarizing the hydrological conditions in the aquifer, including, but not limited to, evidence as to whether the aquifer is confined or unconfined at the artificial recharge well(s) and any Remote Recovery Well(s) and any location between those wells, static water levels, and aquifer hydraulic gradient. The report must include an accounting of the proposed timing, amount, and location(s) of artificially recharged water and recovered water. The report must identify all large capacity wells of record in the State Engineer's office allowing the withdrawal of ground water from the same

aquifer within one (1) mile of the proposed recovery site(s), and the cylinder of appropriation of those wells as calculated pursuant to Rule 4.2.15.

5.6.6 A well used for recovery of artificially recharged and stored water under an aquifer storage and recovery plan must be permitted for such use by the Commission. Other than approval of a replacement plan or an aquifer storage and recovery plan the Commission does not permit or license the physical act of Artificial Recharge, and the applicant is responsible for obtaining any and all necessary approvals for Artificial Recharge as may be required by federal, state, and local agencies. A well permit from the State Engineer is required for the construction of a well to be used solely for the purpose of Artificial Recharge.

5.6.7 Upon receipt of an application for a replacement plan, including a replacement plan that consists of an aquifer storage and recovery plan, the staff shall review it to determine whether the plan is complete under Section 37-90-107.5, C.R.S., and is adequate to meet the criteria under these rules and the provisions of Section 37-90-107, C.R.S. If the plan is located within a ground water management district, a copy of the application shall be sent by the staff to the management district and the staff shall consider any comments or recommendations from the management district. At any time, the staff may propose any additional terms and conditions or limitations which are necessary to prevent material injury and meet the requirements of these rules.

5.6.8 The Commission retains jurisdiction to modify or revoke approval of a replacement plan if monitoring or operating experience reveals that the plan results in any material injury to water rights of other appropriators or in unreasonable impairment to water quality. Retained jurisdiction by the Commission may be limited in duration.

5.8 Removed

Before the Ground Water Commission, Colorado 1313 Sherman St., Rm 821, Denver, CO 80203	
IN THE MATTER OF A PROPOSAL TO THE COLORADO GROUND WATER COMMISSION FOR RULEMAKING TO AMEND RULES 5.6 AND 5.8 OF THE RULES AND REGULATIONS FOR THE MANAGEMENT AND CONTROL OF DESIGNATED GROUND WATER TO PROVIDE FOR MORE DETAIL AND CLARITY ON THE REQUIREMENTS FOR APPROVAL OF REPLACEMENT PLANS	COMMISSION USE ONLY Case No. 17-GW-05
NOTICE OF PUBLIC RULEMAKING HEARING	

I. NATURE OF PUBLIC RULEMAKING PROCEEDING

This is a notice of a public rulemaking hearing before the Colorado Ground Water Commission ("Commission") for consideration of amendments to the Commission's Rules and Regulations for the Management and Control of Designated Ground Water, 2 CCR 410-1 ("Designated Basin Rules", or "Rules").

The Commission's Rules and any amendments thereto are promulgated pursuant to section 37-90-111(1)(h), C.R.S to carry out the authority and responsibilities of the Commission to supervise and control the exercise and administration of rights acquired to the use of designated ground water. The proceedings will be conducted pursuant to the Commission's Rules for Procedure for All Hearings before the Colorado Ground Water Commission, 2 CCR 402-3 ("Procedural Rules").

II. DESCRIPTION OF THE SUBJECTS AND ISSUES INVOLVED

The purpose of the proposed amendment to Rules 5.6 and 5.8 is to provide for more detail and clarity on the requirements for approval of replacement plans.

In response to a request by the public at its August 19, 2016 meeting the Commission directed Staff of the Commission ("Staff") to initiate the informal process to possibly amend Designated Basin Rules 5.6 and 5.8. Staff drafted proposed changes to the rules, solicited written comments from interested parties, and held public (a.k.a. stakeholder) meetings (on January 12, February 1, April 26, and August 8, 2017) to allow interested parties to provide input on the proposed changes. At its August 11, 2017 meeting the Commission authorized Staff and its Hearing Officer to proceed with the formal rulemaking process. The formal rulemaking process is initiated by filing a notice of rulemaking hearing with the Secretary of State and publication in the Colorado Register.

The language of the proposed rule change, and a proposed statement of basis and purpose and specific statutory authority for the amendment, are available for on the Division of Water Resources' ftp site at https://dnrftp.state.co.us/#/DWR/Hearings/Rulemaking%205.6%205.8%2017GW05/, and posted on the Commission's website at http://water.state.co.us/cgwc/, or are available upon request to the Commission's Staff (1313 Sherman Street, Room 821, Denver, CO 80203; telephone (303) 866-3581, email contact: keith.vanderhorst@state.co.us). Pursuant to Procedural Rule 4.F.2.d the Commission will consider any alternative proposals related to the proposed amendments.

III. SPECIFIC STATUTORY AUTHORITY

The statutory authority for promulgating the Commission's Rules and any amendments thereto is found at section 37-90-111(1)(h), C.R.S.

IV. PARTY STATUS

The Notice of Rulemaking Hearing will be published in the Colorado Register on December 10, 2017. Applications for party status will be accepted through January 10, 2018. Applications for party status should be submitted to the Commission's Hearing Officer, Jody Grantham, by email to jody.grantham@state.co.us. The applications will be reviewed in accordance with Rule 4.E of the Procedural Rules. Applications for party status shall set forth the name of the person, persons or agency seeking party status. The application shall also indicate the interest of the person(s) or agency in the proposed rules and a description of the general nature of the evidence or information to be presented in the course of the proceedings. Party status will be determined by the Hearing Officer. Staff of the Commission is automatically a party to the rulemaking proceeding before the Commission pursuant to Rule 4.E.5 of the Procedural Rules.

V. STATUS CONFERENCE

After January 10, 2018, when party status requests have been received, the Hearing Officer will notify all parties of a date and time for a telephonic status conference to establish the requirements and timelines for the pre-hearing conference and the rulemaking hearing (conference call phone number 303-866-3581 ext. 7610).

VI. PRE-HEARING CONFERENCE

Prior to the rulemaking hearing the Hearing Officer will hold a prehearing conference. Participation in the pre-hearing conference may be available by telephone at the Hearing Officer's discretion (conference call phone number 303-866-3581 ext. 7610).

Pursuant to Rule 4.F.2 of the Procedural Rules each applicant for party status must submit at the prehearing conference a prehearing statement.

VII. RULEMAKING HEARING

Date, Time and Location

DATE: June 18 through 22, 2018
TIME: 9:00 a.m. (or as otherwise directed by the Hearing Officer)
LOCATION: 1313 Sherman Street, Room 318, Denver, CO 80203

Procedures

The Commission's Hearing Officer will conduct the rulemaking hearing. The Hearing Officer may ask questions of any person appearing before him.

Pursuant to Procedural Rule 4.F.2.d the Hearing Officer will consider any alternative proposals related to the proposed amendments.

The Hearing Officer may modify the proposed amendments to the Rules from those published in the Colorado Register.

After the conclusion of the rulemaking hearing, the Hearing Officer will transmit his initial decision to the Commission.

Participation by interested persons other than those with party status

Pursuant to Rule 4.I.1 of the Procedural Rules, at the hearing Staff, parties and interested persons shall be afforded the opportunity to submit written data, views, or arguments, and to present the same orally, unless the Hearing Officer deems it unnecessary. The submittal of such material and summations, either in writing or orally, shall be as directed by the Hearing Officer.

Pursuant to Rule 4.I.4 of the Procedural Rules, the Hearing Officer will make efforts to provide for and solicit the greatest possible public participation in the rulemaking hearing.

Pursuant to Rule 4.I.7 of the Procedural Rules, after receiving evidence presented during the hearing the Hearing Officer may allow interested persons and parties to present oral or written summations of the facts and laws as he deems necessary. The submittal of such material and summations, either in writing or orally, shall be at the discretion of the Hearing Officer.

If alternative amendments are proposed, the Hearing Officer encourages those amendments to be included in the written materials, along with a proposed statement of basis and purpose of the alternative amendments.

Once any written material is submitted, the material becomes part of the Administrative Record and the property of the Commission and will not be returned to the person(s) or agency offering the material.

VIII. ADOPTION OF THE RULE

Procedures

After receiving the Hearing Officer's initial decision, the Commission will consider the initial decision at one of its public meetings, at the date, time and place as noticed in the normal manner for its regular quarterly public meetings.

The Commission may, at its discretion, allow Staff, parties and interested persons to present oral or written summations of the facts and laws and opinions. The Commission may ask questions of any person appearing before them.

The Commission may accept or reject, in full or in part, the initial decision of the Hearing Officer, and may modify the proposed amendments to the Rules in adopting amendments to the rules.

Effective date

The amendments to the rules shall become effective 20 days after publication of the final amended rules, as adopted by the Commission, in the Colorado Register.

IX. ADMINISTRATIVE RECORD

The Administrative Record, including the proposal, applications for party status, prehearing statements, and all other written materials to be considered by the Commission in this rulemaking, will be available for inspection on the Division of Water Resource's ftp site at https://dnrftp.state.co.us/#/DWR/Hearings/Rulemaking%205.6%205.8%2017GW05/, and the Commission's website at http://water.state.co.us/cgwc/, and at the Commission's office at 1313 Sherman Street, Room, Room 821, Denver, CO 80203, during normal business hours (8:00 a.m. -5:00 p.m.).

DATED this 27th day of November, 2017.

Kevin Rein, P.E.
Executive Director
Colorado Ground Water Commission
1313 Sherman Street, Rm. 818
Denver, CO 80203

Notice of Proposed Rulemaking

Tracking number

2017-00558

Department

600 - Department of Transportation

Agency

601 - Transportation Commission and Office of Transportation Safety

CCR number

2 CCR 601-4

Rule title

TRANSPORT PERMITS FOR THE MOVEMENT OF EXTRA-LEGAL VEHICLES OR LOADS

Rulemaking Hearing

Date

01/09/2018

Time

01:00 PM

Location

CDOT Auditorium, 4201 E. Arkansas Ave, Denver, CO 80222

Subjects and issues involved

The Rules Pertaining to Transport Permits for the Movement of Extra-Legal Vehicles or Loads, 2 CCR 601-4, are being updated to provide information on how to obtain material that is incorporated by reference in the rules and to update the CDOT headquarters building address.

Statutory authority

42-4-510(1)(b), 511(1), and 43-1-106(8)(k), C.R.S.

Contact information

Name

Marie Nakagawa

Title

Rules and Policy Analyst

Telephone

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Email

marie.nakagawa@state.co.us

DEPARTMENT OF TRANSPORTATION

Transportation Commission

RULES PERTAINING TO TRANSPORT PERMITS FOR THE MOVEMENT OF EXTRA-LEGAL VEHICLES OR LOADS

2 CCR 601-4

[No changes from Chapter 1, Rule 100 to Chapter 10, Rule 1004]

CHAPTER 11 INCORPORATION BY REFERENCE

1100 The Rules are intended to be consistent with and not be a replacement for the federal requirements set forth in "Fixing America's Surface Transportation Act" or the "FAST Act" codified at 23 U.S.C. 127 ~~(~~effective as of October 1, 2016~~)~~, and the regulations set forth under Title 23 of the Code of Federal Regulations, effective as of October 1, 2016, and the "Manual on Uniform Traffic Control Devices (MUTCD)," FHWA, 2009 edition with Revision Numbers 1 and 2 Incorporated, dated May 2012, which are hereby incorporated into these Rules by reference, and do not include any later amendments.

1101 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, 2829 W. Howard Pl., Denver, Colorado 80204.

1102 Copies of the referenced material may be obtained from the following locations:

1102.1 Copies of the referenced United States Code may be obtained from the following address:

Office of the Law Revision Counsel
U.S. House of Representatives
H2-308 Ford House Office Building
Washington, DC 20515
(202) 226-2411

1102.2 Copies of the referenced Code of Federal Regulations may be obtained from the following address:

U.S. Government Publishing Office
732 North Capitol Street, N.W.
Washington, DC 20401
(202) 512-1800

1102.3 Copies of the MUTCD may be obtained from the following address:

Office of Transportation Operations
Federal Highway Administration, Mail Stop: E84-402
1200 New Jersey Avenue, S.E.
Washington, DC 20590

Notice of Proposed Rulemaking

Tracking number

2017-00559

Department

600 - Department of Transportation

Agency

601 - Transportation Commission and Office of Transportation Safety

CCR number

2 CCR 601-19

Rule title

RULES CONCERNING THE IMPLEMENTATION OF THE SAFE ROUTES TO SCHOOL PROGRAM

Rulemaking Hearing

Date

01/09/2018

Time

02:00 PM

Location

CDOT Auditorium, 4201 E. Arkansas Ave, Denver, CO 80222

Subjects and issues involved

The Rules Concerning the Implementation of the Safe Routes to School Program, 2 CCR 601-19, are being revised to update the reference to the FAST Act, to remove the reference to state funding for the Safe Routes to School program that was only available during FY15 pursuant to HB 14-1301, and to make other minor changes.

Statutory authority

43-1-1604, C.R.S.

Contact information

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Title

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marie.nakagawa@state.co.us

DEPARTMENT OF TRANSPORTATION

Division of Transportation Development

RULES CONCERNING THE IMPLEMENTATION OF THE SAFE ROUTES TO SCHOOL PROGRAM

2 CCR 601-19

I. PURPOSE [No changes]

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 provide~~d~~ds 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 require~~d~~ds 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.

The Department amended the Rules in 2017 as a result of changes enacted in HB14-1301 which were only in effect for one year. The state general funds available in FY15 for Safe Routes to School are no longer available for the grant program. All other aspects of- Safe Routes to School Program required by the bill remain in effect.

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. and conform to the requirements of ~~PL 112-141 ("Moving Ahead for Progress in the 21st Century" or "MAP-21")~~PL 114-94 ("Fixing America's Surface Transportation Act" or "FAST Act") signed into law on December 4, 2015,~~"~~ 23 U.S.C. 101 (29)(B); 23 U.S.C. 213(b)(3) and 23 U.S.C. 403 and its implementing regulations; "SAFETEA-LU" 23 U.S.C. 402, and its implementing regulations; "National Goals and Performance Management Measures" 23 U.S.C. § 150; the National School Lunch Act, 42 U.S.C. § 1751 *et seq.* and its implementing regulations, 7 CFR 245. Pursuant to § 24-4-105(11), C.R.S., the Department may entertain petitions for declaratory orders.

1.00 DEFINITIONS

[No changes from Rule 1.01 to 1.12]

1.13 "STIP" means the Statewide Transportation Improvement Program that is the federally required, four-year program of planned transportation projects. The STIP is developed in coordination with planning partners throughout the state through the Project Priority Programming Process. The STIP incorporates the Transportation Improvement Programs (TIPs) from each MPO.

1.14 "TIP" means the Transportation Improvement Programs (TIPs) that identify all current federally funded transportation projects to be completed in a Metropolitan Planning Organization (MPO) region over a four-year period.

1.1~~3~~5 "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 [No changes from Rules 2.01 to 2.02.2]

3.00 APPLICATION INFORMATION [No changes from Rules 3.01 to 3.02]

4.00 THRESHOLD CRITERIA FOR APPLICANT ELIGIBILITY

[No changes from Rules 4.01 to 4.01.7]

4.01.8 On-System projects must not conflict with the State and Regional Transportation Plans available on the Department website found at https://www.codot.gov/programs/colorado-transportation-matters~~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 [No changes from Rules 5.01 to 5.03]

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 (TIP) for that MPO will be taken before the application may be approved.

6.00 FUNDING [No changes from Rules 6.01 to 6.04]

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, 2829 W. Howard Pl., Denver, Colorado 80204, ~~4201 E. Arkansas Avenue, Denver, Colorado 80222~~, or by contacting staff at https://www.codot.gov/business/rules. Copies of the referenced United States Code may be obtained from the following address: Office of the Law Revision Counsel, U.S. House of Representatives, H2-308 Ford House Office Building, Washington, DC 20515, or by phone at (202) 226-2411. Copies of the referenced Code of Federal Regulations may be obtained from the following address: U.S. Government Publishing Office, 732 North Capitol Street, N.W., Washington, DC 20401, or by phone at (202) 512-1800.

Notice of Proposed Rulemaking

Tracking number

2017-00566

Department

700 - Department of Regulatory Agencies

Agency

701 - Division of Banking

CCR number

3 CCR 701-4

Rule title

RULES OF THE COLORADO STATE BANKING BOARD PERTAINING TO THE PUBLIC DEPOSIT PROTECTION ACT

Rulemaking Hearing

Date

01/18/2018

Time

10:00 AM

Location

DORA, Division of Banking, 1560 Broadway, Suite 975, Denver, CO 80202

Subjects and issues involved

The proposed Rule amendment will clarify and update the language in the Rule with regard to standard practice requirements for the annual Directors' Examination.

Statutory authority

11-101-102, 11-102-104, 11-10.5-109

Contact information

Name

Natriece Bryant

Title

Consumer Education & Public Outreach Coordinator

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303-894-7741

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PDP8A ~~A~~ Directors' Examination of Public Deposits. [Section 11-10.5-109(2), C.R.S.]

A. Qualifications for Independent Person(s) Assuming Responsibility for Due Care of Directors' Examinations of Public Deposits.

Persons approved by the Banking Board to conduct directors' examinations under C.R.S. 11-103-502(3)(b) are also automatically approved to conduct directors' examinations of public deposits.

B. Scope of Public Deposit Directors' Examinations.

Directors' examinations of public deposits shall include the following:

1. The bank's total capital to risk-weighted asset ratio.

2. A review of the eligible public depository's trial balance reports or other records identifying all deposit accounts held by the bank to discover any public deposit accounts not previously identified as "public" or reported to the Division of Banking on the Monthly Public Depository Liability Report. This procedure is not required if the eligible public depository's most recent safety and soundness CAMEL rating was 1 or 2.

3. Verification that each piece of pledged collateral is of a type approved by the Banking Board as eligible collateral. Refer to Banking Board Rule PDP3 for eligible collateral list. This procedure is not required if the eligible public depository's most recent safety and soundness CAMEL rating was 1 or 2.

4. Verification that the eligible public depository is reporting monthly to the Division of Banking the current principal balance of each real estate loan, mortgage-backed pool security, and collateralized mortgage obligation pledged as collateral under the Public Deposit Protection Act. This procedure is not required if the eligible public depository's most recent safety and soundness CAMEL rating was 1 or 2.

5. Review of the bank's procedures and workpapers for calculating uninsured public deposits and verifying that sufficient collateral is pledged to protect those uninsured deposits at the minimum required level under Banking Board Rules PDP4 and PDP5. Acknowledgment that the bank has been pledging sufficient amounts of collateral.

6. Review of all collateral pledged under the Public Deposit Protection Act to identify any piece of pledged collateral that has been reported to be in jeopardy of default or any piece of pledged collateral that has been adversely classified by any regulatory agency examiner.

C. Frequency of the Directors' Examination.

The Directors' Examination addressing in detail the items under Banking Board Rule PDP8A (B) shall be performed annually by an independent person that meets the qualifications under Banking Board Rule PDP8A (A).

~~C~~D. Report to be Filed With the Colorado Division of Banking.

A copy of a report addressing in detail the items under Banking Board Rule PDP8A, Paragraph (B) must be filed with the Colorado Division of Banking within one hundred fifty (150) days following the date of the directors' examination of public deposits.

COLORADO
Department of
Regulatory Agencies
Division of Banking

1560 Broadway, Suite 975
Denver, CO 80202

November 17, 2017

BEFORE THE
COLORADO STATE BANKING BOARD

IN THE MATTER OF	)	
	)	**NOTICE OF PROPOSED RULEMAKING**
RULE AMENDMENT	)	

I. Notice of hearing

PLEASE BE ADVISED THAT, as required by Section 24-4-103, C.R.S., of the State Administrative Procedures Act, the Colorado State Banking Board (Banking Board) hereby gives notice of proposed rulemaking. A hearing is scheduled for January 18, 2018, commencing at 10:00 a.m., at 1560 Broadway, Suite 975, Denver, Colorado, Division of Banking (Division) Conference Room, which facility is accessible in compliance with the Americans with Disabilities Act (ADA) guidelines.

II. Purpose of the proposed rulemaking

The purpose of the hearing is to hear comments concerning the proposed amendment of the following Banking Board Rules to update the rules to reflect changes made to the Prompt Corrective Action Guidelines, effective January 1, 2015. A Statement of Basis, Purpose, and Specific Statutory Authority for each rule follows this notice and is incorporated by reference.

PDP1	Capital Standards for Eligible Public Depositories
PDP3	List of Approved eligible Collateral Instruments and Obligations
PDP4	Standards for Establishing Current Market Value of Eligible Collateral
PDP5	Criteria and Procedures for Reducing/Removing Uninsured Public Deposits From a Bank, or Increasing Collateral Requirements, if the Eligible Public Depository Fails to Comply With Minimum Capital Standards or Safety and Soundness Standards
PDP7	Reporting Requirements
PDP8A	Directors' Examination of Public Deposits
PDP9	Assessments and Fees

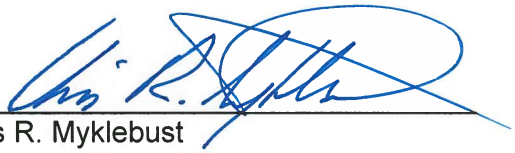
III. Statutory authority for proposed rulemaking

The proposed amendment of the rules is being held under the authority given the Banking Board by the Colorado Banking Code in accordance with Section 11-102-104(1), C.R.S., which states "the banking board is the policy-making and rule-making authority for the division of banking and has the power to: (a) make, modify, reverse, and vacate rules for the proper enforcement and administration of this code…"

IV. Opportunity to testify and submit written comments

Any interested person(s) has the right to submit written comments or data, view, or argument. Written information should be filed with the Division no later than January 8, 2018. To submit written comments, please contact Diana Gutierrez, Banking Board Secretary, at diana.gutierrez@state.co.us. In addition, any interested person(s) has the right to make an oral presentation at the Hearing, unless the Banking Board deems any oral presentation unnecessary.

SUBMITTED ON BEHALF OF THE
COLORADO STATE BANKING BOARD



Chris R. Myklebust
State Bank Commissioner

COLORADO
Department of
Regulatory Agencies
Division of Banking

1560 Broadway, Suite 975
Denver, CO 80202

November 17, 2017

STATE BANKING BOARD
RULE 3-CCR 701-4 PDP8A
PERTAINING TO TITLE 11, ARTICLE 10.5, SECTION 109(2)
COLORADO REVISED STATUTES

STATEMENT OF BASIS, PURPOSE AND SPECIFIC AUTHORITY

Statutory Basis

The statutory basis for Banking Board Rule 3-CCR 701-4 PDP8A is found in section 11-10.5-109(2) of the Colorado Revised Statutes (C.R.S.). The purpose of this rule modification is to provide clarification and updates to language in the current rules and technical updates to standard practice for annual requirements for Directors' Examinations of public deposits.

Purpose of this Rulemaking

The purpose of the proposed revision to amend 3-CCR 701-4 PDP8A(C) to reflect technical changes in the definition of what is meant for frequency of the Directors' Examination of public deposits. The requirement can be found in the statues, this rule is used by auditors as a guide and adding the annual requirement to the rule will help enhance compliance with this requirement. The proposed amendment to the rule would read as such:

1. The Directors' Examination addressing in detail the items under Banking Board Rule PDP8A, Paragraph B shall be performed by an independent person that meets the qualifications under Banking Board Rule PDP8A, Paragraph (A).

The purpose of the proposed rulemaking is to amend 3-CCR 701-4 PDP8A(D) to move the previous subpart C to subpart D based on the above revision. The proposed amendment to the rule would read as such:

A. (D) shall read: Report to be Filed With the Colorado Division of Banking.

A copy of a report addressing in detail the items under Banking Board Rule PDP8A, Paragraph (A).

Rulemaking Authority

11-101-102. Declaration of policy.
11-102-104. Powers and duties of the banking board.
11-10.5-109. Verification of collateral held – reports required.

Notice of Proposed Rulemaking

Tracking number

2017-00564

Department

700 - Department of Regulatory Agencies

Agency

701 - Division of Banking

CCR number

3 CCR 701-4

Rule title

RULES OF THE COLORADO STATE BANKING BOARD PERTAINING TO THE PUBLIC DEPOSIT PROTECTION ACT

Rulemaking Hearing

Date

01/18/2018

Time

10:00 AM

Location

DORA, Division of Banking, 1560 Broadway, Suite 975, Denver, CO 80202

Subjects and issues involved

The purpose of the Rule amendment is to match revisions made to the Prompt Corrective Action (PCA) Capital Guidelines, which went into effect 1/1/15.

Statutory authority

11-101-102, 11-102-104, 11-10.5-106, 11-10.5-107, 11-10.5-112

Contact information

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Title

Consumer Education & Public Outreach Coordinator

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Email

natriece.bryant@state.co.us

PDP5 Criteria and Procedures for Reducing/Removing Uninsured Public Deposits From a Bank, or Increasing Collateral Requirements, if the Eligible Public Depository Fails to Comply With Minimum Capital Standards or Safety and Soundness Standards. [Sections 11-10.5-107(4)(a)~~]~~ and ~~[~~11-10.5-107(4)(b)~~]~~, C.R.S.]

A. Definitions.

For the purposes of this rule:

1. The "composite CAMELS rating" is the numerical rating assigned by a state or federal banking agency at the conclusion of an examination or visitation.

B. Each eligible public depository (hereinafter "depository") is required to pledge the higher of the amount of eligible collateral required under this paragraph or paragraph C below:

1. If the total capital to risk-weighted asset ratio of a depository is equal to or exceeds ~~8~~ 10 percent, the depository shall pledge eligible collateral having a market value at all times in excess of 102 percent of the aggregate of uninsured public deposits held by it. (Well-capitalized)

2. If the total capital to risk-weighted asset ratio of a depository is less than ~~8~~ 10 percent but greater than, or equal to ~~7~~ 8 percent, the depository shall pledge eligible collateral having a market value at all times in excess of 120 percent of the aggregate of uninsured public deposits held by it. (Adequately capitalized)

3. If the total capital to risk-weighted asset ratio of a depository is less than ~~7~~ 8 percent but greater than ~~or equal to~~ 6 percent, the depository shall pledge eligible collateral having a market value at all times in excess of 140 percent of the aggregate of uninsured public deposits held by it. (Undercapitalized)

4. If the total capital to risk-weighted asset ratio of a depository is less ~~than~~ or equal to 6 percent, the depository shall pledge eligible collateral having a market value at all times in excess of 160 percent of the aggregate of uninsured public deposits held by it. (Significantly undercapitalized)

C. Each depository is required to pledge the higher of the amount of eligible collateral required under this paragraph or paragraph B above:

1. Upon receipt of a final report of examination or other notice that a depository has been assigned a composite CAMELS rating of 4, the depository shall pledge collateral having a market value at all times in excess of 120 percent of the aggregate of uninsured public deposits held by it.

2. Upon receipt of a final report of examination or other notice that a depository has been assigned a composite CAMELS rating of 5, the depository shall pledge eligible collateral having a market value at all times in excess of 160 percent of the aggregate of uninsured public deposits held by it.

D. A depository shall not accept any additional uninsured public deposits or renew any uninsured public deposits beyond the original maturity dates:

1. If the depository's total capital to risk-weighted asset ratio is less than 8 percent but greater than ~~below~~ 6 percent; or

2. If the depository has received a final report of examination or other notice that the depository has been assigned a composite CAMELS rating of 5.

E. A depository shall eliminate all public deposits not fully insured by the FDIC in an orderly manner, under a plan and a timeframe approved by the Banking Board:

1. If the depository's total capital to risk-weighted asset ratio is equal to or less than ~~5~~ 6 percent; or

2. If the depository has received a final report of examination or other notice that the depository has been assigned a composite CAMELS rating of 5.

F. Upon notice from the Banking Board, a depository may be required to eliminate all public deposits if the depository meets any of the conditions established in paragraphs D and E above.

~~F~~G. Compliance with this rule shall be the responsibility of each depository regardless of the frequency or form of the reports required by the Banking Board.

COLORADO
Department of
Regulatory Agencies
Division of Banking

1560 Broadway, Suite 975
Denver, CO 80202

November 17, 2017

BEFORE THE
COLORADO STATE BANKING BOARD

IN THE MATTER OF	)	
	)	**NOTICE OF PROPOSED RULEMAKING**
RULE AMENDMENT	)	

I. Notice of hearing

PLEASE BE ADVISED THAT, as required by Section 24-4-103, C.R.S., of the State Administrative Procedures Act, the Colorado State Banking Board (Banking Board) hereby gives notice of proposed rulemaking. A hearing is scheduled for January 18, 2018, commencing at 10:00 a.m., at 1560 Broadway, Suite 975, Denver, Colorado, Division of Banking (Division) Conference Room, which facility is accessible in compliance with the Americans with Disabilities Act (ADA) guidelines.

II. Purpose of the proposed rulemaking

The purpose of the hearing is to hear comments concerning the proposed amendment of the following Banking Board Rules to update the rules to reflect changes made to the Prompt Corrective Action Guidelines, effective January 1, 2015. A Statement of Basis, Purpose, and Specific Statutory Authority for each rule follows this notice and is incorporated by reference.

PDP1	Capital Standards for Eligible Public Depositories
PDP3	List of Approved eligible Collateral Instruments and Obligations
PDP4	Standards for Establishing Current Market Value of Eligible Collateral
PDP5	Criteria and Procedures for Reducing/Removing Uninsured Public Deposits From a Bank, or Increasing Collateral Requirements, if the Eligible Public Depository Fails to Comply With Minimum Capital Standards or Safety and Soundness Standards
PDP7	Reporting Requirements
PDP8A	Directors' Examination of Public Deposits
PDP9	Assessments and Fees

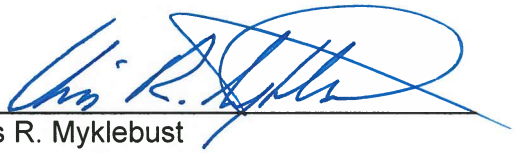
III. Statutory authority for proposed rulemaking

The proposed amendment of the rules is being held under the authority given the Banking Board by the Colorado Banking Code in accordance with Section 11-102-104(1), C.R.S., which states "the banking board is the policy-making and rule-making authority for the division of banking and has the power to: (a) make, modify, reverse, and vacate rules for the proper enforcement and administration of this code…"

IV. Opportunity to testify and submit written comments

Any interested person(s) has the right to submit written comments or data, view, or argument. Written information should be filed with the Division no later than January 8, 2018. To submit written comments, please contact Diana Gutierrez, Banking Board Secretary, at diana.gutierrez@state.co.us. In addition, any interested person(s) has the right to make an oral presentation at the Hearing, unless the Banking Board deems any oral presentation unnecessary.

SUBMITTED ON BEHALF OF THE
COLORADO STATE BANKING BOARD



Chris R. Myklebust
State Bank Commissioner

COLORADO
Department of
Regulatory Agencies
Division of Banking

1560 Broadway, Suite 975
Denver, CO 80202

November 17, 2017

STATE BANKING BOARD
RULE 3-CCR 701-4 PDP5
PERTAINING TO TITLE 11, ARTICLE 10.5, SECTION 107(4)(a) and TITLE 11, ARTICLE 10.5, SECTION 107(4)(a) and 107(4)(b)
COLORADO REVISED STATUTES

STATEMENT OF BASIS, PURPOSE AND SPECIFIC AUTHORITY

Statutory Basis

The statutory basis for Banking Board Rule 3-CCR 701-4 PDP5 is found in section 11-10.5-107(4)(a) and 11-10.5-107(4)(b) of the Colorado Revised Statutes (C.R.S.). The purpose of this rule modification is to reflect changes made in the Division's practices and match the Prompt Corrective Action (PCA) Capital Guidelines which went into effect on January 1, 2015.

Purpose of this Rulemaking

Beginning January 1, 2015, PCA Capital Guidelines established new ratio percentages for a Well Capitalized institution and a Significantly Undercapitalized institution.

The purpose of the proposed rulemaking is to amend 3-CCR 701-4 PDP5(B) to reflect new verbiage per PCA Capital Guidelines. The changed percentages will reflect the revised definition of a Well Capitalized institution and a Significantly Undercapitalized institution per PCA Guidelines. The proposed amendment to the rule would define:

1. Well-capitalized: If the total capital to risk-weighted asset ratio of a depository is equal to or exceeds 10 percent, the depository shall pledge eligible collateral having a market value at all times in excess of 102 percent of the aggregate of uninsured public deposits held by it.

2. Adequately capitalized: If the total capital to risk-weighted asset ratio of a depository is less than 10 percent but greater than, or equal to 8 percent, the depository shall pledge eligible collateral having a market value at all times in excess of 120 percent of the aggregate of uninsured public deposits held by it.

3. Undercapitalized: If the total capital to risk-weighted asset ratio of a depository is less than 8 percent but greater than 6 percent, the depository shall pledge eligible collateral having a market value at all times in excess of 140 percent of the aggregate of uninsured public deposits held by it.

4. Significantly Undercapitalized: If the total capital to risk-weighted asset ratio of a depository is less or equal to 6 percent, the depository shall pledge eligible collateral having a market value at all times in excess of 160 percent of the aggregate of uninsured public deposits held by it.

The purpose of the proposed rulemaking is to amend 3-CCR 701-4 PDP5(D) and 3-CCR 701-4 PDP5(E) to reflect new verbiage defining undercapitalized asset ratios. The proposed amendment to the rule would reflect change the risk-weighted asset ratio to less than 8 percent but greater than 6 percent in subpart D. The proposed amendment to subpart E would reflect language of risk-weighted asset ratio of being equal to or less than 6 percent; which would then equate to the depository eliminating all public deposits not fully insured by the FDIC in an orderly manner. The proposed language would read as follows:

1. (D)(1) shall read: If the depository's total capital to risk-weighted asset ratio is ~~below 6~~ less than 8 percent but greater than 6 percent; or
    a. Note: If an institution reaches the 'undercapitalized' level of 6-8%, provision D will take place.

The purpose of the proposed rulemaking is to amend 3-CCR 701-4 PDP5(E) to reflect new verbiage defining undercapitalized asset ratios. The proposed amendment to subpart E would reflect language of risk-weighted asset ratio of being equal to or less than 6 percent; which would then equate to the depository eliminating all public deposits not fully insured by the FDIC in an orderly manner. The proposed language would read as follows:

1. (E)(1) shall read: If the depository's total capital to risk-weighted asset ratio is equal to or less than ~~5 percent~~ 6 percent; or

The purpose of the proposed rulemaking is to amend 3-CCR 701-4 PDP5(F) to reflect new verbiage added to better define the current practice of the Division with troubled institutions. The addition of subpart (F) leaves the Division with enough power to exercise in extreme cases. The proposed language would read as follows:

1. Upon notice from the Banking Board, a depository may be required to eliminate all public deposits if the depository meets any of the conditions established in paragraph D and E above.

The purpose of the proposed rulemaking is to amend 3-CCR 701-4 PDP5(G) to reflect the addition of subpart (F) from above listed language. The addition of subpart (G) moves previous language to new subpart. The proposed language would read as follows (no change made to previous rule language):

1. Compliance with this rule shall be the responsibility of each depository regardless of the frequency or form of the reports required by the Banking Board.

Rulemaking Authority

11-101-102. Declaration of policy.
11-102-104. Powers and duties of the banking board.
11-10.5-106. Designation as eligible public depository.
11-10.5-107. Eligible collateral – uninsured public deposits.
11-10.5-112. Annual fees and assessments.

Notice of Proposed Rulemaking

Tracking number

2017-00563

Department

700 - Department of Regulatory Agencies

Agency

701 - Division of Banking

CCR number

3 CCR 701-4

Rule title

RULES OF THE COLORADO STATE BANKING BOARD PERTAINING TO THE PUBLIC DEPOSIT PROTECTION ACT

Rulemaking Hearing

Date

01/18/2018

Time

10:00 AM

Location

DORA, Division of Banking, 1560 Broadway, Suite 975, Denver, CO 80202

Subjects and issues involved

The purpose of the Rule amendment is to revise and clarify technical changes to the Rule that were required due to revisions made to PDP3(A), defining eligible collateral.

Statutory authority

11-101-102, 11-102-104, 11-10.5-107

Contact information

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PDP4 Standards for Establishing Current Market Value of Eligible Collateral [Section 11-10.5-107(1)(c), C.R.S.]

A. Market value of the obligations and instruments approved as eligible collateral under Banking Board Rule PDP3(A), items 1, 2, 3, 4, 5, 6, 7, and ~~7~~ 8~~(except medium term and discount notes), and Banking Board Rule PDP3(F)~~; and all items under Banking Board Rule PDP3(B), shall be the last reported bid or transaction price or, for an inactively traded security, evaluators or other analysts acceptable to the Division of Banking may determine the market value.

B. Market value of the obligations approved as eligible collateral under Banking Board Rule PDP3(E) and PDP3(F) shall be 85 percent of the market value determined by evaluators or other analysts acceptable to the Division of Banking.

C. Market value of the obligations approved as eligible collateral under Banking Board Rule PDP3(C) shall be 50 percent of the current principal balance of the note.

D. Market value of the obligations approved as eligible collateral under Banking Board Rules PDP3(D) and PDP3(A)(9) shall be 85 percent of the par value of the obligation.

E. ~~Market value of the medium-term and discount notes approved as eligible collateral under Banking Board Rule PDP3(A), items 3, 4, 5, 6, and 8 shall be 90 percent of the par value of the obligation.~~

~~F~~E. Market value of the letters of credit approved as eligible collateral under Banking Board Rule PDP3(A)(10), and the surety bonds approved under Banking Board Rule PDP3(G) shall be 100 percent of the face value of the letter of credit or surety bond.

COLORADO
Department of
Regulatory Agencies
Division of Banking

1560 Broadway, Suite 975
Denver, CO 80202

November 17, 2017

BEFORE THE
COLORADO STATE BANKING BOARD

IN THE MATTER OF	)	
	)	**NOTICE OF PROPOSED RULEMAKING**
RULE AMENDMENT	)	

I. Notice of hearing

PLEASE BE ADVISED THAT, as required by Section 24-4-103, C.R.S., of the State Administrative Procedures Act, the Colorado State Banking Board (Banking Board) hereby gives notice of proposed rulemaking. A hearing is scheduled for January 18, 2018, commencing at 10:00 a.m., at 1560 Broadway, Suite 975, Denver, Colorado, Division of Banking (Division) Conference Room, which facility is accessible in compliance with the Americans with Disabilities Act (ADA) guidelines.

II. Purpose of the proposed rulemaking

The purpose of the hearing is to hear comments concerning the proposed amendment of the following Banking Board Rules to update the rules to reflect changes made to the Prompt Corrective Action Guidelines, effective January 1, 2015. A Statement of Basis, Purpose, and Specific Statutory Authority for each rule follows this notice and is incorporated by reference.

PDP1	Capital Standards for Eligible Public Depositories
PDP3	List of Approved eligible Collateral Instruments and Obligations
PDP4	Standards for Establishing Current Market Value of Eligible Collateral
PDP5	Criteria and Procedures for Reducing/Removing Uninsured Public Deposits From a Bank, or Increasing Collateral Requirements, if the Eligible Public Depository Fails to Comply With Minimum Capital Standards or Safety and Soundness Standards
PDP7	Reporting Requirements
PDP8A	Directors' Examination of Public Deposits
PDP9	Assessments and Fees

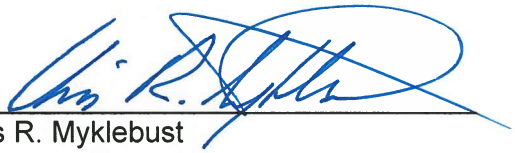
III. Statutory authority for proposed rulemaking

The proposed amendment of the rules is being held under the authority given the Banking Board by the Colorado Banking Code in accordance with Section 11-102-104(1), C.R.S., which states "the banking board is the policy-making and rule-making authority for the division of banking and has the power to: (a) make, modify, reverse, and vacate rules for the proper enforcement and administration of this code…"

IV. Opportunity to testify and submit written comments

Any interested person(s) has the right to submit written comments or data, view, or argument. Written information should be filed with the Division no later than January 8, 2018. To submit written comments, please contact Diana Gutierrez, Banking Board Secretary, at diana.gutierrez@state.co.us. In addition, any interested person(s) has the right to make an oral presentation at the Hearing, unless the Banking Board deems any oral presentation unnecessary.

SUBMITTED ON BEHALF OF THE
COLORADO STATE BANKING BOARD



Chris R. Myklebust
State Bank Commissioner

COLORADO
Department of
Regulatory Agencies
Division of Banking

1560 Broadway, Suite 975
Denver, CO 80202

November 17, 2017

STATE BANKING BOARD
RULE 3-CCR 701-4 PDP4
PERTAINING TO TITLE 11, ARTICLE 10.5, SECTION 107(1)(c)
COLORADO REVISED STATUTES

STATEMENT OF BASIS, PURPOSE AND SPECIFIC AUTHORITY

Statutory Basis

The statutory basis for Banking Board Rule 3-CCR 701-4 PDP4 is found in section 11-10.5-107(1)(c) of the Colorado Revised Statutes (C.R.S.). The purpose of this rule modification is to provide technical language clean-up based on revisions from PCP3(A).

Purpose of this Rulemaking

The purpose of the proposed revision to amend 3-CCR 701-4 PDP4(A) is to reflect the removal of references to medium term and discount notes for establishing current market value. Discount term notes earn the highest credit rating and should be valued the same as the other agency securities. The securities are still issued by the same government-owned or government sponsored agencies and carry the same implicit guarantees. The change simplifies the valuation of the securities for both, the banks and the Division. Added '6' and '8' to the PDP3(A) items valued at market value since the FHLMC and the SLMA securities carry the same implicit guarantees as the other agencies valued at market value. The proposed amendment to the rule would read as such:

1. Market value of the obligations and instruments approved as eligible collateral under Banking Board Rule PDP3(A), items 1, 2, 3, 4, 5, 6, 7 and 8; and all items under Banking Board Rule PDP3(B), shall be the last reported bid or transaction price or, for an inactively traded security, evaluators or other analysts acceptable to the Division of Banking may determine the market value.

The purpose of the proposed rulemaking is to amend 3-CCR 701-4 PDP4(B) is to add PDP3(F) to the provision which refers to Commercial Mortgage-Backed Securities (CMBS). While these products carry government guarantees or implicit guarantees, in a time of financial distress similar to the one experienced in 2007, these securities might not be as liquid as the current market may suggest. The underlying assets of CMBS are comprised of commercial properties such as hotels, office buildings and factories, which makes them more volatile than residential MBS. In addition, the structure of CMBS is often more complicated, similar to a CMO. To be consistent with the reasoning behind the 85% valuation of CMOs, I believe these products should be valued the same. The proposed amendment to the rule would read as such:

1. Market value of the obligations approved as eligible collateral under Banking Board Rule PDP3(E) and PDP3(F) shall be 85 percent of the market value determined by evaluators or other analysts acceptable to the Division of Banking.

The purpose of the proposed rulemaking is to delete 3-CCR 701-4 PDP3(E) to reflect that it is no longer the Divisions' practice to value eligible collateral at 90 percent. The proposed amendment to the rule would be to eliminate the following verbiage:

1. "Market value of the medium term and discount notes approved as eligible collateral under Banking Board Rule PDP3(A), items 3, 4, 5, 6 and 8 shall be 90 percent of the par value of the obligation."

The purpose of the proposed rulemaking is to amend 3-CCR 701-4 PDP3(F) to now be subpart PDP4(E). The removal of above language now moves previous subpart F to E. The proposed amendment to the rule would be to have PDP4(E) read as the following verbiage:

1. Market value of the letters of credit approved as eligible collateral under Banking Board Rule PDP3(A)(10), and the surety bonds approved under Banking Board Rule PDP3(G) shall be 100 percent of the face value of the letter of credit or surety bond.

Rulemaking Authority

11-101-102. Declaration of policy.
11-102-104. Powers and duties of the banking board.
11-10.5-107. Eligible collateral – uninsured public deposits.

Notice of Proposed Rulemaking

Tracking number

2017-00562

Department

700 - Department of Regulatory Agencies

Agency

701 - Division of Banking

CCR number

3 CCR 701-4

Rule title

RULES OF THE COLORADO STATE BANKING BOARD PERTAINING TO THE PUBLIC DEPOSIT PROTECTION ACT

Rulemaking Hearing

Date

01/18/2018

Time

10:00 AM

Location

DORA, Division of Banking, 1560 Broadway, Suite 975, Denver, CO 80202

Subjects and issues involved

The purpose of the Rule amendment is to reflect new capital rule and define Tier 1 and Tier 2 as recorded under the Federal Financial Institutions Examination Council most recent report of condition.

Statutory authority

11-101-102, 11-102-104, 11-10.5-106

Contact information

Name

Natriece Bryant

Title

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303-894-7741

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natriece.bryant@state.co.us

PDP1 Capital Standards for Eligible Public Depositories [Section 11-10.5-106(2)(b), C.R.S.]

For purposes of the Public Deposit Protection Act, a bank meeting adequate capital standards will maintain capital ratios as follows:

A. An eligible public depository must have and maintain a minimum level of total capital to risk-weighted assets in excess of ~~8~~ 10 percent. When that ratio falls to ~~5~~ 6 percent or below, the eligible public depository shall submit a plan and timeframe for eliminating its public deposits not fully insured by the FDIC. The plan will be approved as submitted or modified by the Banking Board on a case-by-case basis.

B. If an eligible public depository's minimum level of total capital to risk-weighted assets is less than ~~8~~ 10 percent, but greater than ~~5~~ 6 percent, that eligible public depository shall adopt a written capital improvement plan that is acceptable to the Banking Board, and be able to meet the risk-based collateral requirements in Banking Board Rule PDP5.

C. Higher than minimum capital ratios may be required for an individual eligible public depository when the Banking Board determines that the bank's capital is, or may become, inadequate. For example, higher capital ratios may be appropriate for:

1. A newly chartered bank;

2. A bank receiving special supervisory attention;

3. A bank which has, or is expected to have, losses resulting in capital inadequacy;

4. A bank having a high proportion of off-balance sheet risks, especially standby letters of credit; or exposed to a high degree of asset depreciation or interest rate, funding, transfer, or similar risks; or having a low level of liquid assets in relation to short-term liabilities;

5. A bank that is growing rapidly, either internally or through acquisitions; or

6. A bank that may be adversely affected by the activities or condition of its holding company, affiliate(s), or other persons or institutions including chain banking organizations, with which it has significant business relationships, including concentrations of credit.

D. An eligible public depository's capital is inadequate if it does not meet the provisions of this Rule. For the purposes of this rule, total capital to risk-weighted assets shall be the same as recorded under the Federal Financial Institutions Examination Council (FFIEC) most recent report of condition. ~~The components of total capital are core (Tier 1) and qualifying supplementary (Tier 2) capital. Specifically, Tier 1 includes:~~

~~1. Common stockholders' equity;~~

~~2. Noncumulative perpetual preferred stock and any related surplus; and~~

~~3. Minority interests in the equity accounts of consolidated subsidiaries.~~

~~The components of Tier 2 capital include:~~

~~1. Cumulative perpetual, long-term and convertible preferred stock, and any related surplus. The amount of long-term subordinated debt that is eligible to be included as Tier 2 capital is reduced~~

~~by 20 percent of the original amount of the instrument at the beginning of each of the last five (5) years of the life of the instrument.~~

~~2. Perpetual debt and other hybrid debt/equity instruments.~~

~~3. Intermediate-term preferred stock and term subordinated debt (to a maximum of 50 percent of Tier 1 capital).~~

~~4. Loan loss reserves (to a maximum of 1.25 percent of risk-weighted assets).~~

~~Deductions from total capital include:~~

~~From Tier 1 capital:~~

~~1. Goodwill and other intangibles, with the exception of identified intangibles that satisfy the criteria included in the guidelines.~~

~~From total capital:~~

~~1. Investments in unconsolidated banking and finance subsidiaries;~~

~~2. Reciprocal holdings of capital instruments.~~

COLORADO
Department of
Regulatory Agencies
Division of Banking

1560 Broadway, Suite 975
Denver, CO 80202

November 17, 2017

BEFORE THE
COLORADO STATE BANKING BOARD

IN THE MATTER OF	)	
	)	**NOTICE OF PROPOSED RULEMAKING**
RULE AMENDMENT	)	

I. Notice of hearing

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PDP7	Reporting Requirements
PDP8A	Directors' Examination of Public Deposits
PDP9	Assessments and Fees

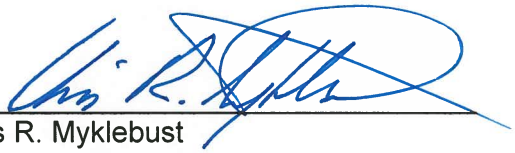
III. Statutory authority for proposed rulemaking

The proposed amendment of the rules is being held under the authority given the Banking Board by the Colorado Banking Code in accordance with Section 11-102-104(1), C.R.S., which states "the banking board is the policy-making and rule-making authority for the division of banking and has the power to: (a) make, modify, reverse, and vacate rules for the proper enforcement and administration of this code…"

IV. Opportunity to testify and submit written comments

Any interested person(s) has the right to submit written comments or data, view, or argument. Written information should be filed with the Division no later than January 8, 2018. To submit written comments, please contact Diana Gutierrez, Banking Board Secretary, at diana.gutierrez@state.co.us. In addition, any interested person(s) has the right to make an oral presentation at the Hearing, unless the Banking Board deems any oral presentation unnecessary.

SUBMITTED ON BEHALF OF THE
COLORADO STATE BANKING BOARD



Chris R. Myklebust
State Bank Commissioner

COLORADO
Department of
Regulatory Agencies
Division of Banking

1560 Broadway, Suite 975
Denver, CO 80202

November 17, 2017

STATE BANKING BOARD
RULE 3-CCR 701-4 PDP1
PERTAINING TO TITLE 11, ARTICLE 10.5, SECTION 106(2)(b)
COLORADO REVISED STATUTES

STATEMENT OF BASIS, PURPOSE AND SPECIFIC AUTHORITY

Statutory Basis

The statutory basis for Banking Board Rule 3-CCR 701-4 PDP1 is found in section 11-10.5-106(2)(b) of the Colorado Revised Statutes (C.R.S.). The purpose of this rule modification is to reflect changes made in the Division's practices and match the Prompt Corrective Action (PCA) Capital Guidelines which went into effect on January 1, 2015.

Purpose of this Rulemaking

Beginning January 1, 2015, PCA Capital Guidelines established new ratios which changed total capital to risk weighted assets ratios.

The purpose of the proposed rulemaking is to amend 3-CCR 701-4 PDP1(A) and 3-CCR 701-4 PDPA1(B) to reflect new verbiage per PCA Capital Guidelines. The proposed amendment to the rule would read as such:

1. Changed to 'not fully insured by the FDIC' to reflect the Division's practice of having banks who fall below 5 percent (will change to 6 percent) capital only eliminate the uninsured portion of their public deposits. It matches the proposed changes on PDP5.
2. The total capital to risk weighted assets ratios have changed to 10 percent and 6 percent to match the revised definition of a Well Capitalized institution and a Significantly Undercapitalized institution per the new PCA Capital Guidelines. New ratios took effect on January 1, 2015.
3. The total capital to risk weighted assets ratios have changed to 10 percent and 6 percent to match the revised definition of a Well Capitalized institution and a Significantly Undercapitalized institution per the new PCA Capital Guidelines.

The purpose of the proposed rulemaking is to amend 3-CCR 701-4 PDP1(D) reflect new Capital rule and define tier 1 and tier 2 based on changes in reference to the Federal Financial Institutions Examination Council (FFIEC). Per new the new Capital rule, the definition of tier 1 and tier 2 capital has changed. The Division would include the updated definition as written below. The proposed amendment to the rule would read as such:

1. For the purposes of this rule, total capital to risk-weighted assets shall be the same as defined under the Federal Financial Institutions Examination Council (FFIEC) report of condition.

Rulemaking Authority

11-101-102. Declaration of policy.
11-102-104. Powers and duties of the banking board.
11-10.5-106 Designation as eligible public depository.

Notice of Proposed Rulemaking

Tracking number

2017-00561

Department

700 - Department of Regulatory Agencies

Agency

701 - Division of Banking

CCR number

3 CCR 701-4

Rule title

RULES OF THE COLORADO STATE BANKING BOARD PERTAINING TO THE PUBLIC DEPOSIT PROTECTION ACT

Rulemaking Hearing

Date

01/18/2018

Time

10:00 AM

Location

DORA, Division of Banking, 1560 Broadway, Suite 975, Denver, CO 80202

Subjects and issues involved

The purpose of this Rule amendment is to provide clarification as to what eligible collateral is defined as by the Division of Banking. Only Section A(1 - 9) is being submitted for amendment.

Statutory authority

11-10.5-107(1), 11-101-102, and 11-102-104

Contact information

Name

Natriece Bryant

Title

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PDP3 List of Approved Eligible Collateral Instruments and Obligations [Section 11-10.5-107(1), C.R.S.]

For purposes of the Public Deposit Protection Act and these rules, the term "investment grade" is defined as any security assigned a rating of AAA to BBB by Standard & Poor's or Fitch's Investors Services or any security assigned a rating of Aaa to Baa by Moody's Investors Service. The following are approved as eligible collateral:

A. 1. U.S. Treasury Bills, Treasury Notes, and Treasury Bonds.

2. U.S. Treasury STRIPS (Separate Trading of Registered Interest and Principal of Securities) with maximum five year maturity and U.S. Treasury TIPS (Treasury-Inflation Protected Securities).

3. Farm Credit Systemwide ~~Debentures, Medium-Term~~ Bonds, Notes, and Discount Notes, issued as Federal Farm Credit Bank (FCSB) securities, excluding multi-asset class structured notes.

4. Federal Home Loan Bank ~~Debentures~~ (FHLB) Bonds, Notes and Discount Notes ~~(FHDN)~~, excluding multi-asset class structured notes.

5. Federal National Mortgage Association ~~Debentures (FNSM)~~(FNMA or Fannie Mae) Bonds, Notes, Discount Notes ~~(FNDN)~~, and Mortgage-Backed Pass-Through Certificates, excluding multi-asset class structured notes.

6. Federal Home Loan Mortgage Corporation (FHLMC or Freddie Mac) Bonds, Notes, Discount Notes ~~(FMDN)~~ and Mortgage-Backed Pass-Through Securities~~Participation Certificates (FMPC)~~, excluding multi-asset class structured notes.

7. Government National Mortgage Association (GNMA or Ginnie Mae) Pass-Through Securities ~~(GNMA)~~.

8. Student Loan Marketing Association (SLMA or Sallie Mae) Bonds ~~(SLBD)~~ and Discount Notes ~~(SLDN)~~, excluding multi-asset class structured notes, excluding debt securities issued by SLM Corporation.

9. Certificates for sale in the secondary market which represent undivided interests in pools composed of United States Department of Agriculture Rural Development and Small Business Administration loans, if either the United States Department of Agriculture Rural Development or Small Business Administration have unconditionally guaranteed payment of all amounts due to be paid to the owner of the certificate, and additionally, portions of loans guaranteed by either the United States Department of Agriculture Rural Development or Small Business Administration, provided that one of those agencies has unconditionally guaranteed payment of all amounts due under the guaranteed portion of the loan. ~~In no event shall any eligible public depository's pledged collateral portfolio consist of more than 50 percent loans.~~

Note to publisher: The existing text under Section A (10) through J (1) inclusive remains unchanged and a part of this Rule.

COLORADO
Department of
Regulatory Agencies
Division of Banking

1560 Broadway, Suite 975
Denver, CO 80202

November 17, 2017

BEFORE THE
COLORADO STATE BANKING BOARD

IN THE MATTER OF	)	
	)	**NOTICE OF PROPOSED RULEMAKING**
RULE AMENDMENT	)	

I. Notice of hearing

PLEASE BE ADVISED THAT, as required by Section 24-4-103, C.R.S., of the State Administrative Procedures Act, the Colorado State Banking Board (Banking Board) hereby gives notice of proposed rulemaking. A hearing is scheduled for January 18, 2018, commencing at 10:00 a.m., at 1560 Broadway, Suite 975, Denver, Colorado, Division of Banking (Division) Conference Room, which facility is accessible in compliance with the Americans with Disabilities Act (ADA) guidelines.

II. Purpose of the proposed rulemaking

The purpose of the hearing is to hear comments concerning the proposed amendment of the following Banking Board Rules to update the rules to reflect changes made to the Prompt Corrective Action Guidelines, effective January 1, 2015. A Statement of Basis, Purpose, and Specific Statutory Authority for each rule follows this notice and is incorporated by reference.

PDP1	Capital Standards for Eligible Public Depositories
PDP3	List of Approved eligible Collateral Instruments and Obligations
PDP4	Standards for Establishing Current Market Value of Eligible Collateral
PDP5	Criteria and Procedures for Reducing/Removing Uninsured Public Deposits From a Bank, or Increasing Collateral Requirements, if the Eligible Public Depository Fails to Comply With Minimum Capital Standards or Safety and Soundness Standards
PDP7	Reporting Requirements
PDP8A	Directors' Examination of Public Deposits
PDP9	Assessments and Fees

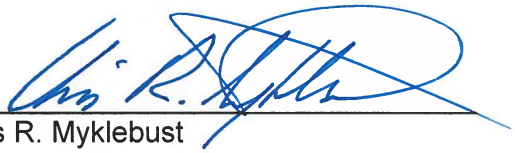
III. Statutory authority for proposed rulemaking

The proposed amendment of the rules is being held under the authority given the Banking Board by the Colorado Banking Code in accordance with Section 11-102-104(1), C.R.S., which states "the banking board is the policy-making and rule-making authority for the division of banking and has the power to: (a) make, modify, reverse, and vacate rules for the proper enforcement and administration of this code…"

IV. Opportunity to testify and submit written comments

Any interested person(s) has the right to submit written comments or data, view, or argument. Written information should be filed with the Division no later than January 8, 2018. To submit written comments, please contact Diana Gutierrez, Banking Board Secretary, at diana.gutierrez@state.co.us. In addition, any interested person(s) has the right to make an oral presentation at the Hearing, unless the Banking Board deems any oral presentation unnecessary.

SUBMITTED ON BEHALF OF THE
COLORADO STATE BANKING BOARD



Chris R. Myklebust
State Bank Commissioner

COLORADO
Department of
Regulatory Agencies
Division of Banking

1560 Broadway, Suite 975
Denver, CO 80202

November 17, 2017

STATE BANKING BOARD
RULE 3-CCR 701-4 PDP3
PERTAINING TO TITLE 11, ARTICLE 10.5, SECTION 107(1)
COLORADO REVISED STATUTES

STATEMENT OF BASIS, PURPOSE AND SPECIFIC AUTHORITY

Statutory Basis

The statutory basis for Banking Board Rule 3-CCR 701-4 PDP3 is found in section 11-10.5-107(1) of the Colorado Revised Statutes (C.R.S.). The purpose of this rule modification is to provide clarification as to what eligible collateral is defined as by the Division.

Purpose of this Rulemaking

The purpose of the proposed revision to amend 3-CCR 701-4 PDP3(A)(2) is to reflect technical changes in the definition of Separate Trading of Registered Interest and Paid Principal (STRIPS) and defining Treasury-Inflated Protected Securities (TIPS), which is not currently specified in the rules. The proposed amendment to the rule would read as such:

1. Adding to the parenthesis the full definition of STRIPS. Also, adding TIPS to this item, since TIPS are not currently specified in the rules and it will share some pricing/liquidity characteristics with STRIPS.

The purpose of the proposed rulemaking is to amend 3-CCR 701-4 PDP3(A)(3) through 3-CCR 701-4 PDP3(A)(8) to reflect how the Division defines eligible collateral. The proposed amendment to the rule would read as such:

1. (A)(3) shall read: Farm Credit Systemwide Bonds, Notes and Discount Notes, issued as a Federal Farm Credit Bank (FFCB) securities, excluding multi-asset class structured notes.

2. (A)(4) shall read: Federal Home Loan Bank (FHLB) Bonds, Notes and Discount Notes, excluding multi-asset class structured notes.

3. (A)(5) shall read: Federal National Mortgage Association (FNMA or Fannie Mae) Bonds, Notes, Discount Notes and Mortgage-Backed Pass-Through Securities, excluding multi-asset class structured notes.

4. (A)(6) shall read: Federal Home Loan Mortgage Corporation (FHLMC or Freddie Mac) Bonds, Notes, Discount Notes and Mortgage-Backed Pass-Through Securities, excluding multi-asset class structured notes.

5. (A)(7) shall read: Government National Mortgage Association (GNMA or Ginnie Mae) Pass-Through Securities.

6. (A)(8) shall read: Student Loan Marketing Association (SLMA or Sallie Mae) Bonds and Discount Notes, excluding multi-asset class structured notes, excluding debt securities issued by SLM Corporation.

    - In the clarification, only SLMA securities will be accepted. SLM Corporation is the private-sector corporation that is the successor of the Student Loan Marketing Association. SLM has issued debt securities including commercial paper.

The purpose of the proposed rulemaking is to amend 3-CCR 701-4 PDP3(A)(9) to reflect a change in the amount of Small Business Administration (SBA) securities a bank is allowed to pledge as a percentage of their total pledging. The 85% haircut of SBA securities combined with the Division being able to obtain independent factors mitigates the need for the limit. The proposed amendment to the rule would be to eliminate the following verbiage:

1. "In no event shall any eligible public depository's pledged collateral portfolio consist of more the 50 percent loans."

Rulemaking Authority

11-101-102. Declaration of policy.
11-102-104. Powers and duties of the banking board.
11-10.5-107 Eligible collateral – uninsured public deposits.

Notice of Proposed Rulemaking

Tracking number

2017-00565

Department

700 - Department of Regulatory Agencies

Agency

701 - Division of Banking

CCR number

3 CCR 701-4

Rule title

RULES OF THE COLORADO STATE BANKING BOARD PERTAINING TO THE PUBLIC DEPOSIT PROTECTION ACT

Rulemaking Hearing

Date

01/18/2018

Time

10:00 AM

Location

DORA, Division of Banking, 1560 Broadway, Suite 975, Denver, CO 80202

Subjects and issues involved

The proposed Rule amendment is to provide clarification of the definition provided in the Rule with regard to reporting requirements.

Statutory authority

11-101-102, 11-102-104, 11-10.5-109

Contact information

Name

Natriece Bryant

Title

Consumer Education & Public Outreach Coordinator

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natriece.bryant@state.co.us

PDP7 Reporting Requirements. [Section 11-10.5-109(1), C.R.S.]

A. On or before the tenth calendar day of each month, each eligible public depository shall list for the Banking Board on the Monthly Public Depository Liability Report:

1. All public deposit account titles (full, complete titles);

2. Each public deposit account's dollar amount as of the last business day of the previous month, or as of the day during the previous month on which the bank experienced its highest single day's aggregate total of uninsured public deposits; however, for the report due each July 10 only, each public deposit account's dollar amount must be reported as of June 30, rather than as of the highest uninsured balance day for June.

3. The dollar amount of each account that is not insured by the FDIC;

4. The official custodian for each account or the identification number assigned to the account by the Division of Banking pursuant to Section 11-10.5-111(3), C.R.S.

5. The aggregate total of all public deposits held on the day upon which the above-required listing was based; and

6. The aggregate market value of the eligible collateral pledged to secure public deposits on the day upon which the above-required listing was based; and

7. For the report due July 10 only, the bank account number(s) must be included for each ~~each~~ public deposit account.

B. On the same Monthly Public Depository Liability Report, each eligible public depository shall report to the Banking Board the bank's highest single day's aggregate total of uninsured public deposits during the previous month and the date on which the bank experienced that highest single day's aggregate total of uninsured public deposits; or, at its option, an eligible public depository may identify each public deposit account's highest uninsured balance during the previous month and report to the Banking Board the aggregate total of those uninsured amounts.

C. A sworn, and notarized, statement shall accompany the Monthly Public Depository Liability Report, certifying that the report is true and correct and that at the close of each business day during the previous month the eligible public depository had sufficient collateral pledged to secure all uninsured public deposits in accordance with the collateralization levels required under the Public Deposit Protection Act and Banking Board's Rule PDP5.

D. On or before the tenth day of each month, each eligible public depository shall report to the Banking Board the following information with respect to each loan pledged by the eligible public depository as eligible collateral:

1. Loan identification number;

2. Name of borrower;

3. Current principal balance;

4. Current interest rate;

5. Maturity date of loan;

6. Original dollar amount of the loan;

7. Date last payment was received; and

8. Date next payment is due.

E. On or before the tenth day of each month, each eligible public depository shall report to the Banking Board the following information with respect to each ~~mortgage-backed pool security~~security with principal balance pledged as eligible collateral:

1. ~~Description of security~~CUSIP number of security; and

2. ~~Joint Custody Receipt Number;~~Current principal balance of mortgage pool or loan backed security.

~~3. Current principal balance of mortgage pool; and~~

~~4. CUSIP number of security.~~

~~F. Thirty (30) days following the end of each fiscal quarter, each eligible public depository must submit a copy of its quarterly call report to the Banking Board, in care of the Colorado Division of Banking, unless the eligible public depository has been notified in writing by the Colorado Division of Banking that hard copy submission of this information is no longer required. The Banking Board hereby authorizes the Colorado Division of Banking to establish a method by which to obtain eligible public depository call report information through alternative electronic sources.~~

COLORADO
Department of
Regulatory Agencies
Division of Banking

1560 Broadway, Suite 975
Denver, CO 80202

November 17, 2017

BEFORE THE
COLORADO STATE BANKING BOARD

IN THE MATTER OF	)	
	)	**NOTICE OF PROPOSED RULEMAKING**
RULE AMENDMENT	)	

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II. Purpose of the proposed rulemaking

The purpose of the hearing is to hear comments concerning the proposed amendment of the following Banking Board Rules to update the rules to reflect changes made to the Prompt Corrective Action Guidelines, effective January 1, 2015. A Statement of Basis, Purpose, and Specific Statutory Authority for each rule follows this notice and is incorporated by reference.

PDP1	Capital Standards for Eligible Public Depositories
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PDP7	Reporting Requirements
PDP8A	Directors' Examination of Public Deposits
PDP9	Assessments and Fees

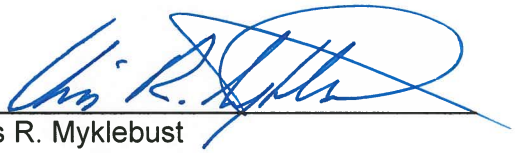
III. Statutory authority for proposed rulemaking

The proposed amendment of the rules is being held under the authority given the Banking Board by the Colorado Banking Code in accordance with Section 11-102-104(1), C.R.S., which states "the banking board is the policy-making and rule-making authority for the division of banking and has the power to: (a) make, modify, reverse, and vacate rules for the proper enforcement and administration of this code…"

IV. Opportunity to testify and submit written comments

Any interested person(s) has the right to submit written comments or data, view, or argument. Written information should be filed with the Division no later than January 8, 2018. To submit written comments, please contact Diana Gutierrez, Banking Board Secretary, at diana.gutierrez@state.co.us. In addition, any interested person(s) has the right to make an oral presentation at the Hearing, unless the Banking Board deems any oral presentation unnecessary.

SUBMITTED ON BEHALF OF THE
COLORADO STATE BANKING BOARD



Chris R. Myklebust
State Bank Commissioner

COLORADO
Department of
Regulatory Agencies
Division of Banking

1560 Broadway, Suite 975
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November 17, 2017

STATE BANKING BOARD
RULE 3-CCR 701-4 PDP7
PERTAINING TO TITLE 11, ARTICLE 10.5, SECTION 109(1)
COLORADO REVISED STATUTES

STATEMENT OF BASIS, PURPOSE AND SPECIFIC AUTHORITY

Statutory Basis

The statutory basis for Banking Board Rule 3-CCR 701-4 PDP7 is found in section 11-10.5-109(1) of the Colorado Revised Statutes (C.R.S.). The purpose of this rule modification is to provide clarification and updates to language in the current rules and technical updates to standard practice for reporting requirements.

Purpose of this Rulemaking

The purpose of the proposed revision to amend 3-CCR 701-4 PDP7(A) to reflect technical changes in the definition of what is meant for reporting requirements. The addition of the word "calendar" to specify timing restrictions in which each eligible public depository shall list for the Banking Board on the Monthly Public Depository Liability Report has added to clarify timing. Previous interpretation by some banks was that the reporting was not due until the tenth business day of the month. In addition the recommended revision to subpart (A)(7) would add an underline to the word 'each' and the proposed amendment to the rule would read as such:

1. Adding the word "calendar" to clarify that the reporting institution has until the tenth calendar day to report. Revised language would now state:
    a. On or before the tenth calendar day of each month, each eligible public depository shall list for the Banking Board on the Monthly Public Depository Liability Report.
2. Adding the underline to the word 'each' to clarify that banks need each account number when providing the report. Revised language is reflected below:
    a. PDP7)A)(7) shall read: For the report due July 10 only, the bank account number(s) must be included for each public deposit account.

The purpose of the proposed rulemaking is to amend 3-CCR 701-4 PDP7(E) to delete subpart 1 and 2 as the Division no longer relies on banks for the description of security and joint custody receipt number. The Division obtains a factor of each of the MBS, CMOs and SBAs pledged once a month. If necessary, the Division can also look for a factor on-demand. The proposed amendment to the rule would read as such:

1. (E)(1) delete: Description of security.

2. (E)(2) delete: Joint Custody Receipt Number.

The purpose of the proposed rulemaking is to amend 3-CCR 701-4 PDP7(E) to reflect changes as listed above. The removal of subpart 1 and 2 will move subpart 3 and 4 to new positions as well as reflect new language to subpart 3 to reflect as such:

1. (E)(3) shall read: Current principal balance of mortgage pool or loan backed security (move to #2).
2. (E)(4) shall read: CUSIP number of security (move to #1).

.

The purpose of the proposed rulemaking is to delete 3-CCR 701-4 PDP7(F) because the requirement stated in subpart (F) has not been required from PDPA banks for many years. The Division can access Call Report information at any time. All information regarding updated capital ratios from the UBPR/Call Report are uploaded into BIDS system. The proposed deletion of the verbiage would eliminate subpart (F) in PDP7. The requirement is also part of C.R.S. 11-10.5-109 (1) which reads: "In addition, each eligible public depository shall submit copies of its quarterly call reports to the banking board thirty days after the close of each fiscal quarter." The following amendment to the rule would be to eliminate the following verbiage:

1. "Thirty (30) days following the end of each fiscal quarter, each eligible public depository must submit a copy of its quarterly call report to the Banking Board, in care of the Colorado Division of Banking, unless the eligible public depository has been notified in writing by the Colorado Division of Banking that hard copy submission of this information is no longer required. The Banking Board hereby authorizes the Colorado Division of Banking to establish a method by which to obtain eligible public depository call report information through alternative electronic sources."

Rulemaking Authority

11-101-102. Declaration of policy.
11-102-104. Powers and duties of the banking board.
11-10.5-109 Verification of collateral held – reports required.

Notice of Proposed Rulemaking

Tracking number

2017-00567

Department

700 - Department of Regulatory Agencies

Agency

701 - Division of Banking

CCR number

3 CCR 701-4

Rule title

RULES OF THE COLORADO STATE BANKING BOARD PERTAINING TO THE PUBLIC DEPOSIT PROTECTION ACT

Rulemaking Hearing

Date

01/18/2018

Time

10:00 AM

Location

DORA, Division of Banking, 1560 Broadway, Suite 975, Denver, CO 80202

Subjects and issues involved

The proposed Rule amendment will update the method of how payment of assessments and fees should be submitted to the Division of Banking.

Statutory authority

11-101-102, 11-102-104, 11-10.5-106, 11-10.5-109, 11-10.5-112

Contact information

Name

Natriece Bryant

Title

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Email

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PDP9 Assessments and Fees. [Sections 11-10.5-106(3)(a)(III)]; [11-10.5-109(4); and 11-10.5-112(2), C.R.S.]

A. Assessments

1. In order to cover the expenses, net of fee income of the Division of Banking for the supervision of eligible public depositories, each eligible public depository shall be assessed annually, as of June 30.

2. On June 30 of each year each eligible public depository shall be subject to the full assessment without proration for any reason.

3. Assessments for all eligible public depositories shall be calculated according to the proportion of aggregate public deposits that each depository holds in relation to the total of all aggregate public deposits held by all eligible public depositories for each annual period for which they were eligible public depositories. Assessments may also be based on other factors as determined by the Banking Board, consistently applied.

B. Fees

1. The Banking Board shall set fees annually by publishing a schedule of fees for services as of July 1 of each year.

2. Such schedule shall list all services performed that are subject to a fee and the fee to be charged. In addition, the fee schedule shall list fees set by statute, if any.

C. Payment of Assessments and Fees.

1. Assessments and fees shall be remitted to the "Division of Banking" in ~~the form of a cashier's check or similar instrument payable to the "Colorado Division of Banking~~a form approved by the Division.~~."~~

2. The assessment and any fee relating to examinations shall be paid within twenty (20) days after a statement of the amount thereof shall have been received by the eligible public depository.

3. All other fees shall be paid at the time the service is rendered. Service relating to statutory application or notice is deemed to be rendered at the time of filing application or notice.

COLORADO
Department of
Regulatory Agencies
Division of Banking

1560 Broadway, Suite 975
Denver, CO 80202

November 17, 2017

BEFORE THE
COLORADO STATE BANKING BOARD

IN THE MATTER OF	)	
	)	**NOTICE OF PROPOSED RULEMAKING**
RULE AMENDMENT	)	

I. Notice of hearing

PLEASE BE ADVISED THAT, as required by Section 24-4-103, C.R.S., of the State Administrative Procedures Act, the Colorado State Banking Board (Banking Board) hereby gives notice of proposed rulemaking. A hearing is scheduled for January 18, 2018, commencing at 10:00 a.m., at 1560 Broadway, Suite 975, Denver, Colorado, Division of Banking (Division) Conference Room, which facility is accessible in compliance with the Americans with Disabilities Act (ADA) guidelines.

II. Purpose of the proposed rulemaking

The purpose of the hearing is to hear comments concerning the proposed amendment of the following Banking Board Rules to update the rules to reflect changes made to the Prompt Corrective Action Guidelines, effective January 1, 2015. A Statement of Basis, Purpose, and Specific Statutory Authority for each rule follows this notice and is incorporated by reference.

PDP1	Capital Standards for Eligible Public Depositories
PDP3	List of Approved eligible Collateral Instruments and Obligations
PDP4	Standards for Establishing Current Market Value of Eligible Collateral
PDP5	Criteria and Procedures for Reducing/Removing Uninsured Public Deposits From a Bank, or Increasing Collateral Requirements, if the Eligible Public Depository Fails to Comply With Minimum Capital Standards or Safety and Soundness Standards
PDP7	Reporting Requirements
PDP8A	Directors' Examination of Public Deposits
PDP9	Assessments and Fees

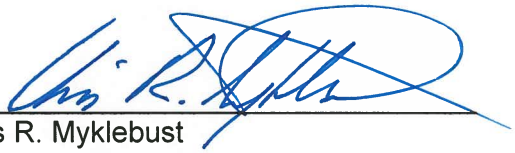
III. Statutory authority for proposed rulemaking

The proposed amendment of the rules is being held under the authority given the Banking Board by the Colorado Banking Code in accordance with Section 11-102-104(1), C.R.S., which states "the banking board is the policy-making and rule-making authority for the division of banking and has the power to: (a) make, modify, reverse, and vacate rules for the proper enforcement and administration of this code…"

IV. Opportunity to testify and submit written comments

Any interested person(s) has the right to submit written comments or data, view, or argument. Written information should be filed with the Division no later than January 8, 2018. To submit written comments, please contact Diana Gutierrez, Banking Board Secretary, at diana.gutierrez@state.co.us. In addition, any interested person(s) has the right to make an oral presentation at the Hearing, unless the Banking Board deems any oral presentation unnecessary.

SUBMITTED ON BEHALF OF THE
COLORADO STATE BANKING BOARD



Chris R. Myklebust
State Bank Commissioner

COLORADO
Department of
Regulatory Agencies
Division of Banking

1560 Broadway, Suite 975
Denver, CO 80202

November 17, 2017

STATE BANKING BOARD
RULE 3-CCR 701-4 PDP9
PERTAINING TO TITLE 11, ARTICLE 10.5, SECTION 106(3)(a)(III); 109(4); 112(2)
COLORADO REVISED STATUTES

STATEMENT OF BASIS, PURPOSE AND SPECIFIC AUTHORITY

Statutory Basis

The statutory basis for Banking Board Rule 3-CCR 701-4 PDP9 is found in section 11-10.5-106(3)(a)(III); 11-10.5-109(4) and 11-10.5-112(2) of the Colorado Revised Statutes (C.R.S.). The purpose of this rule modification is to provide clarification and technical language clean-up to how payment of assessments and fees should be provided to the Division. The updated reflects the new procedures of only accepting electronic payments.

Purpose of this Rulemaking

The purpose of the proposed revision to amend 3-CCR 701-4 PDP9(C)(1) to reflect technical changes in the definition how the Division of Banking shall receive assessments and fees. The proposed amendment to the rule would read as such:

1. (C)(1) shall read: Assessments and fees shall be remitted to the "Division of Banking" in a form approved by the Division.

Rulemaking Authority

11-101-102. Declaration of policy.
11-102-104. Powers and duties of the banking board.
11-10.5-106. Designation as eligible public depository – acceptance provisions.
11-10.5-109. Verification of collateral held – reports required.
11-10.5-112. Annual fees and assessments.

Notice of Proposed Rulemaking

Tracking number

2017-00574

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

01/02/2018

Time

10:00 AM

Location

1560 Broadway, Ste 110D, Denver CO 8202

Subjects and issues involved

4-2-1 REPLACEMENT OF INDIVIDUAL ACCIDENT AND SICKNESS INSURANCE - The purpose of this regulation is to reduce the opportunity for misrepresentation and other unfair practices and methods of competition in the business of insurance. The scope of this regulation includes persons covered by an individual health care coverage plan offered by a health maintenance organization and individual accident and sickness insurance policies or plans, who are considering replacement of their coverage.

Statutory authority

10-1-109 and 10-3-1110

Contact information

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DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

Proposed Amended Regulation 4-2-1

REPLACEMENT OF INDIVIDUAL ACCIDENT AND SICKNESS INSURANCE

Section 1 Authority

This amended regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109 and 10-3-1110, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to reduce the opportunity for misrepresentation and other unfair practices and methods of competition in the business of insurance. The scope of this regulation includes persons covered by an individual health care coverage plan offered by a health maintenance organization and individual accident and sickness insurance policies or plans, who are considering replacement of their coverage.

Section 3 Applicability

This regulation shall apply to individual accident and sickness insurance policies and all service or indemnity contracts offered by entities subject to Part 2, Part 3 and Part 4 of Article 16 of Title 10. ~~(~~except ~~Medicare supplement insurance,~~ conversion to an individual or family policy from a group, blanket or group type policy, or any other insurance that is covered by a separate state statute~~)~~.

Section 4 Definitions

A. "Accident and sickness insurance" means, for the purposes of this regulation, a policy, plan, contract, agreement, statement of coverage, rider or endorsement that provides accident or

sickness benefits or medical, surgical or hospital benefits, whether on an indemnity, reimbursement, service or prepaid basis, except when issued in connection with another kind of insurance other than life and except disability, waiver of premium and double indemnity benefits included in life insurance and annuity contracts. ~~An accident and sickness insurance policy does not include a Medicare supplement insurance policy or any other type of accident and sickness insurance with advertising guidelines covered by a separate statute.~~ For the purposes of this regulation, accident and sickness insurance includes health coverage plans~~, issued by carriers as defined in § 10-16-102(8), C.R.S.~~

B. "Carrier" shall have the same meaning as found at § 10-16-102(8), C.R.S.

C. "Direct response" means, for the purposes of this regulation, a solicitation through a sponsoring or endorsing entity or individually, solely through mail, telephone, the ~~i~~internet, or other mass communication media.

D. "Health benefit plan" shall have the same meaning as found at § 10-16-102(32), C.R.S.

E. "Health coverage plan" shall have the same meaning as found at § 10-16-102(34), C.R.S.

Section 5 Rules

A. Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has an accident and sickness insurance policy or health coverage plan in force, or whether an accident and sickness insurance policy or health coverage plan is intended to replace or be in addition to any other accident and sickness insurance policy or health coverage plan presently in force. A supplementary application or other form to be signed by the applicant and producer containing such questions and statements may be used.

1. Statements

a. You normally do not require more than one of the same type of policy.

b. If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.

c. You may be eligible for benefits under Medicaid or Medicare and may not need an accident and sickness policy. If you are eligible for Medicare, you may want to purchase a Medicare ~~S~~supplemental ~~al~~ insurance policy.

d. If you are eligible for Medicare due to age or disability, counseling services are available in Colorado to provide advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the state Medicaid program, Health First Colorado.

2. Questions

To the best of your knowledge:

a. Do you have another accident and sickness insurance policy ~~or contract~~ in force?

(1) If so, with which company?

(2) If so, do you intend to replace your current accident and sickness insurance policy with this policy ~~(contract)~~?

b. Do you have any other accident and sickness insurance that provides benefits similar to this accident and sickness policy?

(1) If so, with which company?

(2) What kind of policy?

c. Are you covered for medical assistance through the state Medicaid program, Health First Colorado:

(1) As a Specified Low-Income Medicare Beneficiary (SLMB)?

(2) As a Qualified Medicare Beneficiary (QMB)?

(3) For other Medicaid medical benefits?

B. Producers must list ~~any~~all other accident and sickness insurance policies they have sold to the applicant.

1. List policies sold which are still in force; and

2. List policies sold in the past five (5) years which are no longer in force.

C. In the case of a direct response carrier, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the carrier, shall be returned to the applicant by the carrier upon delivery of the policy.

D. Delivery of Replacement Notice

1. Upon determining that a sale will involve replacement of an accident and sickness insurance policy or health coverage plan, a carrier, other than a direct response carrier, or its producer, shall furnish the applicant, prior to issuance or delivery of the accident and sickness insurance policy or ~~contract~~ health coverage plan, a notice regarding replacement of accident and sickness insurance. One (1) copy of such notice signed by the applicant and producer, except where the coverage is sold without a producer, must~~shall~~ be provided to the applicant and an additional signed copy must~~shall~~ be retained by the carrier.

2. A direct response carrier must~~shall~~ deliver to the applicant, at the time of issuance of the policy, the appropriate notice, located in Appendix A or B~~, or C~~ of this regulation.

~~E. The notice contained in Appendix A shall be used through December 31, 2013. The notices contained in Appendix B and C shall be used on or after January 1, 2014.~~

~~F~~E. The notices required by ~~S~~subsection 5.D~~. above for a carrier,~~ must be provided in the format prescribed and adopted by the Commissioner of Insurance and are provided in Appendices A and B of this regulation.

~~G. Paragraphs 1 and 2, contained in Appendix A, may be deleted by appe carrier if the replacement does not involve the application of a new preexisting condition limitation.~~

~~H~~F. Paragraph 1. ~~in~~ of the notices provided in ~~Appendix~~Appendices A and B, may be deleted by the carrier if the replacement does not involve the application of a new pre-existing condition limitation.

~~I~~G. Failure to comply with the requirements of this ~~S~~section 5 constitutes an unfair method of competition and an unfair or deceptive act or practice in the business of insurance which is prohibited under § 10-3-1104, C.R.S.

Section 6 Additional Rules for the Replacement of Health Benefit Plans

A. Carriers are not required to provide the notice in Appendix B when an applicant is replacing his or her current individual health benefit plan with another individual health benefit plan during the annual open enrollment period or if the replacement is due to eligibility for a special enrollment due to one or more of the triggering events listed in Colorado Insurance Regulation 4-2-43.

B. Carriers are required to provide the notice in Appendix B when an applicant is replacing his or her current individual health benefit plan with an accident and sickness insurance policy or health coverage plan which does not meet the definition of a health benefit plan.

Section 7 Incorporation by Reference

Colorado Insurance Regulation 4-2-43, 3 CCR 702-4 published by the Colorado Division of Insurance shall mean Colorado Insurance Regulation 4-2-43, 3 CCR 702-4 as published on the effective date of this regulation and does not include later amendments to, or editions of, Colorado Insurance Regulation 4-2-43, 3 CCR 702-4. Colorado Insurance Regulation 4-2-43, 3 CCR 702-4 may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado 80202 or by visiting the Colorado Division of Insurance website at www.dora.colorado.gov/insurance. Certified copies of Colorado Insurance Regulation 4-2-43, 3 CCR 702-4 are available from the Division of Insurance for a fee.

Section ~~6~~8 Severability

If any provision of this regulation or the application of it to any person or circumstances is for any reason held to be invalid, the remainder of this regulation shall not be affected.

Section ~~7~~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 ~~8~~10 Effective Date

This regulation is effective ~~November~~ April 1, 201~~3~~8.

Section ~~9~~11 History

Originally issued as Regulation 74-2, effective March 15, 1974.
Amended December 22, 1975, effective January 1, 1976.
Amended effective January 14, 1977.
~~Amended effective January 14, 1977.~~
Renumbered on June 1, 1992.
Repealed and Repromulgated in full, effective February 1, 2001.
Amended Regulation 4-2-1, effective May 1, 2010.
Amended Regulation effective November 1, 2013.
Amended Regulation effective April 1, 2018.

Appendix A

NOTICE TO APPLICANT

REGARDING REPLACEMENT OF ACCIDENT

AND SICKNESS INSURANCE

[Insurance Carrier name and address]

According to (your application) (the information furnished by you), you intend to lapse or otherwise terminate your present policy and replace it with a policy to be issued by [Insurance Carrier Name]. Your new policy will provide [Number days of free look period, if any] days within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have. If, after due consideration, you find the purchase of this accident and sickness coverage is a wise decision you should evaluate the need for other accident and sickness coverage you have that may duplicate this policy.

STATEMENT TO APPLICANT BY ISSUER OR PRODUCER:

I have reviewed your current accident and sickness insurance coverage. To the best of my knowledge, this accident and sickness policy will not duplicate your existing coverage because you intend to terminate your existing coverage. The replacement policy is being purchased for the following reason(s) (check one):

_____ Additional benefits

_____ No change in benefits, but lower premiums

_____ Fewer benefits and lower premiums

_____ Other. (please specify)

1. Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of claim for benefits under the new policy, whereas a similar claim may have been payable under your present policy.

2. State law provides that your replacement policy or contract may not contain new preexisting conditions, waiting periods, elimination periods or probationary periods. The issuer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

3. If you wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy has never been in force. After the application has been completed and before you sign it, review it carefully to be certain that all information has been properly recorded. [If the policy or contract is guaranteed issued this paragraph need not appear].

~~Do not cancel your present policy until you have received your new policy and are sure that you want to keep it.~~

~~_____~~

~~(Signature of Producer or Other Representative)*~~

~~[Typed Name and Address of Issuer or Producer]~~

~~_____~~

~~(Applicants Signature)~~

~~_____~~

~~(Date)~~

~~*Signature not required for direct response sales.~~

Appendix ~~B~~A

NOTICE TO APPLICANT

REGARDING REPLACEMENT OF ~~ACCIDENT~~

ACCIDENT AND SICKNESS INSURANCE

[~~Insurance~~ Carrier Name and Address]

According to [your application] [the information furnished by you], you intend to lapse or otherwise terminate your present policy and replace it with a policy to be issued by [~~insurance~~ carrier name]. [Your new policy will provide [number of days of the free look period~~, if any~~] days within which you may decide without cost whether you want to keep the policy.]

You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have. If, after due consideration, you find the purchase of this accident and sickness coverage is a wise decision, you should evaluate the need for other accident and sickness coverage you have that may duplicate this policy.

STATEMENT TO APPLICANT BY CARRIER OR PRODUCER:

I have reviewed your current health coverage. To the best of my knowledge, this accident and sickness policy will not duplicate your existing coverage because you intend to terminate your existing coverage. The replacement policy is being purchased for the following reason(s)(check one):

_____ Additional benefits

_____ No change in benefits, but lower premiums

_____ Fewer benefits and lower premiums

_____ Other. (~~p~~Please specify.)

1. Health conditions which you may presently have (pre-existing conditions) may not be immediately or fully covered under the new policy. This could result in the denial or delay of a claim for benefits under the new policy, whereas a similar claim may have been payable under your present policy.

2. If you wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy ~~has~~had never been in force. After the application has been completed and before you sign it, review it carefully to be certain that all information has been properly recorded. [If the policy or contract is guaranteed issued this paragraph need not appear.]

Do not cancel your current policy until you have received your new policy and are sure that you want to keep it.

_____

(Signature of Producer or Other Representative) *

[Typed Name and Address of Carrier, ~~or~~ Producer, or Other Representative]

[_____

(Carrier Acknowledgement of Receipt and Review) **

_____]

(Date)

_____

(Applicant's Signature)

_____

(Date)

* Signature not required for direct response sales.

** For use by direct response carriers.

Appendix ~~C~~B

NOTICE TO APPLICANT

REGARDING REPLACEMENT OF A HEALTH BENEFIT PLAN

[~~Insurance~~ Carrier Name and Address]

According to [your application] [the information furnished by you], you intend to lapse or otherwise terminate your present policy and replace it with a policy to be issued by [~~insurance~~ carrier name]. [Your new policy will provide [number days of free look period, if any] days within which you may decide without cost whether you want to keep the policy.]

You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have. If, after due consideration, you find the purchase of this accident and sickness coverage is a wise decision, you should evaluate the need for other accident and sickness coverage you have that may duplicate this policy.

STATEMENT TO APPLICANT BY CARRIER OR PRODUCER:

I have reviewed your current accident and sickness insurance coverage, which provides comprehensive medical coverage. To the best of my knowledge, this accident and sickness policy will not duplicate your existing coverage because you intend to terminate your existing coverage. The replacement policy is being purchased for the following reason(s)(check one):

_____ Additional benefits

_____ No change in benefits, but lower premiums

_____ Fewer benefits and lower premiums

_____ Other. (~~p~~Please specify.)

1. Health conditions which you may presently have (pre-existing conditions) may not be immediately or fully covered under the new policy. This could result in the denial or delay of a claim for benefits under the new policy, whereas a similar claim may have been payable under your present policy, which provides comprehensive coverage.

2. If you wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, review it carefully to be certain that all information has been properly recorded. [If the policy or contract is guaranteed issued this paragraph need not appear.]

Do not cancel your current policy until you have received your new policy and are sure that you want to keep it.

_____

(Signature of Producer or Other Representative) *

[Typed Name and Address of Carrier, ~~or~~ Producer, or Other Representative]

[_____

(Carrier Acknowledgement of Receipt and Review) **

_____]

(Date)

_____

(Applicant's Signature)

_____

(Date)

* Signature not required for direct response sales.

** For use by direct response carriers.

Notice of Proposed Rulemaking

Tracking number

2017-00571

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

01/22/2018

Time

09:00 AM

Location

1560 Broadway #110-D, Denver CO. 80202

Subjects and issues involved

Revision to Rules 7.2.5, 8.3.3, 11.2 and repeal of 11.3.7

Statutory authority

12-23-104(2)(a)

Contact information

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COLORADO
Department of
Regulatory Agencies
Division of Professions and Occupations

NOTICE OF RULEMAKING HEARING

Pursuant to §12-23-104(2)(a) of the Colorado Revised Statutes, you are hereby advised that the Colorado State Electrical Board will be holding a public rulemaking hearing on Monday January 22, 2018, commencing at 9:00 a.m. at 1560 Broadway #110-D, Denver, Colorado for the purpose of considering the following.

The Board will consider the revision and repeal of the following rules and regulations:

Rule 7.2.5.9 Reinspection Fees (Revisions)
Rule 8.3.3 Fines (Revisions)
Rule 11.2 Reinstatement (Revisions)
Rule 11.3.7 Exemptions (Repeal)

The proposed rules under consideration are attached. Please be advised that these proposed rules may be changed after public comment and formal hearing.

At the time and place stated in this notice, the Colorado State Electrical Board will afford interested parties an opportunity to submit written data, views, or arguments, and to submit briefly (3 minutes per item) the same orally if they so desire. It is **requested that written testimony be submitted to the Colorado State Electrical Board at least ten (10) days prior to the rulemaking hearing.** All submissions should be addressed to the attention of Mark Browne, Program Director, Colorado Electrical Board, 1560 Broadway, Suite 1350, Denver, Colorado 80202, or email to mark.browne@state.co.us. All submissions will be considered.

Dated this 28th day of November 2017

BY ORDER OF THE COLORADO STATE ELECTRICAL BOARD

Mark Browne, Program Director

STATEMENT OF BASIS AND PURPOSE

Statement of Basis: The Colorado State Electrical Board is authorized under § 12-23-104(2)(a), and § 24-4-103, of the Colorado Revised Statutes to adopt, revise, and repeal rules and regulations as may be necessary for the orderly conduct of its affairs and for the administration of Article 23 of Title 12, C.R.S.

Statement of Purpose: The purpose of the revision of Rule 7.2.5.9, Rule 8.3.3 and Rule 11.2 and repeal of the Rule 11.3.7 stemming from the Office of Legislative Legal Services for the general clarification, cleanup, and efficient management of the State Electrical Board, and for the safeguard of the general public.

The revision and repeal of these rules shall become effective March 17th 2018

Proposed Electrical Board Rule Changes

Redline copy of changes

7.2.5.9 As used in § 12-23-118(1)(c), C.R.S., the term "reasonable time" shall mean thirty (30) calendar days., unless the licensee or registrant appeals to the Board for a hearing on the matter, in which case the thirty (30) calendar day time period shall be extended by the Board until the Board rules on the appeal. The thirty (30) calendar day time period shall restart after the Board issues a ruling on the appeal.

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 citation 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; or

D. Written request, demonstrating good cause, ~~for a~~ to the Board for a hearing ~~for~~ good cause shown on the citation.

11.2 **Reinstatement**. An expired license may be reinstated by submitting a reinstatement application, paying the current reinstatement fee, and meeting the appropriate requirements below.

11.2.1 Expired for More than Sixty (60) Days But Less Than ~~Less Than Three (3)~~ Two (2) ~~or More~~ Years. To reinstate a license that has been expired for ~~less than three (3)~~ more than sixty (60) days but less than two (2) years, the applicant must provide evidence of completion, since applicant's most recent licensing event (original license, renewal or reinstatement) preceding the application for reinstatement, of twenty-four (24) hours of continuing education, as defined in Board Rule 11.3.

11.2.2 Expired for More Than ~~Three (3)~~ Two (2) Years. If the license has been expired for more than ~~three (3)~~ two (2) years, pursuant to § 24-34-102(8)(d)(II), C.R.S. the applicant must demonstrate competency to practice by any of the following:

~~11.3.7 **Exemptions.** The Board may grant an exemption from continuing education requirements set out in Board Rule 11.3. It is within the sole discretion of the Board to decide whether good cause has been shown in order to grant an exemption.~~

~~11.3.7.1 Pursuant to section § 12-70-102, C.R.S., licensees who have been called to federally funded active duty for more than 120 days for the purpose of serving in a war, emergency or contingency may request an exemption from continuing education requirements for the renewal, reinstatement, or activation of his/her license for the 3-year renewal period that falls within the period of service or within six months following the completion of service.~~

~~11.3.7.2 Licensees seeking exemption from continuing education requirements shall provide evidence and written explanation citing in as much detail as possible the inability of the licensee to comply with continuing education requirements for the renewal period and why the license~~ should remain in active status.

Notice of Proposed Rulemaking

Tracking number

2017-00579

Department

700 - Department of Regulatory Agencies

Agency

723 - Public Utilities Commission

CCR number

4 CCR 723-6

Rule title

RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE

Rulemaking Hearing

Date

02/20/2018

Time

09:00 AM

Location

Colorado Public Utilities Commission Hearing Room, 1560 Broadway Suite 250

Subjects and issues involved

The purpose of the proposed rules is to describe the manner of regulation over persons providing transportation service by motor vehicle in the State of Colorado. The proposed rules enhance public safety, protect consumers of regulated transportation utilities, serve the public interest, and make the rules more effective and efficient. The proposed rules provide for clarity, necessity and conciseness and those rules found to be duplicative, inconsistent, or burdensome are repealed. There will be two Rulemaking Hearings. One on February 20, 2018 at 9:00 a.m. and the other on February 21, 2018 at 10:00 a.m.

Statutory authority

§§ 24-4-104(4), 40-2-108, 40-2-110.5, 40-3-101, 40-3-102, 40-3-103, 40-3-110, 40-4-101, 40-5-105, 40-7-113(2), 40-10.1.101 through 507; 42-4-235; 42-4-1809(2)(a), 42-4-2108(2)(a), and 42-20-202(1)(a), C.R.S.

Contact information

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COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 *CODE OF COLORADO REGULATIONS* (CCR) 723-6

PART 6
RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE

BASIS, PURPOSE, AND STATUTORY AUTHORITY

The basis for and purpose of these rules is to describe the manner of regulation over persons providing transportation services by motor vehicle in or through the state of Colorado. These rules address a wide variety of subject areas including, but not limited to, safety; civil penalties; the issuance, extension, transfer, and revocation of authority to operate as a motor carrier; insurance and permit requirements; tariff and time schedule requirements; the identification, condition, and leasing of motor vehicles; record keeping; and service standards. These rules cover an array of carriers, including common carriers, contract carriers, hazardous materials carriers, towing carriers, movers, limited regulation carriers (charter buses, children's activity buses, luxury limousines, off-road scenic charters, and fire crew transport), and transportation network companies. In addition, these rules cover persons required to register under the Unified Carrier Registration Agreement, pursuant to 49 U.S.C. § 14504a, including motor carriers, motor private carries, freight forwarders, brokers, leasing companies, and other persons.

The statutory authority for the promulgation of these rules can be found at §§ 40-2-108, 40-2-110.5(8), 40-3-101(1), 40-3-102, 40-3-103, 40-3-110, 40-4-101, 40-5-105, 40-7-113(2), 40-10.1-101 through 608;42-4-235, 42-4-1809(2)(a), 42-4-2108(2)(a), and 42-20-202(1)(a), C.R.S.

GENERAL PROVISIONS

6000. Scope and Applicability.

All rules in this Part 6, the "6000" series, shall apply to all Commission proceedings and operations concerning regulated entities providing transportation by motor vehicle, unless a specific statute or rule provides otherwise. Rules 6000 – 6099 apply to all common carriers, contract carriers, limited regulation carriers, towing carriers, movers, UCR registrants, and drivers as defined herein. For hazardous materials carriers and nuclear materials carriers, only rule 6008 and the related definitions in rule 6001 shall apply. Rules 6700 – 6724 apply to all transportation network companies. Specific provisions regarding the applicability of this Part 6 can be found in rules 6100, 6200, 6250, 6300, 6400, 6500, 6600, and 6700.

6001. Definitions.

The following definitions apply throughout this Part 6, except where a specific rule or statute provides otherwise:

(a) "Advertise" means to advise, announce, give notice of, publish, or call attention to by use of any oral, written, or graphic statement made in a newspaper or other publication, on radio, television, or any electronic medium, or contained in any notice, handbill, sign (including signage on a vehicle), flyer, catalog, or letter, or printed on or contained in any tag or label attached to or accompanying any article of personal property.

(b) "Airport official" means any person, designated by the airport's management or administration, who is connected with the operation, maintenance, security or servicing of the airport and identified by an airport identification badge.

(~~b~~c) "Authority," except as otherwise defined or contextually required, means a common carrier certificate, a contract carrier permit, or an emergency temporary authority or a temporary authority issued by the Commission to a regulated intrastate carrier that specifies the authorized common carrier type of service or contract carrier service, the authorized ~~geography~~ geographic area of service, and any restrictions limiting the authorized service.

(d) "Call-and-demand", "on call-and-demand", or "call-and-demand service" means the transportation of passengers by a common carrier not on schedule.

(e) "CBI" means the Colorado Bureau of Investigation.

(~~e~~f) "Certificate" means the certificate of public convenience and necessity issued to a common carrier declaring that the present or future public convenience and necessity requires or will require stated operation.

(~~d~~g) "C.F.R." means the Code of Federal Regulations.

(h) "Charter basis" means on the basis of a contract for transportation whereby a person agrees to provide exclusive use of a motor vehicle to a single chartering party for a specific period of time, during which the chartering party has the exclusive right to direct the operation of the vehicle, including selection of the origin, destination, route, and intermediate stops.

(i) "Charter order" means a paper or electronic document that memorializes the contract for luxury limousine or off-road scenic charter service for a specific period of time reasonably calculated to fulfill the purpose of the contract.

(j) "Chartering party" means a person or group of persons who share a personal or professional relationship whereby all such persons are members of the same affiliated group, including, a family, business, religious group, social organization or professional organization. Chartering party does not include groups of unrelated persons brought together by a carrier, transportation broker, or other third party.

(k) "Charter service" means transportation of a chartering party provided by a common carrier on a call-and-demand basis.

(l) "Common carrier" means every person directly or indirectly affording a means of transportation, or any service or facility in connection therewith, within this state, by motor vehicle or the vehicle whatever by indiscriminately accepting and carrying passengers for compensation; except that the term does not include a contract carrier as defined by § 40-10.1-101(6), C.R.S.; a motor carrier that provides transportation not subject to regulation pursuant to § 40-10.1-105, C.R.S.; a limited regulation carrier defined by § 40-10.1-301, C.R.S.; or a Transportation Network Company defined under § 40-10.1-602, C.R.S.

(~~e~~m) "Compensation" means any money, property, service, or thing of value charged or received or to be charged or received, whether directly or indirectly.

(n) "Contract carrier" means every person, other than a common carrier or a motor carrier of passengers under Part 3 of Article 10.1 of Title 40, C.R.S. who, by special contract, directly or indirectly affords a means of passenger transportation over any public highway of this state.

(o) "DIA" means the Denver International Airport.

(~~g~~p) "Driver" means ~~any~~ a person who drives a motor vehicle for a motor carrier, regardless of whether such person drives as an employee or independent contractor.

(q) "Driving time" means all time spent at the driving controls of a motor vehicle operating in a for-hire capacity.

(r) "Duplicating or overlapping authority" means transportation of the same common carrier type of service between the same points under two or more separate authorities which are held by the same regulated intrastate carrier.

(~~h~~s) "Encumbrance" means any transaction that creates a security interest, mortgage, deed of trust, lien, or other similar right or interest, by act or deed or by operation of law.

(~~i~~t) "Enforcement official" means either:

(I) any employee or independent contractor appointed or hired by the director, or the director's designee, to perform any function associated with the regulation of transportation by motor vehicle; or

(II) "enforcement official," as that term is defined by § 42-20-103(2), C.R.S.

(u) "FBI" means the Federal Bureau of Investigation.

(v) "Flag stop" means a point of service designated by a common carrier on its filed schedule, which point is located between two scheduled points on the scheduled route.

(~~j~~w) "FMCSA" means the Federal Motor Carrier Safety Administration and includes predecessor or successor agencies performing similar duties.

(~~k~~x) "GCWR" means gross combination weight rating, the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle. In the absence of a value specified by the manufacturer, GCWR is determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

(~~l~~y) "GVWR" means gross vehicle weight rating, the value specified by the manufacturer as the loaded weight of a single motor vehicle.

(~~m~~z) "Hazardous materials carrier" means a person who transports hazardous materials as defined in § 42-20-103(3), C.R.S.

(~~n~~aa) "Holidays" means those days designated as legal holidays by the Colorado General Assembly.

(~~o~~bb) "Independent contractor" means "independent contractor" as that term is used in Article 11.5 of Title 40, C.R.S.

(~~þ~~cc) "Intrastate commerce" means transportation, other than in interstate commerce, for compensation, by motor vehicle over the public highways between points in this state.

(~~q~~dd) "Letter of authority" means a document issued by the Commission to a common or contract carrier stating the permanent authority granted by the Commission~~,~~. A letter of authority is deemed to provide proof of Commission-granted common or contract carrier authority.

(~~r~~ee) "Limited regulation carrier" means a person who provides service by charter bus, children's activity bus, fire crew transport, luxury limousine, Medicaid client transport, or off-road scenic charter as those terms are defined in § 40-10.1-301, C.R.S.

(ff) "Live meter" means any taxicab meter that, without intervention from the driver, automatically calculates changes in rates for taxicab service due to waiting time, traffic delay, or changes in the taxicab's speed.

(gg) "Luxury limousine carrier" means every person that provides luxury limousine service.

(hh) "Luxury limousine service" means a specialized, luxurious transportation service provided on a prearranged charter basis memorialized in a contract. Luxury limousine service is not taxicab service or any service provided between fixed points over regular routes at regular intervals. Luxury limousine service must be provided in a luxury limousine as defined in rule 6308.

(~~s~~ii) "Manufacturer" means the final person modifying the physical structure of a motor vehicle, such as the original manufacturer or a person subsequently modifying a motor vehicle's wheelbase in a luxury limousine.

(jj~~t~~) "Meter" means a device that calculates charges for passenger transportation and/or measurement of distance travelled by a passenger.

(kk~~u~~) "Motor carrier" means any person owning, controlling, operating, or managing any motor vehicle that provides transportation in intrastate commerce pursuant to Article 10.1 of Title 40, C.R.S.

(ll~~v~~) "Motor vehicle" means any automobile, truck, tractor, motor bus, or other self-propelled vehicle or any trailer drawn thereby.

(mm) "Multiple loading" means the sharing of a taxicab ride, or portion thereof, by unrelated traveling parties.

(~~w~~nn) "Nuclear materials carrier" means a person who transports nuclear materials as defined in § 42-20-402(3), C.R.S.

(oo) "On duty" means on duty time as defined by 49 C.F.R. § 395.2.

(~~x~~pp) "Passenger," except as otherwise specifically defined or contextually required, means any person, other than a driver, occupying a motor vehicle including any assistance animals as defined in § 24-34-803, C.R.S.

(qq) "Passenger carrier" means a taxicab carrier and a limited regulation carrier, except for fire crew transport.

(~~y~~rr) "Permit" means the permit issued to a contract carrier pursuant to part 2 of Article 10.1 of Title 40, C.R.S., or to a motor carrier pursuant to parts 3, 4, and 5 of said Article.

(~~z~~ss) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or other legal entity and any person acting as or in the capacity of lessee, trustee, or receiver thereof, whether appointed by a court or otherwise.

(tt) "Prearranged" means that the charter order for luxury limousine service is entered into electronically or telephonically prior to provision of the service, or entered into in writing prior to the arrival of the luxury limousine at the point of departure.

(~~aa~~uu) "Principal" means a person who:

(I) necessarily participates or abstains in a firm, partnership, corporation, company, association, joint stock association, or other legal entity taking an action as an entity;

(II) is authorized to act on behalf of an entity;

(III) participates in the election, appointment, or hiring of persons that are authorized to act on behalf of an entity; and

(IV) through his/her conduct or activity, directly or indirectly controls an entity subject to the Commission's jurisdiction, irrespective of his/her formal title or financial interest in the entity.

Examples of principals include the owner of a sole proprietorship, a member or manager of a limited liability company, a partner in a partnership, and an officer, director, or shareholder of a corporation.

(~~bb~~vv) "Regulated intrastate carrier" means a public utility declared to be affected with a public interest that is a common carrier and/or a contract carrier.

(~~cc~~ww) "Roof light" means equipment attached to the roof of a vehicle or extending above the roofline of a vehicle.

(xx) "Scheduled service", "on schedule", or "schedule" means the transportation of passengers by a common carrier between fixed points and over designated routes at established times as specified in the common carrier's time schedule filed with and approved by the Commission.

(~~dd~~yy) "Seating capacity" means, the greatest of the following:

(I) ~~Except as otherwise specifically defined or contextually required, and in the absence of the manufacturer-rated number of seating positions in a motor vehicle, "seating capacity" means the greatest of the following~~the total number of seats as designed by the original manufacturer~~:~~;

(~~A~~II) the total number of seat belts, including the driver's, in a motor vehicle; ~~or~~

(~~B~~III) the number generated by adding:

(~~i~~A) for each bench or split-bench seat, the seat's width in inches, divided by 17 inches, rounded to the nearest whole number;

(B~~ii~~) the number of single-occupancy seats, including the driver's seat if it is not part of a split-bench seat; and

(C~~iii~~) for each curved seat, the seat's width in inches measured along the inside arc of the curve, divided by 17 inches, rounded down to the nearest whole number~~.~~; and

(I~~I~~V) the total number of seating positions within the vehicle.

(V) Auxiliary seating positions, such as folding jump seats, shall be counted in determining seating capacity.

(zz) "Shuttle service" means the transportation of passengers by a common carrier on a call-and-demand basis charged at a per-person rate and used of the motor vehicle is not exclusive to any individual or group.

(aaa) "Sightseeing service" means the transportation of passengers by a common carrier on a call-and-demand basis originating and terminating at the same point for the sole purpose of viewing or visiting places or natural, historic, or scenic interest.

(bbb) "Taxicab" means a motor vehicle with a seating capacity of eight or less, including the driver, operated in taxicab service.

(ccc) "Taxicab carrier" means a common carrier with authority to provide taxicab service.

(ddd) "Taxicab service" or "taxi service" means passenger transportation by a common carrier on a call-and-demand basis in a taxicab, with the first passenger therein

(eee) "Time call" means a customer's communication with a common carrier requesting a specific date and time for service (otherwise known as an appointment), or the common carrier's service provided in response to the customer's communication, as the context requires.

(ee~~fff~~) "Transportation broker" means a person, ~~other than a motor carrier or as part of a motor carrier's operations,~~ who, for compensation, arranges, or offers to arrange, for-hire, transportation of passengers by a motor carrier under authority not operated by the transportation broker. A transportation broker is not an agent of a motor carrier authorized to provide the brokered transportation and, therefore, cannot represent itself as ~~a~~ the motor carrier providing the transportation, cannot provide or offer to provide transportation service, and cannot be a party to the contract for transportation. A motor carrier, including a person who is an employee or agent of the motor carrier, is not a broker within the meaning of this definition when it arranges or offers to arrange transportation under such motor carrier's authority.

(ggg) "Transportation network company" (TNC) means a corporation, partnership, sole proprietorship, or other entity operating in Colorado, that uses a digital network to connect riders to drivers for the purpose of providing transportation. A transportation network company does not provide taxi service, transportation service arranges through a transportation broker, ridesharing arrangements, as defined in § 39-22-509(1)(a)(II), C.R.S., or ay transportation service over fixed routes at regular intervals. A transportation network company is not deemed to own, control, operate, or manage the personal vehicles used by transportation network company drivers. A transportation network company does not include a political subdivision or other entity exempted from federal income tax under § 115 of the federal "Internal Revenue Code of 1986", as amended.

(hhh~~ff~~) "Type of service" means any one of the following common carrier services: charter, ~~limousine,~~ shuttle, sightseeing, taxicab, or scheduled.

6002. Authority and Permit ~~Requirements -~~ Applications.

A person may seek Commission action regarding any of the following matters through the filing of an appropriate application:

(a) ~~F~~for the grant or extension of authority to operate as a regulated intrastate carrier, as provided in rule 6203~~.~~;

(b) ~~T~~to voluntarily abandon or suspend an authority to operate as a regulated intrastate carrier, as provided in rule 6204~~.~~;

(c) t~~T~~o encumber or transfer any authority to operate as a regulated intrastate carrier, to acquire control of any regulated intrastate carrier, or to merge or consolidate a regulated intrastate carrier with any other entity, as provided in rule 6205~~.~~;

(d) ~~T~~to amend a tariff on less than statutory notice, as provided in paragraph 6207(~~j~~n)~~.~~;

(e) to convert a common carrier authority for taxi or shuttle service, in whole or in part, to a transportation network company as provided in § 40-10.1-605(n), C.R.S. and rules 6259;

(e) ~~F~~for a permit to operate as a limited regulation carrier on a Commission-prescribed form~~.~~;

(f) ~~F~~for a permit to operate as a towing carrier on a Commission-prescribed form~~.~~; or

(g) ~~F~~for a permit to operate as a mover on a Commission-prescribed form.

6003. Petitions.

Any person may petition the Commission for a waiver or variance of any rule in this Part 6 as provided in rule 1003 of the Commission's Rules of Practice and Procedures, 4 CCR 723-1. The notice and intervention period for petitions that seek a waiver of rule 6107 or 6308 shall expire ten days from the date the notice was mailed.

6004. Registration.

A person may seek Commission action through the filing of an appropriate registration form for registration in the UCR Agreement, as provided in rules ~~6401~~6400 through 6499.

6005. Authority to Interview Personnel and Inspect Records, Motor Vehicles, and Facilities.

(a) Unless a format or period of record retention is specified in a rule:

(I) motor carriers shall maintain all records required by these rules for three years. For the first year, the records must be maintained in their original format. The format may be changed after one year (i.e., converting original paper to electronic format for storage*)*; and

(II) UCR registrants shall maintain the records upon which annual registration in the UCR Agreement is based for a period of three years.

(b) An enforcement official has the authority to interview personnel and inspect records and motor vehicles used in providing a transportation service, and facilities of a motor carrier.

(I) Upon request by an enforcement official, except as otherwise required by these rules or an order of the Commission, records must be made available to the official in the original format during the first year. Thereafter, the records shall be made available in the format maintained by the company. Copies shall also be provided upon request. Records or copies, as applicable, must be made available within the following time periods:

(A) ~~I~~immediately for any records required to be maintained in a motor vehicle or with the driver, towing authorizations, mover estimates for service, mover contracts for service, or any records related to insurance or safety;

(B) ~~W~~within two days for any records related to a complaint investigation; or

(C) ~~W~~within ten days for all other records.

(II) When a request under paragraph (b) of this rule meets multiple time periods under subparagraphs (b)(I) through (III), the shortest time period shall apply.

(III) Upon request of an enforcement official and during business hours, a motor carrier shall make its facilities available for inspection.

(IV) Upon request by an enforcement official, a motor carrier, including its drivers, shall make its motor vehicles available for inspection and shall assist, if requested, in the inspection of such equipment.

(V) Upon request by an enforcement official, motor carrier personnel and drivers shall be available for interview during business hours.

(c) No person shall knowingly falsify, destroy, mutilate, change, or cause falsification, destruction, mutilation or change to any record subject to inspection by the Commission.

(d) No motor carrier, its agents, or its representatives, shall produce or retain false records or records the motor carrier, its agents, or its representatives knew or should have known to be false or inaccurate. The motor carrier shall be responsible for the accuracy of the records it retains and produces.

6006. Reports, Commission Records, Name Changes, Address Changes, and Address Additions~~, and Designated Agent Changes~~.

(a) Each common carrier and contract carrier shall submit ~~its~~ annual report<u>s</u>, as prescribed by rule 6212, or as otherwise ordered by the Commission.

(b) A motor carrier is required to notify the Commission in writing of any change of name, mailing address, physical address, or telephone number on file with the Commission within two days of making said change. The notification shall identify the person making the change and all of the affected motor carrier's certificates, permits, or registrations. A notice of name change including trade name changes and trade name additions~~,~~ shall include supporting documentation from the Colorado Secretary of State.

(I) In the event of a name change or an address change, the motor carrier shall comply with all other applicable Commission rules, including but not limited to, rules regarding financial responsibility and tariffs.

(II) No name change shall be effective until proper proof of financial responsibility in the motor carrier's new name has been filed with the Commission.

(c) If a towing carrier wishes to begin providing storage for towed motor vehicles at a new or additional storage facility, the towing carrier shall, prior to using the new or additional storage facility, file with the Commission the storage facility's address and, if one exists, telephone number.

(d) ~~Each motor carrier shall notify the Commission of any changes in the designated agent's identity, name, or address by filing a new designation within two days following the effective date of such change.~~

~~(e)~~ Any information provided by a motor carrier for the Commission's files shall be deemed accurate until changed by the motor carrier.

6007. Financial Responsibility.

(a) Financial responsibility requirements~~:~~.

(I) Motor vehicle liability coverage. Every motor carrier shall obtain and keep in force at all times commercial motor vehicle liability insurance coverage or a surety bond providing coverage that conforms with the requirements of this rule. Motor vehicle liability means liability for bodily injury and property damage. Coverage shall be combined single limit liability. The minimum level for public entities, as defined in § 24-10-103(5), C.R.S., shall be the maximum amount per § 24-10-114(1), C.R.S. The minimum levels for all other motor carriers shall be:

Type of Carrier	**Vehicle Seating Capacity or GVWR**	**Minimum Level**
Motor Carriers of Passengers	8 or less	$ 500,000
	9 through 15	$1,500,000
	16 through 32	$3,000,000
	33 or more	$5,000,000
Public Entities	Any	The maximum amount per § 24-10-114(1), C.R.S.
Movers	10,000 pounds or more GVWR	$ 750,000
	Less than 10,000 pounds GVWR	$ 300,000
Towing Carriers	Any GVWR	$ 750,000

~~(II) Motor carriers may obtain a certificate of self-insurance issued pursuant to §§ 10-4-624 and 42-7-501, C.R.S., or Part 387 of 49 C.F.R.~~

(~~A~~II) To demonstrate proof of commercial motor vehicle liability coverage, ~~A~~all common carriers, contract carriers, limited regulation carriers, movers, and towing carriers shall cause one of the following to be filed with the Commission: a Form E, Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance, ~~or~~ a Form G, Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety Bond, or a certificate of self-insurance issued pursuant to §§ 10-4-624 and 42-7-501, C.R.S. or Part 387 of 49 C.F.R. ~~to be filed with the Commission.~~

(A) The applicable ~~f~~Form E or Form G shall be executed by a duly authorized agent of the insurer or surety.

(B) ~~All common carriers, contract carriers, limited regulation carriers, movers, and towing carriers obtaining a certificate of self-insurance under the provisions of §§ 10-4-624 and 42-7-501, C.R.S., or Part 387 of 49 C.F.R., shall cause a copy of said certificate of self-insurance to be filed with the Commission.~~ Upon renewal of the certificate of self-insurance, the common carrier, contract carrier, limited regulation carrier, mover, or towing carrier shall file a copy of the most current version of such certificate of self-insurance.

(III) Cargo liability coverage. Every mover and towing carrier shall obtain and keep in force at all times cargo liability insurance coverage or a surety bond providing coverage that conforms ~~with~~to the requirements of this rule. Cargo liability coverage for a towing carrier shall include coverage of physical damage to the motor vehicle in tow (on hook) and loss of its contents.

(A) For towing carriers the cargo liability coverage shall provide coverage to the extent of the towing carrier's legal liability for loss or damage to the property of any persons other than the insured, which is carried in, upon, or attached to the towing vehicle and/or its trailers or dollies operated by, or for, or under the control of the towing carrier.

(B) For movers, the minimum level of cargo liability coverage shall be $10,000.00 for loss of or damage to household goods carried on any one motor vehicle, or sixty cents ($0.60) per pound per article, whichever is greater. By way of example, "article" means a desk, but not each individual drawer of the desk.

(C) All movers or towing carriers shall cause a Form H, Uniform Motor Carrier Cargo Certificate of Insurance, or a Form J, Uniform Motor Carrier Cargo Surety Bond, to be filed with the Commission. For a towing carrier, a Colorado Form 12-INS, Towing Carrier Cargo Liability Insurance Certificate may be used in lieu of the Form H. The applicable form shall be executed by a duly authorized agent of the surety.

(IV) Garage keeper's liability coverage. Towing carriers providing storage, directly or through an agent, shall obtain and keep in force at all times garage keeper's liability insurance coverage.

(A) Garage keeper's liability coverage shall provide coverage to the extent of the towing carrier's legal liability for loss or damage to the property of any person, other than the insured, which is stored by the towing carrier directly or through an agent.

(B) All towing carriers shall cause a Colorado Form 14-INS, Garage Keepers Legal Liability Certificate of Insurance, to be filed with the Commission.

(V) Workers' compensation insurance coverage. Every towing carrier shall obtain and keep in force at all times workers' compensation insurance coverage in accordance with § 40-10.1-401(3), C.R.S., the "Workers' Compensation Act of Colorado" found in articles 40 to 47 of Title 8, C.R.S., and the rules set forth by the Department of Labor and Employment, Division of Workers' Compensation.

(A) If workers' compensation insurance coverage is required, the towing carrier shall cause proof of coverage to be filed and maintained with the Commission on a Commission prescribed Form WC in lieu of the original policy.

(B) If a person has proof of workers' compensation insurance coverage on file with the Commission, there shall be a rebuttable presumption that the person is required to maintain such insurance.

(C) If workers' compensation insurance coverage is not required, the towing carrier shall cause:

(i) ~~F~~for corporations or limited liability companies, a completed Colorado Department of Labor and Employment, Division of Workers' Compensation Form WC43 including a part B for each person listed on part A; or

(ii) ~~F~~for other towing carriers, a statement that workers' compensation insurance coverage is not required.

(VI) General liability coverage. Every mover shall obtain and keep in force at all times general liability insurance coverage, or surety bond, providing coverage of not less than $500,000.00. For purposes of this subparagraph, "general liability" means liability for bodily injury and property damage. ~~(A)~~ All movers shall cause a Colorado Form GL, General Liability Certificate of Insurance to be filed with the Commission.

(b) The motor carrier shall ensure that insurance or surety bond coverage:

(I) is provided only by insurance or surety companies authorized to provide such coverage in the state of Colorado; or, for self-insurance, is provided in accordance with §§ 10-4-624 and 42-7-501, C.R.S.;

(II) is not less than the minimum limits set forth under paragraph (a) of this rule;

(III) covers all motor vehicles which may be operated by or for the motor carrier, or which may be under the control of the motor carrier, regardless of whether such motor vehicles are specifically described in the policy or amendments or endorsements thereto;

(IV) provides for the payment of benefits by the insurance or surety bond company directly to parties damaged by the motor carrier on a "first dollar"/"dollar one" basis;

(V) if the coverage contains a retained risk provision, such provision shall obligate the insurance or surety company to pay the party damaged by the motor carrier regardless of the level of funds in the retained risk pool; and

(VI) does not permit a motor carrier to pay insurance or surety benefits directly to a party damaged by said motor carrier; except that nothing in this subparagraph shall preclude a damaged party from settling a claim for loss or damage prior to making a claim against the motor carrier's insurance or surety policy.

(c) The provisions of subparagraphs (IV) through (VI) of paragraph (b) do not apply to motor carriers with regard to proof of self-insurance pursuant to 49 C.F.R. Part 387, if applicable, and §§ 10-4-624 and 42-7-501, C.R.S. The provisions of subparagraphs (III) through (VI) of paragraph (b) do not apply to workers compensation requirements for towing carriers pursuant to § 40-10.1-401(3), C.R.S.

(d) The motor carrier shall retain each original insurance or surety policy for required coverage and keep a copy of its proof of motor vehicle liability coverage in each motor vehicle that it operates.

(e) The motor carrier's failure to have proof of liability coverage or compliance with workers' compensation insurance requirements, on file at the Commission, as required by this rule, shall constitute a rebuttable presumption that the carrier is in violation of the requirements of this rule.

(f) The motor carrier shall ensure that the policy and the forms noted in this rule contain the motor carrier's exact name, trade name (if any), and address as shown in the records of the Commission.

(g) Any change affecting the policy and the information contained in forms noted in this rule (e.g., name, address, or policy number) shall be filed with the Commission on an appropriate endorsement or amendment.

(h) The proof of minimum levels of financial responsibility required by this rule is public information and may be obtained from the Commission.

(i) Except as provided in paragraph (j) of this rule, each certificate of insurance and/or surety bond required by and filed with the Commission shall be kept in full force and effect unless and until canceled or not renewed upon 30-days advance written notice, on a Form K Uniform Notice of Cancellation of Motor Carrier Insurance Policies, a Form L Uniform Notice of Cancellation of Motor Carrier Surety Bonds, Form BMC 35, or Form BMC 36, as applicable, from the insurer or surety to the Commission. The 30-day cancellation or non-renewal notice period shall commence on the date the notice is received by the Commission. In lieu of the prescribed form, the insurer or surety may cancel or not renew a certificate of insurance and/or surety bond by letter to the Commission containing the same information as required by such form.

(j) Administrative cancellation of certificates of insurance and/or surety bond.

(I) When a new certificate of insurance and/or surety bond is filed with the Commission, all certificates of insurance and/or surety bond for the same type and category of coverage with an older effective date shall be administratively cancelled. For purposes of this paragraph, type of coverage means those listed in paragraph (a) of this rule, and category of coverage means primary coverage or excess coverage.

(II) When the Commission grants an application filed by a regulated motor carrier, or receives notice from any other type of motor carrier to cancel all of its authorities and permits, all certificates of insurance and/or surety bond for the motor carrier shall be administratively cancelled.

(III) When a permit expires or is canceled or revoked, all certificates of insurance and/or surety bonds for the motor carrier may be administratively canceled.

(IV) When a certificate or contract carrier permit is revoked or abandoned, all certificates of insurance and/or surety bonds for the motor carrier may be administratively canceled.

6008. Revocation, Suspension, Alteration, or Amendment.

(a) Summary suspension and/or revocation for lack of financial responsibility of a motor carrier~~, a hazardous materials carrier,~~ and a nuclear materials carrier.

(I) Summary suspension.

(A) Whenever Commission records indicate that a motor carrier's~~, hazardous materials carrier's,~~ or nuclear materials carrier's required insurance or surety coverage, except for garage keeper's coverage, is or will be canceled, and the Commission has no proof on file indicating replacement coverage, the Commission shall, pursuant to § 24-4-104~~(3) and~~ (4)~~,~~ and § 40-10.1-112(3), C.R.S., summarily suspend such authority or permit.

(B) Whenever Commission records indicate that a towing carrier's workers' compensation insurance coverage is or will be canceled and the Commission has no proof on file indicating replacement coverage, or documentation filed demonstrating that coverage is not required, in accordance with rule 6007 the Commission shall, pursuant to § 24-4-104~~(3) and~~ (4) and § 40-101.112(3), C.R.S., summarily suspend such authority or permit.

(C) Failure on the part of an insurance company to respond to a Commission inquiry for verification of insurance coverage within 60 days shall be treated as a cancellation of insurance.

(D) The summary suspension shall be effective on the date of coverage cancellation.

(II) The Commission shall ~~advise~~ notify the motor carrier, ~~hazardous materials carrier,~~ or nuclear materials carrier:

(A) that the Commission is in receipt of insurance or surety cancellation, and the effective date of such cancellation;

(B) that its authority or permit is summarily suspended as of the coverage cancellation date;

(C) that it shall not conduct operations under any of its authorities, or permits after the coverage cancellation date;

(D) that the Commission has initiated ~~complaint~~ a proceeding~~s~~ to revoke its authorities, or permits;

(E) that it may submit, at a hearing convened to determine whether its authorities or permits should be revoked, written data, views, and arguments showing why such authorities or permits should not be revoked; and

(F) the date, time, and place set for such hearing.

(III) Until proper proof of insurance or surety coverage, or documentation demonstrating that coverage is not required as to workers' compensation insurance coverage is filed with the

Commission, a motor carrier, ~~hazardous materials carrier,~~ or nuclear materials carrier receiving notice of summary suspension shall not, under any of its authorities, or permits, conduct operations after the effective date of such summary suspension.

(IV) If the Commission receives proper proof of coverage or documentation that coverage is not required prior to the hearing, the summary suspension ~~and complaint~~ will be dismissed without further order of the Commission, even if there is a lapse in coverage. However, operations performed during lapses in coverage are subject to civil penalty assessments.

(V) If the Commission receives proper proof of coverage or documentation that coverage is not required prior to revocation, the Commission shall dismiss the summary suspension ~~and complaint~~, even if there is a lapse in coverage. However, operations performed during lapses in coverage are subject to civil penalty assessments.

(b) Summary suspension and/or revocation for deliberate and willful violations and/or endangering public health, safety or welfare. ~~If, due to an administrative error or omission of the Commission staff, an authority or permit is suspended or revoked for lack of financial responsibility coverage, such authority or permit shall, without a hearing, be retroactively reinstated as of the effective date of the proof of coverage. Staff shall document in its files the correction of such administrative error or omission.~~ When the Commission finds either that a motor carrier has engaged in a deliberate or willful violation or that the public health, safety, or welfare imperatively requires emergency action, the Commission may summarily suspend the motor carrier's certificate or permit in accordance with §§ 24-4-104(4), C.R.S. and pursuant to the following process.

(I) If, after conducting its investigation, Commission staff believes that a person is guilty of a willful or deliberate violation of Commission rules or that the public health, safety, or welfare requires emergency action, Commission staff can seek a summary suspension pursuant to § 24-4-104(4), C.R.S. from an Administrative Law Judge through the filing of a motion for summary judgement, notice of allegations and supporting material.

(II) Upon a finding of either willful or deliberate violation or endangerment of public health, safety, or welfare, and where Commission staff is reasonably likely to prevail in proving the violation at hearing, the ALJ may issue a notice of summary suspension. Willful and deliberate, for purposes of these rules, means a deliberate, voluntary, or intentional action or inaction that is in violation of the applicable rules, statutes, or any other lawful order. Deliberate and willful acts include: the same or similar action for which a person has already been warned; reckless or dangerous action; action done without regard to the consequence or the rights or safety of others; fraudulent action; conduct without the proper authority or engaging another person who performs without the proper authority.

(III) Unless otherwise requested by the person in alleged violation, an ALJ shall hold a hearing ten days after the notice of summary suspension was served on the motor carrier. The ALJ will expedite the issuance of a decision after hearing.

(IV) The notice of summary suspension shall be served on the person along with Commission staff's notice of allegations and supporting information and a notice of hearing.

~~(c) After a hearing upon at least ten days' notice to the motor carrier affected, and upon proof of violation, the Commission may issue an order to cease and desist, suspend, revoke, alter, or amend any certificate or permit for the following reasons:~~

~~(I) a violation of, or failure to comply with, any statute, order, or rule concerning a motor carrier; or~~

~~(II) a conviction, guilty plea, or plea of nolo contendere to a felony by an owner, member, partner, director, or officer of a towing carrier.~~

(c) Automatic and immediate revocation.

(I) Whenever Commission records indicate that a hazardous material carrier's insurance or surety coverage is canceled and the Commission has no proof on file indicating replacement coverage, the permit is automatically revoked pursuant to § 42-20-202(2)(a), C.R.S.

(A) The Commission shall notify the hazardous materials carrier:

(i) that the Commission is in receipt of insurance or surety cancelation an the effective date of the cancelation; and

(ii) that it shall not conduct operations under any of its authorities or permits after the coverage cancelation date.

(B) Operations performed during lapses in coverage are subject to civil penalty assessments.

(II) When a motor carrier operating under a limited regulation permit issued pursuant to Part 3 of Title 40, Article 10.1, C.R.S., fails to pay a civil penalty, imposed by a final decision of the Commission within the time prescribed for payment, the permit is revoked immediately. The motor carrier, any owner, principal, officer, member, partner, or director of the motor carrier; and any other entity owned or operated by that owner, principal, officer, member, partner, or director are disqualified from applying for a permit for 36 months from the date the penalty payment was due.

(III) When a motor carrier operating under a towing permit issued pursuant to Part 4 of Title 40, Article 10.1, C.R.S., fails to pay a civil penalty, imposed by a final decision of the Commission within the time prescribed for payment, the permit is revoked immediately. The motor carrier, any owner, principal, officer, member, partner, or director of the motor carrier; and any other entity owned or operated by that owner, principal, officer, member, partner, or director may be disqualified from applying for a permit for up to 60 months from the date the penalty payment was due.

(IV) When a motor carrier operating under a household goods permit issued pursuant to Part 5 of Title 40, Article 10.1, C.R.S., fails to pay a civil penalty, imposed by a final decision of the Commission within the time prescribed for payment, the permit is revoked immediately. The motor carrier, any owner, principal, officer, member, partner, or director of the motor carrier; and any other entity owned or operated by that owner, principal, officer, member, partner, or director are disqualified from applying for a permit for 36 months from the date the penalty payment was due.

(d) Period of ineligibility.

(I) A motor carrier whose certificate or permit is revoked shall be ineligible to be issued another certificate or permit for at least one year from the date of such revocation or for such additional period of time as the Commission may in its discretion determine to be appropriate.

(II) A motor carrier whose certificate or permit is revoked more than twice shall be ineligible to be issued another certificate or permit for at least two years from the date of such revocation or for such additional period of time as the Commission may in its discretion determine to be appropriate.

(III) In the case of an entity other than an individual, such period of ineligibility shall also apply to all principals, members, owners, managers, officers, and directors of the entity, without regard to capacity in the same or different entity during the period of ineligibility.

(e) Subparagraphs (d)(I) and (II) shall not apply to revocations that are solely the result of failure to maintain the financial responsibility required by rule 6007, unless the motor carrier knowingly operated without the required financial responsibility.

6009. Annual Motor Vehicle Fees ~~– Exemption~~.

(a) Every motor carrier shall pay to the Commission an annual fee before the first day of January of each calendar year, for each motor vehicle that such motor carrier owns, controls, operates, or manages within the state of Colorado as set forth in § 40-10.1-111, C.R.S.

~~(b) The Commission shall provide public notice on the Commission's website at least 60 days prior to the effective date of such annual fee.~~

(~~c~~b) A motor carrier that obtains an authority or permit during the calendar year shall, unless the Commission orders otherwise, pay the annual fee at the time of obtaining the authority or permit.

(~~d~~c) A motor carrier that acquires one or more additional motor vehicles during the calendar year shall pay the annual fee prior to placing the additional vehicle(s) into service.

(~~e~~d) Proof of payment of each annual fee shall be in the form of a vehicle stamp issued by the Commission.

(~~f~~e) A vehicle stamp is valid only for the calendar year for which it is purchased.

(~~g~~f) A motor carrier shall not operate a motor vehicle unless it has affixed a valid vehicle stamp to the inside lower right-hand corner (passenger side) of the motor vehicle's windshield. In the alternative, the vehicle stamp may be affixed to the right front side window of the motor vehicle so long as the stamp does not interfere with the driver's use of the right-hand outside mirror.

(g) A motor carrier may request a replacement vehicle stamp. The Commission will provide a replacement stamp, without charge, so long as the motor carrier requesting the replacement stamp remits a sufficient portion of the damaged stamp, including the unique number of the stamp to be replaced.

(h) Exemption for a UCR registrant.

(I) Except as provided in subparagraph (II), a motor carrier that is also a UCR registrant for the same calendar year is exempt from paragraphs (a) through (~~g~~f) of this rule.

(II) A motor carrier that is also a UCR registrant for the same calendar year is not exempt from paragraphs (a) through (~~g~~f) of this rule for any motor vehicle that:

(A) was used only in intrastate commerce;

(B) was not included in the calculation of fees paid under the UCR Agreement; and

(C) provides transportation of household goods, nonconsensual tows, or passenger transportation that is not subject to the preemption provisions of 49 U.S.C. section 14501(a).

(i) Exemption for a mover. A mover holding a permit issued under Part 5 of Article 10.1 of Title 40, C.R.S., is exempt from paragraphs (a) through (~~g~~f) of this rule.

6010. ~~Letter of Authority and Permit~~Naming Requirements.

(a) No ~~party~~ person shall file an application under a name or trade name that identifies a ~~type of~~ transportation service not requested or currently authorized (e.g., a limited regulation carrier or a common carrier with only call-and-demand shuttle service shall not have taxi in its name). If an application is filed in violation of this rule, the Commission shall not issue a certificate or permit under such name.

(b) No person shall operate~~Any carrier currently operating~~ under a name or trade name ~~that~~ that identifies a ~~type of~~ transportation service not currently authorized by its certificate or permit (e.g., a limited regulation carrier or a common carrier with only call-and-demand shuttle service shall not have taxi in its name)~~. shall alter its name or trade name to comply with this rule within one year after the effective date of these rules.~~

(c) The motor carrier must maintain evidence of its authority or permit at its principal place of business and, upon request, shall immediately present it to any enforcement official.

6011. Designation of Agent, Service and Notice.

(a) Each motor carrier shall file in writing with the Commission, and shall maintain on file, its designation of the name, mailing address, and physical address of a person upon whom service may be made of any lawful notice, order, process, or demand. The named person is the motor carrier's designated agent. A motor carrier shall not designate the Secretary of State of the state of Colorado. The person designated, if a natural person, shall be at least 18 years of age. The addresses of the person designated shall be in the state of Colorado.

(b) Each motor carrier shall notify the Commission of any changes in the designated agent's identity, name, mailing address, physical address, email address or phone number by filing a new designation within two days following the effective date of such change.

(~~b~~c) Service upon a motor carrier's named designated agent, as on file with the Commission, shall be deemed to be service upon the motor carrier.

(d) Notice sent to the motor carrier's designated agent on file with the Commission shall constitute prima facie evidence that the motor carrier received the notice.

6012. ~~[Reserved].~~Prohibited Credit Card Fees.

No additional fees associate with the use or processing of a credit card may be charged pursuant to § 5-2-212, C.R.S.

6013. ~~Notice~~[Reserved].

~~Notice sent to the motor carrier's address on file with the Commission shall constitute prima facie evidence that the motor carrier received the notice.~~

6014. Waivers.

A motor carrier granted a waiver, or engaging a driver who has been granted a waiver of any rule in this Part 6 shall:

(a) If the waiver pertains to a motor vehicle~~:~~ maintain a copy of the waiver:

(I) in the affected motor vehicle; and

(II) in the motor carrier's motor vehicle maintenance records at the motor carrier's primary place of business.

(b) If the waiver pertains to a driver~~:~~ ensure that a copy of the waiver is:

(I) carried on the affected driver's person whenever the driver is operating a motor vehicle over which the Commission has jurisdiction; and

(II) maintained in the affected driver's qualification file at the motor carrier's primary place of business.

(c) A copy of any other waiver shall be maintained at the motor carrier's primary place of business.

6015. Exterior Vehicle Markings, Signs, or Graphics.

(a) With the exceptions of luxury limousines as restricted by rule 6304, all motor vehicles must have external markings as detailed below.

(I) The markings on the vehicle must;

(A) appear on both sides of vehicles;

(B) be in letters that contrast sharply in color with the background on which the letters are placed;

(C) be readily legible during daylight hours from a distance of 50 feet, but in no case be less than three inches tall;

(D) be maintained in a manner that retains the legibility required above;

(E) display the name or a trade name as set forth in ~~in the common carrier~~its certificate(s)~~, the contract carrier~~ or permit(s)~~, the towing carrier permit(s), or the mover permit(s), as applicable~~;

(F) display the letter and/or number designation of the carrier's certificate(s) and or permit(s), as applicable, preceded by the letters "CO PUC" or "PUC;" and

(G) either be painted on the motor vehicle or consist of a removable device.

(II) Subparagraphs (I)(E) and (I)(F) shall not apply to a commercial motor vehicle that is subject to 49 U.S.C. Section 14506 regarding restrictions on identification of vehicles.

~~(III) In lieu of subparagraph (I), a regulated intrastate carrier or a limited regulation carrier operating a motor vehicle having a seating capacity of fifteen or less may affix the marking required by subparagraph (F) to both the front and rear of the motor vehicle in compliance with subparagraphs (I)(B), (I)(C), (I)(D), and (I)(G).~~

(b) A motor carrier shall remove all markings required by this rule from a motor vehicle that the motor carrier is permanently withdrawing from service.

6016. Offering of Transportation Service.

(a) Advertising to arrange transportation service as a transportation broker is not an offer to provide transportation service; rather, it is an offer to broker transportation service. A person shall be presumed to have offered transportation service if the person has not disclosed the fact the services are being arranged by a transportation broker.

(b) Advertising to provide transportation service or advertising transportation service other than by brokerage is an offer to provide the advertised service.

(c) No motor carrier, or any officer, agent, employee, or representative of said carrier, shall offer to provide a transportation service without authority or permit to provide such service.

(d) No motor carrier, or any officer, agent, employee, or representative of said carrier, shall offer a transportation service in a name, to the character, other than a name appearing on said carrier's authority or permit (e.g., A and B Transportation violates this rule when advertising as A & B Transportation).

(I) If a motor carrier operates its authority or permit under a trade name, nothing in this paragraph shall be construed to require advertising under all names appearing on said carrier's authority or permit.

(II) If a motor carrier holds an authority or permit under more than one trade name, nothing in this paragraph shall be construed to require said carrier advertise under all the trade names.

(e) Each advertisement of a mover shall include the phrase "CO PUC Mover Permit No. [HHG permit number]" and the physical address of the mover.

(f) Each advertisement of a towing carrier in any newspaper or other publication, on radio, television, or any electronic medium, including more than the name and telephone number of the carrier shall include the phrase "PUC. [T- permit number]" of the towing carrier.

(g) Each advertisement of a luxury limousine carrier in any newspaper or other publication, on radio, television, or any electronic medium, including more than the name and telephone number of the carrier shall include the phrase "PUC [LL- permit number]".

(h) Roof lights. Except as otherwise required by law, only a taxicab operated by a common carrier under an authority to provide taxicab service may have a roof light.

6017. Violations, Civil Enforcement, and Enhancement of Civil Penalties.

(a) Each occurrence of a violation and each day that such violation continues, shall constitute a separate violation and shall be subject to a separate civil penalty.

(~~a~~b) A violation of subparagraph (a)(I)~~, except (a)(I)(A) or (a)(I)(B),~~ of rule 6007 may result in the assessment of a civil penalty of up to $11,000.00 for each violation.

(c) A violation of paragraph 6005(c) or (d) may result in the assessment of a civil penalty of up to $1,100 for each violation.

(~~d~~b) A violation of § 40-10.1-111 ~~(1)(f) or~~ (2), C.R.S., or ~~rule~~ paragraph 6009(a), (~~c~~b), ~~or~~ (~~d~~c) or (f) with regard to operating a motor vehicle without having paid the annual fee may result in the assessment of a civil penalty of up to $400.00 for each violation.

(~~c~~e) A violation of ~~rule~~ paragraphs 6016(c) and (d) may result in the assessment of a civil penalty of up to $550.00 for each violation.

(~~d~~f) Except as provided for in paragraph~~s~~ (~~a~~b) through (~~c~~e) of this rule, a violation of any provision of rules 6000 through 6016 ~~or § 40-10.1-111(1)(f) or (2), C.R.S.~~ may result in the assessment of a civil penalty of up to $275.00 for each violation.

(~~e~~g) Pursuant to § 40-7-112, C.R.S., a person, whose driver operates a motor vehicle in violation of applicable statutes or these rules, may be assessed a civil penalty for such violation.

(~~f~~h) Notwithstanding any provision in these rules to the contrary, the Commission may assess a civil penalty of two times the amount or three times the amount, as provided in § 40-7-113, C.R.S.

(I) The amounts in ~~sub~~paragraphs (~~a~~b) through (~~d~~f) shall be two times the specified amount if:

(A) the person engaged in prior conduct which resulted in the issuance of a prior civil penalty assessment notice;

(B) the conduct is of the same or narrower character as the conduct that was cited in the prior civil penalty assessment notice;

(C) the conduct occurred within 24 months ~~one year~~ after the date of violation in the prior civil penalty assessment notice; and

(D) the conduct occurred after the person's receipt of the prior civil penalty assessment notice.

(II) The amounts in ~~sub~~paragraphs ~~(I)~~(~~a~~b) through (~~d~~f) shall be three times the specified amount if:

(A) the person engaged in two or more instances of prior conduct which resulted in the issuance of two or more prior civil penalty assessment notices;

(B) the conduct is of the same or narrower character as the conduct that was cited in the prior civil penalty assessment notices;

(C) the conduct occurred within 24 months ~~one year~~ after the two most recent prior instances of conduct cited in the prior civil penalty assessment notices; and

(D) the conduct occurred after the person's receipt of two or more prior civil penalty assessment notices.

(~~g~~i) The civil penalty assessment notice shall contain the maximum penalty amounts prescribed for the violation, the amount of the penalty surcharge pursuant to § 24-34-108(2), C.R.S., with a separate provision for a reduced penalty of 50 percent of the maximum penalty amount if paid within ten days after the civil penalty assessment notice is tendered.

(~~h~~j) Civil penalty assessments are in addition to any other penalties provided by law.

6018. – 6099. [Reserved].

SAFETY RULES

6100. Applicability of Safety Rules.

(a) Rules 6100 through 6199 apply to:

(I) regulated intrastate carriers and limited regulation carriers; and

(II) drivers (whether as employees or independent contractors), employees, and commercial motor vehicles of the motor carriers listed in subparagraph (a)(I).

6101. Definitions.

In addition to the definitions in rule 6001, and those incorporated from federal law in rule 6102, the following definitions apply to all carriers subject to these safety rules:

(a) "Commission" means the Public Utilities Commission of the state of Colorado. Any reference to the United States Department of Transportation, the FMCSA, or any other federal agency in any provision of the Code of Federal Regulations adopted by reference in these safety rules shall be construed to refer to the Commission.

(b) "Commercial motor vehicle" or "motor vehicle" as used in regulations incorporated by reference by rule 6102, means a motor vehicle operated by a regulated intrastate carrier or limited regulation carrier. Notwithstanding the foregoing, for purposes of the incorporated rules found in 49 C.F.R. Part 382 (concerning drug and alcohol testing), the definition of commercial motor vehicle shall be as found in 49 C.F.R. § 382.107; and for purposes of the incorporated rules found in 49 C.F.R. Part 383 (concerning commercial driver's licenses) the definition of commercial motor vehicle shall be as found in 49 C.F.R. § 383.5.

(c) "Golf cart" means a golf cart as defined in § 42-1-102(39.5), C.R.S.

(~~c~~d) "Employer" as used in regulations incorporated by reference by rule 6102, means a regulated intrastate carrier or limited regulation carrier, in addition to the definition found in 49 C.F.R. § 390.5.

(~~d~~e) "Low-power scooter" means low-power scooter as defined in § 42-1-102(48.5), C.R.S.

(f) "Low-speed electric vehicle" means low-speed electric vehicle as defined in § 42-1-102(48.6), C.R.S.

(~~e~~g) "Motorcycle" means motorcycle as defined in § 42-1-102(55), C.R.S.

6102. Regulations Incorporated by Reference.

(a) Except as provided in rule 6103 and paragraph (c) of this rule, the Commission incorporates by reference the regulations published in:

(I) 49 C.F.R. Parts 40, 382, 383, 390, 391, 392, 393, 395, 396, and 399, as revised on ~~October 1, 2010~~January 1, 2017.

(II) 49 C.F.R. Appendix G to Subchapter B of Chapter III, as revised on ~~October 1, 2010~~January 1, 2017.

(b) No later amendments to or editions of the C.F.R. are incorporated into these rules.

(c) The following provisions of 49 C.F.R. are not incorporated by reference:

(I) §§ 382.507, 383.53, 390.3(a), 390.3(c), 390.3(f)(2), 390.3(f)(6), 390.21(a), 390.21(b), 390.21(e), 390.21(f), 390.37, 391.47, 391.49, 391.68, 391.69, 395.8(e), and 396.9; and

(II) The definition of "commercial motor vehicle" in § 390.5.

(d) The material incorporated by reference may be examined at the offices of the Commission or any state publications library.

6103. Modification of Regulations Incorporated by Reference.

(a) ~~With regard to~~ The qualification and examination of drivers: 49 C.F.R. § 391.11(b)(1), relating to age of drivers, shall not apply to drivers operating solely in intrastate commerce; rather, such drivers shall be at least eighteen years of age. This ~~sub~~paragraph ~~(I)~~ shall not apply to drivers operating motor vehicles used in transporting hazardous materials of a type and quantity that would require the motor vehicle to be marked or placarded under 49 C.F.R. § 177.823.

(b) ~~With regard to m~~Motor vehicle parts and accessories necessary for safe operation~~:~~.

(I) The provisions of 49 C.F.R. § 393.55 shall only apply to a bus with a seating capacity of 16 or more.

(II) The provisions of 49 C.F.R. § 393.83(c) and (d), relating to exhaust systems, shall only apply to any bus with a seating capacity of 16 or more or having a GVWR of more than 10,000 pounds, which is manufactured with a side discharge exhaust.

(III) The provisions of 49 C.F.R. § 393.89, relating to driveshaft protection, and 393.95, relating to emergency equipment, shall only apply to any bus with a seating capacity of 16 or more or having a GVWR of more than 10,000 pounds.

(IV) In addition to the requirements of 49 C.F.R. § 393.93 regarding seat belt assemblies for a bus, a vehicle manufactured with such a system shall be operational and readily accessible to passengers at all times.

(c) ~~With regards to h~~Hours of service of drivers~~:~~.

(I) ~~For a motor carrier of passengers operating a motor vehicle having a seating capacity of 16 or more, or GVWR or GCWR of more than 10,000 pounds, T~~the requirements of 49 C.F.R. §§395.5(a)(2) and (b) and 395.8, shall apply to all motor carriers of passengers operating a motor vehicle having a seating capacity of 16 or more, or GVWR or GCWR of more than 10,000 pounds,.

(II) The requirements of 49 C.F.R. §§395.5(a)(2), 395.5(b) and the log book requirements set forth under 395.8 shall not apply ~~For a~~to all motor carriers of passengers operating a motor vehicle having a seating capacity of 15 or less and GVWR or GCWR or less than 10,001 pounds.~~, the requirements of 49 C.F.R. §§395.5(a)(2) and 395.8 shall not apply.~~

(III) In exchange for not being held to the more rigid requirements of §§ 395.5(a)(2), 395.5(b) and the log book requirements set for under 395.8, assumptions about a driver's duty status after coming on duty are required. Motor carriers subject to subparagraph (II) are not required to track and record each time a driver changes a duty status after going on duty. For the purpose of calculating hours of service, a driver subject to this rule is and remains on duty until and unless the driver is released from duty by the motor carrier for a minimum of eight consecutive hours.

[OPTION ONE]:

(IV) A driver shall not be on duty or be permitted to be on duty more than 12 consecutive hours in any 24 hours period. Drivers may go off duty for any period of time during the 12-hour period, but the 12-hour period shall only be restarted after 12 consecutive hours off duty.

[OPTION TWO]:

(IV) A motor carrier shall neither permit nor require a driver to drive, nor shall any such driver drive in violation of any of the following.

(A) 16 Hour Rule: At the end of the 16th hour after coming on duty, a driver shall not drive for-hire and shall be released from duty~~,~~ for a minimum of eight consecutive hours. Drivers may go off duty for any period of time during the 16-hour period, but the 16-hour period shall only be restarted after eight consecutive hours off duty.~~;~~

(B) Ten Hour Rule: After coming on duty and within the 16 hours provided by the 16 hour rule in subparagraph (A) above, ~~A~~a driver shall not exceed ten hours of~~maximum~~ driving time~~, following eight consecutive hours off duty;~~. At the end of the tenth hour, a driver shall not drive for-hire until he or she has been released from duty by the motor carrier for a minimum of eight consecutive hours.

(C) 80 Hour Rule: ~~A driver shall not drive for a minimum period of eight consecutive hours after having been on duty 80 hours in any eight consecutive days. In no instance shall a driver's hours of service exceed 80 hours in any rolling eight consecutive day period~~In no instance shall a driver's on duty hours exceed 80 hours in any eight consecutive day period. Upon accumulating 80 hours on duty in any rolling eight consecutive days, a driver shall not drive and shall be released from duty for a minimum of eight consecutive hours. For the purposes of this rule, the total number of hours on duty for each day within the eight consecutive day period shall be determined by adding the daily on duty totals derived from the 16 hour rule in subparagraph (A) of this rule.~~; and~~

(D) A motor carrier that employs or retains the driver shall maintain and retain accurate and true time records, including all supporting documents verifying such time records, for a period of six months showing:

(i) the time(s) the driver reports for duty each day;

(ii) the time(s) the driver is released from duty each day;

(iii) the total number of hours the driver is on duty each day; and

(iv) for a driver who is off duty for an entire day, an indication to that effect.

(d) With regard to inspection of drivers and/or motor vehicles:

(I) A driver receiving a Driver/Vehicle Compliance Report (DVCR) from the Commission shall deliver the DVCR to the motor carrier operating the motor vehicle upon the driver's next arrival at any of the motor carrier's terminals or facilities. If the driver is not scheduled to arrive at a terminal or facility within 24 hours, the driver shall immediately mail the report to the motor carrier operating the motor vehicle.

(II) Motor carriers shall examine the DVCR and correct all violations or defects noted thereon. Within 15 days following the date of the inspection, the motor carrier shall:

(A) complete the "Carrier Official's Signature, Title, and Date" portions of the DVCR, certifying that all violations on the DVCR have been corrected;

(B) return the completed DVCR to the Commission at the address shown on the DVCR; and

(C) retain a copy of the DVCR in its records.

(III) A motor vehicle that would likely cause an accident or a breakdown due to its mechanical condition as determined by the current out-of-service criteria set forth by the Commercial Vehicle Safety Alliance shall be placed out-of-service.

(IV) A driver who, by reason of the driver's lack of qualification, sickness or fatigue, violation of hours of service provisions, or violation of drug or alcohol provisions, would likely cause an accident as determined by the current out-of-service criteria set forth by the Commercial Vehicle Safety Alliance shall be placed out-of-service.

(V) A DVCR declaring a motor vehicle and/or a motor vehicle driver out-of-service shall constitute an out-of-service order giving notice to the driver and the motor carrier regarding the out-of-service condition.

(VI) No motor carrier shall require or permit any person to operate, nor shall any person operate, any motor vehicle declared and ordered out-of-service until all repairs required by the out-of-service order have been satisfactorily completed.

(VII) No motor carrier shall require or permit any person declared and ordered out-of-service to operate, nor shall any person operate, any motor vehicle until the person's out-of-service condition has been corrected.

(VIII) A motor vehicle that does not qualify under these Part 6 rules may be placed out of service.

(IX) A motor vehicle equipped with ramps, lifts or other special devices to facilitate the loading, unloading or transportation of individuals with disabilities shall be placed out of service if such devices are not in good working order.

(X) A motor vehicle identified as a golf cart, low-power scooter, low-speed electric vehicle, or motorcycle will be subject to all inspection rules applicable to that type of vehicle.

(e) Motor carriers and drivers shall, upon request by an enforcement official, make available for inspection all records required to be made by these safety rules and all motor vehicles subject to these safety rules.

6104. Motor Vehicle Weight.

An enforcement official may require a motor carrier to have a motor vehicle weighed, if such motor vehicle's structural components, suspension components, wheels, tires, or loading may, in the enforcement official's judgment, create potentially unsafe operations.

6105. Fingerprint-Based Criminal History Record Checks.

(a) For purposes of this rule only:

~~(I) "CBI" means the Colorado Bureau of Investigation.~~

(I~~i~~) "Driver" means a person who drives or wants to drive for a passenger carrier, regardless of whether such person drives or wants to drive as an employee or independent contractor.

~~(III) "Passenger carrier" means a taxicab carrier and a limited regulation carrier, except for fire crew transport.~~

(~~IV~~II) "Criminal history record check" means a state and national fingerprint-based criminal history record check.

(b) This rule applies to passenger carriers and drivers.

(c) Within ten days of contracting or being employed to drive for a passenger carrier, a driver who is not qualified by the Commission at the time of hire shall submit to the Commission a set of the driver's fingerprints, documentation of any name change from the agency where the change was approved, and payment of the actual cost to conduct a criminal history record check. The passenger carrier shall provide to the driver a copy of the Commission's Notice to Driver Applicants which informs the driver that his or her fingerprints will be submitted to the CBI and FBI. This notice shall be provided to the driver prior to the submission of fingerprints.

(d) A driver shall re-submit to the Commission a set of the driver's fingerprints, documentation of any name change from the agency where the change was approved, and payment of the actual cost to conduct a criminal history record check within five years after being qualified by the Commission and at least once every five years thereafter. Qualifications without an expiration date ~~shall expire five years from August 1, 2012~~are deemed to have expired August 1, 2017.

(e) The driver shall submit his or her fingerprints on an official ~~Federal Bureau of Investigation~~FBI form FD-258. The Commission will only accept official forms completed by a law enforcement or state agency in accordance with the instructions available from the Commission or its website.

(f) Qualification determination based upon moral character or statutory disqualification.

(I) Upon the Commission's receipt of a completed criminal history record check, Commission staff shall make a qualification determination regarding the driver's qualification status. In making this determination, Commission staff is authorized to request from the driver, and the driver shall provide, additional information that will assist Commission staff in making the determination regarding the driver's qualification status. If a driver does not provide such additional information requested by Commission staff, or a explain why it is unavailable within 15 days of the request, Commission staff may disqualify the driver.

(II) A driver is not of good moral character and shall be disqualified and prohibited from driving, if the driver has:

(A) a conviction in the state of Colorado at any time of any class 1 or 2 felony under Title 18, C.R.S.;

(B) a conviction in the state of Colorado, within the ten years preceding the date the criminal history record check is completed, of a crime of violence, as defined in § 18-1.3-406(2), C.R.S.;

(C) a conviction in the state of Colorado, within the eight years preceding the date the criminal history record check is completed, of any class 3 felony under Title 18, C.R.S.;

(D) a conviction in the state of Colorado, within the four years preceding the date the criminal history record check is completed, of any class 4 felony under Articles 2, 3, 3.5, 4, 5, 6, 6.5, 8, 9, 12, or 15 of Title 18, C.R.S.; or

(E) an offense in any other state or in the United States that is comparable to any offense listed in subparagraphs (A) through (D) within the same time periods as listed in subparagraphs (A) through (D).

(III) Without a determination as to moral character at the time of determination, a driver is disqualified by statute and prohibited from driving if the driver has been:

(A) convicted in the state of Colorado at any time of a felony or misdemeanor unlawful sexual offense against a child, as defined in § 18-3-411, C.R.S., or of a comparable offense in any other state or in the United States at any time;

(B) within the two years preceding the date the criminal history record check is completed, convicted in this state of driving under the influence (DUI), as defined in § 42-4-1301(1)(f), C.R.S.; driving with excessive alcoholic content (DUI per se), as described in § 42-4-1301(2)(a), C.R.S.; driving while ability impaired, as defined in § 42-4-1301(1)(g), C.R.S.; or ~~driving while an habitual user of a controlled substance, as described in § 42-4-1301(1)(c), C.R.S.; or~~

(C) within the two years preceding the date the criminal history record check is completed, convicted of an offense comparable to those included in subparagraph (III)(B) in any other state or in the United States.

(IV) For purposes of this rule, a deferred judgment and sentence pursuant to § 18-1.3-102, C.R.S., shall be deemed to be a conviction during the period of the deferred judgment and sentence.

(g) The Commission and Commission staff may consult and use any commercially or governmentally available information source in conducting criminal history record checks. The Commission may require a name-based criminal history record check of a driver who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unreadable or unclassifiable.

(h) At any time, Commission staff shall disqualify a previously qualified driver whose subsequent conviction meets the criteria of this rule.

(i) A passenger carrier shall not permit a driver to drive for the passenger carrier if:

(I) the driver has not complied with this rule and § 40-10.1-110, C.R.S., as applicable;

(II) the driver is disqualified and prohibited from driving under paragraph (f) of this rule; or

(III) the driver's qualification status has expired.

(j) A passenger carrier shall, as a condition of continued contract or employment, require a driver to submit his or her fingerprints to the Commission for a criminal history record check:

(I) at least once every five years; and/or

(II) within ten days of becoming aware that the driver has been convicted of the offenses listed in paragraph (f) of this rule.

(k) Commission staff shall notify the driver of its qualification determination. The Commission will also maintain a password-protected portion of its website where drivers, passenger carriers, and other persons authorized by Commission staff may access the current qualification status of drivers.

(l) If the driver is disqualified and prohibited from driving, the driver may, within 60 days of Commission staff's notification, file a petition with the Commission for qualification determination.

(I) Upon the filing of a petition for qualification~~-~~, Commission staff shall be an indispensable party.

(A) If a driver submitting fingerprints is disqualified to drive pursuant to subparagraph (f)(II), the driver shall bear the burden of proving that he is of good moral character based upon all surrounding facts and circumstances or that disqualification is not supported by fact or law.

(B) If a driver submitting fingerprints is disqualified to drive pursuant to subparagraph (f)(III), the driver shall bear the burden of proving that disqualification is not supported by fact or law;

(C) If a driver is disqualified pursuant to paragraph (h), the Commission staff shall bear the burden of proving all applicable elements.

(D) The Commission will consider the petition using the standards set forth in § 24-5-101(2), C.R.S. for disqualifications based on a determination of moral character.

(m) Commission staff's qualification determination may be relied upon by all persons, unless and until the Commission rules on a driver's qualification.

(n) If the Commission qualifies a driver upon petition, paragraph (f) shall be waived as to qualification determinations for future fingerprint resubmissions regarding the events upon which Commission staff's disqualification was based.

6106. Safety Violations, Civil Enforcement, and Civil Penalties.

(a) Each occurrence of a violation and each day that such violation continues, shall constitute a separate violation and shall be subject to a separate civil penalty.

(b~~a~~) A person who violates the following provisions may be assessed a civil penalty of up to $10,000.00 for each violation:

Citation	**Violation Description**
49 C.F.R. § 392.4(b)	Requiring or permitting a driver to drive while under the influence of, or in possession of, a narcotic drug, amphetamine, or any other substance capable of rendering the driver incapable of safely operating a motor vehicle, per §392.4(a).
49 C.F.R. § 392.5(b)(1)	Requiring or permitting a driver to operate a commercial motor vehicle within four hours of using, while under the influence of, or having in his/her possession, alcohol, per §392.5(a).
49 C.F.R. § 392.5(b)(2)	Requiring or permitting a driver to operate a commercial motor vehicle who shows evidence of, or the general appearance and conduct of, having consumed alcohol within the preceding four hours.

49 C.F.R. § 396.11(c)	Failing to correct out-of-service defects listed by the driver in a driver vehicle inspection report before the vehicle is operated again.
Rule 6103(d)(VII)	Requiring or permitting a driver to operate a motor vehicle during the period the driver was placed out of service.
Rule 6103(d)(VI)	Requiring or permitting the operation of a motor vehicle placed out of service before the required repairs are made but after the motor carrier has received notice of the defect.

(~~b~~c) A person who violates the following provisions may be assessed a civil penalty of up to $2,500.00 for each violation:

Citation	**Violation Description**
49 C.F.R. § 390.35	Making, or causing to make, fraudulent or intentionally false statements or records and/or reproducing fraudulent records if such action misrepresents a fact that constitutes a violation other than a reporting or recordkeeping violation.
49 C.F.R. § 391.11(a)	Requiring or permitting a driver who is not qualified to drive [§ 391.11(b)(4), (5), and (7)].
49 C.F.R. § 391.15(a)	Using a disqualified driver.
49 C.F.R. § 392.2	Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated.
49 C.F.R. § 392.9(a)(1)	Requiring or permitting a driver to drive without the vehicle's cargo being properly distributed and adequately secured.
49 C.F.R. § 395.5(b)(1)	Requiring or permitting a driver to drive after having been on duty 60 hours in seven consecutive days.
49 C.F.R. §395.5(b)(2)	Requiring or permitting a driver to drive after having been on duty 70 hours in eight consecutive days.
49 C.F.R. § 395.5(a)(1)	Requiring or permitting a driver to drive more than ten hours.

49 C.F.R. § 395.5(a)(2)	Requiring or permitting a driver to drive after having been on duty 15 hours.
Rule 6103(c)(~~II~~IV)(A)	Requiring or permitting a driver to drive after having been on duty for 16 consecutive hours.
Rule 6103(c)(~~II~~IV)(B)	Requiring or permitting a driver to drive more than ten hours.
Rule 6103(c)(~~II~~IV)(C)	Requiring or permitting a driver to drive after having been on duty 80 hours in eight consecutive days.
49 C.F.R. § 396.17(g)	Failing to promptly repair parts and accessories not meeting minimum periodic inspection standards.
49 C.F.R. § 382.115(a)	Failing to implement an alcohol and/or controlled substances testing program.
49 C.F.R. § 382.201	Using a driver known to have an alcohol concentration of 0.04 or greater.
49 C.F.R. § 382.211	Using a driver who has refused to submit to an alcohol or controlled substances test required under Part 382.
49 C.F.R. § 382.213(b)	Using a driver known to have used a controlled substance.
49 C.F.R. § 382.215	Using a driver known to have tested positive for a controlled substance.
49 C.F.R. § 382.301(a)	Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.
49 C.F.R. § 382.303(a)	Failing to conduct post accident testing on driver for alcohol and/or controlled substances.
49 C.F.R. § 382.305	Failing to implement a random controlled substances and/or an alcohol testing program.
49 C.F.R. § 382.305(b)(1)	Failing to conduct random alcohol testing at an annual rate of not less than the applicable annual rate of the average number of driver positions.

49 C.F.R. § 382.305(b)(2)	Failing to conduct random controlled substances testing at an annual rate of not less than the applicable annual rate of the average number of driver positions.
49 C.F.R. § 382.309(a)	Using a driver who has not undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.
49 C.F.R. § 382.309(b)	Using a driver who has not undergone a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances.
49 C.F.R. § 382.503	Allowing a driver to perform safety sensitive function, after engaging in conduct prohibited by subpart B, without being evaluated by substance abuse professional, as required by § 382.605.
49 C.F.R. § 382.505(a)	Using a driver within 24 hours after being found to have an alcohol concentration of 0.02 or greater but less than 0.04.
49 C.F.R. § 382.605(c)(1)	Using a driver who has not undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 or with verified negative test result, after engaging in conduct prohibited by part 382 subpart B.
49 C.F.R. § 382.605(c)(2)(ii)	Failing to subject a driver who has been identified as needing assistance to at least six unannounced follow-up alcohol and/or controlled substance tests in the first 12 months following the driver's return to duty.
49 C.F.R. § 392.5(a) or (b)	Driving after being placed out of service for 24 hours for violating the alcohol prohibitions.

(~~c~~d) A person who violates the following provisions may be assessed a civil penalty of up to $1,100.00 for each violation:

Citation	**Violation Description**
49 C.F.R. § 391.45	Allowing a driver to drive who is not medically examined and certified.
49 C.F.R. § 396.17(a)	Using a commercial motor vehicle not periodically inspected.

Rule 6103(d)(VI)	Operating a motor vehicle after the vehicle was placed out of service and before the required repairs are made.
Rule 6103(d)(VII)	Operating a motor vehicle during a period the driver was placed out of service.
~~Rule 6107~~	~~Knowingly falsify, destroy, mutilate, change, or cause falsification, destruction, mutilation, or change, to any record.~~

(~~d~~e) A person who violates the following recordkeeping provisions may be assessed a civil penalty of up to $500.00 for each violation ~~up to a cumulative maximum of $10,000.00~~:

Citation	**Violation Description**
49 C.F.R. § 392.6	Scheduling a run that would necessitate the vehicle being operated at speeds in excess of those prescribed.
Rule 6103(c)(~~II~~IV)(D)	Failing to maintain and retain accurate and true time records, including all supporting documents verifying such time records.
Rule 6103(d)(II)	Failing to return the written certification of correction as required by the out-of-service order.
49 C.F.R. § 395.8(a)	Failing to require driver to make a record of duty status.
49 C.F.R. § 395.8(i)	Failing to require driver to forward within 13 days of completion, the original of the record of duty status.
49 C.F.R. § 395.8(k)(1)	Failing to preserve driver's record of duty status and supporting documents for six months.
49 C.F.R. § 396.3(b)	Failing to keep minimum records of inspection and vehicle maintenance.
49 C.F.R. § 396.11(a)	Failing to require driver to prepare driver vehicle inspection report.

(e~~f~~) A person who violates 49 C.F.R. Part 383, Subparts B, C, E, F, G, or H may be assessed a civil penalty of $2,750.00 for each violation.

(g~~f~~) A person who violates any provision of rule 6105 may be assessed a civil penalty of $275.00 for each violation.

(~~g~~h) Except as provided in paragraphs (~~a~~b) through (~~f~~g) of this rule, a person who violates any other rule may be assessed a civil penalty of up to $250.00 for each violation.

(~~h~~i) For each type of recordkeeping violation, a civil penalty may be assessed up to a cumulative maximum of $10,000.00.

~~(i) With the exception of paragraph (f) of this rule, the provisions relating to the doubling and tripling of civil penalty assessments, found in § 40-7-113(3) and (4), and in paragraphs (g) and (h) of rule 6017, shall not apply to the assessment of civil penalties for safety rule violations~~

(j) Civil penalty assessments are in addition to any other penalties provided by law.

~~**6107. Records: Falsification, Reproduction, or Alteration.**~~

~~No person shall knowingly falsify, destroy, mutilate, change, or cause falsification, destruction, mutilation, or change to any record, subject to inspection by the Commission.~~

6107. Age and Condition of Passenger Carrier Motor Vehicles.

Vehicles used for the transportation of passengers and operated under certificates or permits issued by this Commission shall be in good physical condition, meeting the following minimum standards.

(a) The body of the vehicle has a good not faded paint job; is devoid of dents, rust, cracked bumpers, broken trim, broken mirrors, or cracked windows including the windshield.

(b) The interior of the vehicle has no missing or loose parts; has no exposed wiring; is clean; and has no cracks, tears or stains on the upholstery, seats, headliners, floor mats, carpeting or interior trim.

(c) The vehicle's air conditioning system is capable of cooling the vehicle interior to 65 degrees.

(d) The vehicle's heating system is capable of heating the vehicle interior to 85 degrees.

(e) Exterior markings are compliant with applicable vehicle marking rules 6015 and 6304.

(f) The motor carrier's name, permit number and the name of the driver are identified in the interior of the vehicle and are clearly visible to the passenger.

(g) A vehicle equipped with ramps, lifts, or other special devises to facilitate the loading, unloading or transportation of individuals with disabilities has all such devices in good working order.

(h) A vehicle with a seating capacity of less than 16 passengers that is eight or more years old as of January 1 of each calendar year, or has more than 150,000 miles shall have the required periodic vehicle inspection completed at least semi-annually. The required inspections must be compliant with the provisions of 49 C.F.R. § 396.17 and be completed by a qualified inspector meeting the minimum qualification requirements set forth in 49 C.F.R. § 396.19.

(i) No vehicle with a seating capacity of less than 16 passengers shall be more than 12 years old regardless of condition or mileage.

(j) No vehicle with a seating capacity of less than 16 passengers that has more than 250,000 miles shall be operated regardless of age or condition.

(k) No vehicle with a seating capacity of 16 passengers or more shall be more than 15 years old regardless of condition or mileage.

(l) The age of the vehicle shall be determined by subtracting the model year of the vehicle from the present calendar year. By way of example, a 2010 model year vehicle is seven years old for the calendar year 2017.

(m) No petition for waiver of this rule shall be considered by the Commission unless the petitioner files; along with his or her petition:

(I) proof of compliance with all provisions of this rule;

(II) proof that the vehicle has been owned and operated by the petitioner for at least three consecutive years prior to the filing of the petition and documentation confirming the mechanical integrity of the vehicle;

(III) the motor carrier's plan to come into compliance with the minimum vehicle standards (plans to retire and replace the vehicle, the status of any loan against the vehicle, etc.);

(IV) identification of any factors related to the market served as it pertains to the uniqueness or specific needs of the specified market; and

(V) any other information the petitioner deems relevant.

6108. – 6199. [Reserved].

REGULATED INTRASTATE CARRIER RULES

Regulated Intrastate Carrier Rules.

6200. Applicability.

Rules 6200 through 6249 apply to all common carriers, all contract carriers, and to all Commission proceedings and operations concerning common carriers and contract carriers as well as applicants, employees, and drivers of such carriers.

6201. Definitions.

In addition to the definitions in rules 6001 and 6101, the following definitions apply to all carriers and drivers subject to these regulated intrastate carrier rules:

(a) "Access fee" means the fee assessed by an airport for the use of its facilities for one trip levied upon motor carriers transporting passengers to, from or at an airport.

(ab) "Auto livery" or "auto livery service" means the transportation of passengers by common carrier, including the transportation of passengers in scheduled and/or call-and-demand service. This term is only used in historical authorities.

(c) "Base area" means a geographic area in which a taxicab is authorized to provide point-to-point service. This term is defined only because of its use in authorities issued by the Commission.

(bd) "Capable," as used in § 40-10.1-204(1), C.R.S., means ready, willing, and able to provide services under the terms of the common carrier's authority. Capability may be evidenced by,

among other things, ongoing transportation operations or good faith efforts to conduct such operations under such authority.

(e) “Close proximity”, as referenced in § 40-10.1-203, C.R.S., means within a one-mile radius and 20 minutes from the drop-off location and time.

~~(c) "Call-and-demand," "on call-and-demand," or "call-and-demand service" means the transportation of passengers by a common carrier not on schedule.~~

~~(d) “Chartering party” means a person or group of persons who share a personal or professional relationship whereby all such persons are members of the same affiliated group, including, a family, business, religious group, social organization or professional organization. “Chartering party” does not include groups of unrelated persons brought together by a carrier, transportation broker, or other third party.~~

~~(e) "Charter service" means transportation of a chartering party provided by a common carrier on a call-and-demand basis.~~

~~(f) "Common carrier" means every person directly or indirectly affording a means of transportation, or any service or facility in connection therewith, within this state by motor vehicle or other vehicle whatever by indiscriminately accepting and carrying passengers for compensation; except that the term does not include a contract carrier as defined under § 40-10.1-101(6), C.R.S.; a motor carrier that provides transportation not subject to regulation pursuant to § 40-10.1-105, C.R.S.; or a limited regulation carrier defined under § 40-10.1-301, C.R.S~~

~~(g) "Contract carrier" means every person, other than a common carrier or a motor carrier of passengers under Part 3 of Article 10.1 of Title 40, C.R.S., who, by special contract, directly or indirectly affords a means of passenger transportation over any public highway of this state.~~

~~(h) "Encumbrancer" means a person seeking or holding an encumbrance (e.g., lien or mortgage) against the authority of a common or contract carrier.~~

~~(i) "Flag stop" means a point of service designated by a common carrier on its filed schedule, which point is located between two scheduled points on the scheduled route. Typically, the common carrier does not designate a specific time for service to the flag stop; if the common carrier does designate a specific time for service, the time is considered to be an approximation.~~

(jf) "Limousine service" means the transportation of passengers by a common carrier on a call-and-demand basis charged at a per-person rate, and the use of the motor vehicle is not exclusive to any individual or group. The term "limousine service" is distinguished from the term "luxury limousine service" as used in Article 10.1 of Title 40, C.R.S. This term is only used in historical authorities.

~~(k) "Outstanding authority" means an existing authority, or any portion thereof, which is not under suspension.~~

~~(l) "Scheduled service," "on schedule," or "schedule" means the transportation of passengers by a common carrier between fixed points and over designated routes at established times as specified in the common carrier's time schedule filed with and approved by the Commission.~~

~~(m) "Shuttle service" means the transportation of passengers by a common carrier on a call-and-demand basis charged at a per-person rate and the use of the motor vehicle is not exclusive to any individual or group.~~

~~(n) "Sightseeing service" means the transportation of passengers by a common carrier on a call-and-demand basis originating and terminating at the same point for the sole purpose of viewing or visiting places of natural, historic, or scenic interest.~~

(~~o~~g) "Special bus service," "special bus transportation," or "special bus", only used in historical authorities, means the transportation of passengers by common carrier:

(I) not including ordinary and continuous scheduled service;

(II) rendered generally on weekends, holidays, or other special occasions;

(III) with a fixed termination date; and

(IV) to a number of passengers whom the carrier on its own initiative has assembled into a travel group, through its own promotion and sale of individual tickets, for a trip or tour planned by the carrier.

(~~p~~h) "Tack~~ing~~" means the joinder of two or more separate authorities or two or more separate parts thereof at a common service point for the purpose of providing a through service.

~~(q) "Taxicab" means a motor vehicle with a seating capacity of eight or less, including the driver, operated in taxicab service.~~

~~(r) "Taxicab service" means passenger transportation by a common carrier on a call-and-demand basis in a taxicab, with the first passenger therein having exclusive use of the taxicab unless such passenger agrees to multiple loading.~~

(~~s~~i) "Transfer" means, without limitation, any sale, lease, assignment, license, change in ownership, foreclosure of an encumbrance, execution in satisfaction of any judgment or claim, merger, consolidation, or similar transaction in which control of any authority or portion thereof changes from one entity to another, whether voluntarily, by court order, or otherwise.

(~~t~~j) "Transferee" means any entity newly acquiring control of any authority from a transferor.

(~~u~~k) "Transferor" means any entity transferring control of any authority to a transferee.

6202. Prohibited Operations.

(a) Without specific approval by the Commission, no regulated intrastate carrier shall:

(I) combine or tack two or more separate authorities or two or more separate parts of an authority in order to render a transportation service not authorized by any individual authority or part thereof;

(II) extend, enlarge, diminish, change, alter, or vary the territory, route, or service authorized by its authority;

(III) serve any point not included in its authority or authorized by statute;

(IV) abandon or suspend operations under its authority; or

(V) file a tariff or time schedule whose applicability or scope violates this rule.

6203. Applications to Operate as a Common or Contract Carrier.

(a) A~~ny~~ person seeking permanent authority, temporary authority or emergency temporary authority to operate as a common carrier or to extend a common carrier certificate ~~or contract carrier, or permanent authority to extend a common carrier certificate or contract carrier permit,~~ shall file a~~n~~ completed application using the form provided by the Commission on its website. Each application requires supporting information which must be submitted with the application. ~~The application shall contain the following information:~~

(b) A person seeking permanent authority, temporary authority or emergency temporary authority to operate as a contract carrier or to extend a contract carrier certificate shall file a completed application using the form provided by the Commission on its website. Each application requires supporting information which must be submitted with the application.

(c) The granting of an emergency temporary authority creates no presumption that a temporary or permanent authority will be granted. The granting of a temporary authority creates no presumption that a permanent authority will be granted.

~~(I) The name, including trade name if applicable, physical address, mailing address, telephone number, and email address of the applicant.~~

~~(II) The name, mailing address, telephone number, and email address of the applicant's representative to whom the Commission may direct inquiries regarding the application.~~

~~(III) The name and address of the applicant's Colorado designated agent for service of process, if required by rule 6011.~~

~~(IV) A statement describing the applicant's business structure (corporation, limited liability company, partnership, sole proprietorship, etc.).~~

~~(V) If the applicant is a corporation: the name of the state in which it is incorporated; the mailing address and physical address of its principal office; the names of its directors and officers; and a certified copy of its certificate of good standing authorizing it to do business in Colorado, certified within 14 days prior to the filing of the application.~~

~~(VI) If the applicant is a limited liability company: the name of the state in which it is organized; the mailing address and physical address of its principal office; the name of its managers; and a certified copy of its certificate of good standing authorizing it to do business in Colorado, certified within 14 days prior to the filing of the application.~~

~~(VII) If the applicant is a partnership: the names, titles, and addresses of all general and limited partners.~~

~~(VIII) A copy of the applicant's certificate of assumed trade name or trade name registration, if applicable.~~

~~(IX) A complete description of the authority sought, which shall indicate:~~

~~(A) whether the applicant proposes to operate as a common or contract carrier;~~

~~(B) the proposed type of service (e.g., charter, shuttle, sightseeing, taxicab, or scheduled, but not limousine, auto livery or special bus), if the applicant proposes to operate as a common carrier;~~

(C) the proposed geographic area of service or the proposed points or routes of service;

(D) any proposed restrictions to the authority sought; and

(E) a description of the make, model, and year of the motor vehicles proposed to be operated, or if unknown, then a summary of the number and types of motor vehicles proposed to be operated.

(X) A map or diagram showing the proposed geographic service area, or the proposed points or routes of service, if and in the form requested by the Commission or Commission staff.

(XI) A statement setting forth the qualifications of the applicant, including managerial, operational, and financial fitness, to conduct the proposed operations.

(XII) A statement describing the extent to which the applicant, or any person affiliated with the applicant, holds or is applying for authority duplicating or overlapping in any respect the authority at issue in the application.

(XIII) A statement identifying current authorities issued by either a state or federal agency, authorizing the applicant or any affiliate to provide for-hire transportation of passengers in the state of Colorado.

(XIV) A statement that the applicant understands the Commission will, in its discretion, cancel any duplicating or overlapping authorities created by granting the application.

(XV) A statement indicating the town or city where the applicant prefers any hearing to be held.

(XVI) A statement, signed by the applicant, that the application contains only information that is true and correct to the best of the applicant's knowledge and belief.

(XVII) If the applicant applies for common carrier authority, the applicant shall demonstrate a public need for the proposed service and that the authority is in the public interest and should be granted. Due to the presumed public need in § 40-10.1-203(2)(b)(II)(B), C.R.S., this demonstration is not required when the proposed service is taxicab service within and between the counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, and Jefferson. Any letter of support filed to demonstrate a public need:

(A) shall contain the author's name, address, and telephone number;

(B) should describe the public need;

(C) should specifically support the applicant's particular request for authority;

(D) should describe whether and how existing service is inadequate;

(E) should contain a statement that the letter contains only information that is true and correct to the best of the author's knowledge and belief; and

(F) shall be signed by the author.

(XVIII) If the applicant seeks contract carrier authority shall provide a statement of the facts upon which the applicant relies to establish the superior, special, or distinctive nature of the transportation service, or how the transportation service will be specifically tailored to meet the customers' needs. The applicant shall also attach a letter from each proposed customer. Such a letter:

(A) shall contain the proposed customer's name, address, and telephone number;

(B) should indicate the proposed customer's special or distinctive transportation needs;

(C) should specifically support the applicant's particular request for authority;

(D) should describe whether there is existing service and how the existing service is inadequate;

(E) should contain a statement that the letter contains only information that is true and correct to the best of the proposed customer's knowledge and belief; and

(F) shall be signed by the proposed customer.

(b) Any person seeking temporary authority to operate as a common or contract carrier, shall file an application.

(I) The application shall contain all the information specified by paragraph (a) of this rule, modified as follows:

(A) any letters of support shall contain the following additional information: an explanation of the immediate and urgent need for the proposed service; whether there is any other transportation service available; if such service is available, a detailed description of the author's efforts to use it and whether it is capable of meeting the author's needs, and the extent to which available transportation services have refused to provide service;

(B) the statement of facts shall also establish an immediate and urgent need for the proposed service and that there is no such service capable of meeting the need;

(C) the statement in subparagraph (a)(XIX) is not required;

(D) a statement shall be included indicating whether the Commission has previously granted to the applicant authority to render all or any part of the proposed service and the decision number granting the authority; and

(E) a statement shall be included of the period of time which applicant requests the temporary authority to cover, not to exceed 180 days.

(II) The Commission shall not grant temporary authority to provide the same service, including both temporary authority and emergency temporary authority for a total period greater than 180 days.

(c) Any person seeking emergency temporary authority to operate as a common or contract carrier, shall file an application with the Commission. The application shall contain all the information required by paragraph (b) of this rule, except that

~~the period of time identified in subparagraph (b)(I)(E) shall not exceed 30 days. The application shall include a statement of facts establishing the basis and nature of the emergency need for the proposed service. Any letters of support shall describe the basis and nature of the emergency. Without regard to the period of time in the application, the Commission shall not issue emergency temporary authority for a period greater than 30 days following the effective date of the Commission decision granting the authority.~~

~~(d) The granting of emergency temporary authority creates no presumption that temporary or permanent authority will be granted. The granting of temporary authority creates no presumption that permanent authority will be granted.~~

~~(e) Burden of proof for contract carrier applicants.~~

~~(I) A contract carrier applicant shall bear the burden of proving that the service it proposes is superior, special, of a distinctive nature, or that the service will otherwise be specifically tailored to meet the potential customers' needs.~~

~~(II) Such a showing is overcome by an intervenor's showing that the intervenor is ready, willing, and able to meet the potential customers' needs.~~

~~(III) If the intervenor makes such a showing, the applicant shall bear the burden of proving that the applicant is better suited than the intervenor to meet the needs of the potential customer.~~

~~(IV) The intervenor may overcome such a demonstration by establishing that the applicant's proposed operation will impair the efficient public service of any common carrier then adequately serving the same geographic area.~~

~~(V) Nothing in this paragraph shall be construed to direct the sequence of evidence presented by the parties.~~

6204. Applications to Voluntarily Abandon or Suspend Authority.

(a) A regulated intrastate carrier seeking to voluntarily abandon or suspend its authority, or any portion of its authority, shall file a~~n~~ completed application using the form provided by the Commission on its website. ~~to voluntarily abandon or suspend its authority, or any portion thereof~~. Any supporting information must be submitted with the application. After ten days' notice, the Commission may either issue a decision determining the outcome of the application ~~decide such an application without a hearing~~ or set ~~it~~ the matter for hearing. A c~~C~~arrier's obligations to continue to provide service pursuant to its authority are not affected by filing of the application~~;~~. ~~rather they will be determined by Commission decision~~Service may only be abandoned or suspended after approval by the Commission through the issuance of a decision. ~~The application shall:~~

~~(I) fully describe why the abandonment or suspension is sought;~~

~~(II) describe how the abandonment or suspension will affect the public;~~

~~(III) contain a statement that the application contains only information that is true and correct to the best of the applicant's knowledge and belief; and~~

~~(IV) be signed by the applicant.~~

(b) A regulated intrastate carrier may not ~~request and the Commission shall not grant a~~ voluntarily suspension ~~persisting~~ an authority for longer than:

(I) twelve consecutive months;

(II) twelve months in any 24-month period; or

(III) two consecutive seasons, for a regulated intrastate carrier operating seasonally.

(c) In addition to all other applicable requirements, any request for waiver or variance from this time period limitation in paragraph (b) must demonstrate that ~~the~~ the suspension is in the public interest and that alternative service will be available during the period of suspension.

6205. Application to Encumber, Transfer, Merge, Consolidate, and Acquire Control.

(a) No regulated intrastate carrier shall by any means, directly or indirectly, ~~sell, lease, merge, consolidate, assign, license, encumber, or otherwise~~ transfer any right or interest in any portion of said regulated intrastate carrier's authorities, except as specifically provided by Commission order, this rule 6205, or ~~Article 11.5 of Title 40~~§ 40-10.1-205, C.R.S.

(b) ~~Except with regard to foreclosures of encumbrances, executions in satisfaction of a judgment or claim, or transfers pursuant to a court order, o~~Only the owners of an authority as shown in the official records of the Commission may transfer ~~the~~ an authority issued by this Commission. No regulated intrastate carrier shall transfer any authority by means of foreclosure of an encumbrance or by means of an execution in satisfaction of any judgment or claim, except as approved by the Commission or as ordered by a court of law. Commission approval of an encumbrance is not authorization to transfer the subject authority.

(c) An application to ~~encumber any authority,~~ transfer any authority~~, acquire control of any regulated intrastate carrier, or permit a merger or consolidation of a regulated intrastate carrier with any other entity,~~ shall~~, if possible, take the form of a joint application submitted~~ be jointly filed by all parties to the transaction. ~~Such an application shall contain all the information below. If an applicant is unable to supply the required information, the applicant shall explain the reason for the lack of information.~~The parties shall file a completed application using the form provided by the Commission on its website.

~~(I) All applicants shall provide the information required by subparagraphs 6203(a)(I), (II), and (XIV).~~

~~(II) Transferees and encumbrancers shall provide the information required by subparagraphs 6203(a)(III) - (VIII), and (XI) - (XVI). An application to transfer a contract carrier permit shall include a signed letter of support from each customer.~~

~~(III) If a transferee or encumbrancer is an executor, trustee, receiver, or other similar representative of the real party in interest: a copy of the court order evidencing the representative's appointment, or other evidence of authority if not under court order.~~

~~(IV) If the transaction covers only portions of an authority: a statement fully explaining which portions are covered by the transaction and which are not.~~

~~(V) A complete description of the type of transaction for which the applicants seek Commission approval, together with a statement describing each applicant's role in the transaction.~~

~~(VI) If the transaction involves an acquisition of stock: a statement of the transferor's total number of outstanding capital stock shares, by class; and the number of shares of each class to be acquired by transferee.~~

~~(VII) A copy of all agreements concerning the transaction, including a copy of all documents creating a security interest, if any, and a statement of the consideration paid in the transaction.~~

~~(VIII) A statement explaining how the transferee proposes to meet the financial requirements of the transaction, including, if a loan is involved, the amount, maturity, interest rate, and other terms and conditions.~~

~~(IX) A statement setting forth the nature, extent, and proposed disposition of any existing encumbrances against the affected authorities.~~

~~(X) A current copy of each of the letters of authority encompassing the authorities at issue in the application.~~

~~(XI) If the transaction involves the lease of an authority: a copy of the proposed lease and a statement of the lease's effective date and termination date.~~

~~(XII) If a transferor or encumbrancer seeks foreclosure of an encumbrance or execution in satisfaction of any judgment or claim: the transferee's written consent to transfer, or in lieu thereof, a judicial order authorizing unilateral action by the transferor or encumbrancer.~~

~~(XIII) A statement setting forth the qualifications of the transferee, including managerial, operational, and financial fitness, to conduct the proposed operations.~~

~~(XIV) A statement that the applicants understand the Commission will, in its discretion, cancel any duplicating or overlapping authority created by the transaction.~~

~~(XV) A statement setting forth whether the transferor has been and is conducting active, bona fide operations under the authorities at issue in the transaction.~~

~~(XVI) A statement of the facts upon which the applicants rely to show that the application should be granted. The applicants have the burden of proving:~~

~~(A) that the transferor has not abandoned the authority and has not allowed the authority to become dormant;~~

~~(B) that the transferor has been and is engaged in bona fide operations under its authority, or the extent to which bona fide operations have been excused because of a Commission-approved suspension;~~

~~(C) that the transfer is not contrary to the public interest;~~

~~(D) that the transfer will not result in the common control or ownership of duplicating or overlapping authorities; and~~

~~(E) that the transferee will engage in bona fide regulated intrastate carrier operations and is fit to do so, except in transfers involving foreclosures of encumbrances,~~

executions in satisfaction of a judgment or claim, or transfers pursuant to a court order.

(XVII) A statement, signed by the applicants, that the application contains only information that is true and correct to the best of the applicants' knowledge and belief.

(d) An application filed under § 40-10.1-204, C.R.S., seeking temporary or emergency temporary approval to operate or transfer control of an authority shall be filed concurrently with the permanent application filed under paragraph (c) of this rule. A temporary and/or emergency temporary application shall contain a statement of the facts establishing that failure to grant temporary or emergency temporary approval may result in destruction of or injury to the utility's properties sought to be acquired, or to interfere substantially with their future usefulness in the performance of adequate and continuous service to the public. In the case of an emergency temporary application, the application shall contain a statement explaining the nature and extent of the emergency.

(e) Unless the transaction only involves an acquisition of stock or membership interests, Uupon approval of an application to transfer an authority, application a transferee shall not begin operations until after the Commission has advised the transferee that it is in compliance with all requirements and is authorized to begin operations. In accordance with the timelines set forth by the Commission's decision, the transferee shall:

(I) file with the Commission an adoption notice, in a form available from the Commission, whereby the tariff and/or time schedule of the transferor shall become those of the transferee until changed;

(II) cause to be filed with the Commission proof of insurance as required by Commission rules; and

(III) pay the issuance fee and annual motor vehicle fee.

(f) The transferor of any authority or permit shall not cancel its insurance, surety bond, or tariffs until the Commission has approved issued its decision approving the transfer, the transferee and transferor hasve filed all required documents in the transferee's own name, and the Commission has advised the transferee that it is authorized to begin operations.

(g) Upon approval of an application to permanently transfer applicationan authority, the transferor and transferee shall file an Commission-prescribed acceptance of transfer using the form provided by the Commission. The form shall be signed by both parties, indicating acceptance of the terms and conditions of the decision authorizing the transfer. The Acceptance of Transfer shall contain a statement indicating that the transferee has complied, and will comply, with all provisions of the agreement of sale, lease, or other transfer.

(h) When the Commission authorizes the transfer of control of one regulated intrastate carrier to another regulated intrastate carrier on a permanent basis, the adoption notice and adopted tariffs and time schedules adopted by the transferee shall be valid for a maximum of 65120 days from the date of issuance of the authority, or as otherwise ordered by the Commission.

(i) Within 60 30 days from approval of the permanent transfer of the authority, the transferee shall file an advice letter and proposed tariff in the transferee's name in accordance with Commission rules.

(j) The granting of emergency temporary authority to operate or transfer control creates no presumption that temporary or permanent authority will be granted. The granting of temporary

authority to operate or transfer control creates no presumption that permanent authority will be granted.

(k) If temporary or emergency temporary authority to assume operating control is not made permanent, transferor shall file an adoption notice reassuming permanent operating control. ~~The transferor shall also post the adoption notice in a prominent public place in each terminal facility and office of the transportation utility, and shall make the adoption notice available for public inspection at each terminal and office.~~ The temporary or emergency temporary authority assumed by the transferee expires on the effective date of the transferor's adoption notice reassuming permanent operating control.

6206. Duplicating or Overlapping Authorities.

The Commission ~~shall~~ may cancel duplicating or overlapping authorities that arise as a result of any grant, extension, or other modification to a certificate or permit.

6207. Tariffs.

(a) A regulated intrastate carrier shall keep on file with the Commission, at all times, approved tariffs clearly showing rates and~~,~~ charges~~, and collections~~ to be assessed for all transportation and accessorial services provided by the carrier. The tariff must also ~~and~~ disclose~~ing~~ all rules and conditions, and time schedules, as applicable, relating to rates or service. Tariffs filed with the Commission must be filed on the form or in the format prescribed by the Commission.

(b) Flexible tariffs. A common carrier may file a tariff which allows for pricing flexibility in order to compete in the transportation market.

(I) A flexible tariff must be filed on a Commission prescribed form. A flexible tariff must include a minimum and a maximum rate for each service the carrier seeks flexible pricing treatment.

(II) Once a flexible tariff is either approved by the Commission or allowed to become effective by operation of law, the carrier may change its rates within the minimum and maximum range, as follows.

(A) Carriers shall notify the Commission of all rate changes within the tariffed range through the filing of a notice. The notice shall:

(i) be on the Commission prescribed form for a notice of rate change;

(ii) be filed with the Commission using its E-Filings System;

(iii) be filed into the proceeding authorizing the initial flexible tariff; and

(iv) be filed concurrently or prior to the date and time the rate change is implemented.

(B) Carriers shall post the current rates that are in effect:

(i) on the carrier's website; and

(ii) in each vehicle used to provide service under the flexible tariff.

(C) All drivers operating a vehicle under a carrier's authority and tariff shall charge the current rate that is on file with the Commission for that carrier. Drivers may not charge rates different from the rate set by the carrier and filed with the Commission.

(D) In the event a driver is providing a ride to a passenger when a rate is changed, the rate in effect when the ride initiated shall apply.

(III) Flexible tariffs for transportation to and from current flat rate zones.

[OPTION ONE]

Keep the flat rate zones as they exist today and allow individual companies to file flexible tariff with minimums and maximums for flat rates consistent with the provisions of the flexible tariff rule. The maximum flat rates must be at or below the approved flat rates set by the Commission for each zone.

[OPTION TWO]

Eliminate flat zones and apply metered rates allowing for flexible tariffing.

(~~b~~c) Tariff compliance.

(I) No regulated intrastate carrier may operate its motor vehicles without having approved tariffs on file with the Commission.

(II) No regulated intrastate carrier shall operate in conflict with its approved tariff or disseminate t~~o any person i~~nformation contrary to thet which is i~~nformation c~~ontained in its approved tariff.

~~(III) No regulated intrastate carrier shall operate in conflict with its approved tariff.~~

(~~c~~d) A common carrier shall ensure that a copy of its approved tariff is available for public inspection, at all reasonable times, in each of ~~the common carrier's~~its offices~~. or terminals transacting business with the public.~~ If the common carrier maintains a presence on the Internet, its tariff must also be posted on its website(s) relevant to the common carrier's services.

(~~d~~e) A common carrier that is authorized to provide ~~Every~~ taxicab ~~carrier~~ service shall publish, in its tariffs, reduced fares applicable to ~~ ~~each passenger being transported under a multiple loading arrangement. The calculated fare for each passenger in a multiple load shall be reduced by a minimum of 20 percent.

(~~e~~f) A contract carrier shall ensure that its tariff, at a minimum:

(I) ~~Its tariff~~ includes the names of the parties to the contract, the provisions ~~required by paragraph 6209(d)~~regarding the scope and terms of transportation and accessorial services to be provided, and the date(s) and terms of the contract, including rates. ~~or incorporates~~ A copy of the executed written contract may be filed in lieu of the requirement to provide dates, terms and rates of the contract;~~into tariff by attaching a copy of the contract to the tariff.~~

(II) ~~It is paid in accordance with its approved tariff~~provides for payment by the person or agent of the entity with whom the contract carrier has directly contracted pursuant to the authority granted by the Commission; and

(III) prohibits payment from individual passengers.

~~(A) The tariff shall provide for payment to the contract carrier only:~~

~~(i) by the Commission-approved person with whom the contract carrier has directly contracted; or~~

~~(ii) by such entity's agent for distribution of payment.~~

~~(B) The tariff shall not provide for payment from an individual passenger, unless:~~

~~(i) such passenger is the Commission-approved person specifically named in the contract carrier's permit; or~~

~~(ii) the Commission specifically so approves.~~

(~~g~~f) Unless this rule specifies otherwise, the provisions of rules 1210(a)(IV) through (VIII) and 1305 of the Commission's Rules of Practice and Procedure govern the tariffs and advice letters of regulated intrastate carriers. ~~In addition to the requirements of subparagraph 1210(b)(I)(A), the tariff's title page shall contain the regulated intrastate carrier's common carrier certificate or contract carrier permit numbers to which the tariff applies.~~

(h) By October 1, 2018 all regulated intrastate carriers with tariffs on file with the Commission, shall file a complete and updated tariff on the form or in the format prescribed by the Commission.

(~~g~~i) A regulated intrastate carrier ~~filing a tariff for newly~~ granted a new authority or ~~extended~~ an extension of an authority shall file a proposed tariff on not less than the number of days' notice specified in the Commission decision granting the new or extended authority. ~~do so on no less than:~~

~~(I) one day notice for emergency temporary authority;~~

~~(II) five days' notice for temporary authority; and~~

~~(III) ten days' notice for permanent authority.~~

(~~h~~j) A regulated intrastate carrier proposing ~~a tariff~~ to replace or modify any portion of an existing tariff shall:

(I) not implement such change except after 30 days' notice to the Commission and the public. Notice shall be calculated in accordance with paragraph 1203(c) of the Commission's Rules of Practice and Procedure;

(II) file a complete and up-to-date tariff on a form or in the format prescribed by the Commission; and

(III) not operate under any proposed change until it receives approval by the Commission and after notice to the Commission and the public has expired.

(k) Any person seeking to protest any portion of a rate, fare, classification or service not altered by the carrier in its proposed changes to an existing tariff, shall bear the burden of proof as it pertains to why such rate, fare, classification or service is not just and reasonable.

(l) ~~The~~ A regulated intrastate carrier shall file~~, upon the request of Commission staff,~~ additional supporting documentation upon the request of Commission staff~~to justify the proposed tariff~~. The ~~justification~~ documentation shall~~should~~ include an explanation of the circumstances and data relied upon ~~in~~ to justify~~requesting approval of~~ the proposed tariff.

(~~i~~m) In addition to the notice required by § 40-3-104, C.R.S., ~~and the notice requirements of the Rules of Practice and Procedure,~~ a common carrier filing ~~an advice letter and~~ proposed tariff ~~pages~~ changes shall concurrently give notice to the public, as follows:

(I) ~~The common carrier shall~~ post notice of its proposed tariff in a prominent public place in each of its offices, on its website, if the carrier has a website, and in the passenger compartment of each motor vehicle used in the transportation of passengers affected by the proposed tariff changes. ~~pages, concurrently with the filing of the advice letter with the Commission~~.

~~(A) Notice shall be posted in a prominent public place in each terminal facility and office of the common carrier.~~

~~(B) Notice shall be posted on the carrier's website. In the event that a carrier does not have a website, such carrier shall post notice of its proposed tariff pages in a newspaper of general circulation which covers the localities or areas of the state where people affected by the proposed tariff change reside. Such notice shall appear in the newspaper at least 20 days prior to the proposed effective date. A common carrier utilizing this form of notice shall file an affidavit of publication prepared by the newspaper, or a copy of the published notice, with the Commission no later than seven days prior to the proposed effective date,~~

~~(C) Notice shall be posted in the passenger compartment of each motor vehicle used in the transportation of passengers affected by the proposed tariff pages.~~

(~~D~~II) The notice shall remain posted through the effective date of the proposed tariff.~~for a minimum of 20 days from the date filed with the Commission.~~

(II~~I~~) The ~~common carrier shall include in such~~ notice shall include: ~~the~~all proposed changes to the tariff; the proposed effective date; a statement that a written objection maybe filed with the Commission; a statement that any objection must be filed at least ten days prior to the proposed effective date; and ~~-~~the Commission's address and website where objections may be filed.

(~~j~~n) An application to amend a tariff on less notice than otherwise required by these rules shall only be granted for good cause. The application shall contain the proposed advice letter and tariff, information fully explaining the circumstances and data relied upon to justify why the tariff amendment is sought, why it should be made on lesser notice, and how the tariff change will affect the public if approved. Public ~~N~~notice of an application requesting lesser notice shall be ~~given as follows~~provided as described in paragraph (m) of this rule.~~:~~

~~(I) The common carrier shall post notice of its proposed tariff amendment concurrently with the filing of the proposed amendment with the Commission.~~

~~(A) Notice shall be posted in a prominent public place in each terminal facility and office of the common carrier.~~

~~(B) Notice shall be posted on the carrier's website.~~

~~(C) Notice shall be posted in the passenger compartment of each motor vehicle used in the transportation of passengers affected by the proposed amendment.~~

~~(D) The notice shall remain posted until the Commission approves or rejects the application.~~

~~(II) The common carrier shall include in such notice: the proposed changes; the proposed effective date; a statement that the Commission may grant or deny the application; a statement that a written objection maybe filed with the Commission; a statement that an objection may only be filed prior to the date that the Commission grants or denies the application; and the Commission's address and website where objections may be filed.~~

(~~k~~o) If the Commission rejects a tariff, the tariff number contained in it shall not be used again. The tariff or amendment shall not be referred to afterwards as canceled, amended, or otherwise.

6208. Time Schedules.

(a) A common carrier that has been granted authority to provide scheduled service shall file time schedules as part of the carrier's tariff. No ~~scheduled~~ common carrier may operate its motor vehicles in scheduled service without having approved time schedules on file with the Commission. No such common carrier shall operate in conflict with its approved time schedules.

(b) No ~~scheduled~~ common carrier operating a scheduled service shall disseminate to any person information contrary to the information contained in its approved time schedules.

(c) A common carrier operating a scheduled service shall ~~promptly~~ concurrently report in writing to the Commission and post to its website~~and shall communicate to the affected public~~ any interruption of regular service for 24 continuous hours or more, explaining in detail the cause and anticipated length of the service interruption.

(d) A ~~scheduled~~ common carrier operating a scheduled service shall designate its flag stops on its schedule. Such a common carrier shall drive by each flag stop in such close proximity and speed as to be able to reasonably assess whether passengers are waiting for service. The common carrier is not required to designate a specific time for service to the flag stop; if the common carrier does designate a specific time for service, the time is considered to be an approximation. Failure to stop for a waiting passenger constitutes prima facie evidence of a violation of subparagraph 6202(a)(II).

(e) A ~~scheduled~~ common carrier operating a scheduled service shall ensure that a copy of its approved time schedule is available for public inspection, at all reasonable times, in each of the common carrier's offices or terminals transacting business with the public. The common carrier shall carry copies of its time schedules in its ~~scheduled~~ motor vehicles operating the schedule, and shall furnish them to passengers upon request.

(f) A common carrier operating a scheduled service shall file and keep current, ~~T~~time schedules ~~shall be filed~~ with the Commission as part of the ~~scheduled~~ common carrier's tariff.~~, in accordance with applicable provisions of rule 6207.~~ The time schedule shall be filed on the form or in the format prescribed by the Commission. At a minimum, time schedules shall contain the following:

(I) a statement ~~of the scope of the time schedule,~~ describing the route or points to which the time schedule applies;

(II) an explanation of the symbols, reference marks, and abbreviations used;

(III) one or more lists of all scheduled stops and all flag stops, in geographical order, designating the departure and/or arrival times for the scheduled stops, as appropriate;

(IV) a statement whether service is daily or otherwise, and if otherwise a statement describing the other service;

(V) the address of each scheduled stop, if such address exists, otherwise a description sufficient to notify the Commission and the public regarding the location of the scheduled stop; and

(VI) any other appropriate information regarding the service the common carrier desires to perform.

6209. Contract Carrier Contracts.

(a) ~~Except as otherwise permitted by law, a~~A contract carrier shall not enter into a contract for transportation that is in conflict with the contract carrier's permit or with any person not named in the contract carrier's permit.

(b) ~~Except as otherwise permitted by law, a~~A contract carrier shall not engage in any act of transportation for compensation except in compliance with the contract between the contract carrier and the person named in the contract carrier's permit.

(c) Contracts shall be written, not oral.

(d) At a minimum, all contracts shall specify the following:

(I) the names of the parties to the contract;

(II) the provisions regarding the scope and terms of transportation and accessorial services to be provided; and

(III) the date(s) and terms of the contract, including rates.

(e) Contracts shall provide for payment by the person or agent of the entity with whom the contract carrier has directly contracted pursuant to the authority granted by the Commission. In no circumstances shall a contract carrier receive payment for providing contract services from individual passengers.

~~(e) A contract carrier shall not operate in conflict with the contract carrier's permit.~~

~~(f) A contract carrier shall not operate in conflict with the contract carrier's tariff.~~

6210. Refusal of Service, Driver Courtesy.

~~(a)~~ No regulated intrastate carrier or driver may refuse to transport any passenger unless: the passenger is acting in an unlawful, disorderly, or endangering manner; there is a previous commitment of the equipment; or the passenger is unable to care for himself or herself, if not in the charge of a responsible companion or attendant. Except where there is a previous commitment of the equipment, a driver shall immediately report to the carrier any refusal to transport a passenger.

~~(b) Every regulated intrastate carrier shall ensure that its drivers provide its passengers with courteous service promoting the passengers' comfort and convenience. Drivers shall not behave discourteously. Discourteous service by a driver includes, but is not limited to, instances involving profanity, obscenity, assault, or the making of derogatory sexual or racial remarks towards passengers or other persons. Passenger's or other person's conduct, especially if it is unlawful, disorderly, or endangers others, is a factor to consider in determining whether a driver behaves discourteously.~~

6211. [Reserved].

6212. Annual Reports.

(a) Each regulated intrastate carrier shall file with the Commission an annual report on a Commission-prescribed form on or before April 30 of each year. The regulated intrastate carrier shall complete all sections of the annual report applicable to said regulated intrastate carrier for the 12-month period ending on December 31 of the previous calendar year.

(b) ~~When the Commission grants a permanent transfer of authority, the transferor shall complete a terminating annual report on a Commission-prescribed form, which report shall cover the period from January 1 to the date of the decision approving the transfer.~~

~~(c)~~ A principal of the regulated intrastate carrier shall sign the certification of the annual report or terminating annual report. In all annual report filings, the regulated intrastate carrier shall comply with subparagraph 1204(a)(III) and rule 1100 et seq., of the Commission's Rules of Practice and Procedure.

6213. - 6214. [Reserved].~~Age of Motor Vehicles.~~

~~(a) Intrastate regulated carriers operating vehicles with a seating capacity of 15 or less shall not use vehicles older than 12 model years as of July 1 of each year.~~

~~(b) The counting of model years shall begin with the present calendar year. By way of example, between July 1, 2011, and June 30, 2012, counting backwards, 2011 is the first model year, 2010 is the second model year, and so forth.~~

~~(c) An intrastate regulated carrier operating vehicles that are over 12 model years old as of August 1, 2012, shall have until July 31, 2014, to comply with paragraph (a) for those specific vehicles.~~

~~(d) A vehicle that would otherwise be subject to this rule that is equipped with ramps, lifts, or other special devices to facilitate the loading, unloading, or transportation of individuals with disabilities is exempt from the requirements of this rule if all such devices are in good working order.~~

~~**6214. Condition of Motor Vehicles.**~~

~~Vehicles operated by intrastate regulated carriers shall be in good physical condition. The Commission's enforcement officials shall use the following general guidelines in determining if a vehicle is in good physical condition:~~

~~(a) The body of the vehicle has a good, unfaded paint job; is devoid of dents, rust, broken trim, and cracked windows; and~~

~~(b) Except for problems caused by current weather conditions, the interior of the vehicle is clean, and has no major tears, cracks, or stains upon the upholstery, headliner, and carpeting~~.

6215. Forms of Payment.

A common carrier may accept any form of payment, but must accept MasterCard and Visa credit cards.

6216. Regulated Intrastate Carrier Violations, Civil Enforcement, and Civil Penalties.

(a) A person who violates any of the following provisions may be assessed a civil penalty of up to $1,100.00 for each violation of:

(I) § 40-10.1-201(1), C.R.S., or § 40-10.1-202(1)(a), C.R.S.;

(II) § 40-10.1-205, C.R.S.;

(III) ~~r~~Rule 6202; or ~~paragraph 6205(e);or~~

(~~IV~~III) § 40-10.1-206, C.R.S.; subparagraph 6207(c ~~b~~)(I); or paragraph 6208(a).

(b) A violation of subparagraph 6207(c~~b~~)(II), paragraph 6209(a), paragraph 6210~~(a)~~, or ~~rule~~ paragraph 6212(a) ~~regarding filing an annual report~~ may result in the assessment of a civil penalty of up to $550.00 for each violation.

(c) A violation of subparagraph 6207(~~b~~c)(II~~I~~) may result in the assessment of a civil penalty as follows for each violation:

(I) up to $275.00 for an overcharge of $25.00 or less;

(II) up to $550.00 for an overcharge greater than $25.00 but less than or equal to $50.00; and

(III) up to $1,100.00 for an overcharge greater than $50.00.

(d) Except as provided for in paragraphs (a), (b), and (c) of this rule, a person who violates any provision of Part 2 of Article 10.1 of Title 40, C.R.S., or any provision of these regulated intrastate carrier rules may be assessed a civil penalty of up to $275.00 for each violation.

(e) Civil penalty assessments are in addition to any other penalties provided by law.

6217. – 6249. [Reserved].

Taxicab Carrier Rules

6250. Applicability of Taxicab Carrier Rules.

Rules 6250 through 6258 apply to all common carriers providing taxicab service. Nothing in these taxicab carrier rules shall alter, amend, modify, suspend, or otherwise affect specific provisions, limitations, or requirements in any authority issued to any common carrier prior to the adoption of these rules.

6251. ~~Definitions.~~[Reserved].

~~In addition to the definitions in rule 6001, and the definitions applicable to common and contract carriers in rule 6201, the following definitions apply to all common carriers providing taxicab service:~~

~~(a) "Access fee" means the fee assessed by an airport for the use of its facilities for one trip levied upon motor carriers transporting passengers to, from, or at an airport.~~

~~(b) "Base area" means a geographic area in which a taxicab carrier is authorized to provide point-to-point service.~~

~~(c) "Close proximity", as referenced in § 40-10.1-203, C.R.S., means within a one-mile radius and 20 minutes from the drop-off location and time.~~

~~(d) "DIA" means Denver International Airport.~~

~~(e) "Live meter" means any taxicab meter that, without intervention from the driver, automatically calculates changes in rates for taxicab service due to waiting time, traffic delay, or changes in the taxicab's speed.~~

~~(f) "Multiple loading" means the sharing of a taxicab ride, or portion thereof, by unrelated traveling parties.~~

~~(g) "Taxicab carrier" means a common carrier with authority to provide taxicab service.~~

~~(h) "Time call" means a customer's communication with a common carrier requesting a specific date and time for service (otherwise known as an appointment), or the common carrier's service provided in response to the customer's communication, as the context requires.~~

6252. Notices.

Each taxicab carrier shall post the following notices, as applicable, on the inside of the left window immediately behind the driver's window or on the back of the front seat of each taxicab it operates. Except as provided in subparagraph (f), the font size of such notice shall be at least 14-point characters and the font size of the cab number shall be at least 24-point characters. The taxicab carrier shall complete all blanks in the notices.

(a) The following notice shall be placed in all taxicabs:

NOTICE

Cab No. _____

The driver of this taxicab shall not load other passengers without the permission of the first passenger.

Additional charges may apply for additional passengers, passenger drop offs, baggage and packages, waiting time, pets, and toll charges or access fees.

Report any problems to the Public Utilities Commission at (303) 894-2070.

(b) If the taxicab carrier uses meters only, the notice shall state:

Fares are calculated by use of a meter. The maximum meter fares are _____ for the first _____ mile plus _____ for each additional _____ mile.

(c) If the taxicab carrier uses a live meter, the notice shall state:

The meter will automatically change to a maximum time charge of _____ per minute when the taxicab's speed is less than _____ miles per hour.

(d) If the taxicab carrier uses odometers only, the notice shall state:

Fares are calculated by use of the odometer. The maximum fares are _____ for the first _____ mile, plus _____ for each additional _____ mile.

(e) If the taxicab carrier uses both meters and odometers, such notice shall contain the information specified by paragraphs (b), (c), and (d), as applicable.

(f) If the taxicab carrier serves DIA subject to the rate provided for in rule 6257 the notice shall contain a zone map showing the zones and, except for airport access fees and drop charges, the applicable rate in each zone. The font size may be no less than 12-point characters.

6253. Service: Multiple Loading; Routing; Quality.

(a) Multiple loading.

(I) No taxicab carrier or taxicab driver shall engage in multiple loading from a common point of origin or from separate locations if the taxicab driver receives the second request for service via the taxicab company's dispatch system, unless the first passenger occupying the taxicab agrees to multiple loading.

(II) If the first passenger agrees to the multiple load, the taxicab driver shall advise the first passenger that the meter charge from his/her origin to destination will be reduced by the percentage named in the taxicab carrier's tariff. The taxicab driver shall also advise the second passenger that the meter charge from his/her origin to destination will reduced by the percentage named in the taxicab carrier's tariff.

(b) A taxicab carrier shall ensure that passenger transportation shall be by the shortest possible route between the origin and destination; provided, however, that a passenger may agree to an alternate route or designate the route he or she wishes to travel, if the taxicab carrier has first advised the passenger regarding the extent of deviation from the shortest possible route.

(c) When a customer calls a taxicab carrier for service, the taxicab carrier shall request a phone number or email address from the passenger and give an estimated time of pickup. Unless its effective tariff specifies a different time, the taxicab carrier shall arrive at the pickup location within 30 minutes from the time the customer first requested service or within five minutes of a time call, whichever is applicable. ~~The time restriction is limited to pickup locations within a 25-mile radius of the taxicab carrier's dispatch center.~~ A taxicab carrier need not provide time call service if doing so would conflict with the 30-minute margin (or such other margin specified in the taxicab carrier's effective tariff) allowed a taxicab carrier under this paragraph. A delay under this rule shall be excused if:

(I) the customer has left the passenger's telephone number or email address with the taxicab carrier;

(II) the taxicab carrier notifies the passenger regarding the delay; and

(III) such delay is caused by inclement weather, traffic congestion, or other circumstances beyond the control of the taxicab carrier.

6254. Additional Service Requirements for Taxicab Carriers Operating Within or Between Counties with a Population Density of 40 or More People per Square Mile.

Taxicab carriers operating within or between counties with a population density of 40 or more people per square mile based on the most recent federal census shall be subject to the additional requirements of this rule. To the extent of conflict between rule 6254 and the regulated intrastate carrier rules, the requirements of rule 6254 shall prevail.

(a) Hours of operation. Taxicab carriers shall be available to provide service 24 hours per day, every day of the year.

~~(b) Age of motor vehicles. The maximum age of motor vehicles shall be ten model years.~~

~~(c) A taxicab otherwise subject to this rule that is equipped with ramps, lifts, or other special devices to facilitate the loading, unloading, or transportation of individuals with disabilities is exempt from the requirements of paragraph 6213(a) and paragraph (b) of this rule if all such devices are in good working order.~~

6255. Additional Service Requirements for Taxicab Carriers Operating Within and Between the Counties of Arapahe, Adams, Boulder, Broomfield, Denver, Douglas, El Paso, and Jefferson.

Taxicab carriers operating within or between the counties of Arapahe, Adams, Boulder, Broomfield, Denver, Douglas, El Paso, and Jefferson shall be subject to the additional requirements of this rule. To the extent of conflict between rule 6255 and other taxicab carrier rules, the requirements of rule 6255 shall prevail.

(a) Communications and dispatch.

(I) Taxicab carriers shall obtain and advertise a central telephone number by which the public may call and request service.

(II) Taxicab carriers shall employ a communications system capable of contacting each of its taxicabs in service. The communications system shall have the ability to "broadcast" to all motor vehicles in the fleet at the same time.

(III) ~~Beginning January 1, 2014, t~~Taxicab carriers shall employ a GPS-based, digital dispatch system that tracks and records driver hours o~~r~~f service, and records and reports trip information including origination point and customer wait times. Newly authorized taxicab carriers shall have six months from the date of the grant of their authority within which to implement the GPS-based digital-dispatch system required by this rule.

(IV) ~~Beginning January 1, 2014, t~~Taxicab carriers shall employ a GPS-based, digital dispatch system that records and reports driver location all time logged into the system~~and on-duty time~~. The dispatch system must:

(A) ~~Said system must log a driver on-duty when the driver's assigned vehicle is within~~ record a driver as being on-duty when the driver's vehicle enters or exits an area within two miles of Denver International Airport or Colorado Springs Municipal Airport~~,~~. Additionally, the immediately following 30 minutes shall be recorded as on-duty time and added to on-duty hours unless that time is already captured as on-duty time; and

(B) record a driver as being on-duty when the driver's assigned vehicle is within Zone A as defined in subparagraph 6257(d)(I) or is stationed for more than five minutes within ~~and 5~~100 feet of any known taxi stand.

(V) ~~Beginning January 1, 2014, t~~Taxicab carriers shall employ a GPS-based digital dispatch system that locks out from any dispatch system any driver who has exceeded ~~on-duty~~ hours of service provision maximums.

(VI) ~~Beginning January 1, 2014, t~~Taxicab carriers shall lockout from the dispatch system, for a minimum of eight hours, a driver who has exceeded daily on-duty hours of service maximums. Drivers who are locked-out, shall not be allowed access to the carriers dispatch system, credit card processing system, and metering system.

(VII) ~~Beginning January 1, 2014, t~~Taxicab carriers shall ~~log~~ record a driver as being on-duty when the vehicle assigned to said driver, enters an area no less than two miles of Denver International Airport or Colorado Springs Municipal Airport or is stationed more than five minutes ~~,~~ or ~~1~~500 feet of known taxi stands.

~~(b) Age of motor vehicles. The maximum age of motor vehicles shall be eight model years. A taxicab carrier operating vehicles that are over eight model years old as of August 1, 2012, shall have until July 31, 2014, to comply with this paragraph for those specific vehicles.~~

~~(c) A taxicab otherwise subject to this rule that is equipped with ramps, lifts, or other special devices to facilitate the loading, unloading, or transportation of individuals with disabilities is exempt from the requirements of paragraph 6213(a) and paragraph(b) of this rule if all such devices are in good working order.~~

6256. Record Keeping.

(a) A taxicab carrier shall maintain in its files, for a minimum of one year from the date a customer requested service, the following data for each trip:

(I) the taxicab number;

(II) the driver's name;

(III) the date and time of the customer's request for service;

(IV) the address, date, and time of the customer's pickup; and

(V) the address of the customer's destination.

(b) If multiple loading is applicable for a given trip, then the data shall reflect the requirements of this rule for each party involved in the multiple loading trip.

6257. Total Charges for Transportation to and from Denver International Airport.

Taxicab carriers authorized to provide service to or from any portion of the zones listed in this rule shall be subject to all the provisions of this rule.

(a) The total charge established pursuant to this rule shall be the only authorized taxicab rates for service between points in the zones described by this rule, on the one hand, and DIA, on the

other hand. These charges shall be the rates in effect for every taxicab carrier subject to this rule.

(b) Taxicab drivers shall inform passengers of the total charge prior to commencing the trip.

(c) Taxicab carriers shall charge the rates permitted by this rule for service in Zone A (as defined in subparagraph 6257(e)(I). Taxicab carriers providing service between points in the zones listed in this rule shall not charge live meter rates (including any charge for mileage, waiting time, and traffic delays). Rates for taxicab service between any point originating and terminating in Zone A shall be $7.00.

(~~e~~d) Rates for ~~-~~taxicab service between a defined zone and DIA.

(I) Taxicab carriers shall charge the rates permitted by this rule for service between DIA and the zones defined below. Taxicab carriers providing service between DIA and the zones listed in this rule shall not charge live meter rates, (including any charge for mileage, waiting time, and traffic delay). ~~Only as specifically authorized below, taxicab carriers providing service between DIA and the zones listed in this rule may charge airport access fees or for additional passengers in one traveling party.~~

(II) The total charge for transportation service between DIA and any point within a defined zone shall be the zone rate, plus any applicable airport access fee, plus any ~~applicable per~~passenger drop fee for additional drops within the zone.

(III) Zone A: The zone rate for transportation between DIA and any point in Zone A shall be $51.00.

(IV) Zone B: The zone rate for transportation between DIA and any point in Zone B shall be $57.00.

(V) Zone C: The zone rate for transportation between DIA and any point in Zone C shall be $84.00.

(VI) Zone D: The zone rate for transportation between DIA and any point in Zone D shall be $24.00.

(VI~~I~~) Access fees as established by DIA for the use of its facilities for one trip levied upon the taxicab.

(VII~~I~~) A drop fee of $5.00 may be charged for each additional drop within a zone required by members of one traveling party.

(~~e~~d) The zones established in this rule include the following:

(I) Zone A (Downtown Denver): Beginning at the intersection of Clarkson Street and Park Avenue West, then northwest on Park Avenue West to Interstate 25, then south on Interstate 25 to 13th Avenue, then east on 13th Avenue to Speer Boulevard, then southeast on Speer Boulevard to 11th Avenue, then east on 11th Avenue to Clarkson Street, then north on Clarkson Street to the point of beginning.

(II) Zone B (Denver Technological Center): Beginning at the intersection of Dayton Street and Arapahoe Road, then north on Dayton Street to Belleview Avenue, then west on Belleview Avenue to Yosemite Street, then north on Yosemite Street to Quincy Avenue,

then west on Quincy Avenue to Monaco Street, then south on Monaco Street to Belleview Avenue, then east on Belleview Avenue to Quebec Street, then south on Quebec Street to Arapahoe Road, then east on Arapahoe Road to the point of beginning.

(III) Zone C (Boulder): ~~The area within the city limits of the City of Boulder, Colorado, as such city limits exist on the day these Transportation by Motor Vehicle Rules become effective~~ Beginning at the intersection of Jay Road and U.S. Highway 36, then northwest on U.S. Highway 36 to Lee Hill Drive, then west on Lee Hill Drive for one mile, then south on an imaginary line for seven miles, then east on an imaginary line to Cherryvale Road, then north on Cherryvale Road as extended to Jay Road, then west on Jay Road to the point of the beginning.

(IV) Zone D (Tower Road): Beginning at the intersection of 56th Avenue and Genoa Street, then north on Genoa Street as extended to 72nd Avenue, then west for one mile along 72nd Avenue, then south along an imaginary line to 56th Avenue, then east along 56th Avenue to the point of the beginning.

(fe) Additional requirements with multiple loading.

The taxicab driver shall inform the parties of the total charge prior to departing from the point of origin of the second traveling party and advise the parties they must determine how much of the total charge each party is obligated to pay. The total charge may be approximated for taxicab service provided under subparagraphs (I), (II), or (III) of this paragraph.

(I) If the first party is dropped at a point within a defined zone and additional parties are dropped at different points in the same zone, the total charge (not a per party charge) shall be the appropriate zone rate, plus any applicable airport access fee, plus a $5.00 charge for each additional drop within the zone.

(II) If the first party is dropped at a point within a defined zone and the second party is dropped at a point outside of any defined zone the charge for the first party shall be the appropriate zone rate plus the agreed portion of applicable airport access fees. The charge for the second party shall be the meter fare from the first drop point to the second drop point, plus the agreed portion of applicable airport access fees.

(III) If the first party is dropped at a point outside of the defined zones, the rates established in this rule shall not apply.

6258. Taxicab Violations, Civil Enforcement, and Civil Penalties.

(a) A person who violates subparagraph (dc)(I) of rule 6257 may be assessed a civil penalty as follows for each violation:

(I) ~~U~~up to $275.00 for an overcharge of $25.00 or less~~.~~;

(II) ~~U~~up to $550.00 for an overcharge greater than $25.00 but less than or equal to $50.00~~.~~; or

(III) ~~U~~up to $1,100.00 for an overcharge greater than $50.00.

(b) A violation of paragraph (b) of rule 6253 may result in the assessment of a civil penalty of up to $550.00 for each violation.

(c) Except as provided for in paragraphs (a) and (b) of this rule, a person who violates any provision of these Taxicab Carrier Rules or § 42-3-236, C.R.S. may be assessed a civil penalty of up to $275.00 for each violation.

(d) Civil penalty assessments are in addition to any other penalties provided by law.

6259. Conversion to a Transportation Network Company

A motor carrier authorized through the granting of a certificate of public convenience and necessity, to provide taxicab or shuttle service may convert that authority to a transportation network company (TNC) by filing an application to voluntarily abandon or suspend all or part of its authority pursuant to rule 6204 and simultaneously filing an application for a permit to operate as a TNC pursuant to rule 6702. During the period of suspension, the suspended portion of the authority authorizing taxicab or shuttle service is exempt from taxi and shuttle standards concerning the regulation of rates and charges pursuant to the requirements of rule 6207.

6260. Taxicab License Plates.

(a) Vehicles used in the provision of taxi service require a taxi license plate.

(b) A person providing taxi service under Article 10.1 of Title 40, C.R.S. shall register all vehicles used for such purposes with the Colorado Department of Revenue and display the taxi license plates on the vehicles used in providing the services.

(c) A person providing taxi service under an active certificate may provide such service without registering the motor vehicle with the Department of Revenue or using a taxi license plate if the motor vehicle is rented, but the person shall not provide such services using a rented motor vehicle for more than 30 days.

(d) If a motor vehicle is used to provide both taxicab and luxury limousine services, a taxicab license plate is required.

(e) No person shall operate a motor vehicle with a taxi license plate unless the vehicle to which the license plates are attached is required to bear taxi license plates.

(f) Any vehicle operated in violation of this rules may be placed out of service.

625961. - 6299. [Reserved].

LIMITED REGULATION CARRIER RULES

6300. Applicability of Limited Regulation Carrier Rules.

Rules 6300 through 6399 apply to all limited regulation carriers and to all Commission proceedings and operations concerning limited regulation carriers, permit holders, employees, and drivers.

6301. Definitions.

In addition to the definitions in rules 6001 and 6101, the following definitions apply to all carriers subject to these limited regulation carrier rules:

(a) "Couch seat" means seating which is a minimum of 68" in length and is designed for four or more passengers to share at one time.

~~(a) "Charter basis" means on the basis of a contract for transportation whereby a person agrees to provide exclusive use of a motor vehicle to a single chartering party for a specific period of time during which the chartering party has the exclusive right to direct the operation of the vehicle, including, selection of the origin, destination, route, and intermediate stops.~~

~~(b) "Charter order" means a paper or electronic document that memorializes the contract for luxury limousine or off-road scenic charter service for a specific period of time reasonably calculated to fulfill the purpose of the contract. A charter order shall state the charge, the charge method, or a reasonable estimate of the charge. A charter order also shall contain the name and telephone number of the person contracting on behalf of the passengers; the name and telephone number of at least one passenger; the name, telephone number, and PUC number of the carrier and, if different from the carrier, of the driver; pickup time; and pickup address. A copy of the charter order shall be maintained for at least one year following the provision of service.~~

~~(c) "Chartering party" means a person or group of persons who share a personal or professional relationship whereby all such persons are members of the same affiliated group, including, a family, business, religious group, social organization or professional organization. "Chartering party" does not include groups of unrelated persons brought together by a carrier, transportation broker, or other third party.~~

~~(d) "Luxury limousine carrier" means every person that provides luxury limousine service.~~

~~(e) "Luxury limousine service" means a specialized, luxurious transportation service provided on a prearranged charter basis as defined in paragraph 6301(a), memorialized in a contract. "Luxury limousine service" may not include taxicab service or any service provided between fixed points over regular routes at regular intervals.~~

~~(f) "Prearranged" means that the charter order for luxury limousine service is entered into electronically or telephonically prior to provision of the service, or entered into in writing prior to the arrival of the luxury limousine at the point of departure.~~

6302. Application and Permit.

(a) In addition to completing the Commission-prescribed application, a person shall:

(I) file the required proof of financial responsibility; and

(II) pay the required annual vehicle fees or, if applicable, shall be in compliance with the UCR Agreement.

(b) Applications for new permits require the submission of a periodic vehicle inspection form for each vehicle to be operated under the permit. This requirement does not apply to applications to renew a permit.

(c) A permit is valid for one year from the effective date.

~~**6303. [Reserved].**~~

6304. Luxury Limousine Exterior Vehicle Markings, Signs, or Graphics.

(a) Except as otherwise provided in this rule, no person shall have any exterior signs or graphics on a luxury limousine.

(b) The carrier's permit number preceded by "LL" or "PUC LL" or "CO PUC LL" shall be of a size and color readily visible from 50 feet, but in any case not less than one and a half inches tall and not more than three inches tall. The markings ~~may~~ must be displayed on ~~either~~ both the front and rear of the motor vehicle or on both sides if the carrier has a DOT number.

(c) Signs or graphics located inside the luxury limousine that are readily legible from the outside shall be deemed to be exterior signs and graphics.

(d) Nothing in this rule shall prohibit the following:

(I) markings, signs, or graphics otherwise required by law, including those required by any rule of the Commission, the Colorado Department of Public Safety, the FMCSA, or an airport official~~authority~~;

(II) markings, signs, or graphics attached by any law enforcement agency; ~~or~~

(III) signs or graphics attached by the motor vehicle manufacturer or dealership for the purpose of identifying the manufacturer, dealership, or the motor vehicle's make or model; or~~.~~

(IV) signage used solely for the purpose of identifying a group transported under an immediate charter order or contract.

6305. [Reserved].~~Luxury Limousine Features.~~

~~**(a) In addition to compliance with the safety rules, each luxury limousine carrier shall otherwise ensure that its motor vehicles are in good physical condition. The Commission shall use the following guidelines in determining if a vehicle is in good physical condition:**~~

~~(I) The body of the luxury limousine has a good, unfaded paint job; is devoid of dents, rust, broken trim, and cracked windows; and~~

~~(II) Except for problems caused by current weather conditions, the interior of the luxury limousine is clean, free of offensive odors, and has no major tears, cracks, or stains upon the upholstery, headliner, and carpeting.~~

~~(b) Age of Motor Vehicles. Except for luxury limousines covered under subparagraph 6308(a)(IV), luxury limousine carriers shall not use vehicles older than ten model years as of July 1 of each year. For purposes of this rule, the counting of model years shall begin with the present calendar year. By way of example, between July 1, 2011, and June 30, 2012, counting backwards, 2011 is the first model year, 2010 is the second model year, and so forth.~~

6306. Livery License Plates.

(a) Vehicles used in the provision of luxury limousine service require a livery license plate.

(b) A person providing luxury limousine service under Article 10.1 of Title 40, C.R.S., shall register all vehicles used for such purposes with the Colorado Department of Revenue and display the livery license plates on the vehicles used in providing the services.

(c) A person providing luxury limousine service under an active permit may provide such service without registering the motor vehicle with the Department of Revenue or using a livery license

plate if the motor vehicle is rented, but the person shall not provide such services using a rented motor vehicle for more than 30 days.

(d) If a motor vehicle is used to provide both taxicab and luxury limousine services, a taxicab license plate is required.

(e) No person shall operate a motor vehicle with a livery license plate unless the vehicle to which the license plates are attached is required to bear livery license plates.

(f) Any vehicle operated in violation of this rule may be placed out of service.

~~-~~ **6307. [Reserved].**

6308. Luxury Limousine.

(a) A luxury limousine is one of the following:

(I) Stretched limousine, which is a motor vehicle whose wheelbase has been lengthened beyond the original manufacturer's specifications.

(II) Executive car, which is a motor vehicle that has four doors and is:

(A) a sedan, crossover, or sport utility vehicle manufactured by: Acura, Audi, Bentley, BMW, Cadillac, Ferrari, Infiniti, Jaguar, Lexus, Lincoln, Maserati, Mercedes-Benz, Porsche, or Rolls Royce, Tesla, or Volvo; or

(B) one of the following: Chrysler 300, Hyundai Equus, ~~Saab 9-5,~~ Toyota Avalon Livery Edition, Chevrolet Suburban, Chevrolet Tahoe, ~~Ford Excursion,~~ Ford Expedition, GMC Yukon, Hummer (all models, excluding sport utility truck version).

(III) Executive van, which is a motor vehicle built on a cutaway chassis, a motor coach, or a van (but not a minivan as classified by the original manufacturer) whose interior has been enhanced by the installation of either captain's chairs or couch seats.~~:~~

~~(A) Captain's chairs, couch seats, or similar seating in place of standard bench seating; or~~

~~(B) Both of the following:~~

~~(i) An electronic video media system such as television with DVD that is securely attached to the motor vehicle in a professional manner. The screen shall have a diagonal measurement of at least ten inches, be viewable by passengers seated to the rear of the driver, and be in compliance with 49 C.F.R., § 393.88.~~

~~(ii) Beverages and beverage service amenities, including at least an ice container and glasses or cups. The beverages and amenities shall be securely positioned inside a console or cabinet located inside the passenger compartment, to include any containment system, console and cup holder built into the motor vehicle by the manufacturer, and securely attached to the motor vehicle in a professional manner. The beverages are not required to be alcoholic in nature.~~

~~(IV) Other limousine, which is a classic, antique, or specially built motor vehicle that has or had a retail value of $50,000.00 or more.~~

(IV) Collector's vehicle, which is defined in Title 42, C.R.S. as either a luxurious classic or antique vehicle, eligible for a collector's license plate. It is not a stretched limousine. Vehicles qualifying under this paragraph (IV) must have a current appraised retail value of at least $100,000. A certified appraisal is required to prove the value of the vehicle. Vehicles within this category are exempt from the age of vehicle requirements set forth in rule 6108.

6309. Luxury Limousines – Operational Requirements, Prearrangement Required.

(a) No person shall provide luxury limousine service, or a service ancillary to luxury limousine service, except on a prearranged charter basis with all terms and conditions documented on a charter order.

(b) A charter order shall, at a minimum, state the charge, the charge method, or a reasonable estimate of the charge. A charter order shall also contain the name and telephone number of the person contracting on behalf of the passengers; the name and telephone number of at least one passenger; the name, telephone number, and PUC number of the carrier, and, if different than the carrier, of the driver; pick up time; and, pick up address.

(~~b~~c) The fact that the drop off time is amended in a charter order during the course of performance (i.e., the amended drop off time is agreed to before the original drop off time is reached) does not, in and of itself, mean that such transportation is not on a prearranged charter basis. All requirements of a charter order apply equally to the amended charter order.

(~~c~~d) Although a charter order must be for a specific period of time reasonably calculated to fulfill the purpose of the charter, these rules do not prohibit terms addressing time in excess of such calculated specific period of time.

(~~d~~e) Without affecting any other requirement of these rules, a luxury limousine carrier shall, at all times when providing luxury limousine service, carry in each vehicle a charter order. However, the total charge for the specific period of time may be omitted or stricken from the copy of the charter order carried in each vehicle.

(~~e~~f) A luxury limousine carrier shall not station a luxury limousine within one hundred feet of a recognized taxicab stand, a designated passenger pickup point at an airport, a hotel, or a motel without the completed charter order in the vehicle. A luxury limousine carrier shall not station a luxury limousine at the point of departure more than forty-five minutes prior to the pickup time noted on the charter order.

(~~f~~g) A luxury limousine carrier shall provide the charter order immediately upon request by any enforcement official or airport official~~authority~~.

(~~g~~h) Prior to the provision of service, a luxury limousine carrier shall provide the other party to the contract underlying the charter a paper or electronic copy of the charter order.

(~~h~~i) If a passenger is not a party to the contract underlying the charter, the luxury limousine carrier shall provide at least one passenger with name and telephone number of the carrier and, if different from the carrier, of the driver providing the transportation service at the point of departure.

6310. Luxury Limousine Service – Presumptions.

(a) A person shall be presumed to have provided luxury limousine service in violation of paragraph 6309(a) if, without prearrangement, such person:

(I) accepts payment for the transportation of the chartering party at the point of departure;

(II) makes the luxury limousine available to the chartering party at the point of departure;

(III) negotiates the immediate availability of, or the price for immediate use of, the luxury limousine at or near the point of departure;

(IV) loads the chartering party or its baggage into the luxury limousine; or

(V) transports the chartering party in the luxury limousine.

(b) A luxury limousine carrier that charges or offers to charge for transportation services on a per person basis shall be presumed to be providing or offering to provide services as a common carrier.

(c) A luxury limousine carrier may rebut the presumptions created in this rule by competent evidence.

6311. Limited Regulation Carrier Violations, Civil Enforcement, and Civil Penalties.

(a) A person who violates § 40-10.1-302, C.R.S., or paragraph 6309(a), may be assessed a civil penalty of up to $1,100.00 for each violation.

(b) A person who violates ~~rule~~ paragraphs (b) through (i) of rule 6309 may be assessed a civil penalty of up to $500.00 for each violation.

(c) Except as provided in paragraphs (a) and (b) of this rule, a person who violates any provision of Part 3 of Article 10.1 of Title 40, the livery plate requirements set forth in § 42-3-235,C.R.S., or any provision of these limited regulation carrier rules may be assessed a civil penalty of up to $275.00 for each violation.

(d) Civil penalty assessments are in addition to any other penalties provided by law.

6312. – 6399. [Reserved].

Decision No. C17-0976

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 17R-0796TR

IN THE MATTER OF THE PROPOSED RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE, 4 CODE OF COLORADO REGULATIONS 723-6.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: November 30, 2017
Adopted Date: November 16, 2017

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I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission (Commission) hereby issues this Notice of Proposed Rulemaking (NOPR) regarding proposed Rules Regulating Transportation by Motor Vehicle.

2. The Commission proposes amendments to existing Rules 6000 through 6399. The rules affected are the 6000 series General Provisions, the 6100 series Safety Rules, the 6200 series Regulated Intrastate Carrier Rules, and the 6300 series Limited Regulation Carrier Rules. There are no proposed changes to the 6400 series Unified Carrier Registration Agreement Rules, the 6500 series Towing Carrier Rules, the 6600 series Mover Rules, or the 6700 series Transportation Network Company Rules. Proposed changes concerning revocation of hazardous material carrier permits are located in Rule 6008.

3. At the heart of the proposed rule amendments and NOPR are the citizens of Colorado whom we serve every day. The purpose of the proposed rules is to describe the manner of regulation over persons providing transportation service by motor vehicle in the State of Colorado. The proposed rules enhance public safety, protect consumers of regulated transportation utilities, serve the public interest, and make the rules more effective and efficient. The proposed rules provide for clarity, necessity and conciseness and those rules found to be duplicative, inconsistent, or burdensome are repealed.

4. In addition, the proposed rules address legislative changes including the creation of the Medicaid Client Transport permit in House Bill 16-1097 and the clarification of the period of ineligibility of a motor carrier that fails to pay a civil penalty assessment in Senate Bill 17-180.

5. The proposed rules strike a balance between providing regulated industries the opportunity for success while protecting consumers and enhancing safety within the statutory framework in which the Commission must operate. Laws enacted by the Colorado Legislature provide the structure. For examples, common and contract carriers are public utilities and affected with a public interest, *see* § 40-10.1-103(1), C.R.S., and every public utility shall

furnish, provide, and maintain such service that promotes the safety, health, comfort, and convenience of its patrons and the public. *See* § 40-3-101(2), C.R.S. Motor carriers, other than common and contract carriers, are affected with a public interest. *See* § 40-10.1-103(2), C.R.S. Definitions of luxury limousine and luxury limousine service which combine to describe a chauffeur-driven, luxury motor vehicle and the corresponding service that is a specialized, luxurious transportation service provided on a prearranged charter. *See* §§ 40-10.1-301(7)-(8), C.R.S.

6. The statutory authority for the proposed rules is found in §§ 24-4-104(4), 40-2-108, 40-2-110.5, 40-3-101, 40-3-102, 40-3-103, 40-3-110, 40-4-101, 40-5-105, 40-7-113(2), 40-10.1.101 through 507; 42-4-235; 42-4-1809(2)(a), 42-4-2108(2)(a), and 42-20-202(1)(a), C.R.S.

7. The proposed rules in legislative (strikeout/underline) format [as Attachment A] and in final version [as Attachment B] are available in this proceeding number (17R-0796TR) through the Commission's E-Filings system at:

https://www.dora.state.co.us/pls/efi/EFI.homepage

In the E-Filings system, select the "Search" button and enter this proceeding number (17R-0796TR).

8. This NOPR proposes to make the following amendments, without limitation, to the Rules Regulating Transportation by Motor Vehicle (rule numbers below appear in abbreviated form; *e.g.*, Rule 6001(ss) of 4 *Code of Colorado Regulations* 723-6 appears as Rule 6001(ss)).

B. Description of Individual Rule Changes

1. Rules Primarily Affecting Public Safety

9. The first category of proposed amendments are those that primarily affect **public safety**:

10. Many definitions that were previously located throughout Rules 6001 through 6399 are now located in Proposed Rule 6001. This includes general and safety related definitions. Additionally, new definitions were included such as "Airport Official", "Couch Seats", "Driving Time", "FBI," and "On Duty".

11. Proposed Rules 6005(c) through (d) make it clear that motor carriers have the obligation to ensure accurate records are kept and to provide accurate records to enforcement officials. Proposed Rule 6017(c) provides for the assessed civil penalty amount.

12. The Commission specifically requests input from interested persons on Proposed Rule 6007(a)(I) concerning the financial responsibility minimum levels. The Commission is aware that some industry members have in the past advocated for higher levels while others have advocated for lower levels. The Commission wants to ensure that the levels provide adequate protection to passengers and the traveling public without being burdensome to the industry.

13. Proposed Rule 6007(a) clarifies the types of acceptable proof of financial responsibility minimum levels.

14. Proposed Rules 6007(j)(III) through (IV) clarify that if all authorities and permits of a motor carrier are inactive, the Commission may administratively cancel the proof of financial responsibility in the Commission's records.

15. Proposed Rule 6008(a)(I)(A) clarifies that permits of hazardous material carriers are no longer summarily suspended for lack of proof of financial responsibility, now under proposed Rule 6008(c)(I), they will be automatically revoked.

16. Proposed Rule 6008(b) is added to clarify that, under § 24-4-104(4), C.R.S., the Commission may summarily suspend an authority or permit when a motor carrier has engaged in a deliberate or willful violation where the public health, safety, or welfare requires an emergency action. A summary suspension order will be issued by an Administrative Law Judge (ALJ) only upon a finding that Staff of the Public Utilities Commission (Commission Staff) has provided sufficient evidence that a person has willfully or deliberately violated Commission rules or that the public health, safety, or welfare requires emergency action. The ALJ will issue a notice of summary suspension and set a hearing no more than ten days later. The notice of summary suspension shall be served on the person along with Commission Staff's notice of allegations and supporting information and a notice of hearing. Following the issuance of the summary suspension, the Commission will follow its rules for hearing procedures established under § 40-6-109, C.R.S.

17. Proposed Rules 6008(c)(II) through (IV) are added to make clear that certain motor carrier permits are automatically revoked for failure to pay a civil penalty pursuant to statute. This includes limited regulation carriers, tow carriers, and household goods movers.

18. Proposed Rules 6017(a) and 6106(a) clarify that each occurrence of a violation and each day that a violation occurs constitutes a separate violation.

19. Proposed Rule 6017(c) specifies the assessment amount for violation of Rules 6005(c) or (d) (falsifying records or producing/retaining false records).

20. Proposed Rules 6101(c) and (g) are definitions added to clarify the hours of service rules.

21. Proposed Rule 6102 incorporates the most recent version of title 49 of the *Code of Federal Regulations* (CFR) (Transportation). The Commission specifically requests input from interested persons on the incorporation of 49 C.F.R. Data supporting the commenter's position and suggested rule language should be provided with the comments.

22. Proposed Rule 6103(c) concerns hours of service of drivers. Presented are two options concerning the maximum hours a driver may drive and calculation methods for hours of service. Considering the relationship of driver fatigue and the safety of the traveling public, the Commission specifically requests input on these two different options. We ask that carriers weigh in as to whether all industry members should be required to operate under one of the options or if different calculation methods and rules should be used for different types of passenger transportation services.

23. Proposed Rules 6103(d)(VIII) and (IX) are added to clarify that motor vehicles that fail to qualify under the rules may be placed out of service.

24. Proposed Rule 6105(c) adds that motor carriers are required to provide notice to driver applicants that their fingerprints will be submitted to both the Colorado Bureau of Investigation (CBI) and the Federal Bureau of Investigation (FBI).

25. Proposed Rule 6107 outlines the condition, age, and mileage of allowable vehicles and clarifies the frequency of periodic inspections for vehicles. This rule replaces current Rules 6213, 6214, 6254(b), 6254(c), 6255(b), 6255(c), and 6305 in whole or in-part, and therefore contemplates a single vehicle age and condition standard for all taxis, shuttles, contract carriers, and luxury limousines. The Commission specifically requests input from interested

persons on this rule concerning acceptable condition, age, and mileage requirements. Data supporting the commenter's position on the age and mileage criteria is encouraged. Any comments should keep in mind that common and contract carriers are public utilities and affected with a public interest and every public utility shall furnish, provide, and maintain such service that promotes the safety, health, comfort, and convenience of its patrons and the public. *See* §§ 40-10.1-103, 40-3-101(2), C.R.S. Additionally, definitions of luxury limousine and luxury limousine service combine to describe a chauffeur-driven, luxury motor vehicle and the corresponding service that is a specialized, luxurious transportation service provided on a prearranged charter. *See* §§ 40-10.1-301(7)-(8), C.R.S.

26. Proposed Rule 6255(a) specifies requirements of the required dispatch system and its relationship to the hours of service rules.

2. Rules Primarily Affecting Public Interest and Consumer Protection

27. The second category of proposed amendments are those that primarily affect the **public interest and consumer protection**:

28. Proposed Rule 6009(g) is added to clarify under which specific circumstances the Commission will replace a motor vehicle stamp.

29. Proposed Rule 6012 is new and underscores that motor carriers may not charge additional fees to passengers who choose to make payment with a credit card.

30. Proposed Rule 6016(a) clarifies that a person shall be presumed to have offered transportation service if the person has not disclosed the fact that the services are being arranged by a transportation broker.

31. Proposed Rule 6207(a) contemplates a Commission prescribed form intended to simplify the filing of tariffs for motor carriers of passengers.

32. Proposed Rule 6207(b) initiates the foundation for common carriers to file tariffs with the Commission that contain a range of fares and sets out the requirements associated with a carrier operating under such flexible tariff.

33. Proposed Rule 6207(d) requires motor carriers that have a website, to post its tariffs on the website.

34. Proposed Rule 6207(f) clarifies the items to be included in a contract carrier's tariff.

35. Proposed Rule 6207(g) clarifies that a carrier granted a new authority or an extension of its authority may file its proposed tariff as ordered by the Commission.

36. Proposed Rule 6207(h) requires all common and contract carriers to file a complete and updated tariff by October 1, 2018.

37. Proposed Rule 6207(j)(II) is new and makes clear that common and contract carries must file all new tariffs when making changes to an existing tariff. A carrier will no longer be able to only replace a page or pages of an existing tariff.

38. The Commission specifically requests comments on Proposed Rules 6207 (tariffs) and 6208 (time schedules) along with a legal analysis concerning "flexible rates, conditions, or services". By "flexible rates, conditions, or services" the Commission means a range of rates, times, and services in lieu of specific rates for specific services at specific times. Any comments should keep in mind that common and contract carriers are public utilities and affected with a public interest and every public utility shall furnish, provide, and maintain such service that promotes the safety, health, comfort, and convenience of its patrons and the public. *See* §§ 40-10.1-103, 40-3-101(2), C.R.S. Also, rates are to be just and reasonable and a public

utility may not establish unreasonable differences as to rates, charges, service facilities, or between localities or class of service. *See* § 40-3-101(1), C.R.S.

39. Proposed Rule 6253(c) is modified to ensure all taxi customers are provided service within 30 minutes of a request. The Commission seeks comments as to whether a customer pickup time requirement is appropriate weighing the importance of service to customers of common carriers against the difficulty of a requirement to do so in a set amount of time. The Commission requests input as to how the Commission should balance its duty to ensure just and reasonable service to customers while limiting the burden on industry.

40. Proposed Rule 6257(c) creates a flat rate for taxicab transportation within Zone A (downtown Denver). The Commission specifically requests input from interested persons regarding this proposed rule including the proposed flat rate. If this rule is adopted it would apply to all taxicab companies and would disallow market competition pricing.

41. Proposed Rule 6257(e)(III) modifies the boundaries of Zone C (Boulder area) at the request of industry. The Commission specifically requests input from interested persons regarding whether this is the appropriate boundary for Zone C.

42. Proposed Rule 6257(e)(IV) creates a new Zone D (Tower Road) and proposed Rule 6257(d)(VI) sets the rate for that new zone. The Commission specifically requests input from interested persons regarding this proposed rule including the proposed rate.

43. The Commission specifically requests input from interested persons on Proposed Rule 6257 in general and whether the current flat zone rates are just and reasonable for trips to or from Denver International Airport and Zones A, B, C and D, and also whether the flat zone rates could or should be adjustable through a different avenue than a rulemaking. Commenters are encouraged to provide alternate rule language if their input suggest changes should be made.

44. Proposed Rule 6308 clarifies the vehicle types that may be used to provide luxury limousine services. Specifically, Proposed Rule 6308(a)(III) modifies the criteria for an executive van. The Commission specifically requests input from interested persons addressing; executive car acceptable vehicle types, executive van requirements, the elimination of antique or specially built vehicles, and the new definition of collector's vehicle including the suggested appraised certified appraised retail value, keeping in mind the definitions of luxury limousine and luxury limousine service which combine to describe a chauffeur-driven, luxury motor vehicle and the corresponding service that is a specialized, luxurious transportation service provided on a prearranged charter. *See* §§ 40-10.1-301(7)-(8), C.R.S.

3. Rules Primarily Designed to Make the Rules More Efficient and Effective

45. The third category of proposed amendments are those that are primarily designed to make the rules more **efficient and effective for the industry, for the public and for the Commission**:

46. Proposed Rule 6001 now contains most of the definitions for passenger carriers.

47. Proposed Rule 6001(b), the definition of "airport official," is added because the term is used in Rules 6304(d) and 6309(f). Industry representatives requested this definition be added to the rules.

48. Proposed Rule 6001(oo) clarifies the definition of "on duty."

49. Proposed Rule 6001(yy) clarifies the definition of "seating capacity."

50. Proposed Rule 6001(fff) clarifies the definition of "Transportation Broker."

51. Proposed Rule 6001(ggg) adds the definition of "Transportation Network Company."

52. Rule 6003 shortens the notice period from 30 days to 10 days for certain vehicle type waivers.

53. Proposed Rule 6011(b) regarding changes to a motor carrier's designated agent has been moved from 6006(d).

54. Proposed Rule 6011(d) concerning notice provided by the Commission has been moved from current Rule 6013, and it has been modified to name the designated agent.

55. Proposed Rule 6203 modifies the application requirements for persons applying to operate as common or contract carriers. This modification eliminates all of the specific requirements in the current rule and instead requires persons to use the form provided by the Commission.

56. Proposed Rule 6204 modifies the application requirements for persons applying to voluntarily abandon or suspend an existing common carrier authority or contract carrier permit. This modification eliminates all of the specific requirements in the current rule and instead requires persons to use the form provided by the Commission.

57. Proposed Rule 6205 modifies the application requirements for persons applying to transfer an existing common carrier authority or contract carrier permit. This modification eliminates all of the specific requirements in the current rule and instead requires persons to use the form provided by the Commission. It also clarifies requirements of the transferor and the transferee.

58. Proposed Rule 6209 clarifies that a contract carrier shall not operate in conflict with its permit.

59. Proposed Rule 6259 clarifies the method for converting a taxi or shuttle service carrier to a Transportation Network Company. To convert a common carrier authority authorizing taxi or shuttle service, in whole or in part, to a Transportation Network Company permit, an application to convert consists of an application for a permit to operate as a Transportation Network Company along with appropriate fees and may consist of a separate application to voluntarily abandon or suspend an authority to operate as a regulated intrastate carrier. The proposed rule also clarifies that during the period of suspension of its certificate of public convenience and necessity, a taxicab company, shuttle company, or a subsidiary or affiliate of a taxicab company or shuttle company is exempt from taxi or shuttle standards concerning the regulation of rates and charges under, and any commission rules regarding common carriers if the entire authority is suspended.

60. Proposed Rule 6302 lays out the application process for limited regulation carriers and clearly states that a permit is valid for a period of one year pursuant to § 40-10.1-302(1)(b), C.R.S.

61. Proposed Rule 6304(d)(IV) is added at the request of industry and allows luxury limousines to have signage that is used for the purposes of identifying the charter party.

62. Proposed Rule 6306 is added at the request of industry and clarifies the requirement that luxury limousine carriers are required to have livery license plates and requirements for livery plates.

63. The Commission is also making proposed changes to other rules. The changes are nonsubstantive and administrative in nature. Some of these proposed modifications add to existing rules or clarify existing rules to ensure these rules are clearer for the industry, for the public, and for the Commission. For example, Proposed Rule 6001(c), formerly 6001(b), contains some language changes that do not substantively alter the definition of "authority" but better explain the term.

C. Conclusion

64. The proposed amendments will be published in the December 10, 2017 edition of *The Colorado Register*.

65. A Hearing Commissioner, Commissioner Frances Koncilja will conduct a hearing on the proposed rules and related issues at the below-stated time and place. Interested persons may submit written comments and provide legal authority along with the proposed rules, including data, views, or arguments, and present these orally at hearing unless the Hearing Commissioner deems oral presentations unnecessary. The Commission prefers and strongly encourages that interested persons submit comments through the Commission's Electronic Filing System and do so in this proceeding number (17R-0796TR) no later than January 12, 2018. Reply comments should be submitted in the same proceeding and through the Commission's Electronic Filing System by February 2, 2018. The Commission will consider all submissions, whether oral or written.

66. In submitting comments or replies, interested persons are invited to suggest changes that will make the subject rules more efficient, effective, and elegant. We recognize that regulation imposes costs; therefore, suggestions concerning rules that may be unnecessary or unduly burdensome will be fully considered by the Commission.

67. We wish to proceed with this rulemaking in a well-organized manner which requires us to maintain an efficient timeline. Therefore, we request commenters to include alternate rule language, as necessary, with their comments,

68. In order to fully analyze and weigh comments, we ask that in addition to suggested language, commenters provide supporting data and bring relevant information into the proceeding by the dates and manner specified above.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking shall be filed with the Colorado Secretary of State for publication in the December 10, 2017 edition of *The Colorado Register*.

2. Hearing Commissioner Frances Koncilja will hold hearings as set below. The first day of the hearings will focus on common and contract carriers including taxi and shuttle service carriers and the second day will focus on limited regulation carriers including luxury limousine carriers.

3. A hearing on the proposed general, safety, common and contract carrier rules, and related matters shall be held before Hearing Commissioner Frances Koncilja as follows:

DATE: February 20, 2018

TIME: 9:00 a.m.

PLACE: Commission Hearing Room
Suite 250
1560 Broadway
Denver, Colorado

4. A hearing on the proposed general, safety, and limited regulation carrier rules and related matters shall be held before Hearing Commissioner Frances Koncilja as follows:

DATE: February 21, 2018

TIME: 10:00 a.m.

PLACE: Commission Hearing Room
Suite 250
1560 Broadway
Denver, Colorado

5. Hearing Commissioner Frances Koncilja may set additional hearings, if necessary.

6. At the time set for hearing in this matter, interested persons may submit written comments and may present these orally unless Hearing Commissioner Frances Koncilja deems oral comments unnecessary.

7. Interested persons may file written comments in this matter before hearing. The Commission prefers and strongly encourages that interested persons submit comments through the Commission's Electronic Filing System, and do so in this proceeding (17R-0796TR) no later than January 12, 2018 at:

https://www.dora.state.co.us/pls/efi/EFI.homepage.

8. Interested persons may file reply comments in this matter before hearing. The Commission prefers and strongly encourages that interested persons submit comments through the Commission's Electronic Filing System and do so in this proceeding (17R-0796TR) no later than February 2, 2018.

9. This Decision is effective upon its mailed date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING November 16, 2017.

(S E A L)

ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

WENDY M. MOSER

Commissioners

Notice of Proposed Rulemaking

Tracking number

2017-00592

Department

700 - Department of Regulatory Agencies

Agency

740 - Division of Professions and Occupations - State Boxing Commission

CCR number

4 CCR 740-1

Rule title

BOXING KICKBOXING AND MIXED MARTIAL ARTS

Rulemaking Hearing

Date

01/11/2018

Time

10:00 AM

Location

1560 Broadway, Ste 110 D., Denver, CO 80202

Subjects and issues involved

The purpose of this rulemaking is to amend the content in several sections of the rules for further clarification in the regulation of combative sports, eliminate inconsistencies and adopt the amendments made by recent legislation in SB17-148. In addition, the rules will continue to incorporate by reference the Word Anti-Doping prohibited substance list for consistency with other commissions.

Statutory authority

§12-10-105 and 12-10-106, C.R.S., and § 24-4-103(6), C.R.S.

Contact information

Name

Josef Mason

Title

Director

Telephone

303.894.7800

Email

dora_combativesports@state.co.us

2017 NOTICE OF RULEMAKING HEARING

Pursuant to § 24-4-103, and § 12-8-108(1)(a), Colorado Revised Statutes, you are hereby advised that the Combative Sports Commission will hold a public rulemaking hearing.

The hearing will be held on **Thursday, January 11, 2018, at 10:00 A.M.** at 1560 Broadway, Conference Room 110 D, Denver, Colorado for the purpose of considering the following rules:

Chapter 1 – General Rules
Chapter 2 – Requirements for Participants in all bouts
Chapter 3 – Requirements for Bout approval
Chapter 4 – Declaratory Orders
Chapter 5 –Requirements for Boxing participants
Chapter 6 – Requirement for Kickboxing participants
Chapter 7 – Requirements for Mixed Martial Arts (MMA) participants
Chapter 8 – Requirements for Seconds
Chapter 9 – Requirements for Promoters
Chapter 10 – Guidelines for contract, financial arrangements and reporting fraud
Chapter 11 – Personnel, facility and equipment requirements
Chapter 12 – Ticket and sales reporting requirements
Chapter 13 – Requirements for Elimination bouts
Chapter 14 – Requirements for Officials

The purpose of this rulemaking is to amend the content in several sections of the rules for further clarification in the regulation of combative sports, eliminate inconsistencies and adopt the amendments made by recent legislation in SB17-148. In addition, the rules will continue to incorporate by reference the Word Anti-Doping prohibited substance list for consistency with other commissions.

A copy of the proposed rules is attached. Please be advised that the adoption of these rules may be changed after public comment and formal hearing.

At the time and place stated in this notice, the Director will afford all interested persons an opportunity to submit any written data, views, or arguments and to present the same orally (3 minutes per item) if they so desire. It is requested that written testimony be submitted to the Office of Combative Sports at least ten (10) days prior to the rule making hearing. Also, on the day of the meeting participation can be done by webinar by registering to the following link: https://attendee.gotowebinar.com/register/2845001202836021 77.

Written submissions may be sent to dora_combativesports@state.co.us. The Director will consider all such submissions.

Dated this 30th day of November, 2017.

Josef Mason
Director

STATEMENT OF BASIS AND PURPOSE

Proposed Rules for Combative Sports Commission

Statement of Authority:

The specific statutory authority that authorizes the rulemaking is § 12-10-105 and 12-10-106, C.R.S., and § 24-4-103(6), C.R.S.

The statutory authority for these rules is §12-10-106, C.R.S., and § 24-4-103(6), C.R.S. The Commission shall issue such rules as are necessary for the regulation of the conduct, promotion and performance of live professional boxing events, performances, or contests held in this state.

Basis and Purpose:

The basis for the rules is to carry out the provisions of the Combative Sports Commission Practice Act at §§ 12-10-101 *et seq.*, C.R.S. ("the Act").

The purpose of this rulemaking is to amend the content in several sections of the rules for further clarification in the regulation of combative sports, eliminate inconsistencies and adopt the amendments made by recent legislation in SB17-148. In addition, the rules will continue to incorporate by reference the Word Anti-Doping prohibited substance list for consistency with other commissions.

The Director believes the proposed amendments are fair, impartial, and contain the right balance of regulatory oversight.

It is the Director's opinion that these amendments will not have an adverse economic impact on small businesses because the amendments provide greater clarity for compliance and understanding.

The specific purpose for amending these rules is as follows:

Overall amendments	The proposed revisions to the Rules fall into one of two main categories: I. Changes necessary to implement legislation passed in 2017 (SB17-148); and II. Changes needed to improve clarity and eliminate inconsistencies. Changes required by SB 17-148 include the following: Change in the name of the Commission Clarification re. office director vs. division director. The addition of "martial arts" as a combative sport under the jurisdiction of the Commission. The requirement for the Rules to include procedures concerning denial or suspension for non-disciplinary (e.g., medical or administrative) reasons.

Chapter 1 Definitions	The definitions are expanded and clarified to provide an improved foundation for provisions in other chapters. Clarify that the rules apply to professional events. Provisions are added regarding "instant replay".
Chapter 2 Participants	Language is clarified and strengthened re: the requirements that participants be licensed. Provisions are added regarding reinstatement of an expired license and reporting convictions and judgements. Commission requirements related to the federal professional Boxing Safety Act of 1966" are moved from Chapter 4 to Chapter 2. (Federal requirements of the Act are deleted from the Rules.) Appearance requirements at weigh-in (e.g., "clean and organized") are deleted. Ring apparel for female participants are clarified. Provisions are added for denial and suspension of participants for non- disciplinary (e.g., medical and administrative) reasons per SB-17-148.
Chapter 3 Bout Approval	Changes made to this chapter are limited to those needed to improve clarity and eliminate inconsistencies. NEW ITEMS: 3.4 B – Additional test requirement for participants age 45 and older 3.9 – Gender of Participants
Chapter 4	Federal requirements removed from Chapter 4 and added some of the requirements to Chapter 2. This Chapter became the Declaratory Orders chapter.
Chapter 5 Boxing participants	Changes made to these chapters are limited to those needed to improve clarity and eliminate inconsistencies.
Chapter 6 - Kickboxing participants	Changes made to these chapters are limited to those needed to improve clarity and eliminate inconsistencies.
Chapter 7 MMA & MA participants	"Fingers outstretched toward an opponent's face/eyes" is added as a foul for MMA. Basic provisions are added to govern martial arts contests, requiring that such contests be conducted pursuant to the official rules of the sponsoring organization and stating that the director will provide specific requirements prior to a permitted event.

Chapter 8 Seconds	Language is clarified and strengthened re. the requirement that seconds must be licensed. Provisions are added regarding reinstatement of an expired license and reporting
Chapter 9 Promoters	Language is clarified and strengthened re. the requirement that promoters must be licensed.
Chapter 10 Contracts, Financial Arrangements, Reporting Fraud	Changes made to this chapter were limited to those needed to improve clarity and eliminate inconsistencies.
Chapter 11 Personnel, Facility, and Equipment	Changes made to this chapter were limited to those needed to improve clarity and eliminate inconsistencies.
Chapter 12 Ticket and Sales Reporting	Changes made to this chapter were limited to those needed to improve clarity and eliminate inconsistencies.
Chapter 13 Elimination Bouts	Changes made to this chapter were limited to those needed to improve clarity and eliminate inconsistencies
Chapter 14 Officials	Language is clarified and strengthened re. the requirement that officials must be licensed. Authority is added for referee to stop a fight in cases of loss of bodily function.
Chapter 15 Declaratory Orders	No changes are made to this chapter other than it was moved to Chapter 4.

~~Boxing, Kickboxing and Mixed Martial Arts~~COMBATIVE SPORTS Rules

~~Colorado Office of Boxing Combativeand~~ Colorado State ~~Boxing~~ Combative Sports Commission

Effective ~~July~~ ~~February~~March 15, ~~1~~, ~~2016~~2018

Colorado State ~~Boxing~~Combative Sports Commission Rule Contents

CHAPTER I
GENERAL
RULES

1.1 DEFINITIONS

A. ***Bout***. Match, exhibition or contest between two participants involving a combative sport~~.~~

B. ***Boxing.*** Any physical bout between two individuals striking with hands to outscore, knock out, or otherwise disable an opponent into submission.
~~. or with fists.~~

C. Contest. A bout or match in which the participants strive earnestly to win.

~~B~~D. ***Chief Inspector.*** An official assigned to carry out all duties as assigned by the ~~director~~Director.

~~D~~**E. Combative sport**. Boxing, kickboxing, mixed martial arts, and martial arts.

F. ***Commission***. The Colorado Commission of Combative Sports

G. **Commission representative**: The Director or an official.

H. ***Director.*** The Director of the Colorado Office of Combative Sports.

~~C~~I. ***Division ~~of Registrations~~Director~~:~~.*** ~~Is the~~ Director of the ~~d~~Division of ~~professions~~ Professions and ~~occupations~~Occupations, within the Colorado Department of Regulatory Agencies.

~~D.~~
J. ***Event.*** A compilation of bouts that occur at one location during a single day.

~~E~~K. ***Fraud***. Any licensee who cheats, obtains money or some other benefit, or misrepresents facts by deliberate and willful deception.

~~F~~L. ***Kick.*** A strike using the foot or feet.

M. Kickboxing. Any physical bout between two individuals striking with the hand and any part of the leg below the hip, including the feet to outscore, knock out or otherwise disable an opponent into submission.

~~G~~N. ***Official.*** Any person who performs an official function during the supervision of a contest or exhibition. This includes referees, judges, timekeepers and inspectors.

O. Martial Art. Includes by way of example and not limitation aikido, judo, jujitsu, karate, kendo, kung fu, sumo wrestling, t' ai chi, tae kwon do, or wrestling

P. Mixed Martial Art. Any physical contact bout between two or more individuals who attempt to outscore, knock out, or gain submission of the opponent by using any combination of boxing, kicking, choking techniques, or martial art.

~~H~~QQ. ***Non-Sanctioned organization.*** Is an organization that is not governed by a state or tribal athletic commission.

~~I~~R. ***Participant.*** Any individual who competes in ~~a~~ a combative sport bout~~ and may be referred to as a fighter.~~

S. Professional. A contest or match in which participants compete for or receive a purse or anything of value.

~~J~~T. ***Promoter.*** Any person, association, corporation, organization, who is licensed to promote events.

~~K~~U. ***Purse.*** Is a bout earning, a financial guarantee or any other remuneration for which participants are participating in a contest or exhibition and includes the participant's share of any payment received for radio broadcasting, television or motion picture rights.

~~L~~V. ***Reinstatement.*** The process by which a license as a promoter or an official has expired is returned to Active status.

~~M~~W. ***Renewal.*** The process of applying to retain a license as a promoter or an official in an Active status every two years in accordance with the schedule established by the ~~division of registrations~~Division Director pursuant to Sections 12-10-106.5, C.R.S. and 24-34-102, C.R.S.

~~N~~X. ***Sanctioned Organization.*** An organization that sanctions professional bouts of boxing, kickboxing or mixed martial arts and martial arts by a state or tribal athletic commission.

1.2 APPLICABILITY OF RULES

These rules apply only to professional combative sports events where purses or prizes may be given. These rules do not apply to events that are exclusively amateur in nature.

1.~~3~~2 VIOLATIONS OF RULES

Violations of any provision of these rules may result in immediate ejection from event, a ban from future events and subject to disciplinary action.

1.~~4~~3 RESPONSIBILITY

All promoters, participants, seconds and officials associated with combative sport~~the~~ events shall acquaint themselves with and comply with all applicable laws and rules of the Commission.

1.~~5~~4 IMPROPER CONDUCT, FOUL OR ABUSIVE LANGUAGE EJECTION

A. The use of foul or abusive language or mannerisms or threats of physical harm by any person at any permitted event shall not be tolerated. This includes all press conferences, weigh-ins and any aspect of an event. In addition, prohibited conduct includes unfair dealings, unsportsmanlike conduct, protesting the decisions of the officials, or violating any laws or rules.

B. If improper conduct occurs at any permitted event, the Director or chief inspector may eject the individual and forbid such person from acting in any capacity in connection with that or any subsequent permitted event. Any licensee who refuses to obey an order by the Director to leave the premises because of conduct prohibited in this paragraph, or any person who returns to the premises in violation of the Director's order may be subject to further disciplinary action.

1.~~6~~5 MODIFICATION OF BOUT RESULT

A. Only the Director may request a hearing on a result modification matter after the Director determines that one or more of the following incidents has occurred:

i. There were indications of collusion affecting the result of the bout;

ii. The compilation of the scorecards of the judges disclosed an error which showed that the decision was given to the wrong participant; or,

iii. An error interpreting the rules that may have resulted in, an incorrect decision.

iv. A positive test result reveals the use of a prohibited drug, substance, or method.

1.7~~6~~ USE OF INSTANT REPLAY

A. When the Director has approved the use of instant replay prior to an event, the referee, and only the referee, may decide to use instant replay.

B. The referee may use instant replay only for the purpose of determining whether or not a foul was committed, intentional or unintentional, causing a “bout ending sequence” that brought about the final end of the fight.

C. Based on the instant-replay review, the referee may make the correct call with respect to: the winner of the bout; a “no-contest” determination; a disqualification; or a technical decision by the judges.

CHAPTER 2
REQUIREMENTS FOR PARTICIPANTS IN ALL BOUTS

2.1 LICENSE ~~OR PERMIT~~ TO FIGHT APPLICATIONS

A license is required for a participant to fight in a professional combative sports contest. All participants shall submit an application for a license ~~or a permit~~ to fight ~~per event~~ in a manner prescribed by the ~~director~~Director. ~~.~~ Incomplete or incorrect applications will not be accepted.

2.2 FEES

Each applicant for a license ~~or permit~~ shall pay the required fee before the license ~~or permit~~ to fight is granted. The license ~~and permit~~ fee schedule is established by the ~~director of registrations~~Division Director pursuant to §~~Section~~ 24-34-105, C.R.S.

2.3 MINIMUM AGE REQUIREMENT

Any person who wishes to apply for a participant license must be a minimum age of eighteen, unless a signed verification of approval and waiver is signed by the parent or legal guardian and the Director approves. ~~No participant under the age of eighteen years shall be allowed to participate in a professional debut bout~~.

2.4~~:~~ FEDERAL REGISTRATION REQUIREMENT

A. Pursuant to the "Professional Boxing Safety Act of 1996" all professional boxing participants must be registered with the recognized boxing federal registry and obtain a federal identification card in order to participate in boxing bouts anywhere in the United States. Therefore, all professional boxing participants shall show proof of registration. All Mixed Martial Arts participants must register for a National Identification card.

B. Any boxing debut participant must be registered with a federal identification card within seven days prior to the first bout. The participant shall not be permitted to box in any contest scheduled for more than four rounds for the participants first four bouts, and shall not be permitted to compete in any bout of more than six rounds until the participant has participated in ten or more professional bouts, unless approved by the Director.

C Each participant will present their identification card or completed application to the Director or chief inspector not later than the scheduled time of the weigh-in for a bout. A participant, who is unable to produce their identification card or establish with the Director or chief inspector that they have a current federal identification, will not be allowed to participate.

2.45 WEIGH-INS AND FIGHT APPEARANCE

A. Each participant must be weighed in the presence of a ~~commission~~ Commission representative as designated by the ~~director~~Director, on scales approved by the Director ~~the commission at~~and at a place designated by the ~~director~~Director. The participants may have all items of weight stripped from their body before they are weighed in. ~~The owner or operator of the premises in which the weighing in is held shall provide adequate security for the participants and other persons who are present.~~ All participants shall appear at the weigh-in and event on time as required by the ~~director~~Director. All participants must report to the ~~director~~Director or chief inspector as soon as they arrive to the weigh~~-~~in and event at a place designated by the ~~director~~Director. Failure to report to the ~~director~~Director or chief inspector on time may disqualify the participant from competing and may be subject the participant to disciplinary action. Unless a championship bout, participants' weights will be rounded down to the nearest pound.

The weigh-in shall be no less than six hours prior and no more than 30 hours prior to the scheduled event. The directorDirector may require participants to be weighed more than once for just cause.

B. Participants are not allowed to leave the designed weigh-in area until such time as they are notified by the directorDirector or the chief inspector.

2.56 FAILURE TO MAKE CONTRACTED WEIGHT

A participant who at the scheduled time of weigh-in fails to make be at the weight specified in the contract between the promoter and the participant at the scheduled time of weigh-in may be disqualified from competing and may be subject to disciplinary action.

2.67 PARTICIPANTS' APPEARANCE

A. All participants shall be clean and present an organized appearance during the weigh-in as well as the permitted event.

BA. All pParticipants shall not be permitted to have excessive petroleum jelly, grease or foreign substances on any part of their body.

CB. All pParticipants' hair shall be cut or arranged in such a manner as not to interfere with the participant's
vision. Hair may be secured using rubber bands or other banding devices but not hairpins or hairnets. The hair must be free of all hair styling products (i.e.e.g., mousse, gel, or spray). Facial hair must be trimmed to an acceptable level as required by Rule 2.6

DC. The directorDirector or chief inspector shall determine whether head or facial hair (Mustachese.g., mustaches, goatees, sideburns) or hair length, or hair adornments (e.g. jewelry or other decorative items) presents any potential hazard to the safety of the participants, or may interfere with the supervision and conduct of the bout. The participant may not compete in the bout unless the circumstance creating the potential hazard or potential interference is corrected to the satisfaction of the directorDirector or chief inspector.

ED. All pParticipants are prohibited from having facial or body adornments such as earrings, jewelry or body piercing accessories during the bout.

F. Any other objects not initially approvednon-approved objects on or about the body of the participant for during the bout may disqualify the contestantparticipant.

2.78 APPROVED RING ATTIREPPAREL

A. Each pParticipants in an event shall prepare themselves with appropriate ring attirepparel for the sport as approved by the an director official, which may items may include an abdominal guard, a protective cup, two pair of trunks of contrasting color, shoes, and two approved, and properly-fitted mouthpieces.

A.B. Female participants must wear a short sleeved (above the elbow), or sleeveless, form-fitting style top, breast protector, or sports bra. In order to promote uniformity in the sport they are competing in and avoid potential safety risks, loose fitting tops are not allowed. Any top must be well fitted and not interfere with the participant's ability to compete. Wrestling singlets are not permitted. Female competitors will also follow the same requirements for bottom coverings as the male competitors, minus the requirement for groin protection.

2.8 9 MOUTHPIECE REQUIREMENTS / FOREIGN OBJECTS

A. ~~All p~~Participants are required to wear a mouthpiece during competition. The round shall not begin without the proper placement of the mouthpiece. If the mouthpiece is dislodged during competition, the referee will call time and have the mouthpiece replaced at the first available opportunity, without interfering with the immediate action. Points may be deducted from the participant or the participant may be disqualified if the mouthpiece is purposely dislodged or if the mouthpiece continuously becomes dislodged.

B. ~~All p~~Participants are prohibited from having any ~~other~~ removable ~~foreign~~ object other than the required mouthpiece in their mouth during competition. Participants are subject to inspection before, during or after a bout. Should the ~~director~~Director or chief inspector find any foreign object in a participant's mouth the participant may be subject to disciplinary action.

2.~~9~~ 10 GLOVE REQUIREMENTS

A. The participant or the second is responsible for ensuring that gloves are not twisted or manipulated in any way. If a glove breaks or a string becomes untied during the bout, the referee will instruct the timekeeper to take time out while the glove is corrected. All gloves will be checked by a commission representative prior to the start of a bout and any snagged, torn, or unfit gloves will not be approved for competition.

B. ~~Each p~~Participants must decide on the gloves the participant expects to use during the bout. After the ~~director~~Director or chief inspector approves the gloves, there shall not be any changes unless or until the gloves are damaged and/or deemed unusable. Any additional gloves must also be approved by the ~~director~~Director prior to their use.

2.~~10~~11 PROHIBITED SUBSTANCES

All participants are prohibited from using any drugs, alcohol, or stimulants, ~~either before or during a bout~~that could either impair or enhance their fight performance. The consumption of ~~A~~any substance other than plain water or a sports drink approved by the ~~director~~Director is prohibited during the event.

2.~~11~~12 DELAY OF BOUTS

~~Preliminary p~~Participants shall be ready to enter the ring, ~~or~~ cage, or competition area immediately ~~after the conclusion of the preceding bout~~prior to the start of their bout. Any participant, corner person or promoter causing a delay of more than five minutes when called may be subject to disciplinary action.

2.~~12~~13 PARTICIPANTS DENIED PERMISSION TO FIGHT.

A. The Director may deny or suspend permission for a participant to fight due to:

i. The medical or other non-disciplinary reasons set forth in the "Professional Boxing Safety Act of 1996";

ii. ~~A~~dministrative or other non-disciplinary actions imposed by another state regulatory body; or,

iii. A determination by the Director that the participant is unfit to fight for any physical or mental health reason~~.~~.

B. Denials and suspensions for medical, administrative or other non-disciplinary reasons may be lifted when a participant furnishes proof:

i. Of a sufficiently improved medical, physical, or mental health condition; or

ii. That a suspension was not, or is no longer, merited by the facts.

C. The Director may consult and report to the national record keeper all non-disciplinary medical and administrative denials or suspensions.

2.142 OUT OF STATE SUSPENSIONS

All suspensions of participants by another state or tribal athletic commission may be recognized by the Colorado State Boxing Commission. Acceptable verification of license status includes but is not limited to: a new fight faxcurrent official record approved by the Director showing that the participant is not on suspension or verification that the participant is not listed on the record keepers' database.

2.135 PARTICIPANTS WHO ENGAGE IN NON-SANCTIONED BOUTS

A. Any participant who engages in a bout that is not sanctioned by a state or tribal athletic commission will not be approved to compete in a sanctioned bout for a minimum of 30 days from the date of the participant's last non-sanctioned bout and a written clearance from a physician may be required.

B. Any participant who wishes to engage in a sanctioned bout within 30 days from the date of the participant's last non-sanctioned bout must submit, within ten days of the non- sanctioned bout, written information that demonstrates that the non-sanctioned bout met all the requirements set forth in these Colorado State Boxing Commission Rules for a similar type of bout.

C. A participant who engages in a non- sanctioned bout while on suspension from a state or tribal athletic commission may be required to provide additional medical results before the participant is approved to compete.

2.14 6 ADDITIONAL REQUIREMENTS OF FEMALE PARTICIPANTS

A. Restrictions

Participants are restricted to participate in competition between their own gender.

BA. Pregnancy Test

Participants shall submit a doctor's written verification of a negative pregnancy test dated within seven days of a scheduled event. The cost of the test is the responsibility of the participant. The examining physician may fully evaluate a participants' medical history as they deem appropriate.

C. Protective Equipment

Participants must wear protective equipment as applicable in this rule in addition to a breast protector or a sports bra. The breast protector or sports bra must be well fitted and not interfere with the participant's ability to compete.

DB. Number of RoundsTtime Llimits

The number of rounds and time Time limits for female participants may vary depending on the combative sport. In all contests, the number of rounds will be specified.

2.17 REINSTATEMENT OF AN EXPIRED LICENSE

The purpose of this rule is to establish the qualifications and procedures for reinstatement of an expired license pursuant to § 12-10-106.5, C.R.S. and § 24-34-105, C.R.S.

A. Conditions of Reinstatement: License expired for less than two years

i. An applicant seeking reinstatement of an expired license for less than two years shall complete a reinstatement application and pay a reinstatement fee.

B. Conditions of Reinstatement: License expired two years or more

i. An applicant seeking reinstatement of an expired license for two years or more shall complete a reinstatement application, pays a reinstatement fee and provide proof of a compliance bond in a manner approved by the Director.

An applicant for reinstatement who has actively practiced in Colorado with an expired license in violation of § 12-10-106.5 C.R.S. is subject to denial of application, disciplinary action, and/or other penalties as authorized in the ~~Professional Boxing Safety~~ Act at § 12-10-101 et seq., C.R.S., and in accordance with § 24-34-102 et seq., C.R.S.

2.18 NOTICES FROM PARTICIPANTS

A. Address and Name Changes

i. Participants shall inform the Director of any name, address, telephone, or email change within 30 days of the change. The Director will not change a participant's information without explicit notification in a manner prescribed by the Director.

ii. One of the following forms of documentation is needed to change a name or correct a social security number:

a. Marriage license;
b. Divorce decree;
c. Court order; or
d. A driver's license or social security card with a second form of identification may be acceptable at the discretion of the division of registrations.

2.19 REPORTING CONVICTIONS, JUDGMENTS AND ADMINISTRATIVE PROCEEDINGS

A. Participants shall notify the Director within 45 days of any of the following events:

i. The conviction of a felony under any state or federal law, which would be a violation of §12-10-107.1 C.R.S. A guilty verdict, a plea of guilty or a plea of nolo contendere (no contest) accepted by the court is considered a conviction;

ii. A disciplinary action imposed upon the licensee by another jurisdiction that licenses promoters, which would be a violation of § 12-10-107.1, C.R.S., including, but not limited to, a citation, sanction, probation, civil penalty, or a denial, suspension, revocation, or modification of a license whether it is imposed by consent decree, order, or other decision, for any cause other than failure to pay a
license fee by the due date;

iii. Revocation or suspension by another state athlete commission, municipality, federal or state agency or any association who oversees boxing, kickboxing, mixed martial arts or martial arts;

iv. Any judgment, award or settlement of a civil action or arbitration in which there was a final judgment or settlement against the licensee.

B. The notice to the Director shall include the following information;

i. If the event is an action by a governmental agency (as described above), the name of the agency, its jurisdiction, the case name, and the docket, proceeding or case number by which the event is designated, and a copy of the consent decree, order or decision;

ii. If the event is a felony conviction, the court, its jurisdiction, the case name, the case number, a description of the matter or a copy of the indictment or charges, and any plea or verdict entered by the court. The licensee shall also provide to the Director a copy of the imposition of sentence related to the felony conviction and the completion of all terms of the sentence with 45 days of such action;

iii. If the event concerns a civil action or arbitration proceeding, the court or arbiter, the jurisdiction, the case name, the case number, a description of the matter or a copy of the complaint, and a copy of the verdict, the court or arbitration decision, or, if settled, the settlement agreement and court's order of dismissal;

C. The participant notifying the Director may submit a written statement with the notice to be included with the licensee's records.

CHAPTER 3
~~REQUIREMENTS FOR~~ BOUT APPROVAL REQUIREMENTS

3.1 NUMBER OF BOUTS

The Director has the discretion to control and limit the number of bouts held in any one event. Bouts in which more than two participants appear in the ring or cage at the same time ~~and bouts between members of the two genders~~ will not be approved.

3.2 BOUT REVIEW

~~The director reviews the following to determine if a participant is prepared to compete in a bout: This list includes but is not limited to the following~~The Director may not allow a bout to proceed upon a determination~~e~~ that either or both ~~a~~ participants should~~is~~ not ~~prepared to~~ compete ~~in a bout upon a determination that the participant is not in compliance with~~because of one or more of the following factors:

A. Skill level and ability of their opponent;
B. Age disparity between opponents;
C. Consecutive losses or wins ~~or~~ on recent record;
D. Fighting history, including r~~R~~ecent TKO' or KO's;
E. Disqualifications & or poor performances;
F~~E~~. Recent injuries;
G~~F~~. Failure to appear at any scheduled weigh-in or event;
H~~G~~. Failure to compete at any event;
I~~H~~. Request of a weight that may be unattainable given weight history, build, or physique;
J~~I~~. Failing to make weight;
K~~J~~. Lack of experience with consecutive rounds or bouts;
L~~K~~. Medical test results;
M~~L~~. Professional debut participants verify that they have trained for a minimum of 30 days prior to bout approval;
N~~M~~. Recent positive drug or substance test or any known positive test result;
O~~N~~. Failure to submit to a drug test in any jurisdiction;
P~~O~~. Physical impairment(s), eye blindness, missing limb;
Q~~P~~. Serious head or brain injury, trauma, impact or damage;
R~~Q~~. Age and date of most recent bout;
S~~R~~. Overall physical and mental fitness;
T~~S~~. Any action by any athletic or boxing commission in any jurisdiction;
U~~T~~. History of bad faith or dealings with any promotions or commissions;
V~~U~~. Not completing the bout requirements in a timely manner;
W~~V~~. Conduct that discredits or tends to discredit any sport regulated by the Commission in which the participant is competing.
X~~W~~. Such other factor(s) as the Director may determine.

3.3 ~~PRE-FIGHT~~PRE-FIGHT PHYSICAL ~~AND MEDICAL~~ EXAMINATIONS

A. ~~All p~~Participants must receive a physical ~~or a medical~~ examination from a physician and be declared fit to compete at a time approved by the ~~director~~Director and prior to the bout. Any participant deemed to be unfit to participate by the physician will not be permitted to compete. In such ~~instances~~instances, the promoter will be notified immediately.

B. Physicians shall be provided with a suitable place in which to conduct the physical

examinations. The ~~director~~Director may require additional medical tests prior to the weigh-in and may reject a participant for test results that are incomplete or unsatisfactory or deemed untimely prior to the weigh-in.

C. Examination Requirements

Thorough physical examinations will be given to participants and shall include, at a minimum, examinations of the following: weight, temperature, pulse (sitting and standing), lungs, ~~bloodpressure~~blood pressure, ~~-~~heart, venereal disease, urine analysis (when deemed necessary), scrotal evidence of hernia, and general physical condition. See Rule 2.14 for additional female participant examinations.

3.4 MEDICAL TESTS AND RESULTS

A. All participants must have taken and passed the three medical tests listed below within a timeframe prescribed by the Director and must provide ~~all medical~~the results ~~required by the director~~of those tests no later than ~~within~~ 48 hours prior the weigh-in. Exceptions may be made for substitutions as determined by the ~~director~~Director. ~~Such medical results include, but are not limited to the following:~~The Director may on a case by case basis require additional medical tests for participants.

i. Acceptable HIV;
ii. Acceptable Hepatitis B;
iii. Acceptable Hepatitis C.

B. Additional Test Requirements for Participants age 4~~5~~0 and Older.

1. Participants age 4~~5~~0 and older must undergo the following additional tests or examinations.
   a. General physical examination and Senior Athletes Fitness Examination (SAFE), to include a routine EKG.
   b. Exercise treadmill test (ETT)
   c. Echocardiogram
   d. MRI of the brain without contrast.
   e. Neural exam by a neurologist or neural surgeon
2. The requirement for the above additional tests or examinations may be waived by the Director for a participant 4~~5~~0 years of age or older who has been routinely fighting in permitted events for the previous five years.

3.5 PARTICIPANTS NOT SAFE TO COMPETE

Participants cannot safely engage or compete in a bout where there is the potential of an unfair advantage over their opponent. As such, if a participant has one or more medical conditions, the participant may not safely engage in boxing activities and may not be permitted to compete. Such medical conditions will be reviewed by the ~~director~~Director after consultation with the physician on a case by case basis ~~depending on the sport~~.

3.6 ~~PRE-ANNOUNCED~~ADVANCED NOTIFICATION, RANDOM, OR FOR-CAUSE TESTING OF PARTICIPANTS

A. ~~**Pre-Announced**~~**Noticed Testing**: All participants ~~who are licensed, previously licensed or scheduled to compete on any upcoming event are subject to~~ in bouts designated by the Director will be ~~pre-announced~~ being notified in advance that they will be ~~testing~~ tested for the use of any prohibited drugs, substances and methods identified by the World Anti-Doping Agency. If the ~~director~~Director determines that ~~pre-announced~~

testing of the participants should occur, promoters may be verbally informed before the conclusion of the weigh-in.

B. **Random Testing**: All participants ~~who are licensed, previously licensed or~~ scheduled to compete on any upcoming event are subject to random testing for the use of any prohibited drugs, substances and methods identified by the World Anti-Doping Agency. Random testing shall be conducted in accordance with a process established by the ~~director~~Director.~~.~~

C. **For Cause Testing**: If the ~~director~~Director has ~~probable cause~~reason to believe that a participant ~~who is licensed, previously licensed or~~ scheduled to compete on any upcoming event may be under the influence of any prohibited drugs, substances and methods identified by the World Anti-Doping Agency, the ~~director~~Director may order testing of the participant to determine whether or not the participant has taken, used or ingested any drugs, substances and methods.

D. **Mandatory Testing**: Testing will be mandatory for participants in bouts determined by the Director to ~~in~~be championship bouts ~~as determined by director~~.

E. All testing identified above shall be conducted at the discretion of the ~~director~~Director. In any bout which the ~~director~~Director believes the interest of boxing so require, the Director may order both participants submit to testing.

F. **Prohibited drugs, substances and methods**: The Commission hereby adopts the ~~January 1, 2015~~ edition, effective January 1, 2018, of the Prohibited List – International Standard published by the World Anti-Doping Agency. This Prohibited List is adopted to provide notice of this code to all participants. This rule does not include later amendments to or editions of the Prohibited List of the World Anti-Doping Agency.

A copy of the Prohibited List published by the World Anti-Doping Agency is available for public inspection during regular business hours at the Commission 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 and distribution center. For further information regarding how this material can be obtained or examined, contact the ~~director~~Director for the Commission at
1560 Broadway, Suite 1350, Denver, Colorado, 80202, 303-894-2300. The Prohibited List may be obtained, free of charge, at the Internet address www.wada-ama.org. Address: Stock Exchange Tower, 800 Place Victoria (Suite 1700), PO Box 120, Montreal, Quebec H47 1B7, Canada.

3.7 CHAMPIONSHIP BOUTS ~~PROHIBITED WITHOUT COMMISSION APPROVAL~~

A bout shall not be advertised or promoted or called a championship bout unless it has the specific approval of the ~~Colorado State Boxing~~ Commission. A promoter shall not advertise any participant in the State of Colorado as a champion or contender in any manner that is false or misleading.

3.8 PROFESSIONAL-AMATEUR BOUTS PROHIBITED

Bouts between professionals and amateurs are prohibited. Nothing in this rule would prohibit combined Professional-Amateur Events.

3.9 ~~GENDER OF~~ PARTICIPANT~~S~~GENDER CHANGES

A. Bouts between members of different genders will not be approved.

B. For purposes of gender identity under these rules:

a. Individuals who have undergone sex reassignment from male to female prior to puberty shall be regarded as female.

a. Individuals who have undergone or are undergoing sex reassignment from male to female after puberty shall be regarded as female, provided that:
    - Surgical anatomical changes have been completed, including external genitalia and gonadectomy (required for MMA and grappling only); and
    - Appropriate hormone therapy has been administered by a qualified physician for a minimum of two years after gonadectomy.

An individual transitioning from male to female and being treated with testosterone suppression medication may compete as a male until completing two years of documented testosterone suppression therapy.

b. Individuals who have undergone or are undergoing sex reassignment from female to male after puberty shall be regarded as male, provided that:
    i. Appropriate hormone therapy has been administered by a qualified and licensed physician
    ii. A letter is submitted by a board-certified physician responsible for the care of the individual.

c. An individual who is on testosterone replacement therapy may compete only as a male.

CHAPTER FOUR

DECLARATORY ORDERS

This rule establishes procedures for the handling of requests for declaratory orders filed pursuant to the Colorado Administrative Procedures Act at § 24-4-105(11), C.R.S.

A. Any person or entity may petition the commission for a declaratory order to terminate controversies or remove uncertainties as to the applicability of any statutory provision or of any rule or order of the Commission.

B. The commission will determine, at its discretion and without notice to petitioner, whether to rule upon any such petition. If the Commission determines that it will not rule upon such a petition, the commission shall promptly notify the petitioner of its action and state the reasons for such decision.

C. In determining whether to rule upon a petition filed pursuant to this rule, the commission will consider the following matters, among others:

1. Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to petitioner of any statutory provisions or rule or order of the commission.

2. Whether the petition involves any subject, question or issue that is the subject of a formal or informal matter or investigation currently pending before the commission or a court involving one or more petitioners.

3. Whether the petition involves any subject, question or issue that is the subject of a formal or informal matter or investigation currently pending before the commission or a court but not involving any petitioner.

4. Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.

5. Whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to the Colorado Rules of Civil Procedure 57, which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule or order in question.

D. Any petition filed pursuant to this rule shall set forth the following:

1. The name and address of the petitioner and whether the petitioner is licensed pursuant to Title 12, Article 10.

2. The statute, rule or order to which the petition relates.

3. A concise statement of all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule, or order in question applies or potentially applies to the petitioner.

E. If the commission determines that it will rule on the petition, the following procedures shall apply:

1. The commission may rule upon the petition based solely upon the facts presented in the petition. In such a case:

a. Any ruling of the commission will apply only to the extent of the facts presented in the petition and any amendment to the petition.

b. The commission may order the petitioner to file a written brief, memorandum or statement of position.

c. The commission may set the petition, upon due notice to petitioner, for a non-evidentiary hearing.

d. The commission 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.

e. The commission may take administrative notice of facts pursuant to the Administrative Procedure Act at § 24-4-105(8), C.R.S., and may utilize its experience, technical competence, and specialized knowledge in the disposition of the petition.

2. If the commission rules upon the petition without a hearing, it shall promptly notify the petitioner of its decision.

3. The commission may, at its discretion, set the petition for hearing, upon due notice to petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any facts set forth in the petition or to hear oral argument on the petition. The notice to the petitioner shall set forth, to the extent known, the factual or other matters into which the commission intends to inquire.

For the purpose of such a hearing, to the extent necessary, the petitioner shall have the burden of proving all the facts stated in the petition; all of the facts necessary to show the nature of the controversy or uncertainty; and the manner in which the statute, rule, or order in question applies or potentially applies to the petitioner and any other facts the petitioner desires the commission to consider.

F. The parties to any proceeding pursuant to this rule shall be the commission and the petitioner. Any other person including the Director may seek leave of the commission to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the commission. A petition to intervene shall set forth the same matters as are required by Section D of this Rule. Any reference to a "petitioner" in this Rule also refers to any person who has been granted leave to intervene by the commission.

G. Any declaratory order or other order disposing of a petition pursuant to this Rule shall constitute agency action subject to judicial review pursuant to the Colorado Administrative Procedures Act at § 24-4-106, C.R.S.

~~REQUIREMENTS FOR REGISTRATION AND FEDERAL IDENTIFICATION CARD~~

~~4.1 REGISTRATION AND FEDERAL IDENTIFICATION CARD REQUIRED~~

~~The "Professional Boxing Safety Act of 1996" requires all professional boxing participants be registered with the recognized boxing federal registry and obtain a federal identification card in order to participate in boxing bouts anywhere in the United States. Therefore, all professional boxing participants shall show proof of registration. Participants must register with the commission in the participant's home state. In the case of a participant who resides in a state with no commission or a foreign country, the office of boxing may issue the card. An administration fee will be collected from the applicant at the~~

time of application, renewal, or for the replacement of a federal identification card. All Mixed Martial Arts participants must register for a National Identification card.

4.2 APPROVED IDENTIFICATION

Any boxing debut participant must be registered with a federal identification card within seven days prior to the first bout. The participant shall not be permitted to box in any contest scheduled for more than four rounds for the participants first four bouts, and shall not be permitted to compete in any bout of more than six rounds until the participant has participated in ten or more professional bouts, unless approved by the director.

A. Any two forms of identification listed below are acceptable:

1. Voter's registration card;
2. Valid photo drivers license;
3. Social security card;
4. School photo ID card;
5. Birth certificate;
6. U.S. Military ID card;
7. Native American Tribal document;
8. U.S. Passport;
9. Certificate of U.S. Citizenship (INS Form N-560 or N-561);
10. Certificate of naturalization (INS Form N-550 or N-570);
11. Alien registration receipt card with photo (INS Form 1-151 or 1-551); or,
12. Unexpired reentry permit (INS Form 1-327).

4.3 EXPIRATION OF ALL IDENTIFICATION CARDS

Each participant shall renew their identification card at least once every five years.

4.4 FEDERAL ID OR REGISTERED FOR A NATIONAL ID REQUIRED TO PARTICIPATE IN EVENTS

Each participant will present their identification card or completed application to the appropriate designee not later than the scheduled time of the weigh-in for a bout. A participant, who is unable to produce their identification card or establish with the director that they have a current federal identification, will not be allowed to participate.

~~CHAPTER 5~~
CHAPTER 5
~~SPECIFIC~~ REQUIREMENTS FOR BOXING PARTICIPANTS

5.1 WEIGHT ALLOWANCES

Before a participant will be permitted to fight an opponent, who exceeds the weight allowance as shown, the participant must first receive approval by the ~~director~~Director:

POUNDS	CLASSIFICATION	ALLOWANCE
191+	Heavyweight	No limit
190	Cruiserweight	15 lbs.
175	Light Heavyweight	8 lbs.
168	Super Middleweight	8 lbs.
160	Middleweight	7 lbs.
154	Junior Middleweight	7 lbs.
147	Welterweight	7 lbs.
140	Junior Welterweight	5 lbs.
135	Lightweight	5 lbs.
130	Junior Lightweight	5 lbs.
126	Featherweight	5 lbs.
122	Junior Featherweight	5 lbs.
118	Bantamweight	5 lbs.
115	Junior Bantamweight	5 lbs
112	Flyweight	5 lbs.
108	Junior Flyweight	5 lbs.
105	Minimum Weight	5 lbs.

5.2 NUMBER AND DURATION OF ROUNDS

The maximum number of rounds is ten for a bout, except for a championship bout as determined by the Director, which may not exceed twelve rounds. Three minutes will constitute a round, with a rest period of one minute between rounds, which may be extended at the discretion of the ~~director~~Director. Ten seconds before the beginning or the ending of each round, the timekeeper shall give warning to the seconds by suitable signal.

5.3 PARTICIPATION RESTRICTIONS

Any participant, who has participated in a bout scheduled for four rounds or more, shall not participate in a nother ~~contest for~~bout for at least seven days unless specifically authorized by the ~~director~~Director. Main event participants may be required, at the request of the ~~director~~Director, to report and train in public for at least three days in the city where the bout is scheduled to be held.

5.4 RING OCCUPANTS

No person other than the participants and the referee shall enter the ring during a bout. Between rounds, one second may be inside the ring and the others on the ring apron. The physician may enter the ring if asked by the referee. No participant shall leave the ring during any rest period between rounds. The referee may, at their discretion, stop a bout if an unauthorized person enters the ring during a round. The ~~director~~Director or chief inspector may also limit unauthorized people from entering the ring at any time during and after an event.

5.5 INTENTIONAL FOULS

A. If an intentional foul causes an injury, and the injury is severe enough to immediately terminate a bout, the participant causing the injury shall lose by disqualification.

B. If an intentional foul causes an injury, and the bout is allowed to continue, the referee will notify the authorities and deduct two points from the participant who caused the foul. Point deductions for intentional fouls will be mandatory.

C. If intentional foul causes an injury and the injury results in the bout being stopped in a later round, the injured participant shall win by Technical Decision if the participant is ahead on the score cards or the bout will result in a Technical Draw if the injured participant is behind or even on the score cards.

D. If a participant injures themselves while attempting to intentionally foul their opponent, the referee will not take any action in their favor, and this injury is the same as one produced by a fair blow. If a participant has conducted themselves in an unsportsmanlike manner, the referee may stop the bout and disqualify the participant.

5.6 UNINTENTIONAL FOULS

A. If an unintentional foul causes an injury severe enough to immediately stop the bout, the bout will result in a No Contest if stopped before three completed rounds and four completed rounds for championship bouts.

B. If an unintentional foul causes an injury severe enough to immediately stop the bout after three completed rounds and four rounds for championship bouts have occurred, the bout will result in a Technical Decision awarded to the participant who is ahead on the score cards at the time the bout is stopped. Partial or incomplete rounds will be scored.

C. If no action has occurred, the round should be scored as an even round at the discretion of the judges. A fighter who is hit with an accidental low blow must continue after a reasonable amount of time but no more than five minutes or the participant will lose the bout by Technical Knockout (TKO).

5.~~14~~7 TACTICS DEEMED FOULS

A. Hitting below the belt or after the bell has terminated the round;
B. Hitting an opponent who is down or who is getting up after being down;
C. Holding an opponent or deliberately maintaining a clinch;
D. Holding an opponent with one hand and hitting with the other hand;
E. Butting with the head or shoulder or using a knee;
F. Hitting with the glove laces or the heal of the hand, the wrist, or elbow and ~~all~~any back~~-~~-hand blows;
G. Hitting or flicking with an open glove, or thumbing;
H. Wrestling, hitting on the break or pushing an opponent;
I. Spitting out the mouthpiece or going down without being hit;
J. Striking deliberately the part of the body over the kidneys;
K. Use of a pivot or rabbit punch;
L. Hitting an opponent during intervention by the referee;
M. Hitting an opponent who is entangled in the ropes;
N. Biting or any unsportsmanlike conduct;
O. Abusive or profane language;
P. Failure to obey the referee;
Q. Any physical action which may injure a participant, except by fair sportsmanlike boxing;
R. Passive defense by means of double cover.

5.~~15~~8 PENALTY FOR FOULS

A. The referee may penalize a participant if they commit a foul.

B. Points may be deducted from the participant's score in the round or rounds such foul occurred. The referee shall notify the judges at the time of the foul and verify between rounds of the points deducted.

C. If a foul is of a serious nature, intentionally inflicted, or is continuous or repeated; the referee may award the bout to the participant who is fouled.

5.~~7~~9 DETERMINATION OF A KNOCKDOWN

A. A knockdown will be ruled when a participant is hit with the padded knuckle part of the glove on the front or side of the head or the front or side of the body above the belt, and any part of the participant's body other than their feet is on the floor; or the participant is hanging over the ropes without the ability to protect oneself and cannot fall to the floor.

B. A referee may count a participant out if the participant is on the floor or is being held up by the ropes.

5.~~8~~10 REFEREE COUNT

A. If a participant falls due to fatigue, or is knocked down by their opponent, the participant will be allowed ten seconds to rise unassisted. When such participant falls, their opponent shall go to the farthest neutral corner and remain there while the count is made.

B. A participant shall be deemed down when any part of their body but their feet is on the floor, or the participant is being held up by the ropes. A referee may count a participant out either on the ropes or on the floor.

C. The referee shall stop counting should the opponent fail to go to such neutral corner, and resume the count where the participant left off when the opponent goes to the neutral corner. Should a participant who is down rise before the count of ten is reached, and goes back down immediately without being struck by the opponent, the referee shall resume the count where it was left off.

D. Before a participant resumes after having been knocked, fallen or slipped to the floor, the referee shall wipe any accumulated debris from the participant's gloves.

E. When a mouthpiece is knocked out, the referee may allow the exchange to continue until there is a break in the action. Timeout shall be called and the mouthpiece rinsed and replaced.

5.~~9~~11 PARTICIPANT'S RETURN TO RING

A. A participant shall receive a 20 second count if they are knocked out of the ring and onto the floor by a legal strike. The participant is to be unassisted by the second(s). If assisted by the second(s), the participant shall be disqualified.

B. A participant who has been wrestled, pushed, or has fallen through the ropes during a contest may be helped back by anyone and the referee shall allow reasonable time for the return.

C. When on the ring apron outside the ropes, the participant shall enter the ring immediately.

D. Should the participant stall for time outside the ropes, the referee shall start the count without waiting for the participant to reenter the ring.

E. When one participant has fallen through the ropes, the other participant shall retire to a designated corner and remain there until ordered to continue the bout.

F. A participant who deliberately wrestles or throws an opponent from the ring, or who punches their opponent when they are partly out of the ring and prevented by the ropes from assuming a position of defense may be penalized, disqualified, and subject to disciplinary action.

5.~~10~~12 SAVED BY THE BELL

A participant who has been knocked down cannot be saved by the bell in any round.

5.~~11~~13 THREE KNOCKDOWNS IN THE SAME ROUND – TKO

The contest may be stopped at any time by the referee to protect the health and safety of either participant. A participant who has been ruled by the referee to have been knocked down three times in the same round shall lose by TKO. The three-knockdown rule may be waived at the sole discretion of the ~~director~~Director.

5.~~12~~14 BOUT TERMINATION DUE TO INJURY - TKO

If a participant sustains an injury from a fair blow and the injury is severe enough to terminate the bout, the injured participant will lose by TKO.

5.~~13~~15 KNOCKDOWN EIGHT COUNT

A. In the case of a knockdown, the eight count is mandatory. A participant who is knocked out, or is technically knocked out shall be suspended for a minimum of 30 days from participating in any event.

B. If ~~a~~ ~~participant~~ is knocked out, or technically knocked out in two consecutive bouts, the participant shall be suspended for a minimum of 60 days from participating in any activity.

C. If ~~a~~ ~~participant~~ is knocked out or technically knocked out in three consecutive bouts, the participant may be suspended for a minimum of one year from participating in any activity.

D. The ~~director~~Director may require the suspended participant to undergo other medical examinations and submit proof of such examinations and physician clearance to compete in any future bouts.

CHAPTER 6
~~SPECIFIC~~ REQUIREMENT FOR KICKBOXING PARTICIPANTS

6.1 CONDUCT OF ~~ATHLETIC~~ KICKBOXING EVENTS

A. All professional non-title bouts will be a minimum of three rounds and up to a maximum of twelve rounds.

B. All offensive kickboxing, ~~punching~~striking, and kicking techniques are authorized, with the exception of those ~~–~~techniques specified as "fouls" in Rule 6.3, and may be executed according to the individual participant's style or system of kickboxing.

C. Participants shall have the option of leg kicks when both participants have been properly trained for leg kicks and the contract explicitly states that leg kicks will be used.

D. If leg kicks are allowed, any kicking technique may be used as long as the kicks are not to any foul area, such as a knee joint. Allowable ~~T~~targets include kicks to the inside, outside and back of the thigh on either leg and kicks to the calf of either leg.

E. The ~~director~~Director may limit the ~~use~~ ~~the~~ number of leg kicks ~~or the use of~~ inside kicks.

F. A participant intentionally avoiding any physical contact with their opponent will receive a warning from the referee. If the participant continues to avoid a confrontation with their opponent after receiving a warning during that round, the participant may be penalized by the referee. If the participant continues to ~~evade~~ avoid ~~action~~confrontation or physical contact, either in the same round or in any other round, the referee may, at their discretion, impose additional penalties.

6.2 SWEEPS

A. A~~–~~ ~~P~~participant~~s~~ may execute sweeps only by making a sweeping motion to the padded area of opponent's foot with the padded area of the ~~user's~~ participant's foot, also known as "boot to boot".

B. Contact to any other part of the leg (thigh, knee, shin and sides of the shin from any angle) while delivering a sweep shall constitute a foul and will be treated accordingly.

C. A sweep is not a kick and shall not be judged as such.

D. ~~–~~Any technique thrown following a sweep must land on the opponent prior to any part of the participant's body touching the ring floor. If the technique lands after some part of the opponent's body other than the soles of their feet has touched the floor, the referee may call a foul.

E. A successful sweep is not considered a knockdown.

6.3 TACTICS DEEMED FOULS

All general fouls of boxing ~~and~~ apply to kickboxing, ~~apply~~ in addition to the following fouls.

A. Headbutts;
B. Striking the groin, the spine, the throat, collarbone, or the part of the body over the kidneys;
C. Kicking into the knee or striking below the belt in any unauthorized manner;
D. Anti-joint techniques (striking applying leverage against any joint);
E. Grabbing or holding onto an opponent's leg or foot;
F. Leg checking the opponent's leg or stepping on the opponent's foot to prevent the opponent from moving or kicking;
G. Throwing or taking an opponent to the floor in an unauthorized manner;
H. Failure to throw the minimum number of hard ~~eight~~ kicks in a given round as required by the Director;
I. Intentional evasion of contact; and,
J. Executing any techniques which are deemed malicious and beyond the scope of reasonably accepted techniques in an athletic event.

6.4 KICKING REQUIREMENTS

A. All participants must execute a minimum of ~~eight~~ hard kicks per round. The ~~director~~Director may waive this requirement or minimize the number of kicks required per round.

B. In the event a participant fails to execute the required minimum number of hard kicks per round, the referee may give one warning to that participant and their chief second during the rest period following the round.

C. If the participant fails to execute the minimum number of hard kicks in any round following the referee's warning, the participant shall be penalized one point for each kick short of the minimum requirement.

D. If a participant fails to achieve the minimum kicking requirement in a majority of the scheduled rounds, the participant shall be disqualified.

E. If a participant executes less than eight hard kicks in any one round, the ~~director~~Director or chief inspector shall immediately notify the referee the number of kicks thrown. The referee shall, in turn, notify the judges who shall record the appropriate penalty.

F. Contact must be attempted in order for a hard kick to be counted.

G. Slide kicks, push kicks, air kicks or any kick to a foul area on the body are not counted.

6.5 WEIGHT ALLOWANCES

Before a participant will be permitted to fight an opponent, who exceeds the weight allowance as shown, the participant must first receive approval by the ~~director~~Director:

POUNDS	CLASSIFICATION	ALLOWANCE
191+	Heavyweight	No limit
190	Cruiserweight	15 lbs.
175	Light Heavyweight	8 lbs.
168	Super Middleweight	8 lbs.
160	Middleweight	7 lbs.
154	Junior Middleweight	7 lbs.
147	Welterweight	7 lbs.
140	Junior Welterweight	5 lbs.
135	Lightweight	5 lbs.
130	Junior Lightweight	5 lbs.
126	Featherweight	5 lbs.
122	Junior Featherweight	5 lbs.
118	Bantamweight	5 lbs.
115	Junior Bantamweight	5 lbs
112	Flyweight	5 lbs.
108	Junior Flyweight	5 lbs.
105	Minimum Weight	5 lbs.

No participant shall engage in a bout where the weight difference exceeds the allowance shown above. Any greater weight spread requires the ~~director~~Director approval.

6.6 KICKBOXER A~~TTIRE~~PPAREL

A standard karate uniform consisting of jacket, long pants and belt, as traditionally worn in the sport of kickboxing or full contact karate may be worn by all participants upon entering the ring. Prior to the start of a bout, all participants must remove their uniform jackets and belts.

CHAPTER 7
~~SPECIFIC~~ REQUIREMENTS FOR MIXED MARTIAL ARTS (MMA) AND MARTIAL ARTS (MA) PARTICIPANTS

7.1 BOUT REQUIREMENTS

A. Each non-championship MMA ~~contest~~ bout shall be at least three rounds and up to a maximum of four rounds, ~~with~~ five minutes each in duration~~s~~, and ~~one minute~~one-minute rest periods between each round.

B. Each championship MMA ~~contest~~ bout shall be five rounds, ~~of~~ five minutes each in duration~~s~~, and ~~one minute~~one-minute rest periods between each round.

C. A bout may go an extra round if the bout is deemed a draw after the scheduled rounds.

D. The referee is the sole arbiter of a bout and is the only individual authorized to enter the ring or cage at any time during competition and to stop a contest.

~~E. All bouts are evaluated and scored by three judges.~~

E~~F~~. The 10-Point Must System will be the standard system of scoring a bout. Half points may be used with the 10-Point ~~must~~ Must ~~system~~ System if approved prior to the event.

7.2 WARNINGS

A single warning will be issued for the following infractions and may not be limited to these infractions:

A. Holding or grabbing fence or ropes;
B. Holding opponent's shorts or gloves;
C. The presence of ~~more than one~~a second on the apron while the fight is in progress.

7.3 TACTICS DEEMED FOULS

A. Butting with the head.
B. Eye gouging of any kind.
C. Biting or spitting at an opponent.
D. Hair pulling.
E. Fish hooking.
F. Groin attacks of any kind.
G. Intentionally putting a finger in any opponent's orifice (includes laceration).
H. Downward point of elbow strikes.
I. Small joint manipulation.
J. Strikes to spine or back of the head.
K. Heel kicks to the kidney.
L. Throat strikes of any kind (includes grabbing trachea).
M. Clawing, pinching, twisting the flesh or grabbing the clavicle.
N. Kicking the head of a grounded fighter.
O. Kneeing the head of a grounded fighter.
P. Stomping of a grounded fighter.
Q. Holding the fence or a rope.
R. The use of abusive language in the cage or ring.
S. Any unsportsmanlike conduct that causes an injury to an opponent.
T. Attacking an opponent during a break.

U. Attacking an opponent under the referee's care.
V. Timidity (avoiding contact, intentional and/or consistent dropping of mouthpiece or faking an injury).
W. Corner interference.
X. Throwing an opponent out of the cage or ring.
Y. Flagrant disregard of the referee's instructions.
Z. Spiking an opponent to the canvas on his head or neck.
AA. Throwing in the towel during competition.
BB. Fingers outstretched toward an opponent's face/eyes

7.4 PENALTY FOR FOULS

A. Referees may penalize or disqualify a participant after any foul or a flagrant foul.

B. Fouls result in a point being deducted by the official scorekeeper from the offending participant's score. (The judges ~~should~~ may only make notations of points deducted by the referee, for each round).

C. If a foul is committed:

i. The referee shall call time.

ii. The referee shall check the fouled participant's condition and safety and provide adequate time to recuperate and resume fighting. Such time shall not exceed five minutes.

iii. The referee shall then assess the foul to the offending participant, deduct points, and notify the corner men, judges and official scorekeeper

D. If a bottom participant commits a foul, unless the top participant is injured, the fight will continue.

i. The referee will verbally notify the bottom participant of the foul.

ii. When the round is over, the referee will assess the foul and notify both corners, the judges and the official scorekeeper.

iii. The referee may terminate a bout based on the severity of a foul. ~~For such a~~If the referee determines that a foul is intentional and flagrant ~~foul~~, a participant shall lose by disqualification.

7.5 INJURIES SUSTAINED BY FAIR BLOWS OR FOULS:

A. Fair Blows:

If injury is severe enough to terminate a bout, the injured participant loses by TKO.

B. Intentional Fouls:

i. If injury is severe enough to terminate a bout, the participant causing the injury immediately loses by disqualification.

ii. If an injury occurs and the bout is allowed to continue, the referee will notify the ~~director~~Director or the chief inspector and automatically deduct two points from the participant who committed the foul. Point deductions for intentional fouls will be mandatory.

iii. If injury (ii) above is the result of the bout being stopped in a later round, the injured participant will

win by Technical Decision, if the participant is ahead on the score cards.

iv. If injury (ii) above is the result of the bout being stopped in a later round, the bout will result in a Technical Draw, if the injured participant is behind or even on the score cards.

v. If a participant injures themselves while attempting to foul their opponent, the referee will not take any action in their favor, and the injury will be the same as one that occurs by a fair blow.

C. Accidental Fouls:

i. Any injury severe enough for the referee to immediately stop the bout will result in a "No Contest" if stopped before two rounds have been completed in a three-round bout or if stopped before three rounds have been completed in a five-round bout.

ii. Any injury severe enough for the referee to immediately stop the bout after two rounds of a ~~three-round~~three-round bout, or three rounds of a five round bout ~~have occurred, the bout~~ will result in a "Technical Decision", awarded to the participant who is ahead on the score cards at the time the bout is stopped.

iii. If injury (ii) above occurs, an incomplete round will be scored.

iv. If injury (ii) above occurs, and the referee penalizes either participant, the point(s) shall be deducted from the final score.

7.6 WEIGHT ALLOWANCES

Before a participant is permitted to fight an opponent, who exceeds the weight allowance as shown, the participant must first receive approval by the ~~director~~Director:

POUNDS	CLASSIFICATION	ALLOWANCE
Above 265	Super Heavyweight	No limit
265	Heavyweight	35 lbs.
230	Cruiserweight	25 lbs.
205	Light Heavyweight	20 lbs.
185	Middleweight	15 lbs.
170	Welterweight	15 lbs.
155	Lightweight	10 lbs.
145	Featherweight	10 lbs.
135	Bantamweight	10 lbs.
125	Flyweight	10 lbs.
Below 115	Minimum Weight	10 lbs.

The ~~director~~Director may allow participants over 205 lbs. to compete against an opponent up to 265 lbs.

7.7 PARTICIPANTS APPAREL RESTRICTIONS

A. A participant may not wear shirts or gis during competition.

B. A participant may not wear shoes during competition.

7.8 RECORDING OF BOUT RESULTS

A. Submissions occur by either a tap out or a verbal tap out.

B TKO's occur by a referee stopping the bout.

C. KO's occur by failing to rise from the canvas.

D. Decision via score cards occur by:

i. Unanimous: All three judges score the bout for the same participant

ii. Split Decision: Two judges score the bout for one participant and one judge scores for the opponent.

iii. Majority: Two judges score the bout for the same participant and one judge scores a draw.

iv. Draws:

a. Unanimous: All three judges score the bout a draw.
b. Majority: Two judges score the bout a draw.
c. Split: All three judges score differently.

E. Disqualification occurs by a referee disqualifying a participant.

7.9 ~~VARIOUS~~ MARTIAL ARTS

A. A contest of martial arts must be conducted pursuant to the official rules promulgated by the sponsoring organization for the ~~particular~~ martial art.

B. The ~~sponsoring organization or~~ promoter must file a copy of the official rules with the ~~office of boxing~~Director before ~~it will approve~~approval will be given for the contest to be held. ~~The sponsoring organization or promoter will receive a list of requirements and fouls before the contest.~~

C. Prior to the event, the Director will provide the promotor a list of specific requirements, including those concerning fouls. The promoter will be responsible for ensuring that all participants comply with the specific requirements.

D. Where applicable, provisions of Chapters 5, 6, and above sections of Chapter 7 may also constitute requirements for martial arts contests.

CHAPTER 8
REQUIREMENTS FOR SECONDS

8.1 LICENSE ~~OR PERMIT~~ FOR SECONDS

A license is required in order to serve as a second in a professional combative sports contest. All seconds shall submit an application for a license ~~or permit~~ to assist a fighter and must be licensed ~~or permitted~~ prior to the scheduled start of an event. Incomplete or incorrect application forms will not be accepted ~~by the Office~~ and will be returned to the applicant to be corrected.

8.2 FEES

Each applicant applying for a license ~~or a permit~~ shall pay the required fee before the license ~~or permit~~ is granted. The license ~~or permit~~ fee schedule is established by the Division ~~director~~ Director ~~of division of registrations~~ pursuant to Section 24-34-105, C.R.S.

8.3 MINIMUM AGE REQUIREMENT

No person under the age of eighteen years shall be licensed ~~or permitted~~ to act as a second.

8.4 EQUIPMENT REQUIREMENTS

Seconds are required to provide all materials and equipment necessary to conduct themselves as a second. Such equipment includes water buckets, gauze and tape for hand wraps, spit buckets, scissors, towels, petroleum jelly~~vaseline~~, enswell, q-tips, mouthpieces and cut solutions. Water bottles must be clear and all hand wrapping materials must be white.

8.5 NUMBER OF SECONDS

A. Unless special permission is given by the ~~director~~Director, the number of seconds shall not exceed ~~–~~three, one of whom will announce to the referee at the start of the bout that they are the chief second. The ~~director~~Director may reduce the number of seconds per bout or event.

B. If at any time during a bout there are more seconds in a corner than allowed, the bout may be stopped until corrected or the chief second may be disqualified and may be subject to disciplinary action.

8.6 WRAP INSPECTION AND ACCEPTABLE MATERIAL

A. Hand ~~–~~wraps ~~–~~shall ~~–~~be ~~–~~applied ~~–~~in ~~–~~the ~~–~~dressing ~~–~~room ~~–~~in ~~–~~the ~~–~~presence ~~–~~of ~~–~~a ~~–~~commission representative. Unless a championship bout, a representative of a participant must request in writing at the weigh-in or prior, to witness the wrapping of the opponent's hands.

B. White adhesive tape of no more than six feet and not over one and one-half inches wide can be placed directly on the hand to protect the hand near the wrist. The tape may cross the back of the hand but shall not extend within one inch of the knuckles when the hand is clenched in a fist. A single four-inch by four-inch white surgical pad or equivalent material must be approved by the ~~Director~~Director or the chief inspector.

C. If equivalent material is approved it must be folded in half and may be used on the knuckles of each hand for added protection and safety.

D. Single strips of tape not wider than one-fourth inch and not longer than three inches may be placed between the knuckles in order to hold the white gauze in place.

E. Participants shall use soft white surgical bandage not over two inches wide and twenty yards in length, held in place by not more than six feet of white surgeon's adhesive tape to complete the wrappings for each hand. Bandages shall be adjusted in the dressing room in the presence of a commission representative, who must sign across the back of the hand before gloves are secured on each participant.

F. For each foot wrapping, soft surgical bandages shall be used and must not be over two inches wide, held in place by surgeon's adhesive tape not over one and one-half inch wide.

G. Foot wrappings shall not exceed three to four windings of soft surgical bandage around the sole and instep, and no more than four windings around the ankle. Tape shall cross the foot once before being wrapped one more time around the sole and heel.

8.7 ENTERING THE RING OR CAGE

Only one second shall be inside the ring or cage between rounds. The other(s) may be on the ring platform outside the ropes. Seconds shall not enter the ring until the timekeeper indicates the termination of the round and they shall leave when the timekeeper gives the ten second warning before the beginning of each round. If the chief second ~~or anyone for whom they are responsible~~or another second enters the ring before the round ends, the participant may be disqualified and the violator may be subject to disciplinary action. If there are two entrances to a cage, two seconds may be in the cage at the same time.

8.8 CHIEF SECOND

The chief second of a participant may stand on the ring or cage apron and attract the attention of the referee ~~indicating the retirement of the participant~~in order to end the bout. The chief second shall not enter the ring unless the referee stops the bout and shall not interfere with a count that is in progress.

8.9 COACHING DURING A BOUT

While the bout is in progress, a second shall not excessively coach a participant during a round and shall remain seated and silent when ~~so~~ directed by the referee or a commission representative. Seconds shall not place or cause any items to be placed inside the ring or cage during a bout. They shall not continuously stand, lean or pound on the ring apron during the round. Excessive coaching may lead to point deductions, ejection from the venue, or subject to other disciplinary action.

8.10 USE OF ICE/WATER AND SUBSTANCES TO STOP HEMORRHAGING

A. A participant may be refreshed with a wet sponge or spray mist bottle that only contains water.

B. Excess water or ice on the ring or cage floor shall be wiped off immediately by the seconds.

C. Water discharged from the participant's mouth shall be caught in a bucket or other device furnished for that purpose.

D. A participant may not be given any stimulant.

E. Before leaving the ring or cage at the start of each round, the seconds shall remove all obstructions such as buckets, stools, bottles, towels and robes from the ring or cage floor.

F. If a participant is cut, a solution of adrenaline 1/1000, aventine, and thrombin can be used to heal the cut.

G. No other bottle or container shall be allowed or used in the corners during a bout. Any other solution or substance is prohibited.

8.11 ~~DRESS~~ APPAREL AND SUBJECT TO SEARCHES

Seconds shall be neatly dressed while working the participant's corner and may be searched ~~-~~by a Commission ~~for~~representative illegal substances or objects.

8.12 REINSTATEMENT OF AN EXPIRED LICENSE

The ~~purpose of this~~ rule ~~is to~~ establishes the qualifications and procedures for reinstatement of an expired license pursuant to § 12-10-106.5, C.R.S. and § 24-34-105, C.R.S.

A. Conditions of Reinstatement: License expired for less than two years

i. An applicant seeking reinstatement of an expired license for less than two years shall complete a reinstatement application and pay a reinstatement fee.

B. Conditions of Reinstatement: License expired two years or more

i. An applicant seeking reinstatement of an expired license for two years or more shall complete a reinstatement application, pays a reinstatement fee and provide proof of a compliance bond in a manner approved by the Director.

An applicant for reinstatement who has actively practiced in Colorado with an expired license in violation of § 12-10-106.5 C.R.S. is subject to denial of application, disciplinary action, and/or other penalties as authorized in the ~~Professional Boxing Safety~~ Act at § 12-10-101 et seq., C.R.S., and in accordance with § 24-34-102 et seq., C.R.S.

8.13 NOTICES FROM SECONDS

A. Address and Name Changes

i. Seconds shall inform the Director of any name, address, telephone, or email change within 30 days of the change. The Director will not change a second's information without explicit notification in a manner prescribed by the Director.

ii. One of the following forms of documentation is needed to change a name or correct a social security number:

a. Marriage license;
b. Divorce decree;
c. Court order; or
d. A driver's license or social security card with a second form of identification may be acceptable at the discretion of the division of registrations.

8.14 REPORTING CONVICTIONS, JUDGMENTS AND ADMINISTRATIVE PROCEEDINGS

A. Seconds shall notify the Director within 45 days of any of the following events:

i. The conviction of a felony under any state or federal law, which would be a violation of §12-10-107.1 C.R.S. A guilty verdict, a plea of guilty or a plea of nolo contendere (no contest) accepted by the court is considered a conviction;

ii. A disciplinary action imposed upon the licensee by another jurisdiction that licenses promoters, which would be a violation of § 12-10-107.1, C.R.S., including, but not limited to, a citation, sanction, probation, civil penalty, or a denial, suspension, revocation, or modification of a license whether it is imposed by consent decree, order, or other decision, for any cause other than failure to pay a license fee by the due date;

iii. Revocation or suspension by another state athlete commission, municipality, federal or state agency or any association who oversees boxing, kickboxing, mixed martial arts or martial arts;

iv. Any judgment, award or settlement of a civil action or arbitration in which there was a final judgment or settlement against the licensee.

B. The notice to the Director shall include the following information;

i. If the event is an action by a governmental agency (as described above), the name of the agency, its jurisdiction, the case name, and the docket, proceeding or case number by which the event is designated, and a copy of the consent decree, order or decision;

ii. If the event is a felony conviction, the court, its jurisdiction, the case name, the case number, a description of the matter or a copy of the indictment or charges, and any plea or verdict entered by the court. The licensee shall also provide to the Director a copy of the imposition of sentence related to the felony conviction and the completion of all terms of the sentence with 45 days of such action;

iii. If the event concerns a civil action or arbitration proceeding, the court or arbiter, the jurisdiction, the case name, the case number, a description of the matter or a copy of the complaint, and a copy of the verdict, the court or arbitration decision, or, if settled, the settlement agreement and court's order of dismissal;

C. The licensee notifying the Director may submit a written statement with the notice to be included with the licensee's records.

CHAPTER 9
REQUIREMENTS FOR PROMOTERS

9.1 LICENSE REQUIRED

A. A license is required for a promoter of a professional combative sport contest. Promoters shall apply for a license by submitting an application ~~and fee~~ in the manner prescribed by the Director ~~approved by the division of registrations~~ and must be licensed prior to the ~~approval~~ applying for~~of~~ a permit. Incomplete or incorrect applications will not be accepted.

B. Promoters are responsible for ensuring that all participants and seconds are licensed and all applicable fees are paid for each event.

92.2 FEES

Each applicant for a license or permit shall pay the required fees before the license or permit to fight is granted. The license and permit fee schedules are established by the Division Director pursuant to §~~Section~~ 24-34-105, C.R.S.

9.32 MINIMUM AGE REQUIREMENT

A person who applies for a promoter license must be a minimum of eighteen years old.

9.43 PROMOTION PERMIT AND EVENT REQUIREMENTS

A. Promotion Permit Application and Fee

i. A promoter is required to have a permit for each event that includes a combative sport contest. A completed permit application and appropriate fee must be submitted to the ~~director~~Director at least 30 days prior to the scheduled date~~, time and location~~ of the event.

ii. The commission may approve a permit less than 30 days on a case by case basis.

iii. Promotion permits will not be granted to promoters who owe any fees from previous events.

iv. Any change to a previously approved permit will require a new permit application and may require a fee and must be submitted as expeditiously as possible.

v. Permit ~~applications filed~~applications ~~in~~filed ~~excess~~in ~~of~~excess ~~150~~of ~~days~~150 ~~in~~days ~~advance~~in ~~of~~advance ~~the~~of ~~event~~the ~~require~~event require commission approval.

B. ~~A~~ If a promoter ~~may not~~ promotes, advertises or sell tickets for an event ~~until they are~~before the promoter is licensed and appropriate permits have been granted for the event, ~~or~~ the promoter may be subject to a fine or disciplinary action and the license or permit may not granted.

C. Limitations and Expectations on Permits

i. There are no limitations on the number of permits allowed at any one time. However, the ~~director~~Director may deny a permit~~, but is not limited to~~for the following ~~conditions~~reasons:

a. Back-to-back events;
b. Same-day events;
c. Inadequate number of officials to properly regulate the event;
d. Failure of a promoter or any person connected with the promotion to comply with any

statute or rule;

e. A bout listed on the promotion permit application fails to meet the requirements of Chapter 3;

f. Inadequate or unsafe location, site or arena selection; or

g. For ~~other reasons~~other ~~–~~reasons indicating that the requested permit~~which~~ may ~~not be~~not ~~in~~be ~~the~~in ~~best~~the ~~interest~~best ~~of~~interest ~~the~~of ~~sport~~the ~~, the~~sport, the participants, spectators, or the officials.

ii. Promoters are expected to comply with the following:

a. Fulfill all obligations of the permit. ~~-~~Any promoter who cancels an event after a permit is granted may be subject to disciplinary action and future permits may be denied.

b. By completing the permit, promoters agree to pay in guaranteed funds all officials' fees established by the ~~director of the division of registrations~~Division Director within the time frames established by the ~~director~~Director.

c. No weigh-in will begin without official fees paid in full. If the official fees have not been paid in full, ~~T~~the weigh-in cannot be rescheduled and the event will be canceled.

D. Minimum Requirements of Rounds

i. Promoters shall not schedule less than twenty rounds nor more than forty rounds for any one event. A standby bout shall be provided in the event an arranged bout falls through and it is necessary to put on another bout in order to meet the minimum requirements. Any exception to the number of rounds requires approval of the ~~director~~Director.

ii. The promoter is expected to feature a main event bout. The number of rounds that qualify as a main event bout is at least five rounds for boxing and at least three rounds for kickboxing and MMA.

iii. A promoter may appeal a permit denial to the ~~boxing~~Combative Sports ~~commission~~ Commission by submitting a written request within 10 days of the denial.

~~E. Event Fee~~

~~i. The promoter shall pay the appropriate event fee that is established by the director of the division of registrations pursuant to Section 24-34-105 C.R.S.~~

~~ii. The event fee must be paid to the office of boxing at the time the event is approved by the director.~~

~~iii. The event fee may vary depending on the event location, area, or other appropriate considerations.~~

9.54 COMPLIANCE BOND OR CERTIFIED CHECK REQUIRED

A. Promoters shall either submit proof of a surety bond or submit a certified check to the ~~Office of Boxing~~Director in an amount to be determined by the ~~director~~Director before a scheduled event.

i. All bonds must be current and list the office of ~~boxing~~Combative Sports as the obligee.

ii. Bonds and certified checks must be verified and approved by the ~~director~~Director.

iii. Failure to comply may result in the cancellation of the event and disciplinary action.

9.65 INSURANCE REQUIREMENTS

~~A. Promoters are required to provide the director with proof of all insurance coverage at least seven days prior to the scheduled event. Failure to provide timely proof may result in cancellation of the event and/or disciplinary action.~~

A. Promoters are required to provide participants with at least $10,000 of life insurance covering deaths caused by injuries sustained during a bout.

B. Promoters are required to provide participants in each event with at least $10,000 of insurance coverage for medical, surgical, and hospital care as a result of injuries sustained during a bout.

~~C. Promoters are required to provide participants with at least $10,000 of life insurance covering deaths caused by injuries sustained during a bout.~~

C. Promoters are required to provide the ~~director~~Director with proof of ~~all~~the above insurance coverage at least seven days prior to the scheduled event. Failure to provide timely proof may result in cancellation of the event and/or disciplinary action.

9.76 APPROVED ANNOUNCEMENTS

A. Promoters are responsible for ensuring that an announcement is made prior to the start of the main event which includes a statement that the event is regulated by the ~~Colorado State Boxing~~ Commission.

B. Other announcements must be limited to those pertaining to present and future permitted bouts ~~when~~ unless additional information in the announcement is specifically authorized by the ~~director~~Director or chief inspector.

C. Political announcements or references are not allowed under any circumstances.

9.87 SUBSTITUTION ANNOUNCEMENTS

Promoters are required to publicly announce all substitutions for participants advertised for bouts as soon as the substitutions are known. Prior to the announcement of a substitution, the substitute participant must be approved by ~~director~~Director or the chief inspector. If the substitute appears for the bouts and is not used for any reason other than medical disqualification, the substitute will be reimbursed by the promoter a minimum of one hundred dollars for training expenses and transportation. Failing to announce substitutions or pay the required reimbursement may result in disciplinary action against the promoter.

9.98 DELAY OF BOUTS

Promoters are responsible for having participants ready to enter the ring or cage immediately after the conclusion of the preceding bout. Any promoter causing a delay of more than five minutes may be subject to disciplinary action.

9.910 SECURITY AT EVENTS

The promoter is responsible for working with owner or operator of the premises in which the event and weigh-ing ~~in~~ is held to ensure that adequate security is provided for the participants and other persons who are present.

9.9110 REINSTATEMENT OF AN EXPIRED LICENSE

~~The purpose of~~ This rule ~~is to~~ establishes the qualifications and procedures for reinstatement of an expired

license pursuant to § 12-10-106.5, C.R.S. and § 24-34-105, C.R.S.

A. Conditions of Reinstatement: License expired for less than two years

i. An applicant seeking reinstatement of an expired license for less than two years shall complete a reinstatement application and pay a reinstatement fee.

B. Conditions of Reinstatement: License expired two years or more

i. An applicant seeking reinstatement of an expired license for two years or more shall complete a reinstatement application, pays a reinstatement fee and provide proof of a compliance bond in a manner approved by the ~~director~~Director.

An applicant for reinstatement who has actively practiced in Colorado with an expired license in violation of § 12-10-106.5 C.R.S. is subject to denial of application, disciplinary action, and/or other penalties as authorized in the Professional Boxing Safety Act at § 12-10-101 et seq., C.R.S., and in accordance with § 24-34-102 et seq., C.R.S.

9.1~~0~~12 NOTICES FROM PROMOTERS

A. Address and Name Changes

i. Promoters shall inform the ~~director~~Director of any name, address, telephone, or email change within 30 days of the change. The ~~director~~Director will not change a promoter's information without explicit notification in a manner prescribed by the ~~director~~Director.

ii. One of the following forms of documentation is needed to change a name or correct a social security number:

a. Marriage license;
b. Divorce decree;
c. Court order; or
d. A driver's license or social security card with a second form of identification may be acceptable at the discretion of the division of registrations.

9.1~~1~~23 REPORTING CONVICTIONS, JUDGMENTS AND ADMINISTRATIVE PROCEEDINGS

A. Promoters shall notify the Director within 45 days of any of the following events:

i. The conviction of a felony under ~~the laws of~~ any state or ~~of the United States~~federal law, which would be a violation of §12-10-107.1 C.R.S. A guilty verdict, a plea of guilty or a plea of nolo contendere (no contest) accepted by the court is considered a conviction;

ii. A disciplinary action imposed upon the licensee by another jurisdiction that licenses promoters, which would be a violation of § 12-10-107.1, C.R.S., including, but not limited to, a citation, sanction, probation, civil penalty, or a denial, suspension, revocation, or modification of a license whether it is imposed by consent decree, order, or other decision, for any cause other than failure to pay a license fee by the due date;

iii. Revocation or suspension by another state athlete commission, municipality, federal or state agency or any association who oversees boxing, kickboxing, mixed martial arts or martial arts~~boxing, kickboxing or MMA~~;

iv. Any judgment, award or settlement of a civil action or arbitration in which there was a final judgment

or settlement against the licensee.

B. The notice to the ~~director~~Director shall include the following information;

i. If the event is an action by a governmental agency (as described above), the name of the agency, its jurisdiction, the case name, and the docket, proceeding or case number by which the event is designated, and a copy of the consent decree, order or decision;

ii. If the event is a felony conviction, the court, its jurisdiction, the case name, the case number, a description of the matter or a copy of the indictment or charges, and any plea or verdict entered by the court. The licensee shall also provide to the ~~director~~Director a copy of the imposition of sentence related to the felony conviction and the completion of all terms of the sentence with 45 days of such action;

iii. If the event concerns a civil action or arbitration proceeding, the court or arbiter, the jurisdiction, the case name, the case number, a description of the matter or a copy of the complaint, and a copy of the verdict, the court or arbitration decision, or, if settled, the settlement agreement and court's order of dismissal;

C. The licensee notifying the ~~director~~Director may submit a written statement with the notice to be included with the licensee's records.

CHAPTER 10
GUIDELINES FOR CONTRACT, FINANCIAL ARRANGEMENTS AND REPORTING FRAUD

10.1 CONTRACT BETWEEN THE PROMOTERS AND THE PARTICIPANT – WRITING REQUIRED

No professional bout will be approved without a contract with the promoter and the participant. The contracts must contain a minimum of the following:

A. Name and signature of promoter or an authorized designee of the promoter.
B. Name and signature of participant.
C. Name of the opponent.
D. Type of Bout.
E. Date and start time of the event.
F. Date and start time of weigh-in.
G. Location of event and weigh-in.
H. Number of rounds in the bout.
I. Time limit of each round.
J. Maximum and minimum weight allowable.
K. Purse amount (Includes show and win money and ticket amount given).
L. Statement that participant will be present and on time to the weigh-in and the event.
M. Statements that the purse may be held by the commission for violations.
N. Any deducted fees must be listed (this does not include commission permit or license fees.
O. Statement that indicates participants will be paid by the promoter immediately following the event.
P. Statement that indicates a substitute participant will be paid by the promoter if they do not engage in a bout.
Q. Statement whereby the participant acknowledges the inherent risk ~~of engaging~~of engaging in the sport. The participant, agrees to waive any claim that they or the participant's heirs may have against ~~the office of boxing, officials and~~ the State of Colorado, or any of its employees or official representatives as the result of any injury the participant may suffer while engaging in any bout.

10.2 MAXIMUM EFFORT

A participant shall not be fully paid a fee who does not complete the terms of the contract or compete in good faith or maximum effort during the bout as determined by the ~~director~~Director or chief inspector.

10.3 VIOLATION OF CONTRACT

Violation of the terms of a contract by any party may be grounds for disciplinary action.

10.4 GUIDELINES FOR REPORTS OF FRAUD

A. If any person has reason to believe that fraud has occurred, such person ~~may~~ must report the issue to the ~~director~~Director in writing within 10 days of the event, unless otherwise extended by the Director.

B. Any licensee who fails to report to the ~~director~~Director any fraud, violation of the law or rule may be subject to disciplinary action.

C. If a licensee is approached with a request or suggestion that an event not be conducted honestly, that licensee must immediately report the matter to the ~~director~~Director. Failure to do so may be subject to disciplinary action.

D. Any licensee, who directly or indirectly holds, participates in, aids or abets any sham or fake

contest or match may be subject to disciplinary action.

CHAPTER 11
PERSONNEL, FACILITY AND EQUIPMENT REQUIREMENTS

Promoters and others involved in an event have the responsibility to understand and comply with the following rules.

11.1 PERSONNEL REQUIRED DURING BOUTS

A. Physician

i. A bout shall not start or continue unless thean ~~approved~~ physician(s) are actively licensed in Colorado and approved for the event is seated at ring or cage side, and the physician shall not leave until after the decision in a final bout.

ii. Televised bouts may require two physicians so that bouts may continue as one physician attends to a participant in the dressing rooms or in the near proximity.

iii. Physicians shall be prepared to assist if any serious emergency arises, and shall render temporary or emergency treatments for cuts and minor injuries sustained by the participants.

B. Emergency Medical Technician (EMT)

i. Promoters are responsible for ensuring that all bouts have a minimum two EMT's onsite and must ensure that the EMT's have medical equipment that at a minimum contains the following items and is located within twelve feet of the ring or cage:

a. A resuscitator;
b. An oxygen tank properly charged with suitable masks;
c. A stretcher;
d. An airway.

ii. Promoters must arrange for an ambulance to be onsite throughout the entire event and must arrange for and give advance notice to the nearest hospital and persons in charge of its emergency room of such event.

iii. The ~~director~~Director may require additional medical equipment and personnel as appropriate.

C. Security

i. Promoters are responsible for ensuring that public safety is maintained at all events by hiring a minimum of one certified peace officer.
ii. Additional officers may be required as determined by the ~~director~~Director.
iii. Any peace officer hired for this purpose must be Colorado State certified and must be employed by the local agency having jurisdiction in that area.
iv. The decision of whether a uniform is not worn by the peace officer shall be a joint decision of the law enforcement agency and the ~~director~~Director.
v. Failure to comply may result in the cancellation of the event and may result in disciplinary action.

11.2 FACILITY REQUIREMENTS

Promoters are responsible for ensuring that all local laws and fire codes are adhered to where an event occurs. Additionally, promoters are responsible for ensuring that the facility selected for the event and the weigh-in is ~~suitable for all audiences~~a family-friendly environment. Facility selection is subject to the approval of the ~~director~~Director or chief inspector.

A. Dressing Rooms

i. Promoters are responsible for limiting the dressing room area to authorized personnel and shall furnish a person ~~for this purpose~~to enforce this limitation.

ii. Female w~~W~~eigh-in participants may request separate dressing rooms from male participants.

iii. The promoter shall ~~also~~ furnish a private room for officials at the event.

iv. The dressing rooms and immediate area must:

a. Provide privacy for the participants;
b. Be properly lighted;
c. Be clean and free of clutter, trash, etc.;
d. Be free of alcoholic beverages or illegal drugs;
e. Comply with local health department requirements.

B. Smoking area and Prohibited Objects

i. Smoking is not permitted within twelve feet of the ring or cage.

ii. Beverages shall not be dispensed in cans or glass.

iii. Food or serving items used by the patrons ~~Ashtrays and plates~~ shall not be made of hard substances that could reasonably cause harm if thrown.

iv. Any objects considered harmful to patrons as determined by ~~director~~Director or chief inspector are prohibited.

C. Ring, ~~and~~ Cage, or Competition Area Safety Zone

A physical barrier surrounding the entire ring, cage, or competition area shall be placed at a minimum nine feet away from the outside edge of the apron or competition area. Anything within this area is the safety zone.

The ~~ring or cage~~ safety zone shall be under the control and jurisdiction of the ~~director~~Director or the chief inspector assigned to supervise the event.

i. The safety zone is to be used for designated working officials, participants, seconds, physicians, announcers, commission members and their guests and media representatives as approved by the ~~director~~Director or chief inspector.

ii. Promoters ~~are responsible for ensuring~~must ensure that the safety zone is controlled and free of nonessential individuals and the only beverage allowed is water.

iii. At no time during the bout may any items be on the ring apron.

iv. The tables next to the ring or cage must be free of any obstructions and shall not be higher than the fighting area platform. All areas surrounding the ring or cage must be suitable and safe as approved by the ~~director~~Director or chief inspector.

~~v. A physical barrier surrounding the entire ring or cage shall be placed at a minimum nine feet away from the outside edge of the apron.~~

v~~i~~. Spectator seats shall be a minimum of ten feet away from the outside edge of the apron.

v~~ii~~. ~~-~~The ring or cage safety zone must be completely set up at least three hours prior to the start of the first bout. This includes properly tightened ropes and all necessary equipment at ring or cage side.

11.3 RING AND CAGE REQUIREMENTS

A. Ring and Cage Size

i. The ring shall be not less than 16 feet nor more than 25 feet square within the ropes. The ring must have three sets of suitable steps. It shall be elevated no less than three and one-half feet nor more than four feet from the floor.

ii. ~~-~~The cage shall be not less than 18 feet nor more than 32 feet square within the fighting area ~~for MMA~~. The cage must have a set of suitable steps for each entrance. It shall be elevated no more than four feet from the floor.

iii. The ring or cage posts shall be made of metal not less than three inches or more than four inches in diameter extending from the floor to the height of 58 inches above the ring floor.

iv. The ring or cage entry onto the fighting area canvas must be sufficient to allow easy access to the fighting area.

B. Ring Ropes and Fencing

i. Four ropes are required for boxing and kickboxing. The lower rope shall be 18 inches above the ring floor, the second rope 30 inches, the third rope 42 inches, and the fourth rope 54 inches above the ring floor. The ropes shall not be less than one inch in diameter and wrapped in soft material, with the corners padded with protective covers.

ii. ~~Five~~ A fifth or bottom rope~~s are~~ is required for MMA bouts in a ring. The bottom rope shall not be more than six inches from the ring floor. The requirements for the top four ropes are the same as for boxing and kickboxing.

iii. The fencing that encloses a cage shall be ~~enclosed and shall be~~ made of materials that will not allow a participant to easily fall out of the space or break through it onto the floor or spectators.

iv. Acceptable materials for ring ropes or fencing include but are not limited to:

a. Vinyl-coated chain link fencing;
b. Metal parts of the enclosure and fighting ~~area shall be~~that are covered and

padded;

c. Any material ~~used shall not be~~that is not abrasive to the participants;

d. Any material that does ~~N~~not obstruct or limit the supervision and regulation of the bout.

v. The ropes shall be connected to the posts with extensions not shorter than 18 inches.

vi. All ring ropes and fencing is subject to the approval of the ~~director~~Director or the chief inspector.

C. Materials for the Ring and Cage Floor

i. Floor.

a. The ring floor shall extend beyond the lower rope no less than 24 inches.

b. The entire floor and apron must be padded with insulate, felt, matting, or a similar material with a thickness of at least one-inch.

c. A canvas or similar material covering, stretched tightly and laced or fastened to the outer edge of the floor shall cover the padding.

d. Boards shall be of sufficient strength to hold the weight and ensure the safety of all who enter the ring.

e. The padding thickness of any material is subject to the approval of the Director.

ii. Prohibited Floor Materials.

a. Vinyl or any plastic rubberized covering.

b. Materials that gather in lumps or ridges.

D. Additional Required Equipment

Promoters are required to provide all equipment and materials necessary to conduct all bouts. ~~Such~~ The equipment must be clean and in good condition. Such required ~~and includes~~equipment includes which are subject examination and approval by a commission representative the following:

i. Steps;
ii. Two similar stools;
iii. Water buckets;
iv. Bell;
v. Buzzer or whistle;
vi. Timers;
vii. Gloves;
viii. Head gear;
ix. Foot pads;
x. Shin pads;
xi. Gauze and tape;
xii. Scale~~, subject to examination and approval~~;
xiii. Any other associated material and equipment as determined by the ~~director~~Director.

E. Pairs of Gloves Required for all competing participants.

Promoters are responsible for having ~~equal~~ pairs of gloves on hand ~~as the~~equal to

the number of participants competing. The gloves may be used multiple times during an event. Promoters must be prepared for differing glove sizes.

F. Gloves

All gloves shall be furnished by the promoter and shall be new or in-tact ~~or~~ and in good clean condition without lumps or imperfections. All participants in the main event, championship bouts and bouts of six rounds or more shall use new gloves. The specific glove size for each event shall be as follows:

i. In boxing or kickboxing bouts, the following requirements apply:

a. Participants weighing 147 pounds or less shall use at least eight-ounce gloves.
b. Participants weighing over 147 pounds shall use at least ten-ounce gloves.
c. When two participants differ in weight classes, participants shall use at least ten-ounce gloves.
d. The ~~director~~Director may approve or require glove size increases.

e. Participants in each bout shall wear the same brand gloves. The ~~director~~Director may approve gloves of different brands.

ii. In MMA bouts, the following requirements apply:

a. Gloves must weigh at least four ounces.
b. Gloves weighing over eight ounces must be approved by the ~~director~~Director or the chief inspector.

iii. All gloves will be examined and approved by the ~~director~~Director or the chief inspector any time before, during and after a bout.

iv. If gloves are not approved by the ~~director~~Director or the chief inspector, they will be discarded before the bout starts, and the bout will not proceed until proper gloves are approved.

v. Gloves that are manipulated in such a manner as breaking, skinning, roughing or twisting shall not be approved for use, and such conduct is subject to disciplinary action.

CHAPTER 12
TICKETS AND SALES REPORTING REQUIREMENTS

12.1 ADMISSION TO EVENTS AND TICKETS REQUIRED

A. Every person admitted to an event shall have a ticket or a pass, complimentary or otherwise~~, other than o~~Officials, participants, and seconds do not require a ticket or a pass. Every admission ticket or complimentary ticket or pass must be tracked.

B. The retail price of the tickets shall be printed in large type and displayed prominently above or near all ticket sellers or ticket windows.

C. The promoter shall disclose the retail ticket prices to the ~~director~~Director no later than the time the application for the permit is filed.

D. Tickets of different prices shall be printed in different colors, or state the retail price on the face value of the ticket. Retail ticket prices shall not be changed.

E. The ~~director~~Director shall be provided with all information and materials necessary for an accurate accounting, including the printers' manifest showing the total number of tickets printed and the admission prices of each within seven days of an event.

F. Advance tickets, as well as tickets sold at the time of the event, must be accounted for as part of the gross receipts.

G. The number of tickets sold shall not exceed the actual capacity of the location or facility where the event is to be held.

12.2 OTHER TICKETS AND TICKET LIMIT

~~In addition to t~~The ~~director~~Director, commissioners, chief inspectors, and ~~appropriate members~~designated employees of the Department of Regulatory Agencies shall be admitted without charge to any event over which the ~~commission~~ Commission has jurisdiction. ~~Representatives of the office of boxing~~These individuals may be required to present their state identification

12.3 NOTICE OF CHANGE - TICKET REFUNDS

A. Notice of any change in the announced advertised bouts must be conspicuously posted at the box office and announced prior to the scheduled start of the bouts.

B. Any patrons requesting a refund of the ticket price must present the tickets or the ticket stubs at the box office or to a designated person who is handling the refunds.

C. All returned ticket stubs must be held for an accurate accounting of the gross receipts.

12.4 SURCHARGE

The promoter is responsible for all surcharge matters below:

A. An event surcharge on gross receipts, less applicable taxes, may be assessed on each event. If tickets or passes are priced so that the applicable surcharge results in less than $1.00 per ticket or pass, a surcharge of $1.00 per ticket or pass may be assessed.
B. An additional ~~ticket~~ surcharge may be assessed on each ticket or pass issued to the event as determined by the ~~director of the division of registrations~~Division Director.
C. ~~The maximum event surcharge assessment shall not be limited.~~
D. No later than ten business days after the event, promoters are responsible for filing an accurate surcharge report with the appropriate surcharge payment. Payment shall be in the form of a cashier's check, money order, or other acceptable methods as determined by the ~~director~~Director.
E. The ~~director~~Director has the discretion to verify the surcharge report submitted.
F. Failing to submit an accurate surcharge report and appropriate payment may result in disciplinary action.

CHAPTER 13
REQUIREMENTS FOR ELIMINATION BOUTS

All rules in Chapter 2 and in Chapter 5 ~~where appropriate, also~~ apply to elimination bouts unless otherwise noted in this Chapter.

13.1 ELIGIBILITY

A. A participant is eligible to compete if they have NOT:

i. ~~Been issued a boxers federal identification card; or~~
ii. Been a competitor in professional ~~boxing, kickboxing, MMA bout~~combative sports.

C. ~~B.~~ Promoters ~~may request that~~are required to call to the attention of the Director any concerns. ~~the director~~Director not ~~accept a~~accept a ~~participant due~~participant due to conduct or safety ~~concerns.~~concerns. The Director will determine whether the fighter is fit to continue.

D. Elimination tournament debut participants must be medically cleared by the Director upon consultation with a physician a minimum of three days prior to the event.

13.2 GLOVE SIZE

For all boxing and kickboxing elimination bouts, boxing gloves of at least 12 ounces shall be worn. For all MMA
elimination bouts, gloves of at least four ounces shall be worn.

13.3 EQUIPMENT

A. Boxing
The Promoter shall provide head gear which shall be worn by all participants.
The ~~director~~Director has the sole discretion to waive the headgear requirement on a bout by bout basis. B. Kickboxing
The promoter shall provide headgear, foot pads and shin pads which shall be worn by all participants. The
~~director~~Director has the discretion to limit the amount of equipment required.

13.4 ROUNDS AND TIME LENGTH

A. Elimination boxing and kickboxing bouts shall consist of three, two--minute rounds or three, one--minute rounds with a one--minute rest period between each round.

B. Elimination MMA bouts shall consist of three, three--minute rounds with a one--minute rest period between each round.

13.5 ELIMINATION TOURNAMENT FORMAT

A. Tournaments shall be single elimination events. A participant who has lost a bout may not participate in another bout in the same event.

B. Tournaments may be between only two participants.

13.6 ELIMINATION TOURNAMENT LENGTH

A. Elimination tournaments are a one- ~~-~~day event. Participants may not participate in more than three matches per event.

B. ~~Elimination tournament debut participants must be cleared by the director and a physician a minimum of three days prior to the event.~~

13.7 WEIGHT CATEGORIES

A. There shall be two weight classes for all participants in boxing and kickboxing:

i. Light heavyweight - up to 185 lbs.
ii Heavyweight - over 185 lbs. or more.

B. The ~~director~~Director may create weight classes other than those listed above.

C. There shall be 11 weight categories for all participants in MMA as shown below:

POUNDS	CLASSIFICATION	ALLOWANCE
Above 265	Super Heavyweight	No limit
265	Heavyweight	35 lbs.
230	Cruiserweight	25 lbs.
205	Light Heavyweight	20 lbs.
185	Middleweight	15 lbs.
170	Welterweight	15 lbs.
155	Lightweight	10 lbs.
145	Featherweight	10 lbs.
135	Bantamweight	10 lbs.
125	Flyweight	10 lbs.
Below 124	Minimum Weight	10 lbs.

D. No participant shall engage in a bout where the weight difference exceeds the allowance shown above for MMA. Any greater weight spread requires approval of the ~~director~~Director.

13.8 ELBOW AND KNEE STRIKES PROHIBITED

Elbows strikes of any kind or knee strikes to the head are prohibited in any type of elimination bout. The participant may be disqualified and may be subject to disciplinary action.

CHAPTER 14
REQUIREMENTS FOR OFFICIALS

14.1 OFFICIALS - CONTROL

A. All officials involved in an event shall be under the direct control and supervision of the ~~director~~Director or the chief inspector assigned to supervise the event. The ~~director~~Director has the discretion to determine whether clothes, facial or body adornments (long mustaches, goatees, beards sideburns) and length of hair comply with the professional dress code for officials for that particular event.

B. No official shall in any manner display bias for one participant over the other or against any participant.

C. The official may not consume, or be under the influence of, alcohol, marijuana, ~~or be under the influence of any~~or any controlled substance while acting as an official.

D. Failure to comply may result in disciplinary action and prohibition from officiating future events.

E. Any written complaint made to the ~~director~~Director regarding officiating conduct, ~~performance~~ or officials conduct during and outside of an event, will be evaluated on a case-by-case basis if reported within two weeks after an event or incident.

14.2 MINIMUM QUALIFICATIONS FOR AN OFFICIAL LICENSE

A license is required to serve as an official in a professional combative sport contest. ~~Officials licensed prior to July 1, 2011 are not subject to these requirements. After July 1, 2011,~~ All officials shall submit an application for a license to officiate ~~fight~~ in a manner prescribed by the Director. Incomplete or incorrect applications will not be accepted.

Each applicant for a license shall pay the fee established by the Division Director pursuant to Section 24-34-105, C.R.S. A~~a~~ny person wishing to apply for an official's license must demonstrate the following qualifications in ~~boxing, kickboxing or MMA~~combative sport.

A. Referee Qualifications:

i. Referee experience may be demonstrated by one of the following:

a. Four years of amateur experience as a referee at the highest classification level ~~of accomplishment~~, or

b. One year of professional experience as a referee from a State Athletic Commission, or a Tribal Commission that is a member of the Association of Boxing Commissions.

ii. Other requirements for Referees:

a. Prior to licensure, a referee must attest that they have read and understand the laws and rules covering professional ~~boxing, kickboxing, and MMA~~combative sports in this state.

b. ~~The referee~~The ~~must~~referee ~~have~~must ~~also~~have also read and understand the rules of the various sanctioning bodies.

c. A written test and a physical examination may be required at the discretion of the ~~director~~Director to determine fitness to perform.

B. Judge Qualifications:

i. Judge experience may be demonstrated by one of the following:

a. Three years of amateur experience as a judge at the highest level of accomplishment.
b. One year of professional experience as a judge from a State Athletic Commission or a Tribal Commission that is a member of the Association of Boxing Commissions.

C. Inspector Qualifications:

There are three positions within the inspector category: timekeepers, tally judge and knock down judge.

i. Inspector experience may be demonstrated by one of the following:

a. Three years of amateur experience as an inspector, timekeeper, tally judge or knock down judge.
b. One year of professional experience in any of the positions listed above from a State Athletic Commission or a Tribal Athletic Commission that is a member of the Association of Boxing Commissions, or upon approval of the ~~director~~Director.

14.3 CONDITIONS OF REINSTATEMENT OF AN EXPIRED LICENSE

The purpose of this rule is to establish the qualifications and procedures for reinstatement of an expired official's license pursuant to § 12-10-106.5, C.R.S. and § 24-34-105, C.R.S.

A. Conditions of Reinstatement: License expired less than two years

i. An applicant seeking reinstatement of an expired license for less than two years shall complete a reinstatement application and pay a reinstatement fee.

B. Conditions of Reinstatement: License expired two years or more

i. An applicant seeking reinstatement of an expired license for two years or more shall complete a reinstatement application, pay a reinstatement fee and demonstrate competency for the specific position in a manner approved by the ~~director~~Director.

An applicant for reinstatement who has actively practiced in Colorado with an expired license in violation of § 12-10-106.5 C.R.S., is subject to denial of application, disciplinary action, and/or other penalties as authorized in the Professional Boxing Safety Act at § 12-10-101 et seq., C.R.S., and in accordance with § 24-34-102 et seq., C.R.S.

14.4 NOTICES FROM OFFICIALS

A. Address and Name Changes

i. Officials shall inform the ~~director~~Director of any change in name, address, telephone, email, or financial institution that may affect timely payments within 30 days of the change. The ~~director~~Director will not change information without explicit notification in a manner prescribed by the ~~director~~Director.

ii. One of the following forms of documentation is needed to change a name or correct a social security number:

a. marriage license;
b. divorce decree;
c. court order; or
d. a driver's license or social security card with a second form of identification may be acceptable at the discretion of the division of registrations.

14.5 REPORTING CONVICTIONS, JUDGMENTS AND ADMINISTRATIVE PROCEEDINGS

A. Officials shall notify the ~~director~~Director within 45 days of any of the following events:

i. The conviction of a felony under ~~the laws of~~ any state or ~~of the United States~~federal law, which would be a violation of §12-10-107.1 C.R.S. A guilty verdict, a plea of guilty or a plea of nolo contendere (no contest) accepted by the court is considered a conviction;

ii. A disciplinary action imposed upon the licensee by another jurisdiction that licenses officials, which would be a violation of § 12-10-107.1, C.R.S., including, but not limited to, a citation, sanction, probation, civil penalty, or a denial, suspension, revocation, or modification of a license whether it is imposed by consent decree, order, or other decision, for any cause other than failure to pay a license fee by the due date;

iii. Revocation or suspension by another state athlete commission, municipality, federal or state agency or any association who oversees boxing, kickboxing, mixed martial arts or martial arts~~boxing, kickboxing or MMA~~;

iv. Any judgment, award or settlement of a civil action or arbitration in which there was a final judgment or settlement against the licensee.

B. The notice to the ~~director~~Director shall include the following information;

i. If the event is an action by a governmental agency (as described above), the name of the agency, its jurisdiction, the case name, and the docket, proceeding or case number by which the event is designated, and a copy of the consent decree, order or decision;

ii. If the event is a felony conviction, the court, its jurisdiction, the case name, the case number, a description of the matter or a copy of the indictment or charges, and any plea or verdict entered by the court. The licensee shall also provide to the ~~director~~Director a copy of the imposition of sentence related to the felony conviction and the completion of all terms of the sentence with 45 days of such action;

iii. If the event concerns a civil action or arbitration proceeding, the court or arbiter, the jurisdiction, the case name, the case number, a description of the matter or a copy of the complaint, and a copy of the verdict, the court or arbitration decision, or, if settled, the settlement agreement and court's order of dismissal;

C. The licensee notifying the ~~director~~Director may submit a written statement with the notice to be included with the licensee's records.

14.6 CONFLICT OF INTEREST

A. Officials may not act in any other capacity during an event, unless given permission by the ~~director~~Director.

B. Officials shall be excluded from officiating in any bout involving participants with whom they have worked as manager, trainer, etc.

C. Officials shall notify the ~~director~~Director or chief inspector immediately of any ~~such~~ conflict or potential conflict.

14.7 CHIEF INSPECTOR DEFINITION AND DUTIES

A. A chief inspector is a licensed official who is authorized by the ~~director~~Director to supervise an event on behalf of the office of ~~boxing~~Combative Sports.

B. The ~~director~~Director shall set the amount of compensation the official will receive for each supervised event.

C. The chief inspector must ensure that the laws and rules are properly applied and enforced.

D. Chief inspectors must report to the ~~director~~Director any violations of the law or rule that occur during an event within 24 ~~hours..~~hours.

14.8 REFEREE ENFORCEMENT

A. The referee is charged with the enforcement of all office of ~~boxing~~Combative Sports rules which apply to the execution of performance and the conduct of participants' seconds while in the ring.

B. Referees shall not wear glasses of any kind while refereeing a bout.

14.9 REFEREE DUTIES

A. Before the start of each bout, the referee will check each judge and the timekeeper to determine if they are prepared to start the bout.

B. The referee is responsible for determining who will act ~~as the~~as the chief second in each corner and shall hold them responsible for all conduct in the corners.

C. The referee in their discretion shall warn the seconds of rule violations, and if they do not comply, the referee shall warn them that further violations will result in point deductions, disqualification of their participant, and subject to disciplinary action.

D. The referee shall instruct the judges to mark their scorecards accurately at all times.

E. The referee shall ensure that a bout moves to its proper conclusion. It should not be stopped or delayed, except in cases of damaging fouls or health and safety concerns.

F. The referee shall penalize participants who delay or use avoiding tactics by deducting points or by immediate disqualification.

G. At the conclusion of all bouts and upon the announcement of the winner, the referee shall raise the winner's hand.

14.10 APPROVAL AND PAYMENT

The ~~director~~Director shall select the referee for each bout and the decision shall be final. The amount of money paid to the ~~referee shall~~referee shall be fixed by the ~~director~~Director. Depending on the bout, a referee may be paid by the promoter or sanctioning organization.

14.11 SOLE ARBITER

A. The referee is the sole arbiter of a bout and is the only individual authorized to stop a bout.

B. Referees shall stop a bout when they deem the following:

i. The physical condition of a participant so requires,
ii. When a participant is out-classed;
iii. A participant is not demonstrating their best efforts.

C. In the event of serious cuts, the referee may seek a recommendation from the physician whether the bout should be stopped.

14.12 FORFEITURE AND WITHHOLDING OF A PARTICIPANT'S PURSE

The referee shall recommend to the ~~director~~Director or chief inspector, the forfeiture or the withholding of half of a participant's purse whenever a participant fails to perform in good faith or maximum effort when competing.

14.13 GLOVE INSPECTION

A. The referee shall inspect the gloves of the participants in all events and make sure that no foreign substances have been applied to the gloves or bodies of the participants that might be detrimental to an opponent.

B. Whenever the gloves of a boxing or kickboxing participant touches the canvas floor, the referee shall inspect the gloves and wipe them clean before the bout proceeds.

14.14 LOSS OF BODILY FUNCTION

If a participant, during a round, visibly loses control of a bodily function (vomit, urine, bowels), the bout shall be stopped by the referee, and the participant shall lose the contest by TKO. In the event a loss of control of a bodily function occurs in the rest period between rounds, the ringside physician shall be called in to evaluate if the combatant can continue. If the participant is not cleared by the ringside physician to continue, that participant shall lose by TKO by TKO. In these situations, the result shall be recorded as TKO due to Medical Stoppage.

14.1~~5~~4 KNOCKDOWN COUNTS

A. When a participant is knocked down as a result of a punch in a boxing bout or a legal kick or punch in a kickboxing bout, the referee shall order the opponent to a neutral corner and may pick up the count from the timekeeper.

B. The referee shall audibly announce the passing of the count. The participant may take the eight count either on the floor or standing. The referee's count is the official count.

C. Should the opponent fail to stay in the neutral corner, the referee shall cease the count until the participant returns to the corner, then the referee shall continue with the count from the point at which the count was interrupted.

D. The eight count is mandatory for a knockdown in a boxing and kickboxing bout and a participant may not resume fighting until the referee has finished counting to eight.

E. During any count, the opponent shall go to the farthest neutral corner and remain in that neutral corner until signaled by the referee.

14.165 FALLEN PARTICIPANT WHO RISES AND FALLS AGAIN WITHOUT BEING HIT AGAIN

A. When a fallen participant rises and falls again, without being hit again, in a boxing or kickboxing bout the referee shall continue the original count, rather than starting a new count.

B. If the bell rings ending the round during the count, the count shall continue.

14.176 COUNT OF TEN - INDICATION OF KNOCKOUT

If the referee calls the count of ten during a knockdown in a boxing or kickboxing bout or the referee determines that a participant is not able to continue, the referee shall wave both arms to indicate a knockout.

14.187 PARTICIPANTS DOWN AT THE SAME TIME

If both participants are considered down at the same time in a boxing or kickboxing bout, the count shall continue as long as one of them is still down. If both participants remain down until the count of ten, the bout shall be stopped and the result shall be a technical draw.

14.198 ASSESSING FOULS

A. The referee must weigh the cause as well as the act in assessing fouls.

B. When a foul is unintentionally inflicted, but intentionally received, it is applied to the deliberate recipient.

C. If a participant receives a low blow as determined by the referee, the referee may use their discretion to permit a rest period for the recipient. Such period shall not exceed five minutes. During the rest period, seconds or may not assist or coach either participant.

D. The offending participant shall go to a neutral corner.

E. The referee will give a warning for a low blow to the offending participant if the participant who received the low blow indicates they are ready to continue the bout.

D. The referee will give the command to continue after the end of the rest period. If the offended participant refuses to continue after the rest period, their opponent may be named the winner.

14.19 20 LOW BLOWS - RECIPIENT NAMED WINNER

A participant cannot be named the winner of a bout as a result of receiving a low blow unless the referee determines the blow was delivered deliberately and was of such force to seriously incapacitate the offended participant so that they could not continue to compete. Under this condition, the offender shall be disqualified immediately.

14.210 DELIBERATE ACTIONS TO GAIN ADVANTAGE – PENALTIES

A. The referee shall warn or penalize participants who use the ropes or deliberately dislodge their

mouthpiece or use other unfair tactics to gain an advantage.

B. The referee shall not permit unfair tactics that may cause injuries to participants.

C. In a boxing bout, the only fair blow is a blow delivered with the padded knuckle part of the glove on the front or sides of the head and body above the hip line.

14.2221 JUDGE APPROVAL

The ~~director~~Director shall select the judges for each bout and the decision shall be final. The amount of money paid the judges for services rendered shall be fixed by the ~~director~~Director. Depending on the bout, a judge may be paid by the promoter or sanctioning organization.

14.232 JUDGE DUTIES

A. Judges are responsible to familiarize themselves with and review the method to be used when scoring bouts which may vary by sport.

B. The bouts shall be scored to determine the winner ~~through the use of~~with the ten-point must system. In this system, the winner of each round receives ten points and the opponent a proportionately lower number. If the round is even, each participant receives ten points.

C. Scorecards are provided by the ~~director~~Director and only those shall be used.

D. Each judge shall accurately complete their scorecard and in accordance with the provisions of the rules governing the sport they are judging.

E. ~~-~~At the end of each round the scorecard shall be totaled and signed by each judge.

14.243 NUMBER OF JUDGES

All bouts will be evaluated and scored by three judges.

14.254 JUDGE POSITION

The judges shall sit alone at ring or cage side and will reach their own decision without conferring in any manner with any other official or person

14.265 REMOVAL OF JUDGES

Judges of bouts will be under the control and jurisdiction of the office of ~~boxing~~Combative Sports. The ~~director~~Director or chief inspector reserves the right to remove a judge, if, the judge is inefficient or is otherwise unable to act as a judge.

14.276 INSPECTOR PERFORMING TIMEKEEPER DUTIES

The timekeeper is responsible for keeping accurate time of all bouts. The timekeeper shall keep an exact record of the time taken out at the request of the referee for the examination of a participant by the physician, replacing a glove, or adjusting equipment during a round, and report the exact time of the bout being stopped. The timekeeper shall use an audible device to indicate the conclusion of every round.

~~CHAPTER 15~~
~~DECLARATORY ORDERS~~

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

~~A. Any person or entity may petition the commission for a declaratory order to terminate controversies or remove uncertainties as to the applicability of any statutory provision or of any rule or order of the Commission.~~

~~B. The commission will determine, at its discretion and without notice to petitioner, whether to rule upon any such petition. If the Commission determines that it will not rule upon such a petition, the commission shall promptly~~

notify the petitioner of its action and state the reasons for such decision.

C. In determining whether to rule upon a petition filed pursuant to this rule, the commission will consider the following matters, among others:

1. Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to petitioner of any statutory provisions or rule or order of the commission.

2. Whether the petition involves any subject, question or issue that is the subject of a formal or informal matter or investigation currently pending before the commission or a court involving one or more petitioners.

3. Whether

the petition involves any subject, question or issue that is the subject of a formal or informal matter or investigation currently pending before the commission or a court but not involving any petitioner.

4. Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.

5. Whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to the Colorado Rules of Civil Procedure 57, which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule or order in question.

D. Any petition filed pursuant to this rule shall set forth the

following:

1. The name and address of the petitioner and whether the petitioner is licensed pursuant to Title 12, Article 10.

2. The statute, rule or order to which the petition relates.

3. A concise statement of all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule, or order in question applies or potentially applies to the petitioner.

E. If the commission determines that it will rule on the petition, the following procedures shall apply:

1. The commission may rule upon the petition based solely upon the facts presented in the petition. In

~~such a case:~~

~~a. Any ruling of the commission will apply only to the extent of the facts presented in the petition and any amendment to the petition.~~

b. The commission may order the petitioner to file a written brief, memorandum or statement of position.

c. The commission may set the petition, upon due notice to petitioner, for a non-evidentiary hearing.

d. The commission 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.

e. The commission may take administrative notice of facts pursuant to the Administrative Procedure Act at § 24-4-105(8), C.R.S., and may utilize its experience, technical competence, and specialized knowledge in the disposition of the petition.

2. If the commission rules upon the

petition without a hearing, it shall promptly notify the petitioner of its decision.

3. The commission may, at its discretion, set the petition for hearing, upon due notice to petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any facts set forth in the petition or to hear oral argument on the petition. The notice to the petitioner shall set forth, to the extent known, the factual or other matters into which the commission intends to inquire.

For the purpose of such a hearing, to the extent necessary, the petitioner shall have the burden of proving all the facts stated in the petition; all of the facts necessary to show the nature of the controversy or uncertainty; and the manner in which the statute, rule, or

order in question applies or potentially applies to the petitioner and any other facts the petitioner desires the commission to consider.

F. The parties to any proceeding pursuant to this rule shall be the commission and the petitioner. Any other person including the directorDirector may seek leave of the commission to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the commission. A petition to intervene shall set forth the same matters as are required by Section D of this Rule. Any reference to a "petitioner" in this Rule also refers to any person who has been granted leave to intervene by the commission.

G. Any declaratory order or other order disposing of a petition

~~pursuant to this Rule shall constitute agency action subject to judicial review pursuant to the Colorado Administrative Procedures Act at § 24-4-106, C.R.S.~~

THE WORLD ANTI-DOPING CODE

INTERNATIONAL STANDARD

PROHIBITED LIST

JANUARY 2018

WORLD ANTI-DOPING AGENCY

play true

The official text of the *Prohibited List* shall be maintained by *WADA* and shall be published in English and French. In the event of any conflict between the English and French versions, the English version shall prevail.

This List shall come into effect on 1 January 2018

SUBSTANCES & METHODS
PROHIBITED AT ALL TIMES
(IN- AND OUT-OF-COMPETITION)

IN ACCORDANCE WITH ARTICLE 4.2.2 OF THE WORLD ANTI-DOPING CODE, ALL *PROHIBITED SUBSTANCES* SHALL BE CONSIDERED AS *"SPECIFIED SUBSTANCES"* EXCEPT SUBSTANCES IN CLASSES S1, S2, S4.4, S4.5, S6.A, AND *PROHIBITED METHODS* M1, M2 AND M3.

PROHIBITED SUBSTANCES

S0 NON-APPROVED SUBSTANCES

Any pharmacological substance which is not addressed by any of the subsequent sections of the *List* and with no current approval by any governmental regulatory health authority for human therapeutic use (e.g. drugs under pre-clinical or clinical development or discontinued, designer drugs, substances approved only for veterinary use) is prohibited at all times.

S1 ANABOLIC AGENTS

Anabolic agents are prohibited.

1. ANABOLIC ANDROGENIC STEROIDS (AAS)

a. Exogenous* AAS, including:

1-Androstenediol (5α-androst-1-ene-3β,17β-diol);
1-Androstenedione (5α-androst-1-ene-3,17-dione);
1-Androsterone (3α-hydroxy-5α-androst-1-ene-17-one);
1-Testosterone (17β-hydroxy-5α-androst-1-en-3-one);
4-Hydroxytestosterone (4,17β-dihydroxyandrost-4-en-3-one);
Bolandiol (estr-4-ene-3β,17β-diol);
Bolasterone;
Calusterone;
Clostebol;
Danazol ([1,2]oxazolo[4',5':2,3]pregna-4-en-20-yn-17α-ol);
Dehydrochlormethyltestosterone (4-chloro-17β-hydroxy-17α-methylandrosta-1,4-dien-3-one);
Desoxymethyltestosterone (17α-methyl-5α-androst-2-en-17β-ol);
Drostanolone;
Ethylestrenol (19-norpregna-4-en-17α-ol);
Fluoxymesterone;
Formebolone;
Furazabol (17α-methyl [1,2,5]oxadiazolo[3',4':2,3]-5α-androstan-17β-ol);
Gestrinone;
Mestanolone;
Mesterolone;
Metandienone (17β-hydroxy-17α-methylandrosta-1,4-dien-3-one);
Metenolone;
Methandriol;
Methasterone (17β-hydroxy-2α,17α-dimethyl-5α-androstan-3-one);
Methyldienolone (17β-hydroxy-17α-methylestra-4,9-dien-3-one);
Methyl-1-testosterone (17β-hydroxy-17α-methyl-5α-androst-1-en-3-one);
Methylnortestosterone (17β-hydroxy-17α-methylestr-4-en-3-one);
Methyltestosterone;
Metribolone (methyltrienolone, 17β-hydroxy-17α-methylestra-4,9,11-trien-3-one);
Mibolerone;
Norboletone;
Norclostebol;
Norethandrolone;
Oxabolone;
Oxandrolone;
Oxymesterone;
Oxymetholone;
Prostanozol (17β-[(tetrahydropyran-2-yl)oxy]-1'H-pyrazolo[3,4:2,3]-5α-androstane);
Quinbolone;
Stanozolol;
Stenbolone;
Tetrahydrogestrinone (17-hydroxy-18a-homo-19-nor-17α-pregna-4,9,11-trien-3-one);
Trenbolone (17β-hydroxyestr-4,9,11-trien-3-one);

and other substances with a similar chemical structure or similar biological effect(s).

b. Endogenous AAS when administered exogenously:**

19-Norandrostenediol (estr-4-ene-3,17-diol);
19-Norandrostenedione (estr-4-ene-3,17-dione);
Androstanolone (5α-dihydrotestosterone, 17β-hydroxy-5α-androstan-3-one);
Androstenediol (androst-5-ene-3β,17β-diol);
Androstenedione (androst-4-ene-3,17-dione);
Boldenone;
Boldione (androsta-1,4-diene-3,17-dione);
Nandrolone (19-nortestosterone);
Prasterone (dehydroepiandrosterone, DHEA, 3β-hydroxyandrost-5-en-17-one);
Testosterone;

and their metabolites and isomers, including but not limited to:

3β-Hydroxy-5α-androstan-17-one;
5α-Androst-2-ene-17-one;
5α-Androstane-3α,17α-diol;
5α-Androstane-3α,17β-diol;
5α-Androstane-3β,17α-diol;
5α-Androstane-3β,17β-diol;
5β-Androstane-3α,17β-diol;
7α-Hydroxy-DHEA;
7β-Hydroxy-DHEA;
4-Androstenediol (androst-4-ene-3β, 17β-diol);
5-Androstenedione (androst-5-ene-3,17-dione);
7-Keto-DHEA;
19-Norandrosterone;
19-Noretiocholanolone;
Androst-4-ene-3α,17α-diol;
Androst-4-ene-3α,17β-diol;
Androst-4-ene-3β,17α-diol;
Androst-5-ene-3α,17α-diol;
Androst-5-ene-3α,17β-diol;
Androst-5-ene-3β,17α-diol;
Androsterone;
Epi-dihydrotestosterone;
Epitestosterone;
Etiocholanolone.

2. OTHER ANABOLIC AGENTS

Including, but not limited to:
Clenbuterol, selective androgen receptor modulators (SARMs, e.g. andarine, LGD-4033, ostarine and RAD140), tibolone, zeranol and zilpaterol.

For purposes of this section:
* "exogenous" refers to a substance which is not ordinarily produced by the body naturally.
** "endogenous" refers to a substance which is ordinarily produced by the body naturally.

S2 PEPTIDE HORMONES, GROWTH FACTORS, RELATED SUBSTANCES, AND MIMETICS

The following substances, and other substances with similar chemical structure or similar biological effect(s), are prohibited:

1. Erythropoietins (EPO) and agents affecting erythropoiesis, including, but not limited to:

1.1 Erythropoietin-Receptor Agonists, e.g.
Darbepoetins (dEPO);
Erythropoietins (EPO);
EPO based constructs [EPO-Fc, methoxy polyethylene glycol-epoetin beta (CERA)];
EPO-mimetic agents and their constructs (e.g. CNTO-530, peginesatide).

1.2 Hypoxia-inducible factor (HIF) activating agents, e.g.
Argon;
Cobalt;
Molidustat;
Roxadustat (FG-4592);
Xenon.

1.3 GATA inhibitors, e.g.
K-11706.

1.4 TGF-beta (TGF-β) inhibitors, e.g.
Luspatercept;
Sotatercept.

1.5 Innate repair receptor agonists, e.g.
Asialo EPO;
Carbamylated EPO (CEPO).

2. Peptide Hormones and Hormone Modulators,

2.1 Chorionic Gonadotrophin (CG) and Luteinizing Hormone (LH) and their releasing factors, e.g. Buserelin, deslorelin, gonadorelin, goserelin, leuprorelin, nafarelin and triptorelin, in males;

2.2 Corticotrophins and their releasing factors, e.g. Corticorelin;

2.3 Growth Hormone (GH), its fragments and releasing factors, including, but not limited to:
Growth Hormone fragments, e.g.
AOD-9604 and hGH 176-191;
Growth Hormone Releasing Hormone (GHRH) and its analogues, e.g.
CJC-1293, CJC-1295, sermorelin and tesamorelin;
Growth Hormone Secretagogues (GHS), e.g.
ghrelin and ghrelin mimetics, e.g.
anamorelin, ipamorelin and tabimorelin;
GH-Releasing Peptides (GHRPs), e.g.
alexamorelin, GHRP-1, GHRP-2 (pralmorelin), GHRP-3, GHRP-4, GHRP-5, GHRP-6, and hexarelin.

3. Growth Factors and Growth Factor Modulators, including, but not limited to:
Fibroblast Growth Factors (FGFs);
Hepatocyte Growth Factor (HGF);
Insulin-like Growth Factor-1 (IGF-1) and its analogues;
Mechano Growth Factors (MGFs);
Platelet-Derived Growth Factor (PDGF);
Thymosin-β4 and its derivatives e.g. TB-500;
Vascular-Endothelial Growth Factor (VEGF).

Additional growth factors or growth factor modulators affecting muscle, tendon or ligament protein synthesis/degradation, vascularisation, energy utilization, regenerative capacity or fibre type switching.

S3 BETA-2 AGONISTS

All selective and non-selective beta-2 agonists, including all optical isomers, are prohibited.
Including, but not limited to:
Fenoterol;
Formoterol;
Higenamine;
Indacaterol;
Olodaterol;
Procaterol;
Reproterol;
Salbutamol;
Salmeterol;
Terbutaline;
Tulobuterol;
Vilanterol.

Except:

- Inhaled salbutamol: maximum 1600 micrograms over 24 hours in divided doses not to exceed 800 micrograms over 12 hours starting from any dose;
- Inhaled formoterol: maximum delivered dose of 54 micrograms over 24 hours;
- Inhaled salmeterol: maximum 200 micrograms over 24 hours.

The presence in urine of salbutamol in excess of 1000 ng/mL or formoterol in excess of 40 ng/mL is not consistent with therapeutic use of the substance and will be considered as an *Adverse Analytical Finding* (*AAF*) unless the *Athlete* proves, through a controlled pharmacokinetic study, that the abnormal result was the consequence of a therapeutic dose (by inhalation) up to the maximum dose indicated above.

S4 HORMONE AND METABOLIC MODULATORS

The following hormone and metabolic modulators are prohibited:

1. Aromatase inhibitors including, but not limited to:
4-Aandrostene-3,6,17 trione (6-oxo);
Aminoglutethimide;
Anastrozole;
Androsta-1,4,6-triene-3,17-dione (androstatrienedione);

Androsta-3,5-diene-7,17-dione (arimistane);
Exemestane;
Formestane;
Letrozole;
Testolactone.

2. Selective estrogen receptor modulators (SERMs) including, but not limited to:
Raloxifene;
Tamoxifen;
Toremifene.

3. Other anti-estrogenic substances including, but not limited to:
Clomifene;
Cyclofenil;
Fulvestrant.

4. Agents modifying myostatin function(s) including, but not limited, to: myostatin inhibitors.

5. Metabolic modulators:
5.1 Activators of the AMP-activated protein kinase (AMPK), e.g. AICAR, SR9009; and Peroxisome Proliferator Activated Receptor δ (PPARδ) agonists, e.g. 2-(2-methyl-4-((4-methyl-2-(4-(trifluoromethyl) phenyl)thiazol-5-yl)methylthio)phenoxy) acetic acid (GW1516, GW501516);
5.2 Insulins and insulin-mimetics;
5.3 Meldonium;
5.4 Trimetazidine.

S5 DIURETICS AND MASKING AGENTS

The following diuretics and masking agents are prohibited, as are other substances with a similar chemical structure or similar biological effect(s).

Including, but not limited to:

- Desmopressin; probenecid; plasma expanders, e.g. intravenous administration of albumin, dextran, hydroxyethyl starch and mannitol.
- Acetazolamide; amiloride; bumetanide; canrenone; chlortalidone; etacrynic acid; furosemide; indapamide; metolazone; spironolactone; thiazides, e.g. bendroflumethiazide, chlorothiazide and hydrochlorothiazide; triamterene and vaptans, e.g. tolvaptan.

Except:

- Drospirenone; pamabrom; and ophthalmic use of carbonic anhydrase inhibitors (e.g. dorzolamide, brinzolamide);
- Local administration of felypressin in dental anaesthesia.

The detection in an *Athlete's Sample* at all times or *In-Competition*, as applicable, of any quantity of the following substances subject to threshold limits: formoterol, salbutamol, cathine, ephedrine, methylephedrine and pseudoephedrine, in conjunction with a diuretic or masking agent, will be considered as an *Adverse Analytical Finding (AAF)* unless the *Athlete* has an approved *Therapeutic Use Exemption (TUE)* for that substance in addition to the one granted for the diuretic or masking agent.

PROHIBITED METHODS

M1 MANIPULATION OF BLOOD AND BLOOD COMPONENTS

The following are prohibited:

1. The *Administration* or reintroduction of any quantity of autologous, allogenic (homologous) or heterologous blood, or red blood cell products of any origin into the circulatory system.

2. Artificially enhancing the uptake, transport or delivery of oxygen.
   Including, but not limited to:
   Perfluorochemicals; efaproxiral (RSR13) and modified haemoglobin products, e.g. haemoglobin-based blood substitutes and microencapsulated haemoglobin products, excluding supplemental oxygen by inhalation.

3. Any form of intravascular manipulation of the blood or blood components by physical or chemical means.

M2 CHEMICAL AND PHYSICAL MANIPULATION

The following are prohibited:

1. *Tampering*, or *Attempting to Tamper*, to alter the integrity and validity of *Samples* collected during *Doping Control*.
   Including, but not limited to:
   Urine substitution and/or adulteration, e.g. proteases.

2. Intravenous infusions and/or injections of more than a total of 100 mL per 12 hour period except for those legitimately received in the course of hospital treatments, surgical procedures or clinical diagnostic investigations.

M3 GENE DOPING

The following, with the potential to enhance sport performance, are prohibited:

1. The use of polymers of nucleic acids or nucleic acid analogues.

2. The use of gene editing agents designed to alter genome sequences and/or the transcriptional or epigenetic regulation of gene expression.

3. The use of normal or genetically modified cells.

SUBSTANCES & METHODS
PROHIBITED *IN-COMPETITION*

IN ADDITION TO THE CATEGORIES S0 TO S5 AND M1 TO M3 DEFINED ABOVE, THE FOLLOWING CATEGORIES ARE PROHIBITED *IN-COMPETITION*:

PROHIBITED SUBSTANCES

S6 STIMULANTS

All stimulants, including all optical isomers, e.g. *d*- and *l*- where relevant, are prohibited.

Stimulants include:

a: Non-Specified Stimulants:

Adrafinil;
Amfepramone;
Amfetamine;
Amfetaminil;
Amiphenazole;
Benfluorex;
Benzylpiperazine;
Bromantan;
Clobenzorex;
Cocaine;
Cropropamide;
Crotetamide;
Fencamine;
Fenetylline;
Fenfluramine;
Fenproporex;
Fonturacetam [4-phenylpiracetam (carphedon)];
Furfenorex;
Lisdexamfetamine;
Mefenorex;
Mephentermine;
Mesocarb;
Metamfetamine(*d*-);
p-methylamphetamine;
Modafinil;
Norfenfluramine;
Phendimetrazine;
Phentermine;
Prenylamine;
Prolintane.

A stimulant not expressly listed in this section is a *Specified Substance*.

b: Specified Stimulants.

Including, but not limited to:

1,3-Dimethylbutylamine;
4-Methylhexan-2-amine (methylhexaneamine);
Benzfetamine;
Cathine**;
Cathinone and its analogues, e.g. mephedrone, methedrone, and α - pyrrolidinovalerophenone;
Dimethylamphetamine;
Ephedrine***;
Epinephrine**** (adrenaline);
Etamivan;
Etilamfetamine;
Etilefrine;
Famprofazone;
Fenbutrazate;
Fencamfamin;
Heptaminol;
Hydroxyamfetamine (parahydroxyamphetamine);
Isometheptene;
Levmetamfetamine;
Meclofenoxate;
Methylenedioxymethamphetamine;
Methylephedrine***;
Methylphenidate;
Nikethamide;
Norfenefrine;
Octopamine;
Oxilofrine (methylsynephrine);
Pemoline;
Pentetrazol;
Phenethylamine and its derivatives;
Phenmetrazine;
Phenpromethamine;
Propylhexedrine;
Pseudoephedrine*****;

Selegiline;
Sibutramine;
Strychnine;
Tenamfetamine (methylenedioxyamphetamine);
Tuaminoheptane;

and other substances with a similar chemical structure or similar biological effect(s).

Except:

- Clonidine;
- Imidazole derivatives for topical/ophthalmic use and those stimulants included in the 2018 Monitoring Program*.

* Bupropion, caffeine, nicotine, phenylephrine, phenylpropanolamine, pipradrol, and synephrine: These substances are included in the 2018 Monitoring Program, and are not considered *Prohibited Substances*.

** Cathine: Prohibited when its concentration in urine is greater than 5 micrograms per milliliter.

*** Ephedrine and methylephedrine: Prohibited when the concentration of either in urine is greater than 10 micrograms per milliliter.

**** Epinephrine (adrenaline): Not prohibited in local administration, e.g. nasal, ophthalmologic, or co-administration with local anaesthetic agents.

***** Pseudoephedrine: Prohibited when its concentration in urine is greater than 150 micrograms per milliliter.

S7 NARCOTICS

The following narcotics are prohibited:

Buprenorphine;
Dextromoramide;
Diamorphine (heroin);
Fentanyl and its derivatives;
Hydromorphone;
Methadone;
Morphine;
Nicomorphine;
Oxycodone;
Oxymorphone;
Pentazocine;
Pethidine.

S8 CANNABINOIDS

The following cannabinoids are prohibited:

- Natural cannabinoids, e.g. cannabis, hashish and marijuana,
- Synthetic cannabinoids e.g. Δ9-tetrahydrocannabinol (THC) and other cannabimimetics.

Except:

- Cannabidiol.

S9 GLUCOCORTICOIDS

All glucocorticoids are prohibited when administered by oral, intravenous, intramuscular or rectal routes.

Including but not limited to:

Betamethasone;
Budesonide;
Cortisone;
Deflazacort;
Dexamethasone;
Fluticasone;
Hydrocortisone;
Methylprednisolone;
Prednisolone;
Prednisone;
Triamcinolone.

SUBSTANCES PROHIBITED IN PARTICULAR SPORTS

P1 BETA-BLOCKERS

Beta-blockers are prohibited *In-Competition* only, in the following sports, and also prohibited *Out-of-Competition* where indicated.

- Archery (WA)*
- Automobile (FIA)
- Billiards (all disciplines) (WCBS)
- Darts (WDF)
- Golf (IGF)
- Shooting (ISSF, IPC)*
- Skiing/Snowboarding (FIS) in ski jumping, freestyle aerials/halfpipe and snowboard halfpipe/big air
- Underwater sports (CMAS) in constant-weight apnoea with or without fins, dynamic apnoea with and without fins, free immersion apnoea, Jump Blue apnoea, spearfishing, static apnoea, target shooting, and variable weight apnoea.

*Also prohibited *Out-of-Competition*

Including, but not limited to:

Acebutolol;
Alprenolol;
Atenolol;
Betaxolol;
Bisoprolol;
Bunolol;
Carteolol;
Carvedilol;
Celiprolol;
Esmolol;
Labetalol;
Levobunolol;
Metipranolol;
Metoprolol;
Nadolol;
Oxprenolol;
Pindolol;
Propranolol;
Sotalol;
Timolol.

www.wada-ama.org

Notice of Proposed Rulemaking

Tracking number

2017-00569

Department

1000 - Department of Public Health and Environment

Agency

1005 - Laboratory Services Division

CCR number

5 CCR 1005-2

Rule title

TESTING FOR ALCOHOL AND OTHER DRUGS

Rulemaking Hearing

Date

01/17/2018

Time

10:00 AM

Location

Sabin-Cleere Conference Room, Building A, 1st Floor, 4300 Cherry Creek Drive South, Denver, CO 80246

Subjects and issues involved

The Department has reviewed 5 CCR 1005-2, Testing for Alcohol and Other Drugs, in compliance with Executive Order D 2012-002 and the State Administrative Procedure Act, 24-4-103.3, C.R.S. At this time, the Department is proposing the changes necessary to implement HB 14-1340. HB 14-1340 allows specific certifications requirements to be waived for laboratories that are accredited. The revisions streamline existing requirements, and reduce the regulatory burden placed on accredited forensic toxicology laboratories while maintaining the appropriate level of regulatory oversight.

Statutory authority

§42-4-1304, C.R.S.

Contact information

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Title

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COLORADO
Department of Public Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

To: Members of the State Board of Health

From: Jeff Groff, Certification Program Manager, Laboratory Services Division

Through: Dana Erpelding, Laboratory Services Division Director DE

Date: November 1, 2017

Subject: **Request for Rulemaking Hearing**
Proposed Amendments to 5CCR 1005-2 State Board of Health Rules Pertaining to the Testing for Alcohol and Other Drugs with a request for a rulemaking hearing to be set for January 2018.

Colorado statute directs the Colorado Department of Public Health and Environment ("Department") to: regulate the methods of testing a person's alcohol or drug level; certify the design and operation of devices for testing a person's blood, breath, saliva, or urine to determine such person's alcohol or drug level, and; certify the contents, sterility, chemical makeup, and amounts of chemicals contained in the kits used to obtain blood, urine, saliva, or breath specimens. Compliance with the rules is required for test results to be admissible in a criminal proceeding that concern driving under the influence (DUI), driving while ability impaired (DWAI) or with excessive alcoholic content; or illegal consumption of ethyl alcohol or marijuana by an underage person. In addition, to the extent necessary, the board promulgates collection and testing of samples associated with the bodies of all pilots in command, vessel operators in command, or drivers and pedestrians age fifteen or older who die within four hours after involvement in a crash involving a motor vehicle, vessel or aircraft. Rule 5 CCR 1005-2, Testing for Alcohol and Other Drugs, implements these portions of the statute.

The Department has reviewed 5 CCR 1005-2, Testing for Alcohol and Other Drugs, in compliance with Executive Order D 2012-002 and the State Administrative Procedure Act, 24-4-103.3, C.R.S. At this time, the Department is proposing the changes necessary to implement HB 14-1340. HB 14-1340 allows specific certifications requirements to be waived for laboratories that are accredited. The revisions streamline existing requirements, and reduce the regulatory burden placed on accredited forensic toxicology laboratories while maintaining the appropriate level of regulatory oversight. The Department has incorporated stakeholder feedback into the proposed language and will continue to engage stakeholders during the rulemaking process.

The Department requests that the Board review and approve the proposed changes to the existing rule. The proposed changes have been incorporated after stakeholder engagement, discussion and recommendations have been received and considered. The intent of the proposed revisions are to ensure the rule is aligned with current statutory requirements.

Though the Department has identified other changes to align with current statute, current regulatory practice, and national forensic toxicology practice, the Department is not proposing those revisions at this time. The Department anticipates that it will return to the board in the summer of 2018 with those recommendations after it has engaged stakeholders and collected the feedback necessary to propose these future revisions.

STATEMENT OF BASIS AND PURPOSE
AND SPECIFIC STATUTORY AUTHORITY
for Amendments to
5CCR 1005-2
State Board of Health Rules Pertaining to the Testing for Alcohol and Other Drugs

Basis and Purpose.

- Alignment of the requirements found in this rule to current statute(s).
- Implement HB 14-1340, which modified Section 42-4-1304, C.R.S., to allow specific laboratory certification requirements to be waived for laboratories that are accredited by the American Board of Forensic Toxicology (ABFT), the International Standards Organization (ISO) or a successor to either organization. Some Colorado Forensic Toxicology Laboratories voluntarily achieved ISO-17025 accreditation from an internationally recognized accrediting organization. Forensic Toxicology Laboratories that have voluntarily achieved ISO-17025 accreditation from an internationally recognized accrediting organization are meeting the highest professional standards established within the industry. The proposed rule aligns the accreditation and certification processes and eliminates the biennial onsite survey for accredited laboratories. The biennial onsite survey unnecessarily duplicates the accreditation processes. The rule, which authorizes the Department to perform an onsite survey in response to a complaint at any time, is unchanged.

Specific Statutory Authority.
These rules are promulgated pursuant to the following statutes:

Sections 42-4-1304, C.R.S.

Is this rulemaking due to a change in state statute?

___X___ Yes, the bill number is HB 14-1340. Rules are ___ authorized _X__ required.
_____ No

Is this rulemaking due to a federal statutory or regulatory change?

_____ Yes
___X__ No

Does this rulemaking incorporate materials by reference?

_____ Yes
___X__ No

If "Yes," the rule needs to provide the URL of where the material is available on the internet (CDPHE website recommended) or the Division needs to provide one print or electronic copy of the incorporated material to the State Publications Library. § 24-4-103(12.5)(c), C.R.S.

Does this rulemaking create or modify fines or fees?

_____ Yes
___X__ No

REGULATORY ANALYSIS
for Amendments to
5CCR 1005-2
State Board of Health Rules Pertaining to the Testing for Alcohol and Other Drugs

1. A description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

The classes of persons affected are:

- Accredited Forensic Toxicology Laboratories that have or are seeking certification.

2. To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

Quantitative Impact:
The proposed changes will have the following quantitative impact:

- The proposed changes to the rules have no impact on non-accredited forensic toxicology laboratories certified by the department. Accredited labs are relieved of the annual onsite inspection by the department.

Qualitative Impact:
The proposed changes will have the following qualitative impact:

- Alignment with current statutory requirements.
- The certification of forensic toxicology laboratories remains the same regardless of whether is accredited or not; however, to the extent a streamlined process encourages more entities to seek accreditation, this supports best practice.

3. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

- There is a possibility of a nominal savings to state revenues due to the small number of certified forensic toxicology laboratories, the number of onsite visits and the number of accredited laboratories. However, those savings will be slightly offset by the costs of reviewing the accreditation materials.

4. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

Action cost and benefits of the proposed rule:

- Alignment of the rule with current statutory requirements.
- Clarification of existing language.
- Reduction in financial costs to the department.

Inaction cost and benefits of the proposed rule:

- Current rule may not be aligned with existing statutory requirements.
- Continuation of existing department practices and survey schedules.

5. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.
    - No other less costly or less intrusive methods have been identified.
    - Another option is for the department to only provide certification to forensic toxicology laboratories performing testing for DUI/DUID purposes that are ISO-17025 accredited by an internationally recognized accrediting organization. However, this option potentially will have a negative business and financial impact to those laboratories not currently ISO-17025 accredited.

6. Alternative Rules or Alternatives to Rulemaking Considered and Why Rejected.
    - The Department has identified the need for revisions to the current rules to align with current statutory requirements by clarifying the current language.

7. To the extent practicable, a quantification of the data used in the analysis; the analysis must take into account both short-term and long-term consequences.
    - Currently there are 9 forensic toxicology laboratories certified by the department to perform testing on samples for DUI/DUID purposes.
    - Of the 9 laboratories certified, 5 (CBI-3 labs, Denver PD, NMS) are currently accredited by an internationally recognized accrediting organization that include ABFT and/or ASCLD/LAB.

STAKEHOLDER COMMENTS
for Amendments to
5CCR 1005-2
State Board of Health Rules Pertaining to the Testing for Alcohol and Other Drugs

State law requires agencies to establish a representative group of participants when considering to adopt or modify new and existing rules. This is commonly referred to as a stakeholder group.

Early Stakeholder Engagement:
The following individuals and/or entities were invited to provide input and included in the development of these proposed rules:

The forensic toxicology lab directors are identified as the primary stakeholders. These laboratories are directly impacted by the proposed rule revisions:

- Dan Anderson – CBI (3 locations)
- Sarah Urfer – Chematox
- Dr. Patricia Sulik, PhD – Rocky Mountain Instrumental Labs (RMIL)
- Dr. Gregory Dooley, PhD – CSU Analytical Toxicology Laboratory
- Greggory LeBerge, PhD – Denver Crime Laboratory
- Dr. Robert Bux, M.D. – El Paso County Coroner's Office
- Dr. Robert Middleberg, PhD – National Medical Services, Inc. (NMS)

While the change affects accredited laboratories seeking certification, the draft rule will also be posted on the Department's website to make the community aware of the Department's effort to implement HB 14-1340. The Department is also gathering stakeholder suggestions on other improvements that can be made to the rule for future rule-making.

Initial notification was sent to the stakeholders on September 25, 2017 and a copy of the proposed changes were provided. A follow-up email was sent on October 16, 2017 informing the stakeholders that an onsite meeting was being scheduled for November 1, 2017 at the Laboratory Services Division. In addition, the proposed changes were posted on the division's website. A reminder email of the onsite meeting was sent on October 31, 2017.

Stakeholder Group Notification
The stakeholder group was provided notice of the rulemaking hearing and provided a copy of the proposed rules or the internet location where the rules may be viewed. Notice was provided prior to the date the notice of rulemaking was published in the Colorado Register (typically, the 10th of the month following the Request for Rulemaking).

__X__ Not applicable. This is a Request for Rulemaking Packet. Notification will occur if the Board of Health sets this matter for rulemaking.

____ Yes.

Summarize Major Factual and Policy Issues Encountered and the Stakeholder Feedback Received. If there is a lack of consensus regarding the proposed rule, please also identify the Department's efforts to address stakeholder feedback or why the Department was unable to accommodate the request.

- Of the 7 stakeholders, 2 have expressed concerns regarding the annual onsite inspection process being waived all together and have recommended that the current language remain which requires onsite inspections be conducted by the department during the alternate years.
- One of the stakeholders would like to see the department's onsite inspections be changed to every two-years for those labs not accredited.
- Two stakeholders expressed concern that the ISO-17025 accrediting organization known as ASCLD/LAB may not perform a review of the toxicology specialty every two years when performing the biennial onsite inspections. To address this concern, one stakeholder recommended that accredited labs perform and provide a cross-walk analysis of the current laboratory standards found in the rule to the accrediting organizations standards and provide this to the department in the alternating years where an onsite inspection is not performed. This is intended to ensure the department's standards are being implemented.
- One stakeholder made a recommendation that in addition to the alternating year cross-walk when requesting reciprocity, that only labs accredited by the American Board of Forensic Toxicology (ABFT) be eligible for reciprocity.
- One stakeholder made a recommendation that in the event the ISO-17025 accrediting body does not perform a review of the toxicology specialty during the biennial accreditation inspection, that the department would then perform an onsite inspection of the facility(s).

The department will continue to work with the stakeholders prior to the hearing in order to achieve a consensus that is consistent with statutory language and still ensures the highest level of analytical performance is verified and maintained.

Please identify health equity and environmental justice (HEEJ) impacts. Does this proposal impact Coloradoans equally or equitably? Does this proposal provide an opportunity to advance HEEJ? Are there other factors that influenced these rules?

- N/A

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Laboratory Services Division

TESTING FOR ALCOHOL AND OTHER DRUGS

5 CCR 1005-2

ADOPTED BY THE BOARD OF HEALTH _____, 20____.

Part 5: Certification Requirements for Forensic Toxicology Laboratories

5.1 Laboratory Analysis of Blood, Urine and Post Mortem Specimens

5.1.1 Laboratories must be certified by the Department to provide analysis. Participation in the Forensic Toxicology Laboratory certification program is based upon either; successful on-site annual inspection for non-accredited labs, or, ongoing accreditation status for accredited labs, and, successful participation in the designated proficiency testing and ongoing compliance with the applicable requirements in this rule.

5.1.2 Laboratories seeking certification that are accredited by an internationally recognized accreditation organization may forgo the annual onsite inspection as long as accreditation remains active. ~~the American Board of Forensic Toxicology (ABFT) may be granted reciprocity on a biennial basis as long as accreditation remains active. Laboratories certified by the department will be inspected on the alternating accreditation years.~~

5.1.3 Accredited laboratories that are granted reciprocity must provide the Department a copy of the accrediting organizations inspection report in addition to any accepted plan of correction submitted to the accrediting organization by the laboratory.

5.1.~~4~~3 Laboratories certified by the Department who send samples to a reference laboratory for testing, must send those samples to either another Department certified lab, or a forensic toxicology laboratory accredited by an internationally recognized accrediting organization. ~~ABFT~~.

5.2 Initial Application

*****

5.3.3 Certified laboratories referring specimens to ~~ABFT~~ another accredited laboratory ~~laboratories~~ must include documentation with the application (Appendix B) that the reference laboratory is ~~ABFT~~ accredited~~.~~ by an internationally recognized accrediting organization.

*****

5.3.5 To maintain certification, laboratories shall meet all applicable requirements found in Parts 5-8, and Appendix C. Non-accredited laboratories must ~~and~~ participate in an annual on-site inspection~~.~~

*****

COLORADO
Board of Health
Department of Public Health & Environment

Notice of Public Rule-Making Hearing

January 17, 2018

ID #: 112

NOTICE is hereby given pursuant to the provisions of §24-4-103, C.R.S.; that the Colorado Board of Health will conduct a public rule-making hearing on:

Date: January 17, 2018

Time: 10:00 AM

Place: Sabin-Cleere Conference Room, Building A, 1st Floor, 4300 Cherry Creek Drive South, Denver, CO 80246

To consider the promulgation/amendments or repeal of:

CCR Number(s)
5 CCR 1005-2, Testing for Alcohol and Other Drugs

The proposed rules have been developed by the following division or office of the Colorado Department of Public Health and Environment:
Laboratory Services

Statute(s) that requires or authorizes the Board of Health to promulgate, amend, or repeal this rule:

Statute(s)
§42-4-1304, C.R.S.

Agenda and Hearing Documents
The Board of Health agenda and the proposed rules, together with the proposed statement of basis and purpose, specific statutory authority and regulatory analysis will be available, at least seven (7) days prior to the meeting, on the Board's website, https://colorado.gov/cdphe/boh .

For specific questions regarding the proposed rules, contact the division below:
Laboratory Services Division, , 8100 Lowry Blvd., Denver, CO 80230, (303) 692-3681.

Participation
The Board encourages all interested persons to participate in the hearing by providing written data, views, or comments, or by making oral comments at the hearing. At the discretion of the Chair, oral testimony at the hearing may be limited to three minutes or less depending on the number of persons wishing to comment.

Written Testimony
Pursuant to 6 CCR 1014-8, §3.02.1, written testimony must be submitted no later than five (5) calendar days prior to the rule-making hearing.

Persons wishing to submit written comments should submit them to: Colorado Board of Health, ATTN: Board of Health Unit, Program Assistant, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, EDO-A5, Denver, Colorado 80246-1530 or by e-mail at: cdphe.bohrequests@state.co.us

Written testimony is due by 5:00 p.m., Thursday, January 11, 2018.

Deborah Nelson, Board of Health Administrator
Date: 2017-11-27T11:52:47

Notice of Proposed Rulemaking

Tracking number

2017-00572

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 8.900

Rule title

MEDICAL ASSISTANCE - SECTION 8.900

Rulemaking Hearing

Date

01/12/2018

Time

09:00 AM

Location

303 East 17th Ave, 11th Floor, Denver, CO 80203

Subjects and issues involved

see attached

Statutory authority

25.5.1-301 through 303 (CRS 2016)

Contact information

Name

Chris Sykes

Title

Medical Services Board Coordinator

Telephone

3038664416

Email

chris.sykes@state.co.us

COLORADO
Department of Health Care Policy & Financing
Medical Services Board

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, January 12, 2018, beginning at 9:00 a.m., in the eleventh floor conference room at 303 East 17th Avenue, Denver, CO 80203. Reasonable accommodations will be provided upon request for persons with disabilities. Please notify the Board Coordinator at 303-866-4416 or chris.sykes@state.co.us or the 504/ADA Coordinator hcpf504ada@state.co.us at least one week prior to the meeting.

A copy of the full text of these proposed rule changes is available for review from the Medical Services Board Office, 1570 Grant Street, Denver, Colorado 80203, (303) 866-4416, fax (303) 866-4411. Written comments may be submitted to the Medical Services Board Office on or before close of business the Wednesday prior to the meeting. Additionally, the full text of all proposed changes will be available approximately one week prior to the meeting on the Department's website at www.colorado.gov/hcpf/medical-services-board.

This notice is submitted to you for publication, pursuant to § 24-4-103(3)(a) and (11)(a), C.R.S.

MSB 17-10-05-A, Revision to the Medical Assistance Special Financing Division Rule Concerning Colorado Dental Health Care Program for Low-Income Seniors, Section 8.960

Medical Assistance. Revision to the Special Financing Division Colorado Dental Health Care Program for Low-Income Seniors concerning the amendment of procedure codes in Appendix A. MSB 17-10-05-A amends Appendix A to conform to the changes in the American Dental Association Current Dental Terminology (CDT) 2018 code book.

The authority for this rule is contained in 25.5-1-301 through 25.5-1-303, C.R.S. (2017); 25.5-3-404, C.R.S. (2017).

Notice of Proposed Rulemaking

Tracking number

2017-00578

Department

500,1008,2500 - Department of Human Services

Agency

2509 - Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)

CCR number

12 CCR 2509-8

Rule title

CHILD CARE FACILITY LICENSING

Rulemaking Hearing

Date

01/05/2018

Time

10:00 AM

Location

CDHS 1575 Sherman Street, 8th Floor, Denver, CO 80203

Subjects and issues involved

See attachment for detailed description.

CDHS holds two public hearings, an initial and final, for each proposed rule packet.

The initial hearing allows the public an opportunity to submit written data, views, or arguments and to testify for or against the proposed rules. The Board does not vote on the proposed rule at the initial hearing, but asks CDHS to consider all public comment and discussion and, if needed, submit revisions to the proposed rule.

The final hearing, usually the month following the initial hearing, allows the same opportunity for public comment, after which the Board votes on final adoption of the proposed rule.

Please visit CDHS State Board website for meeting dates.

Statutory authority

"26-1-107, C.R.S. (2015)
26-1-109, C.R.S. (2015)
26-1-111, C.R.S. (2015)
26-6-106(1)(a), C.R.S. (2017)
26-6-113, C.R.S. (2017)
"

Contact information

Name

Carin Rosa

Title

Rule Author

Telephone

303-866-6246

Email

carin.rosa@state.co.us

Title of Proposed Rule: **Changes to Rules Regulating Children's Resident Camps; Changes to Rules Regulating School-aged Child Care Centers**

CDHS Tracking #: **14-08-14-01**

Office, Division, & Program: OEC, ECL, LU

Rule Author: Carin Rosa

Phone: 303-866-6246

E-Mail: carin.rosa@state.co.us

STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for new rule or rule change.

Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule.

The Department is statutorily required to review rules on a regular basis and is authorized to promulgate rules for licensed child care programs providing less than twenty-four (24) hour care that create standards and regulations for these child care programs. This package expands and clarifies children's health and medication requirements, eliminates unnecessary or duplicate rules, clarifies existing rules, and adds requirements for safety, physical activity and screen time. The previous comprehensive review and revision for the entire rule package for the "Rules Regulating Children's Resident Camps" and the "Rules Regulating School-aged Child Care Centers" was completed in 2007.

State Board Authority for Rule:

Code	Description
26-1-107, C.R.S. (2015)	State Board to promulgate rules
26-1-109, C.R.S. (2015)	State department rules to coordinate with federal programs
26-1-111, C.R.S. (2015)	State department to promulgate rules for public assistance and welfare activities.

Program Authority for Rule: *Give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority.*

Code	Description
26-6-106(1)(a), C.R.S. (2017)	Standards for facilities and agencies, and authority to promulgate rules;
26-6-113, C.R.S. (2017)	Periodic review of rules and procedures, and licensing of child care facilities

Does the rule incorporate material by reference? [ ] Yes [x] No

Does this rule repeat language found in statute? [ ] Yes [x] No

If yes, please explain.

Title of Proposed Rule: **Changes to Rules Regulating Children's Resident Camps; Changes to Rules Regulating School-aged Child Care Centers**

CDHS Tracking #: **14-08-14-01**

Office, Division, & Program: OEC, ECL, LU

Rule Author: Carin Rosa

Phone: 303-866-6246

E-Mail: carin.rosa@state.co.us

REGULATORY ANALYSIS

1. List of groups impacted by this rule.

Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?

Licensed school-aged child care centers and children's resident camps are governed by these rules and will both benefit from and bear the burden of these rules. There should be minimal cost associated with these rules for providing copies of policies for families, hiring additional staff for smaller ratios if school-aged child care programs chose to accept younger children or on excursions away from the premises, and health consultation and medication requirements. The majority of the rule package is technical cleanup to simplify rule.

2. Describe the qualitative and quantitative impact.

How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?

For instance, providers may need to alter the way in which they provide policies to families and maintain documentation of staff and children's records; they may need to revise their nutritional meal menus, or ensure staff has additional training.

Currently, there are approximately 1000 licensed school-aged child care centers and approximately 125 licensed children's resident camps in Colorado.

Children in licensed school-aged child care centers and children's resident camps will benefit from the expanded well-being and safety requirements in this rule package.

3. Fiscal Impact

For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources. ***Answer should NEVER be just "no impact" answer should include "no impact because…."***

State Fiscal Impact *(Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)*

No fiscal impacts as these rule revisions are primarily technical cleanup or clarifications to simplify existing rules.

County Fiscal Impact

No County fiscal impact as nothing addressed in this rule revision creates costs for counties.

Federal Fiscal Impact

No fiscal impacts as these rule revisions are primarily technical cleanup or clarifications to simplify existing rules.

Other Fiscal Impact *(such as providers, local governments, etc.)*

Providers should see minimal cost associated with these rules for providing copies of policies for families, hiring additional staff for smaller ratios if school-aged programs chose to accept younger

children or on excursions away from the premises, and health consultation and medication requirements.

4. Data Description

List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?

The Children's Resident Camp Rules Re-write committee and the School-aged Child Care Center Rules Re-write committee work product (stakeholder working group) directed all aspects of this revised rule package, including advising the Department on language and provisions.

Caring for Our Children 2011, Stepping Stones to Caring for Our Children 2013, and Current American Camp Association Standards informed the health and safety portions of the rule revisions to ensure the rules followed nationally recognized standards of care.

5. Alternatives to this Rule-making

Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. **Answer should NEVER be just "no alternative" answer should include "no alternative because…"**

No alternative because these rules are considered minimum requirements for health and safety, which the Department is statutorily mandated to promulgate.

Title of Proposed Rule: **Changes to Rules Regulating Children's Resident Camps; Changes to Rules Regulating School-aged Child Care Centers**

CDHS Tracking #: **14-08-14-01**

Office, Division, & Program: Rule Author: Carin Rosa Phone: 303-866-6246

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OVERVIEW OF PROPOSED RULE

Compare and/or contrast the content of the current regulation and the proposed change.

CCDBG REAUTHORIZATION REQUIREMENT – PURPLE

PROVIDER/STAKEHOLDER REQUESTED CHANGE-GREEN

RULE CLARIFICATION – BLUE

TECHNICAL CLEAN UP/RULE REDUCTION-RED

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.711	Technical cleanup	Throughout rule package	Technical cleanup; formatting	Technical cleanup; formatting changes	No
7.711.	Technical cleanup	Rules for Sanitation of Centers	Addition of "Rules Regulating Special Activities; Revised language to reflect current rule title "Rules And Regulations Governing The Health And Sanitation Of Child Care Centers Facilities In The State Of Colorado"	Technical cleanup; revised language	No
7.711.1.A	Rule Clarification	Definitions	Added language of statute section to the definition	Rule clarification	NO
7.711.1.D	Technical cleanup/rule reduction	Definitions	Removed definition for "non-medical religious camp"	Technical cleanup/rule reduction; outdated requirement	NO
7.711.12	Rule Clarification	Governing Body	Defined responsibilities for the Governing Body	Rule Clarification; added language	NO
7.711.14.A, B	Technical cleanup/rule reduction	Insurances	Removed outdated language liability insurance	Technical cleanup/rule reduction; outdated requirement	NO
7.711.15.C	Technical cleanup/rule reduction	Written Agreements, Reports, and Logs	Removed reporting requirement covered in section 7.701	Technical cleanup/rule reduction; outdated requirement	NO
7.711.15.E	Rule Clarification	Written Agreements, Reports, and Logs	Defined lost children	Rule Clarification; added language	NO
7.711.15F	Technical cleanup/rule reduction	Written Agreements, Reports, and Logs	Removed outdated requirement covered in alternate rule section 7.701	Technical cleanup/rule reduction; outdated requirement	NO
7.711.21.B	Provider/stakeholder requested change	General Requirements for All Personnel	Decreased age requirement for staff	Provider/stakeholder requested change	NO
7.711.21.C	Provider/stakeholder requested change	General Requirements for All Personnel	Decreased age requirement for staff	Provider/stakeholder requested change	NO
7.711.21E	Technical cleanup	General Requirements for All Personnel	Timeframe for staff health history stored in a secured location	Technical cleanup; revised language	NO

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7.711.21F	Technical cleanup	General Requirements for All Personnel	Removed outdated exemption information	Technical cleanup; revised language	NO
7.711.21G	Technical cleanup	General Requirements for All Personnel	Added definitions for emergencies	Technical cleanup; revised language	NO
7.711.22.A	Provider/stakeholder requested change	Camp Personnel	Added experience requirements	Provider/stakeholder requested change; added requirement	NO
7.711.22B,C	Provider/stakeholder requested change	Camp Personnel	Updated language to reflect current definitions to clarify rule and removed outdated language	Provider/stakeholder requested change; clarified rule	Revised language to include additional personnel
7.711.22D	CCDBG REAUTHORIZATION REQUIREMENT	Camp Personnel	Removed outdated requirement and added federal requirement to align with all other programs	CCDBG REAUTHORIZATION REQUIREMENT	Clarified that this is a federal requirement and information covered in training
7.711.22E	Provider/stakeholder requested change	Camp Personnel	Updated language to reflect current definitions to clarify rule and removed outdated language	Provider/stakeholder requested change	NO
7.711.22F	Rule Clarification	Camp Personnel	Added language for caregiver and removed parent	Rule Clarification; defined requirement	NO
7.711.22F	Rule Clarification	Camp Personnel	Added language for qualification	Rule Clarification; defined requirement	NO
7.711.23.B	Provider/stakeholder requested change	Supervision	Added requirement of mechanism for alert	Provider/stakeholder requested change; added requirement	NO
7.711.23E	Provider/stakeholder requested change	Supervision	Added age and qualification requirement	Provider/stakeholder requested change; added requirement	NO
7.711.23H	Technical cleanup/rule reduction	Supervision	Moved requirement for itinerary to alternate section	Technical cleanup/rule reduction; outdated requirement	NO
7.711.31.C	Provider/stakeholder requested change	Health Care	Added requirement for notification for children with special health care needs.	Provider/stakeholder requested change; added requirement	NO

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Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.711.31.D	Provider/stakeholder requested change	Health Care	Clarified when examination is provided and removed outdated requirements	Provider/stakeholder requested change	Corrected to require examination 10 calendar days prior to admission
7.711.31.E	Provider/stakeholder requested change	Health Care	Clarified immunization requirements	Provider/stakeholder requested change; added requirement	NO
7.711.31.F	Provider/stakeholder requested change	Health Care	Clarified when health care worker is required to meet with campers	Provider/stakeholder requested change; clarified rule	NO
7.711.31.G	Technical cleanup/rule reduction	Health Care	Removed non-medical religious camp requirement	Technical cleanup/rule reduction; outdated	Added exclusion guidelines
7.711.31.H	Technical cleanup/rule reduction	Health Care	Removed communicable disease information regulated by CDPHE	Technical cleanup/rule reduction; unnecessary requirement	NO
7.711.31.J	Technical cleanup/rule reduction	Health Care	Removed non-medical religious camp requirement	Technical cleanup/rule reduction; outdated requirement	NO
7.711.31.J.1,1.a	Provider/stakeholder requested change	Health Care	Added requirements for the disposal of medication and the process for administration of routine and emergency medications	Provider/stakeholder requested change; added requirements	NO
7.711.31.J.1.b	Provider/stakeholder requested change	Health Care	Added option for on-site RN	Provider/stakeholder requested change; added option	NO
7.711.31.J.5	Provider/stakeholder requested change	Health Care	Added requirements for topical preparations	Provider/stakeholder requested change; added requirements	Clarified parental permission required for topical preparations
7.711.31.J.6	Provider/stakeholder requested change	Health Care	Added requirement for home remedies	Provider/stakeholder requested change; added requirements	clarified why home remedies

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Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
					are not allowed
7.711.31.K	Provider/stakeholder requested change	Health Care	Added requirement for treatment procedures	Provider/stakeholder requested change; added requirements	Clarified treatment procedures are standing orders
7.711.31.O	Technical cleanup/rule reduction	Health Care	Removed equipment and location for ill children regulated by CDPHE	Technical cleanup/rule reduction; unnecessary requirement	NO
7.711.31.P	Technical cleanup/rule reduction	Health Care	Removed supervision for ill children regulated by CDPHE	Technical cleanup/rule reduction; unnecessary requirement	No
7.711.31.O.1-4	Provider/stakeholder requested change	Health Care	Added requirement for protection from sun exposure	Provider/stakeholder requested change; added requirements	NO
7.711.32	Technical cleanup/rule reduction	Guidance	Changed Discipline to Guidance	Technical cleanup/rule reduction; outdated language	NO
7.711.32.A	Rule Clarification	Guidance	Removed outdated language and defined appropriate guidance	Rule Clarification; defined requirement	NO
7.711.32.B	Technical cleanup/rule reduction	Guidance	Removed outdated language for discipline	Technical cleanup/rule reduction; outdated language	NO
7.711.32.C	Technical cleanup/rule reduction	Guidance	Removed outdated language for corporal and harsh punishment	Technical cleanup/rule reduction; outdated language	NO
7.711.32.D	Technical cleanup/rule reduction	Guidance	Clarified requirement for disciplinary measures	Technical cleanup/rule reduction; outdated language	NO
7.711.32.E	Rule Clarification	Guidance	Removed outdated language and defined appropriate guidance through separation	Rule Clarification; defined requirement	NO
7.711.33.A	Provider/stakeholder requested change	Security Procedures	Removed outdated security procedures	Provider/stakeholder requested change; removed outdated requirements	NO
7.711.34.F	Technical cleanup/rule reduction	Food and Nutrition	Removed drinking water requirement covered by CDPHE	Technical cleanup/rule reduction; unnecessary requirement	NO
7.711.35.	Provider/stakeholder requested change	Transportation	Removed outdated transportation procedures and added procedures reflecting current requirements including vehicles and drivers	Provider/stakeholder requested change; removed outdated requirements	Provided information on who was

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Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
					included in creation of requirements
7.711.41.A.3	Technical cleanup/rule reduction	Children's Records	Combined home and employment information	Technical cleanup/rule reduction; unnecessary requirement	NO
7.711.41.A.6	Technical cleanup/rule reduction	Children's Records	Removed unauthorized individuals	Technical cleanup/rule reduction; unnecessary requirement	NO
7.711.41.A.7	Technical cleanup/rule reduction	Children's Records	Removed non-medical religious camp	Technical cleanup/rule reduction; outdated language	NO
7.711.41.A.8	Technical cleanup/rule reduction	Children's Records	Removed person or agency and walking or riding language	Technical cleanup/rule reduction; outdated language	NO
7.711.41.A.10	Technical cleanup/rule reduction	Children's Records	moved records requirement for physical, health history and immunization records	Rule Clarification; moved requirement	NO
7.711.41.B.1	Technical cleanup/rule reduction	Children's Records	Relocated requirement for health history	Technical cleanup/rule reduction; outdated language	NO
7.711.41.B.2	Technical cleanup/rule reduction	Children's Records	Removed injury reporting requirement found in alternate section 7.701	Technical cleanup/rule reduction; outdated requirement	NO
7.711.43.A	Rule Clarification	General Information	Clarified records retention	Rule Clarification; defined requirement	NO
7.711.43.C	Technical cleanup/rule reduction	General Information	Removed language for confidentiality of children's records found in alternate section 7.701	Technical cleanup/rule reduction; outdated requirement	NO
7.711.51.A	Technical cleanup/rule reduction	Campsites	Removed sanitation requirements regulated by CDPHE	Technical cleanup/rule reduction; outdated requirement	NO
7.711.51.B	Provider/stakeholder requested change	Campsites	Added requirement submittal for approval must be made to CDPHE 30 days prior to camp.	Provider/stakeholder requested change; added requirements	NO
7.711.51.D	Technical cleanup/rule reduction	Campsites	Removed health and fire requirements found in alternate section 7.701	Technical cleanup/rule reduction; outdated requirement	NO
7.711.51.H.5	Technical cleanup/rule reduction	Campsites	Removed health and fire requirements found in alternate section and included clarification on shade structure	Technical cleanup/rule reduction; outdated requirement	NO
7.711.51.H.9	Clarified language	Campsites	Clarification of approved resilient surfaces	Clarification; language	NO

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Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.711.51.H.10	Clarified language	Campsites	Clarification of resilient surfaces required under outdoor climbing equipment	Clarification; language	NO
7.711.51.H.11	Clarified language	Campsites	Clarification of playground safety check	Clarification; language	NO
7.711.51.L.1-2	Provider/stakeholder requested change	Campsites	Added requirement for carbon monoxide detectors.	Provider/stakeholder requested change; added requirements	NO
7.711.52.D	Technical cleanup/rule reduction	Permanent and Semi-Permanent Shelters and Sleeping Facilities	Removed health and fire requirements found in alternate section	Technical cleanup/rule reduction; outdated requirement	NO
7.711.52.E	Technical cleanup/rule reduction	Permanent and Semi-Permanent Shelters and Sleeping Facilities	Removed health requirements found in alternate section	Technical cleanup/rule reduction; outdated requirement	NO
7.711.52.N	Technical cleanup/rule reduction	Permanent and Semi-Permanent Shelters and Sleeping Facilities	Removed insulation requirements	Technical cleanup/rule reduction; outdated requirement	NO
7.711.53A&B	Technical cleanup; language change	Toilet and Bathing Facilities	Updated language	Technical cleanup	Included updated language gender-segregated toilet facilities
7.711.53C1&2	Technical cleanup; rule reduction	Toilet and Bathing Facilities	Removed requirements for maintenance requirements. Eliminate duplicate rule with other agency	Technical cleanup; rule reduction	Included updated language gender-segregated toilet facilities
7.711.53C	Addition to requirement	Toilet and Bathing Facilities	Added a requirement in new construction for hand washing facilities adjacent to where meals are served	Provider/ stakeholder requested change	Clarified that this is for new constructio n
7.711.53D	Technical cleanup; rule reduction	Toilet and Bathing Facilities	Removed requiring vapor proof lights in shower or bathing area	Technical cleanup; rule reduction	No
7.711.53E	Language change	Toilet and Bathing Facilities	Added meeting the Colorado Department of Public Health and Environment requirements.	Technical cleanup	No
7.711.53G1	Technical cleanup; rule	Toilet and Bathing Facilities	Rules removed; eliminate duplication of rule with other	Technical cleanup; rule	No

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Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
	reduction		agency	reduction	
7.711.754	Technical cleanup; rule reduction	Food Preparation Area	Rules removed; eliminate duplication of rule with other agency	Technical cleanup; rule reduction	No
7.711..55B	Added clarifying language	General Building Safety	Clarified complying with local & building ordinances for any installation and/or construction	Added clarification	No
7.711.55B	Added clarifying language	General Building Safety	Clarified permanent structures	Added clarification	No
7.711.55E	Added clarifying language	General Building Safety	Clarified where egress can be	Added clarification	No
7.711.55G	Added clarifying language	General Building Safety	Clarified maintaining exits	Added clarification	No
7.711.55J1	Added clarifying language	General Building Safety	Clarified installation of heating elements	Added clarification	No
7.711.55J5	Technical cleanup	General Building Safety	More specific language	Technical cleanup	No
7.711.55K	Technical cleanup and change in requirement	General Building Safety	Separated from power tools; defined additional weapons	Technical cleanup	No
7.711.55L	Technical cleanup & change in requirement	General Building Safety	Separated from weapons & ammunition	Technical cleanup	No
7.711.55M	Added clarifying language	General Building Safety	Removed old language and clarified hazardous items that must be inaccessible to children	Cleanup and clarification added clarification	No
7.711.55R	Added clarifying language	General Building Safety	Clarified all areas accessible to children, types of items, worn or dangerous.	Added clarification	No
7.711.56F	Added clarifying language	Fire Safety Provisions	Removed close at hand & added immediately accessible	Added Clarification	No
7.711.56G	Technical cleanup; additional requirement	Fire Safety Provisions	Campfires and open flames prohibited within 10 feet of any tent or fabric structure	Technical cleanup	No
7.711.53A&B	Technical cleanup; language change	Toilet and Bathing Facilities	Updated language	Technical cleanup	No
7.711.53C1&2	Technical cleanup; rule reduction	Toilet and Bathing Facilities	Removed requirements for maintenance requirements. Eliminate duplicate rule with other agency	Technical cleanup; rule reduction	No
7.711.53C	Addition to requirement	Toilet and Bathing Facilities	Added a requirement in new construction for hand washing facilities adjacent to where meals are served	Provider/ stakeholder requested change	No
7.711.53D	Technical cleanup; rule reduction	Toilet and Bathing Facilities	Removed requiring vapor proof lights in shower or bathing area	Technical cleanup; rule reduction	No
7.711.53E	Language change	Toilet and Bathing Facilities	Added meeting the Colorado Department of Public Health and Environment requirements.	Technical cleanup	No
7.711.53G1	Technical cleanup; rule reduction	Toilet and Bathing Facilities	Rules removed; eliminate duplication of rule with other agency	Technical cleanup; rule reduction	No
7.711.754	Technical cleanup; rule reduction	Food Preparation Area	Rules removed; eliminate duplication of rule with other agency	Technical cleanup; rule reduction	No
7.711..55B	Added clarifying language	General Building Safety	Clarified complying with local & building ordinances for any installation and/or construction	Added clarification	No
7.711.55B	Added clarifying language	General Building Safety	Clarified permanent structures	Added clarification	No

Title of Proposed Rule: **Changes to Rules Regulating Children's Resident Camps; Changes to Rules Regulating School-aged Child Care Centers**

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Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.711.55E	Added clarifying language	General Building Safety	Clarified where egress can be	Added clarification	No
7.711.55G	Added clarifying language	General Building Safety	Clarified maintaining exits	Added clarification	No
7.711.55J1	Added clarifying language	General Building Safety	Clarified installation of heating elements	Added clarification	No
7.711.55J5	Technical cleanup	General Building Safety	More specific language	Technical cleanup	No
7.711.55K	Technical cleanup and change in requirement	General Building Safety	Separated from power tools; defined additional weapons	Technical cleanup	No
7.711.55L	Technical cleanup & change in requirement	General Building Safety	Separated from weapons & ammunition	Technical cleanup	No
7.711.55M	Added clarifying language	General Building Safety	Removed old language and clarified hazardous items that must be inaccessible to children	Cleanup and clarification added clarification	No
7.711.55R	Added clarifying language	General Building Safety	Clarified all areas accessible to children, types of items, worn or dangerous.	Added clarification	No
7.711.56F	Added clarifying language	Fire Safety Provisions	Removed close at hand & added immediately accessible	Added Clarification	No
7.711.56G	Technical cleanup; additional requirement	Fire Safety Provisions	Campfires and open flames prohibited within 10 feet of any tent or fabric structure	Technical cleanup	No
7.711.53A&B	Technical cleanup; language change	Toilet and Bathing Facilities	Updated language	Technical cleanup	No
7.711.53C1&2	Technical cleanup; rule reduction	Toilet and Bathing Facilities	Removed requirements for maintenance requirements. Eliminate duplicate rule with other agency	Technical cleanup; rule reduction	No
7.711.53C	Addition to requirement	Toilet and Bathing Facilities	Added a requirement in new construction for hand washing facilities adjacent to where meals are served	Provider/ stakeholder requested change	No
7.711.53D	Technical cleanup; rule reduction	Toilet and Bathing Facilities	Removed requiring vapor proof lights in shower or bathing area	Technical cleanup; rule reduction	No
7.711.53E	Language change	Toilet and Bathing Facilities	Added meeting the Colorado Department of Public Health and Environment requirements.	Technical cleanup	No
7.711.53G1	Technical cleanup; rule reduction	Toilet and Bathing Facilities	Rules removed; eliminate duplication of rule with other agency	Technical cleanup; rule reduction	No
7.711.754	Technical cleanup; rule reduction	Food Preparation Area	Rules removed; eliminate duplication of rule with other agency	Technical cleanup; rule reduction	No
7.711..55B	Added clarifying language	General Building Safety	Clarified complying with local & building ordinances for any installation and/or construction	Added clarification	No
7.711.55B	Added clarifying language	General Building Safety	Clarified permanent structures	Added clarification	No
7.711.55E	Added clarifying language	General Building Safety	Clarified where egress can be	Added clarification	No
7.711.55G	Added clarifying language	General Building Safety	Clarified maintaining exits	Added clarification	No
7.711.55J1	Added clarifying language	General Building Safety	Clarified installation of heating elements	Added clarification	No
7.711.55J5	Technical cleanup	General Building Safety	More specific language	Technical cleanup	No
7.711.55K	Technical cleanup and change in requirement	General Building Safety	Separated from power tools; defined additional weapons	Technical cleanup	No

Title of Proposed Rule: **Changes to Rules Regulating Children's Resident Camps; Changes to Rules Regulating School-aged Child Care Centers**

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Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.711.55L	Technical cleanup & change in requirement	General Building Safety	Separated from weapons & ammunition	Technical cleanup	No
7.711.55M	Added clarifying language	General Building Safety	Removed old language and clarified hazardous items that must be inaccessible to children	Cleanup and clarification added clarification	No
7.711.55R	Added clarifying language	General Building Safety	Clarified all areas accessible to children, types of items, worn or dangerous.	Added clarification	No
7.712.	Technical cleanup	Throughout rule package	Technical cleanup; formatting	Technical cleanup; formatting changes	No
7.712.2.A	Changes and additions to ages served.	Definitions	Increased ages of children served to 18 years; allows 4 year old children to be enrolled in summer program.	Provider/stakeholder requested change	Comments to keep new language
7.712.2A	Technical cleanup/ rule reduction	Definitions	Removed unnecessary language and outdated rule language	Technical cleanup; rule reduction.	No
7.712.2B	Changes to ages served	Definitions	Increased ages of children served to 18 years	Provider/ stakeholder requested change	No
7.712.2C	Technical cleanup	Definitions	Removed unnecessary language	Technical cleanup; rule reduction	No
7.712.C2	Clarification	Definitions	Mobile programs can operate under one license in a single county.	Added clarification	Clarified why no longer necessary to allow mobile day camp to operate across counties
7.712.C3	Technical cleanup	Definitions	Removed unnecessary language and revised language	Technical cleanup	No
7.712.31A5	Removed severe and added inclement	Statement of Policies and Procedures	Revised language	Provided clarification	No
7.712.31A6	Removed registration and added enrollment	Statement of Policies and Procedures	Revised language	Provider/ stakeholder requested change	No
7.712.31A8	Language change	Statement of Policies and Procedures	Language revised in this section; changes and additions to requirements	Added clarification	No
7.712.31A10	Technical cleanup	Statement of Policies and Procedures	Removed outdated rule language & updated rule language	Technical cleanup & updated rule language	No
7.712.31A11	Language change	Statement of Policies and Procedures	Revised language	Provided clarification	No

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Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.712.31A11	Technical cleanup	Statement of Policies and Procedures	Removed outdated rule; rule is in General Rules for Child Care Facilities	Technical cleanup; rule reduction	No
7.712.31A13	Removed responsibility added role	Statement of Policies and Procedures	Revised language	Added clarification	No
7.712.31A14	Removed policy added procedure	Statement of Policies and Procedures	Revised language	Added clarification	No
7.712.31A18	Added storage	Statement of Policies and Procedures	Revised language	Added clarification	No
7.712.31A21	Added procedure	Statement of Policies and Procedures	Revised language	Added clarification	No
7.712.31A23	Added language	Statement of Policies and Procedures	Revised language	Added clarification	No
7.712.31A24	Added language	Statement of Policies and Procedures	Revised language	Added clarification	No
7.712.31A25	Added additional policy	Statement of Policies and Procedures	Added procedure for transitioning children between school/ community activities	Provider/stakeholder requested change	No
7.712.31A26	Technical cleanup	Statement of Policies and Procedures	Removed unnecessary language and revised language	Technical cleanup	No
7.712.31A32C	Technical cleanup	Statement of Policies and Procedures	Removed rule	Technical cleanup; Rule reduction	No
7.712.31A32F	Technical cleanup	Statement of Policies and Procedures	Removed rule	Technical cleanup; Rule reduction	No
7.712.41A	Technical cleanup	General Requirements for all Personnel	Removed unnecessary language; added clarifying language	Technical cleanup	No
7.712.41B	Added volunteers	General Requirements for all Personnel	Revised language	Added clarification	No
7.712.41C	Technical cleanup	General Requirements for all Personnel	Removed rule; rule is in General Rules for Child Care Facilities	Technical cleanup; rule reduction	Clarified rule is found in general rules
7.712.41C	CCDBG reauthorization requirement	General Requirements for all Personnel	Changes and additions to requirements	Rule change to comply with Federal law	No
7.712.41E	Technical cleanup	General Requirements for all Personnel	Removed rule; rule is in General Rules for Child Care Facilities	Technical cleanup; rule reduction	Clarified rule is found in general rules
7.712.41D	Language revised	General Requirements for all Personnel	Changes and additions to requirements	Provider/ stakeholder requested change	Clarified rule is found in general rules
7.712.41H	Language revised	General Requirements for all Personnel	Modified language & regulation to reflect current requirements	Added clarification	Revised not to apply to

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Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
					day camps
7.712.41I	Language revised	General Requirements for all Personnel	Modified language & regulation to reflect current requirements	Added clarification	
7.712.42A1c	Technical cleanup; language revised	Program Director	Removed unnecessary language and revised language	Technical cleanup; addition to requirement	
7.712.42A1c2	Language revised	Program Director	Revised language; added clarifying language	Added clarification	
7.712.42B	Language revised	Program Leader	Revised language; additions to requirements; added clarifying language	Added clarification	Revised to exclude day camps and clarified will count towards ongoing training
7.712.42D1	Rule added; required experience	Department-Approved Child Care Consultant	Addition of regulation to reflect current requirements; required topic for consultant to cover to meet specific needs of program.	Provider/ stakeholder requested change	NO
7.712.42D2	Rule added; required documentation	Department-Approved Child Care Consultant	Addition of regulation to reflect current requirements; document date of consultation and the content that was covered	Provider/ stakeholder requested change	NO
7.712.42D3	Rule added; required documentation of experience	Department-Approved Child Care Consultant	Addition of regulation to reflect current requirements; documentation of license in good standing; biography if knowledge & experience	Provider/ stakeholder requested change	NO
7.712.42D4	Rule added; documentation of required training	Department-Approved Child Care Consultant	Addition of regulation to reflect current requirements; completion & documentation of required Department-Approved Child Health Consultant training	Provider/ stakeholder requested change	NO
7.712.42D5	Rule added; documentation of immunization course	Department-Approved Child Care Consultant	Addition of regulation to reflect current requirements; completion & documentation of required Department-Approved immunization course	Provider/ stakeholder requested change	Positive to keep language
7.712.42F	Rule added; staff on duty at all times with required training	Required Personnel on duty at all times	Addition of regulation to reflect current requirements; staff member with current Department-Approved medication administration training & delegation on duty at all times	Provider/ stakeholder requested change	NO
7.712.43C	Rule added; 4 year old in attendance	Required Staff Supervision	Addition of regulation for supervision when 4 year old are in attendance	Added clarification	NO
7.712.43D	Rule added; required group size	Required Staff Supervision	Addition of regulation for group size of children	Added clarification	NO
7.712.43E	Rule added; group size may be exceeded	Required Staff Supervision	Addition of regulation for time when group size may be exceeded	Added clarification	NO

Title of Proposed Rule: **Changes to Rules Regulating Children's Resident Camps; Changes to Rules Regulating School-aged Child Care Centers**

CDHS Tracking #: **14-08-14-01**

Office, Division, & Program: Rule Author: Carin Rosa Phone: 303-866-6246

OEC, ECL, LU E-Mail: carin.rosa@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.712.43F	Rule added; ratio when 4 year olds are in attendance	Required Staff Supervision	Addition of regulation for required ratio when 4 year olds are in attendance.	Added clarification	NO
7.712.43F	Chart added	Required Staff Supervision	Addition of chart for ratio & group size	Provider/ stakeholder requested change	NO
7.712.43I	Revised language	Required Staff Supervision	Clarified requirement anytime program is away from the building.	Added clarification	Clarified why necessary for supervisio n
7.712.44	Technical cleanup; language revised	Volunteers	Language revised and addition of requirements for volunteers who work more than 14 days or 112 hours per year	Rule cleanup; language revised	NO
7.712.51B	Removed attendance	Admission Procedure	Language revised; removed attendance & replaced with first day in care	Added clarification	NO
7.712.52A1	Rule added	Statements of Health Status	Requirement of Statements of Health Status at enrollment	Provider/stakeholder requested change	NO
7.712.52A1a	Revised language; health history	Statements of Health Status	Revised language; addition of overall health history including current medications and special diets	Provider/stakeholder requested change	clarified this is a health history and not a physical
7.712.52A1b	Revised language; specified prior to or on first day of care	Statements of Health Status	Revised language; addition of Colorado law requires proof of immunization prior to or on the first day of care.	Provider/stakeholder requested change	Positive to keep
7.712.52Ab1a bc	Added rule for child care centers at a ski area	Statements of Health Status	Addition of regulations for requirements of immunization exemption for child care centers at a ski area based on attendance and parent notification	Provider/stakeholder requested change	NO
7.712.52A2	Added rule for consultant notification	Statements of Health Status	Addition of regulation for notification of child care health consultant prior to the first day of care of enrollment of a child with specialist health care needs	Provider/ stakeholder requested change	NO
7.712.52A3	Revised language	Statements of Health Status	Clarified center staff and hours the center is open	Added clarification	NO
7.712.52B2	Revised language	Emergency Procedures	Clarified notification of parents when there's an accident, injury, illness, or seek medical attention.	Added clarification	NO
7.712.52B3,4	Revised language	Emergency Procedures	Clarified supervision of ill or injured children until they are picked up or sign out of the program.	Added clarification	NO
7.712.52B5	Revised language	Emergency Procedures	Clarified first aid kids available to staff and out of reach of children. Frequency they must be checked & stocked	Added clarification	NO

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7.712.52C1	Revised language; medication with current written order given to children	Medication	Addition of un-expired medication; addition of home remedies/ homeopathic medications not given to children.	Provider/ stakeholder requested change	NO
7.712.52C5	Technical cleanup	Medication	Removed verbal orders taken from the licensed prescriber may be accepted by a licensed registered nurse	Technical cleanup; rule reduction	NO
7.712.52C6,a, b,c	Revised language; administration of medication	Medication	Modified language & regulation to reflect current requirements	Provider/stakeholder requested change	NO
7.712.52C7	Revised language; storage of medication	Medication	Modified language & regulation to reflect current requirements	Provider/stakeholder requested change	NO
7.712.52C8	Rule added; storage of emergency medication	Medication	Addition of storage of emergency medications	Provider/ stakeholder requested change	
7.712.52C10	Revised language	Medication	Added auto injectors	Provider/stakeholder requested change	
7.712.52C13	Revised language	Medication	Added consultants must be aware of severe allergies who can administer auto injectors	Provider/ stakeholder requested change	
7.712.52D1	Revised language; authorization for sunscreen	Sun Protection	Modified language & regulation to reflect current requirements	Provider/ stakeholder requested change	clarified parental permission
7.712.52D5	Added rule	Sun Protection	Addition of application of sunscreen	Provider/ stakeholder requested change	clarified child may apply
7.712.52E3	Revised language	Control of Communicable Illness	Modified language & regulation to reflect current requirements	Provider/ stakeholder requested change	
7.712.53	Technical cleanup; rule reduction	Personal Hygiene	Rule reduction; eliminate duplication of regulation with other agency	Technical cleanup; rule reduction	NO
7.712.53B	Revised language	Personal Hygiene	Removed diapering and replaced with Children with specific toileting needs	Provider/ stakeholder requested change	NO
7.712.54A	Rule reduction; added language	Food and Nutrition	Rule reduction; eliminate duplication of regulation. Addition of food provided by center must meet current USDA child and adult meal pattern requirements	Provider/ stakeholder requested change	clarified when meals and snacks are provided by the center
7.712.54B	Added rule	Food and Nutrition	Modified language & regulation to reflect current requirements. Addition of centers must not provide sugar sweetened beverages to children	Provider/ stakeholder requested change	clarified when meals and

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
					snacks are provided by the center
7.712.54C	Added rule	Food and Nutrition	Modified language & regulation to reflect current requirements. Addition of 100% of fruit juice is limited to no more than twice per week	Provider/ stakeholder requested change	clarified when meals and snacks are provided by the center
7.712.54D	Removed rule; added rule	Food and Nutrition	Rule reduction; eliminate duplication of regulation; modified language & regulation to reflect current requirements. Center who don't regularly provide meals must supplement if the meal appears does not appear to meet current USDA	Provider/ stakeholder requested change	clarified when meals and snacks are provided by the center
7.712.54E	Added rule	Food and Nutrition	Modified language & regulation to reflect current requirements. Meal menu planning & recording	Provider/ stakeholder requested change	clarified when meals and snacks are provided by the center
7.712.54F	Added rule	Food and Nutrition	Modified language & regulation to reflect current requirements. Appropriate serving size for child's age & appetite.	Provider/ stakeholder requested change.	clarified when meals and snacks are provided by the center
7.712.55E	Revised language	Guidance	Clarified appropriate separation when used as a form of guidance	Added clarification	NO
7.712.55H	Added rule	Guidance	Addition of physical exercise must not be used as a form of guidance	Provider/ stakeholder requested change	positive to keep language
7.712.56B1d	Added rule	Requirements for Vehicles	Addition of modification to the vehicle must be completed by manufacturer and have documentation available.	Provider/stakeholder requested change	NO

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7.712.56B2b	Rule reduction; rule added	Requirements for Vehicles	Two or more children restrained in one seat belt was removed; addition of the provider must not transport more children than any vehicle can safely accommodate.	Provider/stakeholder requested change	NO
7.712.56C6,7,8,9	Rules added; driver safety	Requirements for Vehicles	Addition to the requirements for drivers; safety, ratio, driver age, and required driver training	Provider/ stakeholder requested change	Clarified training may be developed by the program
7.712.62A,B,C	Rules added; daily physical activities	Physical Activity	Addition of physical gross motor activities requirements based on hours the program is in operation.	Provider/ stakeholder requested change	positive to keep language
7.712.63A,B,c	Rules added; screen time and media use	Screen Time and Media Use	Addition of rules regarding screen time & media use including: not containing explicit language, prohibited during meals & snacks, and developing a media plan	Provider/stakeholder requested change	positive to keep language
7.712.635A1	Language added; parent notification	Field Trips	Addition of notifying parents in advance of any field trip	Provider/ stakeholder requested change	NO
7.712.635A2,3	Added language	Field Trips	Clarification of supervision of children by qualified staff on field trips	Clarification	Clarified why necessary for supervision
7.712.635A5	Added rule; medication on field trip	Field Trips	Addition of qualified staff to administer medication to a child while attending field trip	Provider/ stakeholder requested change	NO
7.712.635A6	Added rule; filed trip list	Field Trips	Modified language & regulation to reflect current requirements; a list of children and staff out on the field trip must be kept at the center	Provider/ stakeholder requested change	NO
7.712.635A7	Added rule; copy of emergency disaster plan	Field Trips	Modified language & regulation to reflect current requirements; staff must have a copy of the emergency disaster plan when offsite	Provider/ stakeholder requested change	NO
7.712.71.D.4-5	Added language	Building and Facilities	Added requirement of equipment height and resilient surface currently enforced under 7.712.71.C	Clarification; added requirement	clarified height is based on play surface unless equipped with

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Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
					protective barrier
7.712.71E	Technical cleanup; Rule reduction	Building and Facilities	Removed rule; eliminate duplication of regulation with other agency	Technical cleanup; rule reduction	NO
7.712.72B	Added requirement	Toilet Facilities	Addition for new construction after February 1, 2018 must have one sink & toilet for every 15 or fewer children	Provider/ stakeholder requested change	Clarified only for new construction and gender-segregated toilets
7.712.73	Technical cleanup; rule reduction	Food Preparation Area	Removed rule; eliminate duplication of regulation with other agency	Technical cleanup; rule reduction	NO
7.712.73B2	Technical cleanup; revised language	Fire Safety	Revised language and addition of requirement	Technical clean up	NO
7.712.81A7	Addition of requirement	Children's Records	Revised & clarified language	Provider/ stakeholder requested change	NO
7.712.82A5	Technical cleanup; rule reduction	Staff Records	Removed rule; duplicate rule	Technical cleanup; rule reduction	clarified found in general rules
7.712.82A7	Technical cleanup; added language	Staff Records	Addition of Federal Bureau of Investigation	Technical cleanup	NO
7.712.83B	Added language	Administrative Records and Reports	Clarified reporting to the Department using the online injury reporting system	Added clarification	NO
7.712.83D	Technical cleanup; change in requirement	Administrative Records and Reports	Center must maintain records of reports made to Colorado Department of Public Health and Environment or local public health agency	Technical cleanup	NO
7.712.83D	Technical cleanup; rule reduction	Administrative Records and Reports	Removed rule; required in 7.712.52B2, 7.712.83B, & 7.712.52C9	Technical cleanup; rule reduction	NO
7.712.83G	Technical cleanup; rule reduction	Administrative Records and Reports	Removed rule; required in General Regulations for Child Care Centers	Technical cleanup; rule reduction	NO

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STAKEHOLDER COMMENT SUMMARY

Development

The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):

The Children's Resident Camp Rules Re-write committee and the School-aged Child Care Center Rules Re-write committee work product (stakeholder working group) directed all aspects of this revised rule package, including advising the Department on language and provisions.

Committee members include: Colorado Department of Public Health and Environment, Healthy Child Care Colorado, Qualistar Colorado, Denver Public Health and Environment, Avid 4 Adventure, St. Vrain Valley School District, Boulder Valley School District, Adams 12 School District, Children's Hospital Colorado, Colorado Early Education Network, Mesa County Health Department, Institute for Racial Equity and Excellence, Colorado Ski Country USA, Extended Hours Program, Jefferson County school District, Jefferson County Health Department, Louisville City Government, Rocky Mountain Region of the American Camp Association, Indian Hills Camp, Boy Scouts of America, YMCA of the Rockies, Work Bright, Sanborn Western Camps and Pathways.

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:

All licensed School-aged Child Care Centers and Children's Resident camps

Other State Agencies

Are other State Agencies (such as HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

[x] Yes [ ] No

If yes, who was contacted and what was their input?

CDPHE was consulted on the development of these regulations and assisted with removing duplicative regulations

Sub-PAC

Have these rules been reviewed by the appropriate Sub-PAC Committee?

[X] Yes [ ] No

Name of Sub-PAC	EC Sub-PAC		
Date presented	Electronically November 8, 2017		
What issues were raised?			
Vote Count	*For*	*Against*	*Abstain*
	2	0	
If not presented, explain why.			

PAC

Have these rules been approved by PAC?

[ ] Yes [X] No

Date presented	The rules will be presented to PAC on December 7, 2017
What issues were raised?	

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Vote Count	*For*	*Against*	*Abstain*
If not presented, explain why.			

Other Comments

Comments were received from stakeholders on the proposed rules:

[X] Yes [ ] No

If "yes" to any of the above questions, summarize and/or attach the feedback received, including requests made by the State Board of Human Services, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.

12 CCR 2509-8

CCDBG REAUTHORIZATION REQUIREMENT – PURPLE
PROVIDER/STAKEHOLDER REQUESTED CHANGE-GREEN
RULE CLARIFICATION – BLUE
TECHNICAL CLEAN UP/RULE REDUCTION-RED

7.711 RULES REGULATING CHILDREN'S RESIDENT CAMPS [Rev. eff. 6/1/07]

In addition to the General Rules for Child Care Facilities, Children's Resident Camps shall follow the rules specified in this section and the "RULES REGULATING SPECIAL ACTIVITIES" AND " RULES AND Regulations Governing the HEALTH AND Sanitation of Child Care ~~Centers~~ FACILITIES in the State of Colorado".

7.711.1 DEFINITIONS [Rev. eff. 4/1/13]

A. A "residential camp" ~~is defined at Section 26-6-102(2.2), C.R.S.~~ MEANS A FACILITY OPERATING FOR THREE OR MORE CONSECUTIVE TWENTY-FOUR-HOUR DAYS DURING ONE OR MORE SEASONS OF THE YEAR FOR THE CARE OF FIVE OR MORE CHILDREN. THE FACILITY SHALL HAVE AS ITS PURPOSE A GROUP LIVING EXPERIENCE OFFERING EDUCATION AND RECREATIONAL ACTIVITIES IN AN OUTDOOR ENVIRONMENT. THE RECREATIONAL EXPERIENCES MAY OCCUR AT THE PERMANENT CAMP PREMISES OR ON TRIPS OFF THE PREMISES. A CHILDREN'S RESIDENT CAMP SHALL SERVE CHILDREN WHO HAVE COMPLETED KINDERGARTEN OR ARE SIX YEARS OF AGE OR OLDER THROUGH CHILDREN YOUNGER THAN NINETEEN YEARS OF AGE; EXCEPT THAT A PERSON NINETEEN YEARS OF AGE OR TWENTY YEARS OF AGE MAY ATTEND A CHILDREN'S RESIDENT CAMP IF, WITHIN SIX MONTHS PRIOR TO ATTENDING THE CHILDREN'S RESIDENT CAMP, HE OR SHE HAS ATTENDED OR HAS GRADUATED FROM HIGH SCHOOL.

B. A residential camp may have a "primitive camp" which is a portion of the permanent camp premises or another site at which the basic needs for camp operation, such as places of abode, water supply systems, and permanent toilet and/or cooking facilities, are not usually provided.

C. A "travel-trip camp" shall be known as a camp in which there is no permanent camp site and children move from one site to another. The travel-trip camp either originates in Colorado or moves into and/or through Colorado from another state and operates for three or more consecutive 24-hour days during one or more seasons of the year for the care of five or more children who are at least ten (10) years old or have completed the fourth grade. The program shall have as its purpose a group learning experience offering educational and recreational activities utilizing an outdoor environment.

D. ~~A "non-medical religious camp" is a camp operated by a religious organization which does not believe in the use of medical practice in physical examination or treatment of illness or injury.~~

7.711.11 Purpose and Goals [Rev. eff. 11/1/98]

Each camp ~~shall~~ MUST submit to the department a statement of goals and objectives. This statement ~~shall~~ MUST be kept on file, updated periodically, made known to staff, and available for licensing inspection.

7.711.12 Governing Body [Rev. eff. 6/1/07]

The governing body ~~shall~~ MUST be identified by its legal name. The names and addresses of individuals who hold primary financial control and officers of the governing body ~~shall~~ MUST be disclosed fully to the Colorado Department of Human Services. THE GOVERNING BODY IS RESPONSIBLE FOR PROVIDING NECESSARY FACILITIES, ADEQUATE FINANCING, QUALIFIED PERSONNEL, SERVICES, AND PROGRAM FUNCTIONS FOR THE SAFETY AND WELL-BEING OF CHILDREN IN ACCORDANCE WITH THESE RULES. When changes of governing body occur, the new governing body must immediately submit an original application and pay the required fee.

A. If the governing body lets, leases, or rents the licensed facility to any group or organization whose program falls under the definition as found at Section 7.711.1 and verifies in writing to the State Department that the lessee meets the licensing standards, an application is not required of the lessee. If the governing body does not verify that the lessee meets the licensing standards, an application is required of the lessee and the license must be issued to the lessee before the camp opens.

B. When the facility is let, leased, or rented, the governing body ~~shall~~ MUST report the following in writing at the request of the State Department: name of the group, number and ages of children, length of time for use of the facility, and the purpose of the camp.

7.711.13 Financial Support [Rev. eff. 11/1/98]

The governing body ~~shall~~ MUST satisfy the department upon request that there is sufficient financial support to operate and maintain a camp in accordance with these rules and camp goals and objectives.

7.711.14 Insurances [Rev. eff. 11/1/98]

~~A.~~ Every facility ~~shall~~ MUST carry public liability insurance. The applicant or licensee ~~shall~~ MUST submit the amount of the insurance and the name and the address of the insurance agency providing the insurance to the camp. The camp ~~shall~~ MUST maintain information about the insurance at the campsite. ~~A camp need not carry public liability insurance if the camp's governing body determines that insurance is unnecessary due to its financial ability to meet all possible claims. The basis of such judgment must be revealed to the department.~~

~~B. Camps operating their own transportation vehicles shall carry liability insurance in compliance with the minimum limits required by Article 10, Chapter 7, Colorado Revised Statues.~~

7.711.15 Written Agreements, Reports, and Logs [Rev. eff. 6/1/07]

A. There ~~shall~~ MUST be on file at the campsite an~~d~~ annually-dated ~~a written~~ A WRITTEN OR ELECTRONIC agreement with a licensed physician or nearby health care facility TO PROVIDE ~~stating that the physician or health care facility will furnish~~ the necessary medical services for campers at the camp and medical help as a backup to the camp staff members responsible for health supervision.

B. A travel-trip camp is not required to have a written agreement, but IT must have a list of all medical facilities in areas where the travel-trip camp will be traveling.

~~C. The camp shall report to the State Department in writing within 48 hours each injury or illness which required that the camper be permanently sent home. The report shall include name, age and address of the camper; name of camper's parent(s) or guardian(s) and their address if different; date of accident or illness; description of accident or diagnosis of illness; treatment given; name and address of physician prescribing treatment; and, where treatment was given and disposition of the case.~~

~~D~~C. The camp ~~shall~~ MUST maintain at the campsite a medical record keeping system, listing name of camper, ~~ailment~~ ILLNESS OR INJURY, ~~treatment~~ prescribed TREATMENT and ~~administered dale~~ DATE THE TREATMENT WAS ADMINISTERED, and name of person administering care. This record keeping system ~~shall~~ MUST be available to licensing personnel.

~~E~~D. ~~Within 24 hours of each incident, t~~The camp ~~shall~~ MUST submit within 24 hours to the State Department a written report about any camper who has been ~~lost~~ SEPARATED FROM THE GROUP OUTSIDE OF THE SUPERVISION OF THEIR ASSIGNED STAFF MEMBER ~~from the campsite~~ and for whom a report has been made to the local ~~sheriffs~~ SHERIFF'S department for search and rescue. Such report ~~shall~~ MUST indicate the name, age, and address of the camper; the name of parent~~(~~s~~)~~ ~~or~~ /guardian~~(~~s~~)~~ and their address if different; the date when the child was lost; the location, time, and circumstances when the camper was last seen; and~~,~~ circumstances of locating the camper.

~~F. Each camp shall have a plan for action in case of natural disasters, lost campers/swimmers, injuries, and illnesses. These plans shall be in writing and shall be on file at the camp office. The staff shall receive training regarding the implementation of these plans. In the case of a travel trip or primitive camp, these plans shall accompany the staff members and campers.~~

7.711.2 PERSONNEL

7.711.21 General Requirements for All Personnel [Rev. eff. 6/1/07]

A. All paid employees at the camp ~~shall be sixteen (16) years of age or over, except that employment of maintenance staff including kitchen service, grounds, and housekeeping employees under~~ LESS THAN 16 years of age ~~is allowed if~~ MUST BE EMPLOYED in compliance with Colorado labor laws.

B. All counselors and staff members having a supervisory role with campers ~~shall~~ MUST be at least eighteen (18) years of age, OR SEVENTEEN (17) YEARS OF AGE AND GRADUATED HIGH SCHOOL, and have interest in, respect for, and ability to work with children.

C. There ~~shall~~ MUST be a letter of agreement with each volunteer or employed staff member which includes listing of specific responsibilities/job description and referring to information contained in the hiring packet or staff manual. Days or hours of employment/time off, personal conduct, and ~~necessary medical examinations~~ HEALTH HISTORY QUESTIONNAIRE must be provided in writing OR ELECTRONICALLY and may be provided in the hiring packet or the staff manual. The letter of agreement ~~shall~~ MUST be signed by both the employer and the volunteer or staff member. In the case of staff members or volunteers who are younger than eighteen (18) years old, the letter of agreement ~~shall~~ MUST also be signed by the parentS/ ~~or~~ guardianS.

D. There ~~shall~~ MUST be at least three references ~~about~~ FOR each staff member of the camp attesting to the individual's character and suitability to work with children. The written references ~~shall~~ MUST be in the personnel file or there ~~shall~~ MUST be an indication in the personnel file that a reference has been obtained~~. by telephone~~.

E. Each staff member must complete aN ANNUAL ~~current~~ health history~~. and must have been examined within the last 24 months by a licensed medical health care professional approved to perform physical examinations.~~ The health history must ~~be completed within 90 calendar days of the beginning of working at the camp and shall~~ be maintained ~~IN the personnel file~~ A SECURED LOCATION at the camp. ~~The staff members of a non- medical religious camp are exempt from this regulation.~~

~~F. If a staff member wishes an exemption from an examination performed by a licensed medical hearth care professional due to religious beliefs, the staff member shall submit a signed, written statement, which states the reason for the religious exemption and that the individual is in good health. A camp retains the right to ask a staff member for a written statement prior to employment at the camp.~~

~~G~~F. Each staff member ~~shall~~ MUST be trained and given written instructions as to camp policy when emergencies occur INCLUDING BUT NOT LIMITED TO: ~~, such as fires,~~ LOST CAMPERS, MEDICAL SITUATIONS, HAZARDOUS WILDLIFE and ENVIRONMENTAL HAZARDS. IN THE CASE OF TRAVEL TRIP OR PRIMITIVE CAMPS, THESE PLANS MUST ACCOMPANY THE STAFF AND CAMPERS.

7.711.22 ~~Necessary~~ Camp Personnel [Rev. eff. 6/1/07]

A. Each camp ~~shall~~ MUST have an onsite director who ~~shall~~ MUST be at least twenty-one (21) years of age. The director ~~shall~~ MUST have ~~a maturity of judgment and~~ 12 MONTHS (1820 HOURS) ~~prior~~ verified ~~adult~~ leadership experience in an administrative or supervisory position, WITH GROUPS OF CHILDREN FIVE (5) YEARS OF AGE OR OLDER, ~~at an organized camp, and twelve months employed adult leadership with groups of children~~ since he OR ~~/~~she attained the age of EIGHTEEN (18) years.

B. At each permanent camp there ~~shall~~ MUST be AT LEAST one ~~or more~~ health care ~~providers~~ WORKER who ~~shall be~~ IS responsible for monitoring the overall health of the CAMPERS AND STAFF. ~~and creating a healthy camp community.~~ A ~~hearth~~ HEALTH care ~~provider~~ WORKER ~~may~~ MUST be one of the following: a licensed physician, a registered nurse, a licensed practical nurse, a licensed physician's assistant, a certified nursing assistant ~~or a staff member who holds a current American Red Cross Emergency Response Certificate or a current certificate as an Emergency Medical Technician or equivalent. Any health care provider other than a licensed physician, registered nurse, or licensed practical nurse must also hold a current certificate indicating completion of the State Department approved and required medication administration course.~~ OR AN INDIVIDUAL WHO HOLDS CURRENT CERTIFICATION IN EMERGENCY MEDICAL SERVICES. ALL HEALTH CARE WORKERS MUST WORK WITHIN THEIR SCOPE OF PRACTICE, INCLUDING THE ABILITY TO WORK INDEPENDENTLY OR WITH REQUIRED OVERSIGHT.

1. At least one health care ~~provider~~ WORKER ~~shall~~ MUST be at the camp twenty-four (24) hours per day that the camp is in session.

2. If the camp health care ~~provider~~ WORKER is not a physician or RN, a physician or RN currently licensed in Colorado must specifically delegate ~~authority to any camp health care provider or~~ THE camp staff member ~~to~~ THE AUTHORITY TO administer medications. The delegating physician or RN must be aware of the specific medical needs of campers, be available for consultation while the camp is in session, and accept responsibility for monitoring the therapeutic effects of medications administered at camp. ~~As directed by their scope of practice, EMTs may not administer medications in the camp setting; therefore, an EMT may not serve as the sole camp health care provider.~~ Respiratory therapists may administer medication within their scope of practice.

3. IN ORDER TO ADMINISTER MEDICATIONS ~~A~~All health care ~~providers~~WORKERS, except physicians and RNs, must ~~take~~ COMPLETE the Department-approved ~~m~~Medication ~~a~~Administration ~~course~~ TRAINING, RECEIVE DELEGATION and hold ~~a~~ current DEPARTMENT-APPROVED First Aid and CPR ~~card~~ CERTIFICATION.

C. At any ~~primitive~~ camp LESS THAN THIRTY (30) MINUTES FROM EMERGENCY MEDICAL SERVICES, ~~within sixty (60) minutes from definitive medical care of the base camp, where children may be away from the base camp for up to six nights,~~ there must be at least one staff

member WITH EACH GROUP OF CHILDREN qualified with ~~community~~ DEPARTMENT-APPROVED First Aid ~~training~~, CPR, and ~~m~~Medication ~~a~~Administration ~~t~~Training AND DELEGATION. ~~if children taking medicine accompany the trip.~~

D. ~~At any primitive camp where children are either more than one hour from definitive medical care or are away from the base camp for seven or more nights, there must be at least one staff member with each group of children with wilderness First Aid training, CPR, and medication administration training.~~ ALL STAFF MEMBERS MUST COMPLETE A DEPARTMENT-APPROVED STANDARD PRECAUTIONS TRAINING PRIOR TO WORKING WITH CHILDREN. THIS TRAINING MUST BE RENEWED ANNUALLY AND MAY COUNT TOWARDS ONGOING TRAINING REQUIREMENTS.

E. ~~At any primitive camp where children are away from camp for seven or more nights and are more than one hour away from emergency medical services, there must be at least one staff member with each group of children with wilderness first responder training, CPR, and medication administration training if children taking medicine accompany the trip.~~ FOR EVERY THIRTY (30) OR FEWER CHILDREN IN ATTENDANCE, THERE MUST BE AT LEAST ONE (1) STAFF MEMBER WITH EACH GROUP OF CHILDREN WHO HOLDS CURRENT DEPARTMENT-APPROVED FIRST AID AND CPR FOR ALL AGES OF CHILDREN. AT ANY CAMP MORE THAN THIRTY (30) MINUTES AWAY FROM EMERGENCY MEDICAL SERVICES, THERE MUST BE AT LEAST ONE (1) STAFF MEMBER WITH EACH GROUP OF CHILDREN QUALIFIED WITH A MINIMUM OF WILDERNESS FIRST AID TRAINING, DEPARTMENT-APPROVED CPR AND MEDICATION ADMINISTRATION TRAINING. STAFF MEMBERS WITH MEDICATION ADMINISTRATION TRAINING MUST HAVE ANNUAL DELEGATION AS REQUIRED.

F. There ~~shall~~ MUST be sufficient camp counselors or staff members who have a supervisory role with children at the camp to meet the staff ratio as indicated in Section 7.711.23. Children under the age of six (6) years who live at camp or are visiting ~~with their parent~~ must be directly supervised by ~~their parent~~ A CAREGIVER, WHO IS NOT INCLUDED IN THE STAFF TO CAMPER RATIO, at all times when the children are involved in camp activities. Staff members whose children are under six (6) years of age cannot be supervising campers or leading special activities when they are supervising their own children.

G. If the camp has counselors-in-training WHO ARE NOT FULLY QUALIFIED, they must be directly accountable to a qualified counselor or specialized staff member and must be directly supervised by those individuals in their role when caring for children. The counselors-in-training who are less than eighteen (18) years old ~~shall~~ MUST not be counted as staff members in the maintenance of the staff ratio for supervision of children as found at Section 7.711.23.

H. There ~~shall~~ MUST be specialized staff members who are responsible for specific portions of the camp program. Requirements for those specialized staff members are found among the requirements for the specialized activity areas at Section 7.719, et seq.

7.711.23 ~~Necessary Staff~~ Supervision [Rev. eff. 6/1/07]

A. The camp ~~shall~~ MUST have an accurate system whereby staff members who are responsible for the supervision of children ~~shall~~ MUST know where each child is at all times.

B. At no time ~~shall~~ MAY a camper be left without qualified supervision. Sleeping quarters of the counselors ~~shall~~ MUST be ~~in close proximity~~ WITHIN SIGHT OR HEARING DISTANCE ~~to~~ OF THE sleeping quarters of the children whom they supervise ~~so that counselors are within sight or hearing of the children they supervise~~. Children may sleep alone for specific program functions such as solos or survival experiences and then only when regularly monitored pursuant to the camp's written program. THE CAMP'S WRITTEN PROGRAM MUST INCLUDE AN AUDIBLE

MECHANISM FOR A CAMPER TO ALERT A STAFF MEMBER WHO IS ABLE TO IMMEDIATELY RESPOND.

C. Each special activity ~~shall~~ MUST be supervised by a staff member currently qualified in DEPARTMENT-APPROVED First Aid and CPR training, and by the experience and training in that special activity as specified in Section 7.719, et seq.

D. In a residential camp, ratio of one (1) staff member having a supervisory role with children per number of campers ~~or fraction thereof~~ MUST be maintained at all times as follows:

Age of Children	Number of Children	Number of Staff Members
~~6~~ 5 ~~and~~ THROUGH 7 yrs. old	6	1
8 through 10 yrs. old	8	1
11 through 13 yrs. old	10	1
14 ~~through 15~~ yrs. ~~old~~ and ~~over~~ OLDER	12	1

E. In a trip away from the residential camp premises or at the primitive camp, the staff ratio given at Section 7.711.23, D, ~~shall~~ MUST be maintained, but there ~~shall~~ MUST be at least two staff members accompanying each trip, and one staff member ~~shall hold at least a current Red Cross standard First Aid and safety certificate or equivalent~~ MUST MEET THE QUALIFICATIONS AS DEFINED IN 7.711.22.C,E. If the trip exceeds two nights, there ~~shall~~ MUST be with the group a staff member who IS AT LEAST TWENTY-ONE (21) YEARS OF AGE, ~~has maturity of~~ EXERCISES GOOD judgment, ~~and~~ THE ABILITY TO ASSUME LEADERSHIP INDEPENDENTLY AND has been trained in trip leading procedures.

F. In a travel-trip camp, the staff ratio given at Section 7.711.23~~,~~.D, ~~shall~~ MUST be maintained, but there ~~shall~~ MUST be at least two (2) staff members at all times with the campers. One (1) of those staff members must be at least twenty-one (21) years old and one (1) staff member ~~shall~~ MUST meet qualifications of the health care ~~provider~~ WORKER ~~(see~~ AS DEFINED IN Section 7.711.22.B~~)~~.

G. In the case of trips away from the permanent residential camp, including overnights OR TRAVEL-TRIP CAMPS, there ~~shall~~ MUST be a day-to-day itinerary prepared prior to departure. The resident camp headquarters ~~shall~~ MUST keep a copy of the itinerary. The itinerary ~~shall~~ MUST be followed as closely as possible. ~~Resident c~~Camp headquarters ~~shall~~ MUST be notified of an itinerary change as soon as possible.

~~H. A travel-trip camp shall establish a day-to-day itinerary. A copy shall be on file at the camp headquarters. The itinerary shall be followed as closely as possible. In case of emergency, if a change in the itinerary is necessary, the camp headquarters shall be notified as soon as possible~~.

~~**7.711.3 – 7.711.42 None [Rev. eff. 6/1/07]**~~

7.711.~~5~~3 CHILD CARE

7.711.5~~3~~1 Health Care [Rev. eff. 6/1/07]

A. The camp health program ~~shall~~ MUST be under the supervision of an individual qualified as stated at Section 7.711.22, B.

B. ~~At the time of~~ AT LEAST TEN (10) CALENDAR DAYS PRIOR TO admission, each camper ~~shall~~ MUST furnish a health history which indicates communicable diseases and ~~serious~~ CHRONIC illnesses or ~~operations~~ INJURIES the individual has had, any known drug reactions and allergies,

medications being taken, and any necessary HEALTH PROCEDURES OR special diets ~~at the time of camp admission~~.

C. THE CAMP MUST INFORM ITS HEALTH CARE WORKER PRIOR TO THE FIRST DAY OF CARE OF THE ENROLLMENT OF A CHILD WITH SPECIAL HEALTH CARE NEEDS, IF KNOWN, TO ENSURE STAFF RECEIVES TRAINING, DELEGATION AND SUPERVISION AS INDICATED BY THE CHILD'S INDIVIDUALIZED HEALTH CARE PLAN.

~~C~~D. The camper ~~shall~~ MUST present a statement confirming a physical examination, which has been performed within the preceding twenty-four (24) months FROM THE FIRST DAY OF ATTENDANCE AT CAMP by a ~~licensed physician or qualified, licensed nurse practitioner~~ HEALTH CARE PROVIDER, WHICH INCLUDES~~. The physician or nurse practitioner shall be asked to inform the camp as to~~ any physical problems which would limit the camper's activity, AND any special care which the child will need~~., and include a record of up-to-date immunizations which the child has had, including the date of the last tetanus shot~~.

~~D~~E. ~~If the camper wishes an exemption from a statement confirming a physical examination and immunizations due to religious beliefs, the camper shall submit a written statement, signed by the camper's parents or legal guardian, which states the reason for such an exemption and that the individual is in good health. The camp has the right to refuse the admission of a child who has no statement from a physician or nurse practitioner.~~ The camper must submit documentation of immunization status or exemption as required by Colorado Department of Public Health and Environment (CDPHE). Immunizations must be updated and recorded as specified on the certificate of immunization or alternate certificate of immunization as supplied and approved by the Colorado Department of Public Health and Environment (CDPHE). Colorado law requires proof of immunization or exemption be provided prior to or on the first day of admission.

~~E~~F. UPON ARRIVAL OR ~~W~~within TWENTY-FOUR (24) hours ~~after arrival at camp~~, each camper ~~shall~~ MUST be observed by camp staff trained to do so to identify noticeable evidence of any illness, communicable disease, or signs of abuse. The camp health care ~~provider~~ WORKER ~~shall~~ MUST meet with campers ~~upon arrival at camp~~ that have special medications, HEALTH ~~treatment~~ procedures ~~or~~, SPECIAL ~~dietetic~~ restrictions ~~or~~, known allergic reactions, CHRONIC HEALTH CONDITIONS or any known physical limitations.

~~F~~G. If a child shows signs of ~~severe~~ illness or communicable disease listed in the Colorado Department of Public Health and Environment (CDPHE) exclusion guidelines, the camper ~~shall~~ MUST be separated from other campers, parents/GUARDIANS ~~shall~~ MUST be notified, and a doctor or medical facility ~~shall~~ MUST be consulted, if appropriate and as required, as to the child's treatment. All items used by the sick child ~~shall~~ MUST be properly disinfected before use by any other person.

~~G. The non-medical religious camp shall notify parents immediately when a camper becomes ill, but is exempt from the requirement of consultation with the doctor or medical facility.~~

~~H. When communicable diseases occur, parents and staff members shall be advised what protective measures are available and indicated for the particular disease, and the county or state health officer notified.~~

~~I~~H. If a camper requires medical attention away from the camp site, the camper's parents/ ~~or~~ guardian ~~shall~~ MUST be notified and necessary medical care ~~shall~~ MUST be sought from a ~~licensed physician~~ HEALTH CARE PROVIDER or medical facility. Written authorization for medical care ~~shall~~ MUST be in the child's file pursuant to Section 7.711.61~~,~~. A~~,~~.9.

~~J. If a camper requires medical attention away from the campsite of a non-medical religious camp, the parents shall be notified and their instructions followed.~~

~~K~~I. In the case of travel-trip camps, primitive camps, or trips away from the camp, a copy of the statement which has been signed by the parent or guardian indicating that the camp staff may obtain emergency medical care ~~shall~~ MUST be in the possession of staff members accompanying the campers. The original signed statement ~~shall~~ MUST be readily accessible.

~~L~~J. The camp health care ~~provider~~ WORKER ~~shall~~ MUST be responsible for administering medication to campers. If the health care ~~provider~~ WORKER is not a currently Colorado licensed RN or physician, the health care ~~provider~~ WORKER may only administer medication PRESCRIBED FOR INDIVIDUAL CAMPERS AS delegated and supervised by aN RN or physician. Respiratory therapists may administer medication within their scope of practice. ~~The health care provider shall administer only medicines prescribed for an individual camper or medicines listed in written standing treatment procedures from a licensed physician who has agreed to furnish medical services for the camp, pursuant to Section 7.711.61, A. Such medicines shall only be administered by authority of written authorization given to the camp or to the health care provider by the child's physician or camp physician.~~

1. MEDICATION prescribed for campers ~~shall~~ MUST be from a licensed pharmacy; labeled with the name, address, and phone number of the pharmacy; name of the camper; name and strength of the medicine; directions for use; date filled; prescription number~~; ,~~ and~~,~~ the name of THE practitioner prescribing the medicine. When no longer needed OR EXPIRED, the medication ~~shall~~ MUST be returned to the parent or ~~destroyed~~ DISPOSED OF IN ACCORDANCE WITH THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT (CDPHE) REQUIREMENTS.

    a. WHEN THE CAMP HAS AN ON-SITE RN OR PHYSICIAN, AND CAMPERS ARE ON EXCURSIONS AWAY FROM THE CAMP, THE RN OR PHYSICIAN IS RESPONSIBLE FOR DETERMINING A SAFE PROCESS FOR THE ADMINISTRATION OF ROUTINE AND EMERGENCY MEDICATIONS. THIS PROCESS SHOULD INCLUDE:

        i. THE TRANSFER OF MEDICATIONS AND ASSOCIATED DOCUMENTS FROM THEIR USUAL STORAGE PLACE TO PORTABLE STORAGE FOR THE TRIP.

        ii. LABELING WHICH INCLUDES CAMPER'S NAME, MEDICATION, ROUTE, DOSAGE, AND TIME THE MEDICATION SHOULD BE ADMINISTERED AS INDICATED ON THE ORIGINAL MEDICATION CONTAINER.

        iii. SECURE AND TEMPERATURE APPROPRIATE STORAGE DURING THE TRIP.

        iv. HAND HYGIENE DURING THE TRIP.

        v. APPROPRIATE DOCUMENTATION PRACTICES DURING THE TRIP.

        vi. THE RETURN OF MEDICATION AND ASSOCIATED DOCUMENTS FROM PORTABLE STORAGE FOR THE FIELD TRIP TO THEIR USUAL ON-SITE STORAGE.

    b. IF THE CAMP DOES NOT HAVE AN ON-SITE RN OR physician, medications on trips must be in original labeled pharmacy containers

2. A record of any medications administered ~~shall~~ MUST be maintained in a medication administration record pursuant to Section 7.711.15, D.

3. All medication at the permanent camp site ~~shall~~ MUST be kept in a clean, locked container, except emergency medication such as ~~EPI-PENS~~ EPINEPHRINE AUTO INJECTORS or asthma inhalers. On excursions away from the camp, medication MUST be under the control of an adult and ~~shall~~ MUST be stored inaccessible to children.

4. The camp may, with written parental consent and authorization of the prescribing practitioner, permit children who have asthma to carry their own inhalers and use them as directed. All staff must be aware of which children have asthma and which ones may use their own inhalers as needed.

5. TOPICAL PREPARATIONS SUCH AS PETROLEUM JELLY AND BUG SPRAYS MAY BE ADMINISTERED TO CHILDREN WITH WRITTEN PARENTAL AUTHORIZATION. THESE PREPARATIONS MAY NOT BE APPLIED TO OPEN WOUNDS OR BROKEN SKIN UNLESS THERE IS A WRITTEN ORDER BY THE PRESCRIBING PRACTITIONER.

6. HOME REMEDIES, INCLUDING HOMEOPATHIC MEDICATIONS MUST NOT BE ADMINISTERED AT CAMP.

K. STANDING ORDERS FOR OVER THE COUNTER MEDICATIONS MUST BE UPDATED ANNUALLY AND ARE ONLY ALLOWED WITH PARENTAL PERMISSION AND WHEN ADMINISTERED BY A PHYSICIAN OR RN.

~~M~~L. First Aid supplies ~~shall~~ MUST be located near food service operations, program areas, maintenance areas, the headquarters of the medical supervisor, and in motor vehicles which are used to transport campers.

~~N~~M. There ~~shall~~ MUST be an identified headquarters of the health care ~~provider~~ WORKER at the campsite.

~~O~~. ~~There shall be a location at the campsite furnished with necessary equipment to care for an individual who needs to be separated from other campers due to a communicable disease or illness. The isolation quarter shall be located within close proximity of restroom facilities.~~

~~P. A responsible adult shall be present or within hearing distance of any ill child.~~

~~Q~~N. Transportation ~~shall~~ MUST be available at all times in cases of medical emergency according to the written emergency medical evacuation plan of the camp.

O. To ensure the protection of campers from sun exposure the camp must:

1. Obtain the parent or guardian's written authorization and instructions for applying sunscreen or use of another form of parent or guardian approved sun protection to their children's exposed skin prior to going outside. A doctor's permission is not needed to use sunscreen at the camp;

2. Apply sunscreen or use another form of parent or guardian approved sun protection for children prior to campers going outside. Sunscreen must be reapplied as directed by the product label;

3. When supplied for an individual camper, the sunscreen must be labeled with the camper's first and last name; and

4. If sunscreen is provided by the camp, parents must be notified in advance, in writing, of the type of sunscreen the camp will use.

7.711.532 ~~Discipline~~GUIDANCE [Rev. eff. 11/1/98]

A. ~~The camp shall have a written policy regarding the discipline of children, which shall be explained to staff members before the camp session begins.~~ Guidance must be appropriate and constructive or educational in nature and may include such measures as diversion, separation of the child from problem situations talking with the child about the situation, or praise for appropriate behavior.

B. ~~Discipline shall be constructive or educational in nature and may include such measures as diversion, separation from problem situations, talking with the child about the situation, or praise for appropriate behavior.~~

~~1.~~ Children ~~shall~~ MUST not be subjected to physical harm, fear, or humiliation.

~~2~~C. THE PROGRAM DIRECTOR MUST NOT USE, OR PERMIT A STAFF MEMBER TO USE CORPORAL OR OTHER HARSH PUNISHMENT, INCLUDING BUT NOT LIMITED TO ~~Children shall not be punched~~PINCHING, ~~shaken~~SHAKING, ~~bitten~~SPANKING, ~~roughly handled~~ PUNCHING, ~~pinched~~BITING, KICKING, ROUGH HANDLING, HAIR PULLING, or ~~subjected to~~ any HUMILIATING OR FRIGHTENING METHOD OF GUIDANCE ~~physical punishment~~.

D. GUIDANCE MUST NOT BE ASSOCIATED WITH FOOD, REST, OR TOILETING. CHILDREN SHOULD NEVER BE PUNISHED FOR TOILETING ACCIDENTS. CHILDREN MUST NOT BE DENIED FOOD OR FORCED TO EAT AS A DISCIPLINARY MEASURE.

~~3~~E. Separation, when used as ~~discipline~~GUIDANCE, ~~shall~~ MUST ~~be brief~~ NOT EXCEED FIVE (5) MINUTES and MUST BE appropriate ~~to~~ FOR the child's age. ~~and circumstances, and t~~The child ~~shall~~MUST be ~~within hearing of an adult~~ in a safe, lighted, well-ventilated ~~place~~AREA AND BE WITHIN SIGHT AND HEARING OF AN ADULT. ~~No~~ THE child ~~shall~~ MUST NOT be isolated in a locked ~~room~~ or ~~closet~~ CLOSED AREA.

~~4. No child shall be punished for toileting accidents.~~

~~5~~F. Verbal abuse or derogatory remarks about the child~~, his family, his race, religion, or cultural background shall not be used or~~ ARE NOT permitted.

~~6. Meals may not be denied the camper as a disciplinary measure.~~

~~7~~G. Authority ~~to punish shall~~ FOR GUIDANCE MUST not be delegated to other children~~, nor shall~~ AND the camp MUST NOT sanction one ~~camper~~ CHILD punishing another ~~camper~~CHILD.

7.711.533 Security Practices [Rev. eff. 7/1/00]

A. The camp ~~shall~~ MUST establish a written security procedure and ~~shall~~ MUST train staff members and campers regarding this procedure. ~~Such procedures may include, but are not limited to, the following:~~

~~1. The campers and staff organized into a buddy system and trained to report immediately to camp authorities when they believe their buddy is missing.~~

~~2. Whistles issued to campers and/or staff who are instructed as to their usage if a camper or staff member is attacked.~~

~~3. Campers and staff trained to report to the camp administration any strangers or unidentified person who may be at the campsite.~~

~~4. Bumper stickers for each authorized car at camp.~~

~~5. Limited advertisement of camp location.~~

~~6. Use of intra-camp emergency communication.~~

B. The camp ~~shall~~ MUST report to the local law enforcement office or department the dates of the camp sessions and the location of the camp.

C. When a camper is discharged from camp or when the camp session is over, the child ~~shall~~ MUST be returned to the parentS/~~ or~~ guardianS or ~~to~~ aN ~~properly identified~~ adult ~~approved~~ AUTHORIZED by the ~~child's~~ parentS/ ~~or~~ guardianS. IF THE INDIVIDUAL IS UNKNOWN TO THE STAFF, IDENTIFICATION MUST BE REQUIRED.

7.711.5~~3~~4 Food and Nutrition [Rev. eff. 10/1/03]

A. Each camp ~~shall~~ MUST establish a written policy for its nutrition and food service program. This policy ~~shall~~ MUST include meal hours, type of food service, staff responsibilities during the time food is served, authorization of special diets, and the administration of the food service program. This policy ~~shall~~ MUST be available to all staff members.

B. All foods ~~shall~~ MUST be stored and prepared in accordance with the rules and regulations governing the sanitation of food service establishments in the State of Colorado.

C. Foods provided by the camp ~~shall~~ MUST be of sufficient quantity and nutritional quality to provide for the dietary needs of each child. Menus ~~shall~~ MUST meet the most recently revised recommended daily allowances of the Food and Nutrition Board, National Academy of Sciences, National Research Council, adjusted for age, sex, religion, and activity. The only exception ~~shall~~ MUST be by written parental or medical direction.

D. Menus ~~shall~~ MUST be planned at least a week in advance and ~~shall~~ MUST be dated as to the week in use. The current week's menu ~~shall~~ MUST be posted in the food preparation area. Food substitutions ~~shall~~ MUST be noted on the menus in writing. After use, the menus ~~shall~~ MUST be kept on file for the period of the camping season.

E. In travel-trip camps, all menus ~~shall~~ MUST be planned prior to leaving and changes noted in writing. Menus ~~shall~~ MUST be maintained in file of camp.

~~F. Drinking water shall be readily accessible to campers at all times.~~

7.711.5~~3~~5 Transportation [Rev. eff. 6/1/07]

~~A. If the camp transports children from their home to camp, the camp shall assume responsibility for the child between the place where he she is called for and the camp, and from the time he she leaves the camp until delivered to his her parents or to a responsible person designated by the parents or guardians.~~

~~B. Any transportation of the camper during the camp session is the responsibility of the camp.~~

~~C. There shall be at least one adult supervisor in addition to the driver when nine or more children are being transported at any one time. No child shall be permitted to remain unattended in any vehicle.~~

~~D. Only that number of children and adults for whom there is comfortable seating space shall be transported. Standing in the vehicle while it is moving shall be prohibited. No person shall sit on the floor or in aisles, or project head or limbs out of the vehicle.~~

~~E. No more than three persons, including the driver, shall be permitted to occupy the front seat of the vehicle. Each camper permitted to ride in the front seat of the vehicle shall be secured by a seat belt.~~

~~F. If trucks are used by the camp as a means of transportation, the use shall be limited to short periods of time such as no more than thirty minutes. Safe seating arrangements shall be provided. Only trucks with sides may be used. When such trucks are in use, the tailgate shall be closed at all times when the vehicle is in motion. There shall be an adult riding with the campers in the back of the truck. Campers shall be seated whenever the vehicle is in motion.~~

~~G. The camp which provides any transportation shall have a written policy including, but not limited to, the following topics: safety education while riding in the vehicles, seating, highway stops, relief drivers, when necessary, supervision, and emergency procedures on the road.~~

~~H. All vehicles transporting children shall comply with the applicable regulations of the Colorado Department of Revenue, Motor Vehicle Division, and the ordinances of the municipality in which the vehicle is operated.~~

~~I. All persons who transport campers shall be properly licensed to operate the vehicle being driven.~~

~~J. At least one adult in each vehicle shall hold a current Red Cross standard First Aid and safety certificate or equivalent. The vehicle shall be equipped with a First Aid kit.~~

~~K. Any vehicle which transports nine or more passengers shall carry a fire extinguisher, reflective equipment, and road side markers.~~

A. TRANSPORTATION PROVIDED BY THE CAMP MUST MEET THE FOLLOWING REQUIREMENTS:

1. THE CAMP IS RESPONSIBLE FOR ANY CHILDREN IT TRANSPORTS;

2. THE CAMP MUST OBTAIN WRITTEN PERMISSION FROM PARENTS OR GUARDIANS FOR ANY TRANSPORTATION OF THEIR CHILD DURING CAMP HOURS;

3. THE NUMBER OF STAFF MEMBERS WHO ACCOMPANY CHILDREN WHEN BEING TRANSPORTED IN THE VEHICLE MUST MEET THE CHILD CARE STAFF RATIO FOUND AT SECTION 7.711.23. THE DRIVER OF THE VEHICLE IS CONSIDERED A STAFF MEMBER;

4. THE CAMP MUST NOT PERMIT CHILDREN UNDER THE AGE OF 8 OR CHILDREN UNDER 57” TALL TO RIDE IN THE FRONT SEAT OF A VEHICLE. CHILDREN UNDER 8 MUST BE SECURED IN A CHILD RESTRAINT SYSTEM THAT IS APPROPRIATE FOR THE AGE AND DEVELOPMENT OF THAT CHILD. THE CHILD RESTRAINT MUST CONFORM TO ALL APPLICABLE FEDERAL MOTOR VEHICLE SAFETY STANDARDS AND COLORADO CHILD PASSENGER SAFETY LAWS;

5. CAMPERS MUST BE LOADED AND UNLOADED OUT OF THE PATH OF MOVING VEHICLES;

6. CAMPERS MUST NOT BE LEFT UNATTENDED IN THE VEHICLE;

7. FOR TRIPS AWAY FROM THE CAMP, A LIST OF INDIVIDUALS ON EACH TRIP MUST BE READILY AVAILABLE EITHER IN THE VEHICLE(S) OR AT THE CAMP OFFICE.

B. REQUIREMENTS FOR VEHICLES

1. ANY VEHICLE USED FOR THE TRANSPORTATION OF CHILDREN TO AND FROM THE CAMP OR DURING CAMP ACTIVITIES MUST MEET THE FOLLOWING REQUIREMENTS:

a. THE VEHICLE MUST BE ENCLOSED AND HAVE DOOR LOCKS;

b. THE SEATS OF THE VEHICLE MUST BE CONSTRUCTED AND INSTALLED ACCORDING TO THE VEHICLE MANUFACTURER'S SPECIFICATIONS;

c. THE VEHICLE MUST BE KEPT IN SATISFACTORY CONDITION TO ASSURE THE SAFETY OF OCCUPANTS. VEHICLE TIRES, BRAKES, AND LIGHTS MUST MEET SAFETY STANDARDS SET BY THE COLORADO DEPARTMENT OF REVENUE, MOTOR VEHICLE DIVISION;

d. SEATING MUST BE COMFORTABLE WITH A SEAT OF AT LEAST TEN (10) INCHES WIDE FOR EACH CHILD;

e. VEHICLES MUST BE LOADED ONLY WITHIN THE PASSENGER SEATING LIMIT ESTABLISHED BY THE VEHICLE MANUFACTURER; AND

f. EACH VEHICLE MUST HAVE A FIRST AID KIT.

2. IN PASSENGER VEHICLES, WITH A MANUFACTURER'S ESTABLISHED CAPACITY OF SIXTEEN (16) OR FEWER PASSENGERS AND LESS THAN 10,000 POUNDS, THE FOLLOWING IS REQUIRED:

0 a. EACH CAMPER AND STAFF MEMBER MUST BE RESTRAINED IN AN INDIVIDUAL SEAT BELT; AND

b. CAMPERS AND STAFF MUST BE INSTRUCTED AND REQUIRED TO KEEP THE SEAT BELT PROPERLY FASTENED AND ADJUSTED.

3. IN VEHICLES WITH A MANUFACTURER'S ESTABLISHED CAPACITY OF SIXTEEN (16) OR MORE PASSENGERS, SEAT BELTS FOR PASSENGERS ARE NOT REQUIRED.

C. REQUIREMENTS FOR DRIVERS OF VEHICLES

1. ALL DRIVERS OF VEHICLES TRANSPORTING CHILDREN MUST COMPLY WITH APPLICABLE LAWS OF THE COLORADO DEPARTMENT OF REVENUE, MOTOR VEHICLE DIVISION, AND ORDINANCES OF THE MUNICIPALITY IN WHICH THE CENTER OPERATES.

2. THE CAMP MUST VERIFY THAT ALL DRIVERS MEET MINIMUM REQUIREMENTS, INCLUDING:

   a. DRIVING RECORDS THAT HAVE BEEN REVIEWED WITHIN THE LAST FOUR MONTHS FOR SEASONALLY HIRED DRIVERS OR WITHIN THE LAST TWELVE MONTHS FOR YEAR-ROUND DRIVERS TO DETERMINE DRIVER SUITABILITY;

   b. DRIVERS HAVE THE APPROPRIATE LICENSE FOR THE VEHICLES TO BE DRIVEN;

   c. DRIVERS MUST HAVE CURRENT DEPARTMENT-APPROVED FIRST AID AND CPR CERTIFICATION;

   d. ALL DRIVERS MUST BE AT LEAST TWENTY (20) YEARS OF AGE;

   e. DRIVERS MUST COMPLETE A MINIMUM OF FOUR (4) HOURS OF DRIVER TRAINING THAT INCLUDES AT A MINIMUM: BEHIND THE WHEEL TRAINING; PARTICIPANT TRANSPORT ATTENDANCE PROCEDURES INCLUDING TAKING ATTENDANCE AT THE DESTINATION; MANAGING BEHAVIORAL ISSUES; LOADING AND UNLOADING PROCEDURES; DAILY VEHICLE INSPECTION PROCEDURE; PROPER TIRE INFLATION; EMERGENCY EQUIPMENT AND HOW TO USE IT; ACCIDENT PROCEDURES; PASSENGER ILLNESS PROCEDURES; PROCEDURES FOR BACKING UP; AND, IF BUSES ARE USED, EVACUATION PROCEDURES;

3. THE DRIVER MUST ENSURE THAT ALL DOORS ARE SECURED AT ALL TIMES WHEN THE VEHICLE IS MOVING;

4. THE DRIVER MUST MAKE A GOOD FAITH EFFORT TO ENSURE THAT EACH CHILD IS PROPERLY BELTED THROUGHOUT THE TRIP; AND

5. THE DRIVER MUST NOT EAT OR USE A CELLULAR DEVICE WHILE DRIVING.

7.711.~~6~~64 RECORDS FOR CHILDREN AND PERSONNEL

7.711.~~6~~641 Children's Records [Rev. eff. 6/1/07]

A. ~~At the time the child is admitted to the~~ PRIOR TO THE CHILD'S ATTENDANCE AT camp, the following information ~~shall~~ MUST be obtained and maintained at the campsite for each camper:

1. Child's name, birth date, and address.

2. Parent's or guardian's names, HOME AND EMPLOYMENT addresses, ~~and~~ telephone numbers, AND EMAIL ADDRESSES.

~~3. Parents or guardian's place of employment and telephone numbers, which may include work phone, cell phone and fax numbers, e-mail address and employment addresses.~~

~~4~~3. Name, address and telephone number ~~of an adult designated to contact in case~~ of emergency ~~if the camp is unable to~~ contact~~S the parent or guardian~~.

~~5~~4. Name, address, and telephone number of individuals authorized to take the child from camp if different from the parent or guardian.

~~6. Names of individuals that are not authorized to take the child from camp.~~

~~7~~5. Dates of the camp session which the child will attend.

~~8~~6. Name~~, address~~ and telephone number of the child's ~~doctor~~HEALTH CARE PROVIDER. ~~This information need not be obtained in a non-medical religious camp or if the child is exempt for the need for a statement confirming a physical examination pursuant to Section 7.711.51, D.~~

~~9~~7. Authorization signed by the ~~person or agency having custody~~PARENTS/GUARDIANS, giving authority for the camp to obtain emergency medical care. ~~A non-medical religious camp is exempt from this regulation.~~

~~10~~8. Authorization signed by the parentS/GUARDIANS~~, person or agency having custody~~ of the child to participate in all special trips or excursions ~~in which the child may be walking or riding~~ away from the campsite.

~~11~~9. Indication of any camp activity in which the parentS/GUARDIANS~~, person or agency having custody~~ of the child does not wish the child to participate (see Section 7.719, et seq.).

10. Physical examination, health history and immunization as required in Section 7.711.51.C-D.

~~B. The child's records shall also include:~~

~~1. A statement confirming a physical examination signed by the physician or nurse practitioner or a written statement signed by camper's parent or guardian pursuant to Section 7.711.51, D, and a current health history from the parent regarding the child's current physical condition (see Section 7.711.51, B).~~

~~2. Copies of reports submitted to the department regarding injury or illnesses suffered by the camper, the fatality of a camper, or a report of a camper being lost (see Section 7.711.15).~~

7.711.~~6~~42 Staff Records [Rev. eff. 6/1/07]

There ~~shall~~ MUST be maintained at the campsite a record for each staff member, paid or volunteer, ~~which shall~~ THAT MUST include the following:

A. Name, address, and birth date of the individual.

B. Training, education, AND experience of the staff member.

C. Copies of any ~~first aid~~ REQUIRED certification or other ~~certification~~ TRAINING confirming qualifications for the responsibilities ~~assumed~~ ASSIGNED at the camp.

D. Copy of a HEALTH ~~statement~~ HISTORY ~~signed by the physician or the nurse practitioner regarding the physical examination of the staff member or a statement from the staff member pursuant to~~ AS REQUIRED IN Section 7.711.21.E.

E. Name, address, and telephone number of any person(s) to be notified in the event of an emergency~~, which may include home phone number, work phone, cell phone, pager, fax number, and e-mail address if available~~.

F. Copy of the written references or note of phone references pursuant to Section 7.711.21.D.

G. Copy of the signed letter of agreement pursuant to Section 7.711.21.C.

H. The dates ~~that the staff member was on the staff of the camp~~ OF EMPLOYMENT FOR EACH STAFF MEMBER.

7.711.~~6~~43 General Information [Rev. eff. 7/1/00]

A. The camper's file ~~shall~~ MUST be retained by the camp for at least three (3) years after the child'S ~~leaves the~~ LAST DAY OF ATTENDANCE AT THE camp, and ~~shall~~ MUST be available without restriction to the ~~licensing agency, but otherwise shall be treated as confidential. Retention of records for a longer period may be desirable where they reflect an accident, injury, or other unusual circumstances~~ DEPARTMENT.

B. Personnel AND CHILDREN'S records ~~shall~~ MUST be maintained by the camp for at least three (3) years. If the record reflects an accident, injury, or other unusual circumstance, it is suggested that the record be maintained for a longer period of time.

C. ~~Children's records shall be confidential, and facts learned about children and their families shall be kept confidential. The license may be denied, revoked, or made probationary if confidentiality of records or information is not maintained.~~

7.711.~~7~~5 CAMPSITE, PHYSICAL FACILITY, FIRE SAFETY AND SANITATION

7.711.~~7~~51 Campsites [Rev. eff. 6/1/07]

A. ~~All new and remodeled camp buildings, facilities, and equipment must meet the requirements of applicable codes and regulations, such as those governing health, safety, sanitation, building and fire; specifically, the codes of the local fire departments and the Colorado Department of Public Health and Environment.~~

~~B.~~ ~~Prior to issuance of an original license, and at least every two years, the camp shall be inspected and approved by the state health department or its local unit as conforming to sanitary standards. In the case of a t~~Travel-trip camp~~S, the~~ MUST SUBMIT THEIR plans FOR COMPLIANCE WITH THE RULES AND REGULATIONS GOVERNING THE HEALTH AND SANITATION OF CHILD CARE FACILITIES IN THE STATE OF COLORADO FOR APPROVAL BY THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, THIRTY (30) DAYS PRIOR TO ~~that the camp has made to meet the requirements shall be inspected and approved prior to~~ the date the trip camp begins.

~~C~~B. The camp must conform to fire prevention and protection requirements of local fire departments in the locality of the camp. ~~An inspection and approval of the local fire department must be obtained prior to original licensing and at least every two years. If the camp is not located within~~

~~the jurisdiction of a local fire department, such fire department approval is not required.~~ In the case of a travel-trip camp, the fire department approval is not required ~~since the camp has no permanent campsite~~.

~~D. Existing facilities can be required to correct deficiencies caused by non-compliance with regulations of the health or fire departments, which may be hazardous in nature.~~

~~E~~C. The camp ~~shall~~ MUST identify hazard~~ou~~s~~,~~ AND high-risk areas ~~such as cliffs, cellars, mineshafts, etc~~ AND DEVELOP POLICIES THEY FOLLOW TO PREVENT UNAUTHORIZED ACCESS TO THESE HAZARDS AND HIGH-RISK AREAS. ~~These areas shall be guarded of posted to reduce the possibility of accidents.~~

~~F~~D. Each ~~residential~~ camp ~~shall~~ MUST have a telephone or ~~comparable~~ means of communication TO CONTACT EMERGENCY SERVICES. ~~If either of these is impossible, individual arrangements shall be made by the camp and approved by the State Department.~~

~~G~~E. Emergency telephone numbers ~~shall~~ MUST be posted ~~for at least, but no limited to,~~ the camp ~~doctor~~ HEALTH CARE PROFESSIONAL, nearest clinic or hospital, ambulance service, local sheriff's office ~~and rescue unit~~, national or state forest service office (as appropriate), fire department or lookout station, and poison control center ~~(if available)~~.

~~H~~F. In the case of a primitive camp or travel-trip camp, sources of emergency care and methods of communication with such facilities as hospitals, police, AND forest service ~~shall~~ MUST be identified for each campsite on the itinerary.

~~I~~G. When playground equipment is provided at a residential camp, the equipment and playground area ~~shall~~ MUST be free of obstruction and man-made or natural hazards and ~~shall~~ MUST be away from natural pathways of traffic.

H. Playground equipment ~~such as, but not limited to, climbing apparatus, slides, swings, and swing sets shall~~ MUST MEET THE FOLLOWING REQUIREMENTS:

1. Be in good repair, of solid and safe construction, free of rough edges, protruding bolts, and the possibility of entrapment of extremities.

2. Be securely anchored ~~to~~ BY ~~concrete or other~~ suitable footing.

3. Swings must have seats made of a flexible material.

4. Moving equipment must be located toward the edge or corner of a play area or be designed in such a way as to discourage children from running into the path of the moving equipment.

5. Metal equipment ~~shall~~ MUST be placed in the shade ~~when possible and must be arranged so that children playing on one piece of equipment will not interfere with children playing on or running to another piece of equipment~~ OR A SHADE STRUCTURE MUST BE PROVIDED.

6. The maximum height of any piece of playground equipment is six (6) feet.

7. All pieces of playground equipment must be designed to guard against entrapment and strangulation.

8. All pieces of permanently installed playground equipment must be surrounded by a resilient surface of a depth of at least six (6) inches. Rubber mats manufactured for such

use consistent with the guidelines of the Consumer Product Safety Commission may be used in place of resilient material.

9. ~~The use of any materials under permanently installed playground equipment other than wood chips, wood mulch, engineered wood fiber, pea gravel, synthetic pea gravel, and shredded rubber tires must be approved by the State~~ Department APPROVED RESILIENT SURFACING INCLUDES LOOSE FILL MATERIALS SUCH AS WOOD CHIPS, WOOD MULCH, ENGINEERED WOOD FIBER, PEA GRAVEL, SYNTHETIC PEA GRAVEL, SHREDDED RUBBER TIRES, AND FINE LOOSE SAND. SOLID UNITARY MATERIALS INCLUDE POURED IN PLACE SURFACING, APPROVED RUBBER MATS, PLAYGROUND TILES, AND ASTRO TURF WITH BUILT IN RESILIENT PAD.

10. ANY PERMANENTLY INSTALLED OUTDOOR CLIMBING EQUIPMENT OR PORTABLE CLIMBING EQUIPMENT EIGHTEEN (18) INCHES OR HIGHER MUST HAVE RESILIENT SURFACING, MEETING CURRENT FEDERAL SAFETY REQUIREMENTS, UNDERNEATH AND IN THE USE ZONE SURROUNDING THE EQUIPMENT, AND INSTALLED ACCORDING TO MANUFACTURER INSTRUCTIONS.

11. PLAYGROUND SURFACES MUST BE CHECKED PRIOR TO USE FOR THE PRESENCE OF DANGEROUS OR OTHER FOREIGN MATERIALS. PLAYGROUND EQUIPMENT MUST BE CHECKED FOR SAFETY ON A MONTHLY BASIS.

J. If the residential camp is located on or uses national or state lands, the director ~~shall~~ MUST familiarize the staff and campers with rules and ethics governing the use of such property and ~~shall~~ MUST be responsible for compliance.

K. An itinerary ~~shall~~ MUST be filed or an arrangement ~~shall~~ MUST be made with national or state forest service office if such land is to be used by the travel-trip camp. The director ~~shall~~ MUST familiarize the staff and campers with rules governing the use of such property. Should the travel-trip camp pass onto private land, an agreement ~~shall~~ MUST be made with the individual responsible for that land prior to access.

L. IN STRUCTURES WHERE THE PROGRAM USES ANY SOURCE OF COAL, WOOD, CHARCOAL, OIL, KEROSENE, PROPANE, NATURAL GAS OR ANY OTHER PRODUCT THAT CAN PRODUCE CARBON MONOXIDE INDOORS, AN OPERATIONAL CARBON MONOXIDE DETECTOR MUST BE INSTALLED. CARBON MONOXIDE DETECTORS MUST MEET THE FOLLOWING REQUIREMENTS:

1. TESTED MONTHLY TO ENSURE THEY ARE OPERATIONAL.

2. BATTERIES CHANGED AT LEAST YEARLY.

7.711.~~7~~52 Permanent and Semi-Permanent Shelters and Sleeping Facilities

A. All structures used by children ~~shall~~ MUST be kept in good repair at all times.

B. At least one-half of the floor area in each living unit, excluding tents, ~~shall~~ MUST have a minimum ceiling height of seven (7) feet. No portion of a room having a ceiling height of less than five (5) feet ~~shall~~ WILL be considered as usable floor space.

C. If fabric structures are used~~, no plastic material will be permitted. Fabric structures shall~~ THEY ~~shall~~ MUST be CONSTRUCTED of a fire- and flame-retardant material. ~~Existing fabric structures may be required to be removed on the basis of hazard potential.~~

~~D. Campfires and open flames of any type shall be prohibited within ten (10) feet of any tent.~~

~~E. Each camp building used for living or sleeping quarters shall have windows or openings constructed so as to admit adequate light and air.~~

~~F~~D. Each camper ~~shall~~ MUST be provided with his~~/~~ OR her own mat, pad, b~~a~~Ed, or cot.

~~G~~E. The aisles between rows of cots, beds, or bunks ~~shall~~ MUST be kept clear for exiting purposes. There ~~shall~~ MUST be at least two (2) feet of clear space separating sides of COTS, beds OR BUNKS.

~~H~~F. If bunk beds are in use, no bunks ~~shall~~ MAY contain more than two tiers of beds. There ~~shall~~ MUST be at least twenty-seven (27) inches of clear space separating the tiers of beds and thirty-six (36) inches of clear space between the top tier and the ceiling. Electric lights which are within reach of the top bunk ~~shall~~ MUST be protected.

~~I~~G. Each permanent sleeping unit, building, or tent ~~shall~~ MUST have ~~not less than~~ AT LEAST THIRTY (30) square feet of floor space per person, camper, or counselor for single-tier beds and twenty (20) square feet per person, camper, or counselor for two-tier bunks.

~~J~~H. In tent structures which have a platform floor, beds or bunks ~~shall~~ MUST be arranged in such a fashion that no camper who might fall from a bed or bunk could fall through the sides of the tent to the ground below.

~~K~~I. There ~~shall~~ MUST be provision in each sleeping unit for storage of the camper's clothing and personal belongings.

~~L~~J. No camper shall sleep in the same room or tent with any person of the opposite ~~sex~~GENDER, except FOR~~ing~~ members of his OR ~~/~~her immediate family.

~~M~~K. In a primitive camp or travel-trip camp, adequate shelters such as a tent ~~shall~~ MUST be available for each child. ~~There shall be fifteen square feet per occupant in each tent or shelter~~ THE SHELTER OCCUPANCY MUST BE IN COMPLIANCE WITH MANUFACTURERS' RECOMMENDATIONS.

~~N. Reasonable insulation shall be provided from cold/dampness by means of such things as a ground cloth beneath the tent.~~

7.711.~~7~~53 Toilet and Bathing Facilities

A. In a resident camp there ~~shall~~ MUST be one COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT (CDPHE) approved toilet for every twenty (20) OR FEWER campers ~~or fraction thereof~~ for which the camp is licensed. Urinals may be substituted for no more than one-third of the required toilets.

B. CHILDREN MUST BE ALLOWED THE USE OF GENDER-SEGREGATED TOILET FACILITIES THAT ARE CONSISTENT WITH THEIR GENDER IDENTITY OR HAVE Sseparate ~~designated toilet facilities shall be provided for each sex in coed camps~~ OR INDIVIDUAL TOILET FACILITIES.

~~C. Installation, operation, and maintenance requirements for toilet facilities and urinals:~~

~~1. Water-flush toilets and urinals, chemical toilets, pit privies or latrines shall be provided and maintained in a clean and sanitary condition.~~

2. Toilets, privies, and latrines shall have tight seat covers free of splinters.

DC. Hand washing facilities shall MUST be provided throughout the camp. There shall MUST be one basin or lavatory for per eachVERY twenty (20) campers. IN NEW CONSTRUCTION COMPLETED AFTER MARCH 1, 2018, CHANGE OF GOVERNING BODY OR EXTENSIVE REMODELING THE CAMP MUST PROVIDE HAND WASHING FACILITIES LOCATED ADJACENT TO WHERE THE CAMP SERVES MEALS.

ED. Showers or bathtubs shall MUST be located within buildings used for sleeping, such as cabins or dormitories, or in a centrally located shower or bathing structure.

1. There shall MUST be one shower head or bathtub for PER each EVERY twenty (20) campers or fraction thereof for which the camp is licensed.

2. Hand washing facilities shall MUST be available in the shower or bathing area.

3. Shower or bathhouses shall be provided with vapor-proof lights enclosed in a shatterproof container.

FE. All sewage disposable systems shall MUST meet the state and local health department COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT (CDPHE) requirements.

G. In a primitive or travel-trip camp, the following shall be provided:

1. If the camp is not provided with privies or other acceptable type toilets, there shall be separate designated areas; for each gender for toilet use that meets the Health Department's requirements.

7.711.75 Food Preparation Area

A. The kitchen, the food preparation process, dish and utensil washing, food storage, and all other food service areas shall be operated in compliance with the rules and regulations governing food services establishments within the State of Colorado.

B. Garbage and trash removal shall meet the requirements of the state, federal, and local ordinances.

7.711.754 General Building Safety [Ref. eff. 6/1/12]

A. Every building, structure, tent, cabin, and camp premises shall MUST be kept in good repair, and shall MUST be maintained in a safe condition.

B. All new electrical installations shall meet standards of the National Electrical Code. All electrical work must be installed by a licensed electrical contractor with proper permits and inspections. Each electric outlet on the outside of a building shall be mounted in approved, protective weatherproof housing. ALL CONSTRUCTION AND INSTALLATIONS MUST COMPLY WITH LOCAL BUILDING AND PLANNING ORDINANCES.

DC. In buildings accommodating more than 12 persons IN PERMANENT STRUCTURES, exit signs shall MUST be posted at every required exit doorway and wherever otherwise required to clearly indicate the directions of egress. Exit signs shall have letters of at least five inches in height.

ED. A building with an occupancy of more than twelve (12) persons shall MUST be provided with at least two separate and independent means of egress located as far apart as practical and

SEPARATED BY NO ~~in no case~~ less than fifty (50) percent of the largest dimension of the building FROM EACH OTHER.

1. In an existing building, such as a cabin occupied by more than twelve (12) but less than twenty (20) persons, a window may be utilized as an acceptable second exit. The window ~~shall~~ MUST be openable and the distance from the window to the ground ~~shall~~ MUST not be more than four feet.

2. Each exit door ~~shall~~ MUST be hung to swing in the direction of exit travel. Exiting through a food preparation area is not permitted.

~~F~~E. If buildings with second stories are used by campers, there ~~shall~~ MUST be two ~~widely separated~~ INDEPENDENT MEANS OF EGRESS SEPARATED BY NO LESS THAN FIFTY (50) PERCENT OF THE BUILDING FROM EACH OTHER PER FLOOR. ~~exits from each floor.~~

~~G~~F. Each fire escape from any upper level of a building ~~shall~~ MUST be installed in accordance with ~~requirements of the National Fire Protection Association codes~~ LOCAL FIRE PROTECTION ORDINANCES.

~~H~~G. ~~The door hardware on a door, forming part of a means of egress shall be of a type that is non-locking against egress and operated with a single motion. The use of hooks and eyes, bolts, bars, and similar devices is prohibited on any door provided for exiting purposes or designated as an exit when camp is in use~~. IN EVERY BUILDING OR STRUCTURE, EXITS MUST BE ARRANGED AND MAINTAINED SO AS TO PROVIDE FREE AND UNOBSTRUCTED EGRESS FROM ALL PARTS OF THE BUILDING OR STRUCTURE AT ALL TIMES WHEN IT IS OCCUPIED. NO LOCK OR FASTENING TO PREVENT FREE ESCAPE FROM THE INSIDE OF ANY BUILDING CAN BE INSTALLED. ONLY PANIC HARDWARE OR SINGLE-ACTION HARDWARE IS PERMITTED ON A DOOR OR ON A PAIR OF DOORS. ALL DOOR HARDWARE MUST BE WITHIN THE REACH OF CHILDREN.

~~I~~H. ~~When occupancy of a building exceeds 100 persons,~~ eExit doors ~~shall~~ MUST be equipped only with panic OR SINGLE-ACTION hardware.

J. ~~The means of egress or the entire passage to free and safe ground remote from a building shall be unobstructed for easy travel conditions at all times.~~

~~K~~I. There ~~shall~~ MUST be fifteen (15) square feet per occupant in any room having an occupant load of more than FIFTY (50) persons where fixed seaTs are not installed and which is used for classroom, assembly, or similar purposes. The maximum occupancy ~~shall~~ MUST be posted in a conspicuous place near the main exit from the room.

~~L. In an assembly area or classroom such as a recreation room, dining hall, chapel or gymnasium, each door from that room occupied by campers shall enter a one-hour fire-rated corridor between exits or there shall be a direct egress to the outside from each such room.~~

~~M. Where a sleeping occupancy is maintained on the floor over a basement area or on a second floor, the ceiling of the basement or first floor shall be protected with five-eighths inch United Underwriters Laboratory-listed gypsum wallboard or any other proven assembly of materials that will provide a minimum one-hour resistance to fire, unless such construction is of solid or laminated wood timbers not less than three 3 inches in thickness and installed so as to be smoke tight.~~

~~N~~J. Furnaces, fireplaces, heaters, or wood-burning stoves ~~shall~~ MUST meet the following regulations:

1. ~~Furnaces such as forced-air furnaces or hot water boilers~~ ALL HEATING UNITS ~~shall~~ MUST be INSTALLED IN COMPLIANCE WITH LOCAL ORDINANCE ~~separated from the rest of the building by one-hour fire-resistive material (see Section 7.711.75, M) provided with adequate outside combustion air, installed~~ and maintained with safety devices to prevent fire, explosions, and other hazards. NO OPEN-FLAME GAS OR OIL STOVES, UNSCREENED FIREPLACES, HOT PLATES, OR UNVENTED HEATERS CAN BE USED FOR HEATING PURPOSES. ALL HEATING ELEMENTS, INCLUDING HOT WATER PIPES, MUST BE INSULATED OR INSTALLED IN SUCH A WAY THAT CHILDREN CANNOT COME IN CONTACT WITH THEM.

~~2. Only heaters installed with permanent connections and protectors shall be used~~.

~~3. All heaters installed shall be U.L. approved and installed according to manufacturers' specifications.~~

~~4. Boilers used for hot water supply rated at over 200,000 BTU or any boiler used for building heating shall be inspected and a certificate provided as required by the Division of Labor.~~

~~5~~2. A heater or wood-burning stove ~~shall~~ MUST be located and/or protected in such a manner as to prevent injuries to occupants of the building.

~~6~~3. Wood-burning stoves ~~shall~~ MUST be regularly cleaned of ashes, which are immediately removed from the building and properly stored.

~~7~~. ~~Fireplaces shall be protected by a screen or glass device.~~

~~8~~4. Space around furnaces, heaters, and wood-burning stoves ~~shall~~ MUST not be used for storage.

~~9~~5. ~~Fire hazards~~ NOTHING FLAMMABLE OR ~~and~~ combustible ~~materials such as paper and rags shall not be permitted to accumulate upon the premises and shall not~~ CAN be stored ~~near~~ WITHIN THREE (3) FEET OF A FURNACE OR HOT water heater~~, furnaces, heaters, stoves~~.

~~P~~K. ~~Ammunition,~~ ALL firearms~~, explosives, power tools, and special equipment involving unusual risk shall~~ MUST be ~~stored in a~~ locked AND INACCESSIBLE TO ~~place not occupied by~~ children. THIS INCLUDES, BUT IS NOT LIMITED TO AIR RIFLES, BB GUNS, AND PAINTBALL GUNS. AMMUNITION MUST BE LOCKED AND STORED SEPARATELY~~. and shall always be under the custody and direct supervision of authorized personnel when in use.~~

L. POWER TOOLS, EXPLOSIVES AND SPECIAL EQUIPMENT INVOLVING UNUSUAL RISK MUST BE STORED IN A LOCKED PLACE INACCESSIBLE TO CHILDREN, AND MUST ALWAYS BE UNDER THE CUSTODY AND DIRECT SUPERVISION OF AUTHORIZED PERSONNEL WHEN IN USE.

~~Q~~M. ~~All flammables shall be stored in approved containers or storage cabinet or in a building other than buildings which children occupy.~~ VOLATILE SUBSTANCES SUCH AS GASOLINE, KEROSENE, FUEL OIL, AND OIL- BASED PAINTS, FIREARMS, EXPLOSIVES, AND OTHER HAZARDOUS ITEMS MUST NOT BE STORED IN ANY AREA OF THE BUILDING USED FOR CHILDREN UNLESS APPROVED BY THE LOCAL FIRE DEPARTMENT.

~~R~~N. Substances which may be toxic to a child if ingested, inhaled, or handled, including, but not limited to, poisons, drugs, medicines, insecticides, herbicides, rodenticides, bleaches, chemicals,

~~plastic bags~~ and corrosive agents ~~shall~~ MUST be stored in a cabinet or enclosure located in an area not used by children, stored in the original container, and properly labeled.

~~S~~O. Glass doors, walls, or panels ~~shall~~ MUST be clearly marked. Safety glass ~~shall~~ MUST be installed when required.

~~T~~P. Stairways OF A HEIGHT of more than ~~three risers shall~~ THIRTY (30) INCHES MUST be equipped with handrails on each side of the stairways. A stairway which is larger than 88 inches wide ~~shall~~ MUST have an intermediate handrail ~~equidistant~~ EQUAL DISTANCE between the two handrails.

~~U~~Q. All window wells and outside stairwells that are hazardous to children ~~shall~~ MUST be equipped with screens or guards, which ~~shall~~ MUST be attached in such a manner that they may either by removed from the inside or broken in from the outside in case of fire.

~~V~~R. ~~Premises~~ ALL AREAS ACCESSIBLE TO CHILDREN ~~shall~~ MUST be MAINTAINED IN A SAFE CONDITION BY REMOVAL OF DEBRIS, DILAPIDATED STRUCTURES, AND BROKEN OR WORN EQUIPMENT OR DANGEROUS ITEMS. ~~free of all hazards, including, but not linked to, old refrigerators, freestanding walls, open cisterns, grease traps, unsafe fences, worn or hazardous play equipment.~~

7.711.~~75~~5 Fire Safety Provisions [Rev. eff. 4/1/15]

A. Any fire extinguisher used at the camp ~~shall~~ MUST be of a dry chemical type, hung at a level readily available to staff members, and annually inspected by an approved inspector. Indian pump backpack fire extinguishers and fire extinguishers approved for use by the U.S. Forest Services are also acceptable.

1. There must be a fire extinguisher located in the camp kitchen.

2. In each building and/or structure, there must be a fire extinguisher on each floor.

3. In tent areas, there must be a fire extinguisher located within seventy-five (75) feet of each tent or a plan approved by the department.

B. In each camp there must be a fire alarm(s) ~~which~~ THAT sounds a separate and distinctly recognizable tone from all other signaling devices used by the camp. The alarm(s) must be audible throughout the occupied camp premises. The alarm device, once activated, must continue to sound automatically.

C. Within twenty-four (24) hours after arrival at the campsite, all individuals attending the camp must be made familiar with the methods by which the fire alarm may be activated and with procedures to be followed upon notification of fire.

D. Each separate building used for sleeping campers and each multistory building must be protected by a smoke detector on each floor of the building.

E. Areas used for campfires must be cleared and must be away from overhanging branches.

F. Campfires must never be left unattended and must be thoroughly extinguished. Extinguishing equipment must ~~be close at hand~~ IMMEDIATELY ACCESSIBLE.

G. CAMPFIRES AND OPEN FLAMES OF ANY TYPE MUST BE PROHIBITED WITHIN 10 FEET OF ANY TENT OR FABRIC STRUCTURE.

Editor's Notes

History

Sections 7.702; 7.707; 7.712 eff. 05/01/2007.

Sections 7.705, 7.711, 7.712, 7.719 eff. 06/01/2007.

Sections 7.701.2; 7.701.3; 7.708; 7.709; 7.710 eff. 07/30/2007.

Sections 7.701.32-33, 7.710.56.A-J.5 emer. rule eff. 08/03/2007.

Sections 7.710.33.L-M, 7.710.36.A eff. 09/01/2007.

Sections 7.701.32-33; 7.710.56 eff. 10/30/2007.

Sections 7.710.52, 7.710.56 emer. rule eff. 12/07/2007.

Sections 7.710.52; 7.710.56 eff. 01/30/2008.

Section 7.710.32 eff. 04/01/2008.

Sections B&P, 7.701.4, 7.707.42, 7.712.33, eff. 09/01/2008.

Sections 7.709, 7.710.34, 7.710.36 eff. 11/01/2008.

Section 7.707 eff. 01/01/2010.

Sections 7.702.52-7.702.54, 7.702.55.D-7.702.56.A(5), 7.710.1-7.710.25, 7.710.33.A, J, L(6), M, 7.710.34-7.710.42, 7.710.45-7.710.98, 7.716.4-7.716.6.B eff. 05/01/2010.

Section 7.701.33.A emer. rule eff. 09/10/2010.

Section 7.701.33.A eff. 12/01/2010.

Sections 7.716.1, 7.716.2.A.7, 7.716.3 eff. 01/01/2011.

Section 7.710.12 eff. 03/02/2011.

Sections 7.700, 7.701.11, 7.701.2, 7.701.33.A, 7.701.4, 7.720 eff. 04/01/2011.

Section 7.701.33.A-D.1, 7.701.33.H-I emer. rule eff. 08/10/2011.

Sections 7.701.33.A-D.1, 7.701.33.H-I eff. 11/01/2011.

Sections 7.705.9-7.705.96 repealed eff. 01/01/2012; Sections 7.701.2, 7.705.1, 7.705.33, 7.705.42, 7.705.43, 7.714, 7.714.4, 7.714.932 eff. 01/01/2012.

Section 7.17 repealed eff. 02/01/2012.

Section 7.708 eff. 04/01/2012.

Sections 7.701.2, 7.701.31, 7.701.33, 7.701.4, 7.701.9, 7.702.2, 7.702.43, 7.702.91, 7.705, 7.705.22, 7.705.33, 7.705.55, 7.705.6, 7.705.82, 7.705.84, 7.705.100, 7.706, 7.706.1, 7.706.15 - 17, 7.706.19, 7.707.1, 7.707.22, 7.707.31, 7.707.71, 7.707.923, 7.708.11, 7.708.31, 7.708.34-35, 7.708.36, 7.708.61, 7.708.65, 7.709.2, 7.709.21, 7.709.24, 7.710, 7.710.11, 7.710.2, 7.710.21-22, 7.710.24-25, 7.710.33-34, 7.710.36, 7.710.41-42, 7.710.44-45, 7.710.52-53, 7.710.55-56, 7.710.92-93, 7.711.1, 7.712.41-42, 7.712.74, 7.713, 7.713.1, 7.713.21, 7.713.23-25, 7.713.31, 7.713.41, 7.713.56, 7.713.65, 7.714, 7.714.1-2, 7.714.4-5, 7.714.52-53, 7.714.92, 7.714.933, 7.715.11, 7.715.46, 7.715.82, 7.715.84.H, 7.720.41, 7.720.73 eff. 06/01/2012. Sections 7.702.1, 7.705.7, 7.707.32.B.7, 7.710.26, 7.711.75.W, 7.712.1, 7.712.33, 7.718 repealed eff. 06/01/2012.

Sections 7.702.44, 7.708.39.A, 7.709.29.E eff. 07/01/2012.

Section 7.708.11 emer. rule eff. 09/07/2012.

Sections 7.701.21, 7.705.81-82, 7.708.1.B, 7.710.1, 7.710.33.A-J, 7.715.1, 7.715.33, 7.715.43.F-K, 7.715.71.A, 7.721 eff. 09/15/2012.

Sections 7.708.11, 7.708.7 eff. 12/01/2012.

Sections 7.701.2.D, 7.711.1 eff. 04/01/2013.

Sections 7.701.13, 7.701.33 eff. 02/01/2014.

Sections 7.708.21, 7.708.21.I, 7.721.3, 7.721.3.G eff. 07/01/2014.

Section 7.701.35 eff. 08/01/2014.

~~Sections 7.701.100, 7.702.42, 7.702.64, 7.702.73, 7.706.19, 7.707.6, 7.707.75, 7.711.76, 7.712.32, 7.712.74 eff. 04/01/2015. Section 7.702.93 repealed eff. 04/01/2015.~~

~~Sections 7.701.2, 7.701.4, 7.706.1 eff. 10/01/2015.~~

~~Sections 7.701.200, 7.705.22.A, 7.705.83, 7.708.39, 7.708.39, 7.708.61, 7.708.61.K, 7.708.65, 7.709.22, 7.709.22.I, 7.709.25, 7.709.25.E, 7.710.43, 7.710.43.H-.I eff. 11/01/2015.~~

~~Sections 7.701.2, 7.701.32, 7.701.33, 7.701.34, 7.701.56, 7.708, 7.708.1, 7.708.11, 7.708.2-7.708.21-7.708.26, 7.708.3-7.708.31, 7.708.33, 7.708.34, 7.708.35, 7.708.36, 7.708.37, 7.708.38, 7.708.39, 7.708.41, 7.708.42, 7.708.43, 7.708.46, 7.708.51, 7.708.52, 7.708.61, 7.708.62, 7.708.63, 7.708.64, 7.708.65, 7.708.67, 7.708.7, 7.708.71, 7.708.72, 7.708.74, 7.710, 7.710.1, 7.710.3-7.710.31, 7.710.33, 7.710.34, 7.710.36, 7.710.52 eff. 01/01/2016.~~

~~Sections 7.702-7.702.94 eff. 02/01/2016.~~

CCDBG REAUTHORIZATION REQUIREMENT – PURPLE
PROVIDER/STAKEHOLDER REQUESTED CHANGE-GREEN
RULE CLARIFICATION – BLUE
TECHNICAL CLEAN UP/RULE REDUCTION-RED

7.712 RULES REGULATING SCHOOL-AGE CHILD CARE CENTERS

All school-age child care centers must comply with the "General Rules for Child Care Facilities" as well as the "Rules Regulating School-Age Child Care Centers" and the "Rules and Regulations Governing the HEALTH and Sanitation of Child Care ~~Centers~~ FACILITIES in the State of Colorado."

7.712.1 (None) [Rev. eff. 6/1/12]

7.712.2 DEFINITIONS [Rev. eff. 3/1/18]

A. A "school-age child care center" (hereafter referred to as the "center") is a child care center that provides care for five (5) or more children who are between five (5) and ~~sixteen (16)~~ EIGHTEEN (18) years of age. CHILDREN FOUR (4) YEARS OF AGE, WHO WILL TURN FIVE (5) ON OR BEFORE OCTOBER 15TH OF THE CURRENT CALENDAR YEAR, MAY ATTEND THE CENTER AS PART OF A "BUILDING-BASED SCHOOL-AGE CHILD CARE PROGRAM" OR "BUILDING-BASED DAY CAMP" SUMMER PROGRAM PRIOR TO THEIR KINDERGARTEN YEAR. ~~The center's purpose is to provide child care and/or an outdoor recreational experience using a natural environment.~~ The center operates for more than one week during the year. The term includes facilities commonly known as "day camps,"~~,~~ "summer camps,"~~,~~ "summer playground programs,"~~,~~ "before and after school programs,"~~,~~ and "extended day programs."~~.~~ This includes centers operat~~ed~~ING with or without compensation for such care, and with or without stated educational purposes.

B. A "building-based school-age child care program" is a child care program that provides care for five (5) or more children who are between five (5) and ~~sixteen (16)~~ EIGHTEEN (18) years of age. The center is located in a building that is regularly used for the care of children.

C. A "day camp" is a school-age child care program which operates at least four (4) hours a day primarily during one season of the year, and during school vacation periods for children between five (5) and eighteen (18) years of age, which accepts registrations for finite, not necessarily contiguous sessions. Programs may operate daily between 6:00 a.m. and 10:00 p.m. Day camp programs may ~~incidentally~~ offer ~~not~~ NO more than two overnight stays each camp session. ~~The~~

~~day camp provides a creative recreational and educational opportunity through group oriented programs. The day camp utilizes trained leadership and the resources of the natural surroundings to contribute to each child's mental, physical, social, and personal growth.~~

The types of day camps are as follows:

1. A "building based day camp" is a child care program that provides care for five (5) or more children who are between five (5) and eighteen (18) years of age. The day camp is located in a building which, along with the outdoor surroundings, is regularly used by the program.

2. A "mobile day camp" is a child care program that provides programming for five (5) or more children who are at least seven (7) years of age or who have completed the first grade. Children move from one site to another by means of transportation provided by the governing body of the program. The program uses no permanent building on a regular basis. Mobile day camp programs may operate in multiple sites, IN A SINGLE COUNTY, under one license.

3. An "outdoor-based day camp" is a child care program that provides care or five (5) or more children who are at least seven (7) years of age or have completed the first grade. The day camp ~~uses no~~ DOES NOT USE A permanent building on a regular basis and provides programming in a permanent outdoor or park setting.

7.712.3 POLICIES AND PROCEDURES

7.712.31 Statement of Policies and Procedures [Rev. eff. 6/1/07]

A. At the time of enrollment, and upon amendments to policies and procedures, the center must give the parent(s)/guardian(s) the center's policies and procedures, and provide the opportunity to ask questions. Written copies must be available either electronically or in hard copy. The center must obtain a signed document stating that the parent(s)/guardian(s) have received the policies and procedures, and by signing the policies and procedures document, the parent(s)/guardian(s) agree to follow, accept the conditions of, and give authorization and approval for the activities described in the policies and procedures. Policies must include the following:

1. The center's purpose and its philosophy on child care;

2. The ages of children accepted;

3. Services offered for special needs children in compliance with the Americans with Disabilities Act (see Section 7.701.14, General Rules for Child Care Facilities);

4. The hours and dates when the center is in operation, specific hours during which special activities are offered, AND holidays when the center is closed;

5. The policy regarding ~~severe~~ INCLEMENT weather;

6. The procedure concerning admission and ~~registration~~ ENROLLMENT of children;

7. An itemized fee schedule;

8. The procedure ~~for identifying where children are at all times~~ TO ENSURE THE LOCATION OF CHILDREN IS KNOWN AT ALL TIMES, HOW CHILDREN ARE ACCOUNTED FOR THROUGHOUT THE DAY, AND THAT CHILDREN ARE SUPERVISED AT ALL TIMES BY THEIR ASSIGNED STAFF MEMBER;

9. The center's procedure on guidance, positive instruction, supporting positive behavior, discipline and consequences, including how the center will:

   a. Cultivate positive child, staff and family relationships;

   b. Create and maintain a socially and emotionally respectful early learning and care environment;

   c. Implement teaching strategies supporting positive behavior, pro-social peer interaction, and overall social and emotional competence in young children;

   d. Provide individualized social and emotional intervention supports for children who need them, including methods for understanding child behavior; and developing, adopting and implementing a team-based positive behavior support plan with the intent to reduce challenging behavior and prevent suspensions and expulsions; and

   e. Access an early childhood mental health consultant or other specialist as needed.

10. The procedure~~, including notification of parents and guardians,~~ for handling children's illnesses, accidents, and injuries, INCLUDING WHEN CHILDREN WILL BE EXCLUDED FROM CARE AND NOTIFICATION OF PARENTS/GUARDIANS;

11. The procedures ~~for handling~~ FOLLOWED ~~lost children~~ WHEN IT HAS BEEN IDENTIFIED A CHILD IS SEPARATED FROM THEIR GROUP AND NOT UNDER THE DIRECT SUPERVISION OF THEIR ASSIGNED STAFF MEMBER. ~~and other emergencies at all times, including during field trips. An outline of a plan of action in case of natural disaster is found at Section 7.712.83, G;~~

12. The procedure for transporting children, if applicable, including transportation arrangements and parental permission for excursions and related activities;

13. The written policy and procedure governing field trips, television and video viewing, and special activities, including the staff's ~~responsibility~~ ROLE for the supervision of children;

14. The ~~policy~~ PROCEDURE on children's safety related to riding in a vehicle, seating, supervision, and emergency procedures on the road;

15. The procedure for releasing children from the center only to persons for whom the center has written authorization;

16. The procedures followed when a child is picked up from the center after the closing hours of the center or not picked up at all, and the procedure to ensure that all children are picked up before the staff leave for the day;

17. The procedure for caring for children who arrive late to the center and their class/group is away from the center on a field trip or excursion;

18. The procedure for STORING AND administering children's medicines and delegation of medication administration in compliance with Section 12-38-132, C R S., of the "Nurse Practice Act.";

19. The procedure concerning children's personal belongings and money;

20. The policy concerning meals and snacks;

21. The policy AND PROCEDURE regarding visitors;

22. The procedure for filing a complaint about child care (see Section 7.701.5. General Rules for Child Care Facilities);

23. The ~~policy~~ PROCEDURE regarding the reporting of SUSPECTED OR KNOWN child abuse AND/OR NEGLECT (see Section 7.701.5 General Rules for Child Care Facilities);

24. ~~The policy regarding the child care facilities' responsibility to notify parents or guardians when the program will no longer be able to serve children~~ THE POLICY FOR NOTIFICATION WHEN CHILD CARE SERVICE IS WITHDRAWN BY THE PROGRAM, OR WHEN PARENTS OR GUARDIANS WITHDRAW THEIR CHILD(REN) FROM THE CENTER;

25. ~~The policy regarding the parent's or guardian's responsibility to notify the child care program when parents or guardians withdraw their child(ren) from the PROGRAM~~ THE PROCEDURE, IF APPLICABLE, FOR TRANSITIONING CHILDREN BETWEEN SCHOOL OR COMMUNITY SPONSORED ACTIVITIES; and

26. ~~What~~ THE POLICY ON THE steps ~~are taken~~ THE CENTER WILL TAKE prior to the suspension, expulsion or request to parents/~~ or~~ guardians to withdraw a child from care due to concerns about the child's behavioral issues. These procedures must be consistent with the center's policy on guidance, positive instruction, discipline and consequences, and include documentation of the steps taken to understand and respond to challenging behavior.

7.712.32 Communication, Emergency, and Security Procedures [Rev. eff. 4/1/15]

A. The center must notify the parents/~~ or~~guardians in writing of significant changes in its services, policies, or procedures so that they can decide whether the center continues to meet the needs of the child(ren).

B. For security purposes, a DAILY sign-in/sign-out sheet or other mechanism for parents/ ~~and~~ guardians must be maintained ~~daily~~ by the center It must include, for each child in care, the date, the child's name, the time when the child arrived ~~at~~ and left the center, and the parent/~~ or~~ guardian's signature or other identifier. With A parent/ ~~or~~ guardian's approval, a child FIVE (5) YEARS OF AGE OR OLDER may sign in and out instead of the parent/ ~~or~~ guardian. Staff must verify attendance periodically throughout the day.

~~C. Each center is required to have a written mission statement. This statement must be kept on file, updated periodically, and made known to staff and to parents and guardians, and must be available during the licensing inspection.~~

~~D~~C. During the hours the center is in operation, the center must provide an office and/or monitored telephone number known to the public and available to parents/GUARDIANS in order to provide immediate access to the center.

~~E~~D. If the center has a permanent site, there must be a telephone at the site.

~~F. Centers must have an established means of communication between staff and the program office when children are being transported or are away from the permanent site on a field trip.~~

~~G~~E. Emergency telephone numbers must be posted at each permanent site and taken on all field trips and during mobile school-age child care programs. The emergency numbers must include, at a minimum, 911, ~~if available,~~ or A rescue unit if 911 isn't available; the clinic or hospital nearest to the activity location; ambulance service; fire, police, and health departments; and Rocky Mountain Poison Control.

~~H~~F. Mobile school-age child care programs must have a way to be contacted while in transit.

~~I~~G. The center must be able to provide emergency transportation to a health care facility at all times either via program vehicle or the emergency medical services system.

~~J~~H. The director of the center or the director's delegated substitute must have a means for determining ~~at all times~~ who is present at the center AT ALL TIMES.

~~K~~I. A written policy regarding visitors to the center must be posted and a record maintained daily by the center that includes, at a minimum, the visitor's name and address and the purpose of the visit. At least one piece of identification must be inspected for individuals who are strangers to personnel at the center.

~~L~~J. With the exception of children who are allowed to sign themselves in and out, the center must release A ~~the~~ child only to the adult(s) for whom written authorization has been given and is maintained in the child's record (see Section 7.712.81). In an emergency, the child(REN) may also be released to an adult for whom the child's parent or guardian has given verbal authorization. If the staff member who releases the child does not know the adult, identification must be required to assure that the adult is authorized to pick up the child.

~~M~~K. The center must have a procedure for dealing with individuals not authorized by the parent/~~ or~~ guardian of a child who attempts to have the child released to them.

~~N~~L. The center must have a written emergency procedure that explains how AND WHEN it will report communicable illnesses to the local, health department pursuant to regulations of the State Department of Public Health and Environment.

~~O~~M. The center must have a written procedure for closing the center at the end of the day to ensure that all children are picked up.

7.712.4 PERSONNEL

7.712.41 General Requirements for All Personnel [Rev. eff. 6/1/12]

A. ~~All personnel of the center must demonstrate an interest in and knowledge of children and concern for their proper care and well-being.~~ ALL PERSONNEL AND VOLUNTEERS AT THE CENTER MUST DEMONSTRATE KNOWLEDGEABLE DECISION-MAKING, JUDGMENT, AND CONCERN FOR THE PROPER CARE AND WELL-BEING OF CHILDREN.

B. All personnel AND VOLUNTEERS must be free from illness and conduct that would endanger the health, safety, or well-being of children.

~~C. The center must determine if any staff person who works at the center has ever been convicted of a crime as listed at Section 7.701.33, D, 5 or 6, of the General Rules for Child Care Facilities.~~

~~D~~C. A criminal record check request for all ~~in-state~~ staff must be submitted to the Colorado Bureau of Investigation ~~within five (5) days that an individual is employed by the center~~. The personnel file of ~~in-state~~ staff members of the center must contain clearance ~~or arrest~~ report from the Colorado Bureau of Investigation ~~resulting from the caregiver's criminal record check~~. The requirement for a

criminal record check is found in Section 7.701.33 of the General Rules for Child Care Facilities. Seasonal staff that indicate that they will not be returning to the program for employment ~~shall~~ MUST be removed from the CBI list for the program.

~~E. A request for a review of the State Department's automated system must be made within ten (10) working days of each staff member's first day of employment. The method for making the request is found in 7.701.32 (General Rules for Child Care Facilities).~~

~~F~~D. Each staff member and REGULAR volunteer must ~~furnish the center with information concerning chronic health problems, any known drug reactions, allergies, medications being taken, and/or other health problems that could affect the staff member's ability to perform the duties of the job assigned~~ COMPLETE AN ANNUAL HEALTH HISTORY. THE HEALTH HISTORY MUST BE MAINTAINED IN A SECURE LOCATION.

~~G~~E. The duties and responsibilities of each staff position and the lines of authority and responsibility within the center must be in writing. At the time of employment, staff members must be informed of their duties and assigned a supervisor.

~~H~~F. Prior to working with children, the staff member must read and be instructed on the policies and procedures of the center, including those relating to hygiene, sanitation, food preparation practices, proper supervision of children, and reporting of child abuse. Staff members must sign a statement indicating that they have read and understand the center's policies and procedures.

~~I~~G. Day camp staff ~~shall~~ MUST receive a minimum of fifteen (15) hours of pre-camp training, ~~not including~~ IN ADDITION TO DEPARTMENT-APPROVED First Aid and CPR. Pre-camp training must include all training activities that staff MEMBERS participate in as a whole. Training should include, but not be limited to, familiarizing staff with the camp mission, site emergency policy and procedures, how to supervise and facilitate activities with campers, and health care policies and procedures. Policies and procedures must be in writing. Staff will be supervised and additional training may be provided if needed. Day camps must have a system in place to provide staff the essential training information for late hires.

~~J~~H. The center must have a staff development plan that includes a minimum of fifteen (15) clock hours of ONGOING training each year for all staff. This requirement does not apply to day camps. ~~This training must relate to one or more of the following general areas: child growth and development, healthy and safe environment, developmentally appropriate practices, guidance, family relationships, cultural and individual diversity, and professionalism. At least three (3) clock hours per year must be in the focus of social emotional development.~~ The fifteen (15) clock hours of training does not include recertification in First Aid and CPR. ONGOING TRAINING AND COURSES MUST DEMONSTRATE A DIRECT CONNECTION TO ONE OR MORE OF THE FOLLOWING COMPETENCY AREAS:

1. CHILD GROWTH AND DEVELOPMENT, AND LEARNING OR COURSES THAT ALIGN WITH THE COMPETENCY DOMAINS OF CHILD GROWTH AND DEVELOPMENT;

2. CHILD OBSERVATION AND ASSESSMENT;

3. FAMILY AND COMMUNITY PARTNERSHIP;

4. GUIDANCE;

5. HEALTH, SAFETY AND NUTRITION;

6. PROFESSIONAL DEVELOPMENT AND LEADERSHIP;

7. PROGRAM PLANNING AND DEVELOPMENT;

8. TEACHING PRACTICES:

a. EACH ONE (1) SEMESTER HOUR COURSE WITH A DIRECT CONNECTION TO THE COMPETENCY AREA LISTED IN SECTION 7.712.41, J, 1-8, TAKEN AT A REGIONALLY ACCREDITED COLLEGE OR UNIVERSITY MAY COUNT AS FIFTEEN (15) CLOCK HOURS OF ONGOING TRAINING.

b. TRAINING HOURS COMPLETED CAN ONLY BE COUNTED DURING THE YEAR TAKEN AND CANNOT BE CARRIED OVER.

I. TO BE COUNTED FOR ONGOING TRAINING, THE TRAINING CERTIFICATE MUST HAVE DOCUMENTATION THAT INCLUDES:

1. THE TITLE OF THE TRAINING; AND,

2. THE COMPETENCY DOMAIN; AND,

3. THE DATE AND CLOCK HOURS OF THE TRAINING; AND,

4. THE NAME OR SIGNATURE, OR OTHER APPROVED METHOD OF VERIFYING THE IDENTITY OF TRAINER OR ENTITY; AND,

5. EXPIRATION OF TRAINING IF APPLICABLE; AND,

6. CONNECTION TO SOCIAL EMOTIONAL FOCUS IF APPLICABLE.

~~K~~J. All staff MEMBERS must complete a ~~d~~Department~~-~~approved standard precautions training ~~that meets current occupational safety and health administration (OSHA) requirements~~ prior to working with children. This training must be renewed annually and may count toward~~s~~ ongoing training requirements.

~~L~~K. ~~Effective DECEMBER 31, 2016 a~~All staff MEMBERS must complete a building and physical premises safety training prior to working with children. The training must include:

a. Identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water~~,~~ and vehicular traffic; and

b. Handling and storage of hazardous materials and the appropriate disposal of bioLOGICAL contaminants.

~~M~~L. ~~Effective December 31, 2016 each provider or~~ ALL staff memberS responsible for the collection, review and maintenance of the child immunizations records must complete the Colorado Department of Public Health and Environment (CDPHE) immunization course within ~~thirty (~~30~~)~~ calendar days of employment. This training must be renewed annually and may count towards ongoing training requirements.

~~N~~M. ~~Effective December 31, 2016 each provider,~~ ALL staff memberS ~~or~~ AND regular volunteerS must complete a ~~d~~Department~~-~~approved training about child abuse prevention, including common symptoms and signs of child abuse within ~~thirty (~~30~~)~~ calendar days of employment. This training must be renewed annually and may count towards ongoing training requirements.

7.712.42 Required Personnel and Qualifications [Rev. eff. 6/1/12]

A. Program Director

Each center must have an on-site program director who ~~shall~~ MUST be at least twenty-one (21) years of age. The program director must have demonstrated to the hiring authority maturity of judgment, administrative ability~~,~~ and the skill to appropriately supervise and direct school-age children in an unstructured setting.

1. The program director must have verifiable education or training in work with school-age children in such areas as recreation, education, scouting~~,~~ or 4-H; and the program director must have completed at least one of the following qualifications:

   a. A four (4) year college degree with a major such as recreation, OUTDOOR EDUCATION, education with a specialty in art, elementary or early childhood education, or a subject in the human service field; or

   b. Two years of college training and six (6) months (910 HOURS) of satisfactory and verifiable full-time or equivalent part-time, paid or volunteer, experience, since attaining the age of eighteen (18), in the care and supervision of four (4) or more children; or

   c. ~~Three years of satisfactory and verifiable full-time or equivalent part-time, paid or volunteer, experience, since attaining the age of eighteen (18), in the care and supervision of four (4) or more children. The program director must complete six (6) semester hours, nine (9) quarter hours in course work from a regionally accredited college or university, or forty (40) clock hours of training in course work applicable to school-age children within the first nine (9) months of employment.~~ THREE YEARS (5460 HOURS) OF SATISFACTORY AND VERIFIABLE FULL-TIME OR EQUIVALENT PART-TIME, PAID OR VOLUNTEER, EXPERIENCE AND ONE OF THE FOLLOWING QUALIFICATIONS:

      1) COMPLETE SIX SEMESTER HOURS, OR NINE QUARTER HOURS IN COURSE WORK FROM A REGIONALLY ACCREDITED COLLEGE OR UNIVERSITY; OR

      2) 40 CLOCK HOURS OF TRAINING IN COURSE WORK APPLICABLE TO SCHOOL-AGE CHILDREN AND THE DEPARTMENT-APPROVED COURSES IN INJURY PREVENTION, AND PLAYGROUND SAFETY FOR SCHOOL-AGED CHILD CARE CENTERS WITHIN THE FIRST NINE MONTHS OF EMPLOYMENT.

1. ~~The program director is responsible for planning and implementing the program and supervising the staff.~~ SATISFACTORY EXPERIENCE INCLUDES EXPERIENCE IN THE CARE AND SUPERVISION OF FOUR OR MORE CHILDREN FROM THE AGES OF FOUR (4)-EIGHTEEN (18) YEARS OLD, UNRELATED TO THE INDIVIDUAL, SINCE ATTAINING THE AGE OF EIGHTEEN (18).

2. THE PROGRAM DIRECTOR IS RESPONSIBLE FOR PLANNING AND IMPLEMENTING THE PROGRAM AND SUPERVISING THE STAFF.

B. Program Leaders

EACH PROGRAM LEADER MUST BE AT LEAST 18 YEARS OF AGE, DEMONSTRATE ABILITY TO WORK WITH CHILDREN, AND MUST MEET THE FOLLOWING QUALIFICATIONS:

1. COMPLETE THE DEPARTMENT-APPROVED COURSE IN INJURY PREVENTION;

2. COMPLETE THE DEPARTMENT-APPROVED COURSE IN PLAYGROUND SAFETY FOR SCHOOL-AGED CHILD CARE CENTERS. THIS REQUIREMENT DOES NOT APPLY TO DAY CAMPS THAT DO NOT REGULARLY USE A PLAYGROUND.; AND

3. ~~Program leaders must be at least eighteen (18) years of age and demonstrate an ability to work with children. Program leaders m~~Must have at least three (3) months (460 HOURS) of full-time or equivalent part-time satisfactory and verifiable experience with school-age children.

C. Program Aides

1. Program aides ~~shall~~ MUST be at least sixteen (16) years of age. Program aides ~~shall shall~~ MUST work directly under the supervision of the program director or program leaders and ~~shall shall~~ MUST never be left alone with children.

2. Program aides can be counted as staff in determining child care staff ratios.

D. DEPARTMENT- APPROVED CHILD CARE HEALTH CONSULTANT

1. STAFF MUST CONSULT WITH A CURRENT DEPARTMENT-APPROVED COLORADO CHILD CARE HEALTH CONSULTANT. TO BE APPROVED THE CHILD CARE HEALTH CONSULTANT MUST BE ONE OF THE FOLLOWING: A LICENSED REGISTERED NURSE WITH KNOWLEDGE AND EXPERIENCE IN MATERNAL AND CHILD HEALTH, A PEDIATRIC NURSE PRACTITIONER, A FAMILY NURSE PRACTITIONER, OR A PEDIATRICIAN. THE CONSULTATION MUST BE SPECIFIC TO THE NEEDS OF THE FACILITY AND INCLUDE SOME OF THE FOLLOWING TOPICS: TRAINING, DELEGATION AND SUPERVISION OF MEDICATION ADMINISTRATION AND SPECIAL HEALTH PROCEDURES, HEALTH CARE, HYGIENE, DISEASE PREVENTION, EQUIPMENT SAFETY, INTERACTION BETWEEN CHILDREN AND ADULT CAREGIVERS, AND NORMAL GROWTH AND DEVELOPMENT. CONSULTATION MUST OCCUR AS OFTEN AS THE CHILD CARE HEALTH CONSULTANT WHO IS DELEGATING MEDICATIONS AND/OR MEDICAL PROCEDURES REQUIRES.

2. THE DATE AND CONTENT OF EACH CONSULTATION MUST BE RECORDED AND MAINTAINED IN THE CENTER'S FILES.

3. THE CENTER MUST MAINTAIN DOCUMENTATION INCLUDING THE CHILD CARE HEALTH CONSULTANT'S (CCHC) DEPARTMENT OF REGULATORY AGENCIES (DORA) PROOF OF RN OR MD CURRENT LICENSURE IN GOOD STANDING, A BRIEF BIOGRAPHY HIGHLIGHTING APPLICABLE KNOWLEDGE, EXPERIENCE AND APPROXIMATE DATES WORKED AS A SCHOOL NURSE OR CHILD CARE HEALTH CONSULTANT COMMENCED.

4. CHILD CARE HEALTH CONSULTANTS (CCHC) MUST COMPLETE THE DEPARTMENT-APPROVED CHILD CARE HEALTH CONSULTANT (CCHC) TRAINING PRIOR TO CONSULTING WITH THE CENTER. THE CENTER MUST OBTAIN AND MAINTAIN PROOF OF COURSE COMPLETION.

5. ALL CHILD CARE HEALTH CONSULTANTS (CCHC) MUST COMPLETE THE DEPARTMENT-APPROVED COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT (CDPHE) IMMUNIZATION COURSE ANNUALLY.

~~D~~E. Employment of maintenance staff, including kitchen service, grounds, and housekeeping employees less than sixteen (16) years of age, must be in compliance with Colorado labor laws.

F. AT LEAST ONE STAFF MEMBER WITH CURRENT DEPARTMENT-APPROVED MEDICATION ADMINISTRATION TRAINING AND DELEGATION MUST BE ON DUTY AT ALL TIMES.

~~E~~G. First Aid and CPR Certified Staff

1. For every thirty (30) or fewer children in attendance, there must be at least one (1) staff member who holds ~~a~~ current Department-approved First Aid, and ~~safety certificate that includes~~ CPR for all ages of children. Such individuals must be with the children at all times when the center is in operation. If children are at different locations, there must be a First Aid and CPR qualified staff member at each location. In a day camp, all staff MEMBERS ~~that~~ WHO are eighteen (18) years of age and ~~over~~ OLDER ~~are required to~~ MUST have ~~a~~ current DEPARTMENT-APPROVED First Aid and CPR certificate~~S from a nationally recognized provider~~. Uncertified staff MEMBERS must work with another certified staff member.

2. All employees caring for children, not required by rule to be certified in First Aid and CPR, must complete a DEPARTMENT-APPROVED basic First Aid and CPR module within THIRTY (30) calendar days of employment and the module must be renewed every TWO (2) years.

7.712.43 Required Staff Supervision [Rev. eff. 6/1/07]

A. A program director must be present at the center at least 60~~%~~ PERCENT of any day the center is in operation. An individual who meets one of the following requirements must be present for the remaining 40~~%~~ PERCENT of the day:

1. A QUALIFIED program leader who is at least twenty-one (21) years of age ~~and has at least three (3) months of full-time or equivalent part time verifiable experience working with children~~; OR

2. A QUALIFIED program leader who is at least eighteen (18) years of age and has at least one (1) year (1820 HOURS) full-time or equivalent part-time verifiable experience working with children; or

3. Two QUALIFIED program leaders who are at least nineteen (19) years of age ~~and have at least three (3) months of full-time or equivalent part-time verifiable experience working with children~~.

B. If the program director cannot be present 60 PERCENT ~~%~~ of any day the center is in operation, an individual who meets program director qualifications must substitute for the director.

C. There must be at least one (1) program leader providing supervision with each group of THIRTY (30) or fewer children cared for by the center. ~~At all times, staff must be actively supervising children.~~ WHEN FOUR (4) YEAR OLDS ARE IN ATTENDANCE, THERE MUST BE AT LEAST ONE PROGRAM LEADER PROVIDING SUPERVISION WITH EACH GROUP OF TWENTY-FOUR (24) OR FEWER CHILDREN CARED FOR BY THE CENTER.

D. THE MAXIMUM GROUP SIZE FOR CHILDREN OVER THE AGE OF FIVE (5) IS THIRTY (30) CHILDREN. WHEN FOUR (4) YEAR OLDS ARE IN ATTENDANCE THE MAXIMUM GROUP SIZE IS TWENTY-FOUR (24). WHEN THE CENTER HAS THE CAPACITY TO CARE FOR MULTIPLE GROUPS OF CHILDREN, THEY MUST BE SEPARATED INTO DEVELOPMENTALLY AND AGE APPROPRIATE ACTIVITIES. GROUPS ARE NOT REQUIRED TO BE SEPARATED FROM EACH OTHER BY PERMANENT OR PORTABLE DIVIDERS OR WALLS.

E. GROUP SIZE FOR CHILDREN IN CARE MAY BE EXCEEDED FOR ATTENDANCE TIME, MEAL AND SNACK TIME, SPECIAL OCCASIONS AND ACTIVITIES. THE ROOM CAPACITY MUST NOT BE EXCEEDED.

~~D~~F. There must be one (1) staff member for each fifteen (15) children in attendance. WHEN FOUR (4) YEAR OLDS ARE IN ATTENDANCE, THERE MUST BE AT LEAST ONE STAFF MEMBER FOR EACH TWELVE (12) OR FEWER CHILDREN CARED FOR BY THE CENTER.

Ages of Children	Number of Staff	Maximum Group Size
Mixed age group with 4 year olds	1 staff member to 12 children	24 children
5 years and older	1 staff member to 15 children	30 children

~~E~~G. At any time when nine (9) or more children are ~~present~~ IN CARE at the center, there must be at least one (1) program leader actively supervising children and another responsible person at least sixteen (16) years of age on the premises. When EIGHT ~~8~~ or fewer children are present, there must be at least ONE (1) program leader on duty and a second staff member on call ~~and~~ WHO IS immediately available in an emergency.

~~F~~H. At all times, school-age child care personnel must be ~~actively~~ DIRECTLY supervising the children.

~~G~~I. In a mobile day camp program, ~~or~~ an outdoor-based day camp program, OR ANYTIME A BUILDING BASED PROGRAM IS AWAY FROM THE FACILITY, the staff ratio given at Section 7.712.43, ~~C and D~~F, must be maintained, but there must be at least two (2) program leaders at all times with the children.

7.712.44 Volunteers [Rev. eff. 11/1/98]

A. If volunteers are used by the center, there must be a clearly established policy in regard to their function, orientation, and supervision.

B. REFERENCES MUST BE OBTAINED FOR ~~I~~f volunteers WHO are counted in the staff to child ratio, ~~references must be obtained for them~~ consistent with Section ~~7.712.41, D~~7.701.33B.

C. ~~Volunteers must have qualifications suitable to the tasks assigned~~ VOLUNTEERS THAT WORK MORE THAN FOURTEEN (14) CALENDAR DAYS (112 HOURS) PER CALENDAR YEAR WHO ARE USED TO MEET STAFF TO CHILD RATIO MUST BE EQUALLY QUALIFIED AS A PROGRAM DIRECTOR, PROGRAM LEADER OR PROGRAM AIDE AND MUST HAVE COMPLETE STAFF RECORDS AS DEFINED IN 7.712.82.

D. Volunteers UNLESS EQUALLY QUALIFIED must be~~:~~

~~1.~~ ~~D~~irectly supervised by a program director or program leader~~; and~~.

~~2~~E. VOLUNTEERS MUST BE Given instruction as to the center's policies and procedures.

7.712.5 CHILD CARE SERVICES

7.712.51 Admission Procedure [Rev. eff. 6/1/07]

A. The center can accept children only of the ages AND CAPACITY for which it has been licensed. ~~At no time can the number of children in attendance exceed the number for which the center has been licensed.~~

B. Admission procedures must be completed prior to the child's ~~attendance~~ FIRST DAY IN CARE at the center and must include:

1. Completion of the registration information for inclusion in the child's record, as required in Section 7.712.81; and

2. Providing the parent(s)/ ~~or~~ guardian(s) with a copy of the center's policies and procedures.

7.712.52 Health Care [Rev. eff. 6/1/07]

~~A. Statements of Health Status~~

~~1. At the time of admission, health information must be provided for every child entering the center, including any known drug reactions and allergies, medications being taken, and any special diets required. The name, address, and phone number of the child's physician and dentist must be provided.~~

A. STATEMENTS OF HEALTH STATUS

1. AT THE TIME OF ENROLLMENT, THE PARENT(S)/GUARDIAN(S) MUST PROVIDE FOR EACH CHILD ENTERING THE CENTER:

a. A COMPLETE HEALTH HISTORY FOR EACH CHILD, INCLUDING ANY COMMUNICABLE DISEASES, CHRONIC ILLNESSES OR INJURIES, KNOWN DRUG REACTIONS AND ALLERGIES, CURRENT MEDICATIONS AND ANY SPECIAL DIETS NEEDED, THE NAME ADDRESS AND PHONE NUMBER FOR THE CHILD'S HEALTH CARE PROVIDER AND DENTIST.

b. DOCUMENTATION OF IMMUNIZATION STATUS OR EXEMPTION AS REQUIRED BY COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT (CDPHE). IMMUNIZATIONS MUST BE UPDATED AND RECORDED AS SPECIFIED ON THE CERTIFICATE OF IMMUNIZATION OR ALTERNATE CERTIFICATE OF IMMUNIZATION AS SUPPLIED AND APPROVED BY THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT (CDPHE). COLORADO LAW REQUIRES PROOF OF IMMUNIZATION BE PROVIDED PRIOR TO OR ON THE FIRST DAY OF ADMISSION.

1) CHILD CARE CENTERS AS DEFINED IN SECTION 26-6-102 (1.5), C.R.S., LOCATED AT A SKI AREA, ARE EXEMPT FROM OBTAINING IMMUNIZATION RECORDS FOR STUDENTS WHEN ALL OF THE FOLLOWING CONDITIONS ARE MET:

a) STUDENTS ATTEND FOR FIFTEEN (15) DAYS OR LESS IN A FIFTEEN-CONSECUTIVE-DAY PERIOD, NO MORE THAN TWICE IN A CALENDAR YEAR; AND

b) AT LEAST SIXTY (60) CALENDAR DAYS SEPARATE THE TWO SESSIONS WITHIN THE CALENDAR YEAR; AND

c) THE CENTER NOTIFIES PARENTS/GUARDIANS THAT NON-IMMUNIZED CHILDREN ARE ENROLLED ON THE ABOVE SHORT-TERM BASIS.

2. ~~At the time of admission, information regarding all immunizations a child has had, including month and year each immunization was administered, must be provided to the center, or a plan must be developed with the parent or guardian for submitting the information within thirty (30) days of enrollment. Immunizations must be recorded on the Certificate of Immunization or alternate approved immunization form supplied and approved by the Colorado Department of Public Health and Environment (CDPHE) and kept on file at the center~~ THE CENTER MUST INFORM ITS CHILD CARE HEALTH CONSULTANT (CCHC) PRIOR TO THE FIRST DAY OF CARE OF THE ENROLLMENT OF A CHILD WITH SPECIAL HEALTH CARE NEEDS, IF KNOWN, SO STAFF RECEIVES TRAINING, DELEGATION AND SUPERVISION AS INDICATED BY THE CHILD'S INDIVIDUALIZED HEALTH CARE PLAN.

3. If the center is located at an elementary school and all the children attend that school, the immunization records may be maintained at the school office but must be accessible to CENTER STAFF MEMBERS AND licensing specialists DURING THE HOURS THE CENTER IS OPEN.

B. Emergency Procedures

1. Written authorization for emergency medical care must be in the child's file as required in Section 7.712.81.

2. WHEN ACCIDENTS, INJURIES, OR ILLNESSES OCCUR, THE PROGRAM DIRECTOR OR RESPONSIBLE ADULT IN CHARGE MUST NOTIFY THE CHILD'S PARENT OR GUARDIAN AND, IF NECESSARY, SEEK MEDICAL CARE FOR THE CHILD. ~~If a child requires medical attention away from the program site, the child's parent(s) or guardian(s) must be notified, and necessary medical care sought from a licensed physician or medical facility.~~

3. Children too ill OR INJURED to remain in the group must be comfortably cared for and supervised until they can be PICKED UP OR SIGNED OUT FROM THE PROGRAM. ~~taken home or suitably cared for elsewhere.~~ For building-based programs, a cot or mat, plus a sheet and blanket must be provided.

4. A responsible staff member must be ~~present or within hearing distance of~~ DIRECTLY SUPERVISING any ill OR INJURED child.

5. ~~First aid supplies must be available at the program site and in all vehicles operated by the center.~~ PORTABLE FIRST AID KITS MUST BE AVAILABLE TO STAFF AT ALL TIMES, INCLUDING FIELD TRIPS, AND MUST BE LOCATED OUT OF REACH OF CHILDREN AND MAINTAINED IN A SANITARY CONDITION. FIRST AID KITS MUST BE CHECKED AND RESTOCKED ON AT LEAST A MONTHLY BASIS.

C. Medication

1. ANY UN-EXPIRED ROUTINE MEDICATION, ~~P~~Prescription and non-prescription (over-the-counter) medications ~~for eyes or ears, all oral medications, topical medications, inhaled medications, and certain emergency injections can~~ MUST be administered only with ~~the~~ A CURRENT written order of a ~~person~~ HEALTH CARE PROVIDER with prescriptive authority and with written parental consent. ~~Centers may administer medications for chronic health conditions or emergency situations~~ HOME REMEDIES, INCLUDING HOMEOPATHIC MEDICATIONS, MUST NEVER BE GIVEN TO A CHILD.

2. The written order by the prescribing practitioner must include:

   a. Child's name;

   b. Licensed prescribing practitioner name, telephone number, and signature;

   c. Date authorized;

   d. Name of medication and dosage;

   e. Time of day medication is to be given;

   f. Route of medication;

   g. Length of time the medication is to be given;

   h. Reason for medication (unless this information needs to remain confidential);

   i. Side effects or reactions to watch for; and

   j. Special instructions.

3. Medications must be kept in the original labeled bottle or container. Prescription medications must contain the original pharmacy label. ~~that lists:~~

   ~~a. Child's name;~~

   ~~b. Prescribing practitioner's name;~~

   ~~c. Pharmacy name and telephone number;~~

   ~~d. Date prescription was filled;~~

   ~~e. Expiration date of the medication;~~

   ~~f. Name of the medication;~~

   ~~g. Dosage;~~

   ~~h. How often to give the medication; and~~

   ~~i. Length of time the medication is to be given.~~

4. Over-the-counter medication must be kept in the originally labeled container and be labeled with the child's first and last name.

45. In the case medication needs to be given on an ongoing, long-term basis, the authorization and consent forms must be reauthorized on an annual basis. Any changes in the original medication authorization require a new written order by the prescribing practitioner and a change in the prescription label. ~~Verbal orders taken from the licensed prescriber may be accepted only by a licensed registered nurse.~~

~~56~~. ~~All child care staff designated by the center director to give medications must complete the 4-hour Department-approved medication administration training and have current First Aid and universal precautions training.~~ STAFF DESIGNATED BY THE PROGRAM DIRECTOR TO GIVE MEDICATIONS MUST COMPLETE THE DEPARTMENT-APPROVED MEDICATION ADMINISTRATION TRAINING AND HAVE CURRENT ANNUAL DELEGATION OR MORE OFTEN AS DETERMINED BY THE CHILD CARE HEALTH CONSULTANT. DELEGATION MUST BE FROM THE CENTER'S CURRENT CHILD CARE HEALTH CONSULTANT WHO MUST OBSERVE AND DOCUMENT THE COMPETENCY OF EACH STAFF MEMBER INVOLVED IN MEDICATION ADMINISTRATION. ALL STAFF ADMINISTERING MEDICATION MUST HAVE CURRENT DEPARTMENT-APPROVED CPR, FIRST AID TRAINING PRIOR TO ADMINISTERING MEDICATION WITH THE FOLLOWING EXCEPTIONS:

a. STAFF DETERMINED BY THE PROGRAM DIRECTOR, IN CONSULTATION WITH THE CHILD CARE HEALTH CONSULTANT, TO BE RESPONSIBLE FOR PROVIDING ROUTINE EMERGENCY MEDICATIONS COVERED IN THE APPROVED MEDICATION ADMINISTRATION TRAINING FOR THE TREATMENT OF SEVERE ALLERGIES OR INHALED MEDICATIONS FOR THE TREATMENT OF ASTHMA MUST RECEIVE TRAINING AND DELEGATION FROM THEIR CHILD CARE HEALTH CONSULTANT FOR THOSE MEDICATIONS ONLY. STAFF MUST THEN PROVIDE THOSE MEDICATIONS TO CHILDREN BASED ON THE INSTRUCTIONS FROM THE CHILD'S INDIVIDUALIZED HEALTH CARE PLAN.

b. STAFF DETERMINED BY THE DIRECTOR, IN CONSULTATION WITH THE CHILD CARE HEALTH CONSULTANT, TO BE RESPONSIBLE FOR PROVIDING MEDICATIONS NOT COVERED IN THE APPROVED MEDICATION ADMINISTRATION TRAINING ~~SHALL~~ MUST ALSO BE PERMITTED TO ADMINISTER MEDICATIONS AND/OR MEDICAL TREATMENTS SUCH AS EMERGENCY SEIZURE MEDICATION, INSULIN OR OXYGEN WITH INDIVIDUALIZED TRAINING AND DELEGATION FROM THE CHILD CARE HEALTH CONSULTANT BASED ON INSTRUCTIONS FROM THE CHILD'S INDIVIDUALIZED HEALTH CARE PLAN.

c. STAFF MAY BE TRAINED AND DELEGATED IN THE ADMINISTRATION OF A SINGLE RESCUE MEDICATION OR RESCUE MEDICAL INTERVENTION BY THE CENTER'S CHILD CARE HEALTH CONSULTANT. SUCH TRAINING AND DELEGATION ~~SHALL~~ MUST QUALIFY THE STAFF MEMBER TO PROVIDE A RESCUE MEDICATION OR TREATMENT FOR A SPECIFIC CHILD BASED ON INSTRUCTIONS FROM THE CHILD'S INDIVIDUALIZED HEALTH CARE PLAN.

~~67~~. ~~Medications must be kept in an area inaccessible to children. Controlled medications must be counted and safely secured, and specific policies regarding their handling require special attention in the center's policies. Access to these medications must be limited.~~ ALL MEDICATIONS, EXCEPT THOSE MEDICATIONS SPECIFIED IN THE DEPARTMENT'S APPROVED MEDICATION ADMINISTRATION TRAINING AS EMERGENCY MEDICATIONS, MUST BE KEPT IN AN AREA INACCESSIBLE TO CHILDREN, BUT AVAILABLE TO STAFF TRAINED IN ADMINISTERING MEDICATION. IF REFRIGERATION IS REQUIRED, THE MEDICATION MUST BE STORED IN EITHER A SEPARATE REFRIGERATOR OR A LEAK PROOF CONTAINER IN A

DESIGNATED AREA OF A FOOD STORAGE REFRIGERATOR, SEPARATE FROM FOOD AND INACCESSIBLE TO CHILDREN. CONTROLLED MEDICATIONS MUST BE COUNTED AND SAFELY SECURED, AND SPECIFIC POLICIES REGARDING THEIR HANDLING REQUIRE SPECIAL ATTENTION IN THE CENTER'S POLICIES. ACCESS TO THESE MEDICATIONS MUST BE LIMITED (SEE SECTION 12-22-318, C.R.S.).

~~7~~8. EMERGENCY MEDICATIONS MUST BE STORED IN ACCORDANCE WITH THE CHILD CARE HEALTH CONSULTANT'S RECOMMENDATION. EMERGENCY MEDICATIONS ARE NOT REQUIRED TO BE STORED IN A LOCKED AREA. EMERGENCY MEDICATIONS MAY BE STORED IN AN AREA EASILY ACCESSIBLE AND IDENTIFIABLE TO STAFF BUT OUT OF REACH OF CHILDREN. WHEN AWAY FROM THE CLASSROOM, STAFF MUST CARRY EMERGENCY MEDICATIONS IN A BAG ON THEIR PERSON.

~~8~~9. A written medication log must be kept for each child. This log is part of the child's records. The log must contain the following:

a. Child's name;

b. Name of the medication, dosage, and route;

c. Time medication is to be given;

d. Special instructions;

e. Name and initials of the individuals giving the medication; and

f. Notation if the medication was not given and the reason.

~~9~~10. Topical preparations such as petroleum jelly AND~~, diaper rash ointments, sunscreen,~~ bug sprays~~, and other ointments~~ may be administered to children with written parental authorization. These preparations may not be applied to open wounds or broken skin unless there is a written order by the prescribing practitioner.

~~10~~11. The center must have a written policy on the storage and access of inhalers and epinephrine AUTO INJECTORS for all children in care. This policy must be reviewed by the C~~c~~hild C~~c~~are H~~h~~ealth C~~c~~onsultant.

~~11~~12. The center may, with written parental consent and authorization of the prescribing health care provider, permit children who have asthma to carry their own inhalers or children who are at risk of anaphylaxis to carry their own epinephrine, and use them as directed. The center must have a specific written policy on the storage and access of inhalers and epinephrine for children who are permitted to carry or self-administer these medications. The policy must include a contract with the parent(s)/guardian(s), and child acknowledgement, assigning levels of responsibility of each individual. THIS CONTRACT MUST ACCOMPANY orders for the medication from the health care provider, along with confirmation from ~~the health care provider~~ CHILD CARE HEALTH CONSULTANT that the student has been instructed and is capable of self- administration of the prescribed medications.

~~12~~13. All staff MEMBERS AND CHILD CARE HEALTH CONSULTANTS must be aware of which children have asthma AND SEVERE ALLERGIES, and which of those may ADMINISTER ~~use~~ their own inhaler~~s~~ OR AUTO INJECTORS ~~as needed~~. ~~All staff must be aware of which children are at risk of anaphylaxis, and which of those may administer their own epinephrine as needed.~~

D. Sun Protection

1. The center must OBTAIN THE PARENT/GUARDIAN'S WRITTEN AUTHORIZATION AND INSTRUCTIONS FOR APPLYING SUNSCREEN OR USE OF ANOTHER FORM OF PARENT/GUARDIAN APPROVED SUN PROTECTION. ~~supervise that sunscreen is applied to children prior to outside play or outside activities unless parents provide written notice that they have applied the sunscreen themselves~~. A ~~doctor's~~ HEALTH CARE PROVIDERS permission is not needed to use sunscreen at the center.

2. When supplied for an individual child, the sunscreen must be labeled with the child's first and last name.

3. If sunscreen is provided by the center, parents must be notified in advance, in writing, of the type of sunscreen the center will use.

4. Children may apply sunscreen to themselves under the direct supervision of a staff member.

5. THE CENTER MUST APPLY SUNSCREEN, HAVE THE CHILD APPLY SUNSCREEN, HAVE THE PARENT OR GUARDIAN APPLY SUNSCREEN, OR USE ANOTHER FORM OF PARENT OR GUARDIAN APPROVED SUN PROTECTION FOR CHILDREN PRIOR TO CHILDREN GOING OUTSIDE. SUNSCREEN MUST BE REAPPLIED AS DIRECTED BY THE PRODUCT LABEL.

E. Control of Communicable Illness

1. When children show signs of ~~severe or~~ communicable illness, they must be separated from other children, the parent(s) or guardian(s) notified, and a doctor or medical facility consulted as needed regarding treatment.

2. Staff members with a communicable illness must not be permitted to work or have contact with children or other staff members if the illness could be readily transmitted during normal working activities.

3. When children have been diagnosed with a communicable illness such as hepatitis, measles, mumps, meningitis, diphtheria, rubella, salmonella, tuberculosis, giardia or shigella, the center must immediately notify the local or state department of health, all staff members, and all parents and guardians of children in care. Children's confidentiality must be maintained. THE PROGRAM DIRECTOR MUST ASK PARENTS TO REPORT EXPOSURE OF A CHILD TO COMMUNICABLE ILLNESS OUTSIDE OF THE CENTER, AND THE CHILD SHOULD BE EXCLUDED FROM THE CENTER FOR THE PERIOD OF TIME PRESCRIBED BY THE CHILD'S HEALTH CARE PROVIDER OR BY THE LOCAL HEALTH DEPARTMENT.

7.712.53 Personal Hygiene

~~A. Hand Washing/Clothing~~

~~Children's hand washing must be supervised and must be taught when necessary.~~

~~B~~A. ~~Diapering~~ CHILDREN WITH SPECIFIC TOILETING NEEDS

The center must have one or more designated ~~diaper~~ change areas for all children in need of ~~diaper~~ changing. The ~~diaper~~ change area must:

1. MEET A CHILD'S INDIVIDUAL AND DEVELOPMENTAL NEEDS AND ~~B~~be ~~a minimum of thirty six (36) by eighteen (18) inches in size and~~ large enough to accommodate the size of the child;

2. Have a place inaccessible to children for storing all ~~diaper~~ change supplies and disinfecting solutions and products; and

3. Have ~~a~~ sufficient supplIES~~y of diapers at all times~~.

7.712.54 Food and Nutrition

A. ~~Drinking water must be freely available to children at all times.~~ ALL MEALS AND SNACKS PROVIDED BY THE CENTER MUST MEET CURRENT USDA CHILD AND ADULT CARE FOOD PROGRAM MEAL PATTERN REQUIREMENTS AND BE OFFERED AT SUITABLE INTERVALS. CHILDREN WHO ARE AT THE CENTER FOR MORE THAN 4 HOURS, DAY OR EVENING, MUST BE OFFERED A MEAL.

B. ~~Nutritious snacks must be served at suitable intervals.~~ CENTERS MUST NOT PROVIDE SUGAR SWEETENED BEVERAGES TO CHILDREN. THESE ARE LIQUIDS THAT HAVE BEEN SWEETENED WITH VARIOUS FORMS OF SUGARS THAT ADD CALORIES AND INCLUDE, BUT ARE NOT LIMITED TO: SODA, FRUITADES, FRUIT DRINKS, FLAVORED MILKS, AND SPORTS AND ENERGY DRINKS.

C. ~~Children who are at the center for more than four (4) hours, day or evening, or come directly to the center from a morning kindergarten class must receive a meal.~~ IF 100% FRUIT JUICE, WHICH IS NOT A SUGAR SWEETENED BEVERAGE, IS OFFERED AS PART OF MEALS AND/OR SNACKS, IT MUST BE LIMITED TO NO MORE THAN TWICE PER WEEK.

1. ~~If the center provides a meal, it must meet one third of the child's daily nutritional needs.~~

~~2. The center staff must check lunches brought from children's homes to determine if they meet one third of the child's daily nutritional needs.~~

~~3. If the child fails to bring a meal, or if the meal meets less than one-third of the child's daily nutritional needs, the center must supply an adequate meal.~~

D. ~~All food prepared by the center must be from sources approved by the health authority. All food must be stored, prepared, and served in such a manner as to be clean, wholesome, free from spoilage, and safe for human consumption. Home canned foods cannot be served.~~ IN CENTERS THAT DO NOT REGULARLY PROVIDE A MEAL, IF A CHILD BRINGS A MEAL FROM HOME THAT DOES NOT APPEAR TO MEET CURRENT USDA CHILD AND ADULT CARE FOOD PROGRAM MEAL PATTERN REQUIREMENTS, THE CENTER MUST HAVE FOODS AVAILABLE TO OFFER AS A SUPPLEMENT TO THAT MEAL.

E. MEAL MENUS MUST BE PLANNED AT LEAST ONE WEEK IN ADVANCE, DATED, AND AVAILABLE TO PARENTS. AFTER USE, MENUS MUST BE FILED AND RETAINED FOR THREE (3) MONTHS. RECORDS MUST BE AVAILABLE FOR PERIODIC REVIEW AND EVALUATION.

F. THE SIZE OF SERVINGS MUST BE SUITABLE FOR THE CHILD'S AGE AND APPETITE, AND SUFFICIENT TIME MUST BE ALLOWED SO THAT MEALS ARE UNHURRIED.

7.712.55 ~~Discipline~~GUIDANCE

A. ~~Discipline~~ GUIDANCE must be appropriate and constructive or educational in nature and may include such measures as diversion, separation of the child from problem situations talking with the child about the situation, or praise for appropriate behavior

B. Children must not be subjected to physical or emotional harm or humiliation

C. The director must not use, or permit a staff ~~person~~ MEMBER or child to use, corporal or other harsh punishment, including but not limited to pinching, shaking, spanning punching, biting, kicking, rough handling, hair pulling, or any humiliating or frightening method of discipline.

D. ~~Discipline~~ GUIDANCE must not be associated with food, rest, or toileting ~~No c~~ChildREN should NEVER be punished for toileting accidents. ~~Food~~ CHILDREN must not be denied FOOD ~~to~~ or forced ~~upon a child~~ TO EAT as a disciplinary measure.

E. Separation, when used as ~~discipline~~GUIDANCE, must ~~be brief~~ NOT EXCEED FIVE MINUTES and MUST BE appropriate for the child's age ~~and circumstances~~. The child must be in a safe, lighted, well-ventilated area and be within SIGHT AND hearing ~~and vision~~ of aN ~~staff member~~ADULT. The child must not be isolated in a locked OR CLOSED ~~room, bathroom, closet, or pantry~~AREA.

F. Verbal abuse and derogatory remarks about the child are not permitted.

G. Authority ~~to discipline~~ FOR GUIDANCE must not be delegated to other children, and the center must not sanction one child punishing another child.

H. PHYSICAL EXERCISE MUST NOT BE USED AS A FORM OF GUIDANCE.

7.712.56 Transportation [Rev. eff. 6/1/07]

A. Transportation Provided by the Center

1. The center is responsible for any children it transports and must abide by applicable State and Federal motor vehicle laws.

2. The center must obtain written permission from parents/ ~~or~~ guardians for any transportation of their child during child care hours.

3. The number of staff members who accompany children when being transported in the vehicle must meet the child care staff ratio found at Section 7.712.43. The driver of the center vehicle is considered a staff member.

4. Children must not be permitted to ride in the front seat of a vehicle unless they are secured in a seat belt that conforms to all applicable Federal Motor Vehicle Safety Standards. Children must remain seated while the vehicle is in motion.

5. Children must be loaded and unloaded out of the path of moving vehicles.

6. Children must not be permitted to stand or sit on the floor of a moving vehicle, and their arms, legs, and heads must remain inside the vehicle at all times.

7. Transportation arrangements for school-age children must be by agreement between the center and the children's parents/GUARDIANS, i.e., whether the children can walk, ride a bicycle or travel in a car. The center must monitor the children to ~~be sure~~ ENSURE they arrive at the center when expected and follow up on their whereabouts if they are late.

Written permission from parents or guardians for their children to attend community functions after school hours must include agreements regarding transportation.

8. Prior to a field trip or other excursion, the center must obtain information on liability insurance from parents/GUARDIANS and staff who transport children in their own cars and verify that all drivers have valid driver's licenses.

B. Requirements for Vehicles

1. Any vehicle used for transporting children to and from the center or during program activities must meet the following requirements:

   a. The vehicle must be enclosed and have door locks;

   b. The seats of the vehicle must be constructed and installed according to the vehicle manufacturer's specifications; AND

   c. The vehicle must be kept in satisfactory condition to assure the safety of occupants. Vehicle tires, brakes, and lights must meet safety standards set by the Colorado Department of Revenue, Motor Vehicle Division; and

   d. ~~Seating must be comfortable, with a seat of at least ten (10) inches wide for each child.~~ MODIFICATIONS TO VEHICLES INCLUDING, BUT NOT LIMITED TO, THE ADDITION OF SEATS AND SEAT BELTS MUST BE COMPLETED BY THE MANUFACTURER OR AN AUTHORIZED REPRESENTATIVE OF THE MANUFACTURER. DOCUMENTATION OF SUCH MODIFICATIONS MUST BE AVAILABLE FOR REVIEW.

2. In passenger vehicles~~, which include automobiles, station wagons and vans~~ with a manufacturer's established capacity of sixteen (16) or fewer passengers and less than 10~~.~~,000 pounds, the following is required:

   a. Each child must be restrained in an individual seat belt OR CHILD RESTRAINT SYSTEM;

   b. ~~Two or more children must never be restrained in one seat belt~~ THE PROVIDER MUST NOT TRANSPORT MORE CHILDREN THAN ANY VEHICLE IS ABLE TO SAFELY ACCOMMODATE WHEN CHILD RESTRAINT SYSTEMS AND SEAT BELTS ARE PROPERLY INSTALLED AND USED IN THE VEHICLE;

   c. Lap belts must be secured low and tight across the upper thighs and under the belly; and

   d. Children must be instructed and required to keep the seat belt properly fastened and adjusted.

3. In vehicles with a manufacturer's established capacity of sixteen (16) or more passengers, seat belts for passengers are not required, but ~~shall~~ MUST be used if provided.

C. Requirements for Drivers of Vehicles

1. All drivers of vehicles transporting children must comply with applicable laws of the Colorado Department of Revenue, Motor Vehicle Division, and ordinances of the municipality in which the child care program is operated.

2. All drivers of vehicles owned or leased by the center in which children are transported must have a current Department-approved First Aid and safety certificate that includes CPR for all ages of children

3. In each vehicle used to transport children, drivers must have access to a First Aid kit.

4. The driver must ensure that all doors are secured at all times when the vehicle is moving.

5. The driver must make a good faith effort to ensure that each child is properly belted throughout the trip.

6. THE DRIVER MUST NOT EAT, SMOKE OR USE A CELLULAR DEVICE WHILE DRIVING.

7. THE REQUIRED STAFF TO CHILD RATIO MUST BE MAINTAINED AT ALL TIMES.

8. ALL DRIVERS MUST BE AT LEAST 20 YEARS OF AGE.

9. DRIVERS MUST COMPLETE A MINIMUM OF FOUR HOURS OF DRIVER TRAINING PRIOR TO TRANSPORTING CHILDREN. THE DRIVER TRAINING CURRICULUM MAY BE DEVELOPED AND ADMINISTERED BY THE CENTER AND MUST INCLUDE AT A MINIMUM: BEHIND THE WHEEL TRAINING; PARTICIPANT TRANSPORT ATTENDANCE PROCEDURES INCLUDING TAKING ATTENDANCE AT THE DESTINATION; MANAGING BEHAVIORAL ISSUES; LOADING AND UNLOADING PROCEDURES; DAILY VEHICLE INSPECTION PROCEDURE; PROPER TIRE INFLATION; EMERGENCY EQUIPMENT AND HOW TO USE IT; ACCIDENT PROCEDURES; PASSENGER ILLNESS PROCEDURES; PROCEDURES FOR BACKING UP; AND VEHICLE EVACUATION.

7.712.6 PROGRAM ACTIVITIES

7.712.61 Activity Schedules [Rev. eff. 6/1/07]

A. The center must provide parents/~~ or~~ guardians with a list of activities it offers.

B. Parents or guardians must be given the opportunity to indicate to the staff of the center if they do not want their child to participate in an activity.

C. Parents/~~ or~~ guardians must be notified in advance of all activities that will occur away from the center.

D. Television viewing, including videos, should not be permitted without the approval of a child's parents/GUARDIANS, who must be advised of the center's policy regarding television and video viewing.

E. A mobile day camp program must establish a daily itinerary and make available a copy to each child's parent or guardian. A copy must also be or file at the program's headquarters. The itinerary should be followed as closely as possible. In case of an emergency or change in the itinerary, the headquarters of the mobile day camp must be notified immediately. Parents/GUARDIANS must be instructed to contact the main headquarters to determine the exact location of their child.

7.712.62 PHYSICAL ACTIVITY

A. DAILY PHYSICAL GROSS MOTOR ACTIVITIES, WITH OR WITHOUT EQUIPMENT OR MATERIALS, MUST BE PROVIDED OUTDOORS, OR INDOORS DURING INCLEMENT WEATHER, FOR NO LESS THAN 60 MINUTES TOTAL FOR PROGRAMS OPERATING OVER FIVE HOURS PER DAY. ACTIVITIES DO NOT HAVE TO OCCUR ALL AT ONE TIME.

B. DAILY PHYSICAL GROSS MOTOR ACTIVITIES, WITH OR WITHOUT EQUIPMENT OR MATERIALS, MUST BE PROVIDED OUTDOORS OR INDOORS DURING INCLEMENT WEATHER, FOR NO LESS THAN 30 MINUTES TOTAL FOR PROGRAMS OPERATING FROM THREE TO FIVE HOURS PER DAY. ACTIVITIES DO NOT HAVE TO OCCUR ALL AT ONE TIME.

C. DAILY PHYSICAL GROSS MOTOR ACTIVITIES, WITH OR WITHOUT EQUIPMENT OR MATERIALS, MUST BE PROVIDED OUTDOORS OR INDOORS DURING INCLEMENT WEATHER, FOR NO LESS THAN 15 MINUTES TOTAL FOR PROGRAMS OPERATING LESS THAN 3 HOURS PER DAY. ACTIVITIES DO NOT HAVE TO OCCUR ALL AT ONE TIME.

7.712.63 SCREEN TIME AND MEDIA USE

A. ALL MEDIA THAT CHILDREN ARE EXPOSED TO MUST NOT CONTAIN EXPLICIT LANGUAGE OR TOPICS.

B. ALL TELEVISION, RECORDED MEDIA, COMPUTER, TABLET, CELL PHONES, VIDEO GAMES AND OTHER MEDIA DEVICES ARE PROHIBITED DURING SNACK OR MEAL TIMES.

C. THE CENTER MUST DEVELOP A MEDIA AND INTERNET USEAGE PLAN OUTLINING SCREEN TIME AND MEDIA USE RELATED TO THEIR CURRICULUM. THE MEDIA PLAN MUST HAVE INFORMATION ON ONGOING COMMUNICATION WITH CHILDREN ABOUT SAFE ONLINE PRACTICES. THE CENTER MUST OBTAIN A SIGNED DOCUMENT STATING THAT THE PARENTS/GUARDIANS HAVE RECEIVED THIS PLAN, AND AGREE TO THE ACTIVITIES DESCRIBED IN THE PLAN.

7.712.6~~2~~4 Equipment and Materials [Rev. eff. 6/1/07]

A. In a building based school-age child care center, a rest time and rest equipment must be provided for school-age children who require a rest time.

B. Children at the center must have access to age-appropriate materials and equipment from at least the following categories:

1. Activity supplies;

2. Manipulatives and games;

3. Recreation equipment;

4. Library items; and

5. Science equipment and materials.

C. Children must wear helmets when riding scooters, bicycling, skateboarding, or rollerblading.

7.712.6~~3~~5 Field Trips [Rev. eff. 11/1/98]

A. ~~The program may include field trips, where children and staff leave the center to visit some site in the community.~~ On a field trip or during a mobile school-age child care program:

1. THE CENTER MUST NOTIFY THE CHILDREN'S PARENTS /GUARDIANS IN ADVANCE OF ANY FIELD TRIP. THE Staff-child ratios FOUND AT SECTION 7.712.43.C, D, I must be maintained at all times;

2. ALL GROUPS OF ~~C~~Children must be ~~actively~~ DIRECTLY supervised BY A QUALIFIED PROGRAM DIRECTOR OR PROGRAM LEADER at all times;

3. An accurate itinerary OF EACH FIELD TRIP must remain at the ~~headquarters/office of the~~ center; ~~and~~

4. The staff must have ~~with them on a field trip~~ the following information about each child: PARENTS/GUARDIANS CONTACT INFORMATION, HEALTH CARE PROVIDER'S name, address, and phone number~~, of the child's physician or other appropriate health care professional~~ and the written authorization from parent~~(~~s~~)~~/ ~~or~~ guardian~~(~~s~~)~~ for emergency medical care~~.~~;

5. IF CHILDREN ATTENDING THE FIELD TRIP REQUIRE MEDICATIONS BE ADMINISTERED DURING THE FIELD TRIP OR HAVE SPECIAL HEALTH NEEDS, A STAFF MEMBER WITH CURRENT MEDICATION ADMINISTRATION TRAINING AND DELEGATION MUST ATTEND ON THE FIELD TRIP;

6. A LIST OF ALL CHILDREN AND STAFF ON A FIELD TRIP MUST BE KEPT AT THE CENTER; AND

7. A COPY OF THE EMERGENCY DISASTER PLAN MUST ACCOMPANY STAFF OFFSITE.

~~B. A list of all children and staff on a field trip must be kept at the headquarters of the center.~~

7.712.64 - 7.712.66 None

7.712.7 BUILDING AND FACILITIES

7.712.71 Facility Requirements [Rev. eff. 6/1/07]

A. The mobile day camp program and the outdoor-based day camp program may use as a gathering place a public park or playground if the program primarily includes field trips away from the gathering place. Such programs must have a contingency plan for facilities to use during increment weather. The plan must be available to parents/GUARDIANS on a daily basis.

B. If a room(S) ~~or rooms~~ inside a building are used for indoor care~~, the following ratio must be maintained: open indoor play space of~~ at least thirty (30) square feet of floor space per child IS REQUIRED.~~, including space for readily movable furniture and equipment~~ Indoor space is exclusive of kitchen, toilet rooms, office, staff rooms, hallways and stairways, closets, laundry rooms, furnace rooms~~, and space occupied by permanent built-in cabinets and permanent storage shelves~~.

C. When a building is being used during the summer months by a center specifically as a gathering place at the beginning and end of the day, the thirty (30) square feet requirement need not apply. The total amount of time during which the number of children present may exceed the THIRTY (30) square feet requirement must not exceed THREE (3) hours. This time must be divided evenly between the morning and the evening.

D. The building based school-age child care center must provide access to an outdoor play area. The outdoor play area may be a city park or public school ground. The play area must meet the following requirements:

1. The center must provide a total outside play area of at least seventy-five (75) square feet per child for a minimum of one-third of the licensed capacity of the center or a minimum of 1500 square feet, whichever is greater;

2. Access to a shaded area, sheltered area, or inside building area must be provided at all times to guard children against the hazards of excessive sun and heat; and

3. The outdoor play area must be maintained in a safe condition by removing debris, dilapidated structures, and worn and broken play equipment. The center must identify hazardous, high-risk areas. These areas must be monitored to reduce the possibility of injury and accidents.

4. OUTDOOR PLAY AREAS PROVIDED BY THE CENTER MUST NOT HAVE EQUIPMENT THAT EXCEEDS SIX (6) FEET IN HEIGHT FOR ANY SURFACE AREA INTENDED FOR CHILDREN'S PLAY UNLESS EQUIPPED WITH A PROTECTIVE BARRIER TO PREVENT CHILDREN FROM FALLING.

5. ALL OUTDOOR CLIMBING EQUIPMENT OVER EIGHTEEN (18) INCHES PROVIDED BY THE CENTER MUST HAVE LEAST SIX (6) INCHES RESILIENT SURFACE THROUGHOUT THE USE ZONE.

~~E. A safe, comfortable place for relaxing and for sick children must be available at all times for children in care.~~

7.712.72 Toilet Facilities

A. ~~Boys and girls~~ CHILDREN ~~OF DIFFERENT GENDERS~~ must BE ALLOWED THE USE OF GENDER-SEGREGATED TOILET FACILITIES THAT ARE CONSISTENT WITH THEIR GENDER IDENTITY ~~have separate OR INDIVIDUAL, clearly identified toilet facilities~~, with toilets separated by partitions to provide privacy.

B. There must be a minimum of one (1) toilet per thirty (30) or fewer children for which the center is licensed. Hand-washing facilities must be available at the ratio of one (1) sink per thirty (30) or fewer children. AFTER FEBRUARY 1, 2018 ALL NEW CONSTRUCTION MUST HAVE A MINIMUM OF ONE (1) TOILET AND ONE (1) HAND WASHING SINK PER EVERY FIFTEEN (15) OR FEWER CHILDREN FOR WHICH THE CENTER IS LICENSED.

~~**7.712.73 Food Preparation Area**~~

~~Areas used for food preparation, dish and utensil washing, and storage must be in compliance with the requirements of the Colorado Department of Public Health and Environment or its local unit.~~

7.712.~~74~~73 Fire and Other Safety Requirements [Rev. eff. 4/1/15]

A. General Requirements

1. Buildings must be kept in good repair and maintained in a safe condition.

2. Major cleaning is prohibited in rooms occupied by children.

3. Volatile substances, such as gasoline, kerosene, fuel oil, and oil-based paints, firearms, explosives, and other hazardous items, must be stored away from the area used for child care and be inaccessible to children.

4. Combustibles, such as cleaning rags, mops~~,~~ and cleaning compounds, must be stored in well-ventilated areas separated from flammable materials and stored in areas inaccessible to children.

5. Closets, atticS, basementS, cellarS, furnace roomS~~,~~ and exit routes must be kept free from accumulation of extraneous materials.

6. All heating units, gas or electric, must be installed and maintained with safety devices to prevent fire, explosions, and other hazards. No open-flame gas or oil stoves, unscreened fireplaces, hot plates, or unvented heaters can be used for heating purposes. All heating elements, including hot water pipes, must be insulated or installed in such a way that children cannot come in contact with them. Nothing flammable or combustible can be stored within three (3) feet of a hot water heater or furnace.

7. Indoor and outdoor equipment, materials, and furnishings must be sturdy, safe and free of hazards.

8. Equipment, materials, and furnishings, including durable furniture such as tables and chairs, must be stored in a manner that is safe for children.

9. Extension cords cannot be used in place of permanent wiring.

10. Corridors, halls, stairs, and porches must be adequately lighted. Operable battery-powered lights must be provided in locations readily accessible to staff in the event of electric power failure.

B. Fire Safety

1. Every building and structure must be constructed, arranged, equipped, maintained, and operated so as to avoid undue danger to the lives and safety of its occupants from fire, smoke, fumes, or resulting panic during the period of time reasonably necessary for escape from the building or structure in case of fire or other emergency.

2. Every building and structure ~~must have at least two (2) exits that permit the prompt escape of occupants in case of fin; or other emergency~~. MUST HAVE AT LEAST TWO (2) APPROVED, ALTERNATE MEANS OF EGRESS FROM EACH FLOOR OF THE BUILDING OR TO A COMMON HALLWAY LEADING TO THE EXTERIOR. THEY MUST BE AT DIFFERENT LOCATIONS.

3. Every exit must be clearly visible, or the route to reach it must be conspicuously indicated. Each path of escape must be clearly marked.

4. In every building or structure, exits must be arranged and maintained so as to provide free and unobstructed egress from all parts of the building or structure at all times when it is occupied. ~~No l~~LockS or fastening DEVICES to prevent free escape from the inside of any building ~~can~~ MUST NOT be installed. Only panic hardware or single-action hardware is permitted on a door or on a pair of doors. All door hardware must be within the reach of children.

5. If the building in which the center operates has a security lock on outside exit doors, the center must obtain written permission from the local fire department; and there must be a

written sign attached to the door instructing staff that the security lock is not to be utilized when children are present and the center is in operation.

6. Every building and structure must have an automatic or Department-approved manually operated fire alarm system to warn occupants of the existence of fire or to facilitate the orderly conduct of fire exit drills.

7.712.8 RECORDS AND REPORTS

7.712.81 Children's Records [Rev. eff. 6/1/07]

A. The center must maintain and update annually a record on each child that includes:

1. The child's full name, age, current address, and date of enrollment;

2. Names, ~~and~~ home and employment addresses and telephone numbers, which may include cell phone numbers~~, pagers, fax~~ and e-mail of parents ~~or~~ /guardians if available;

3. Any special instructions as to how the parents ~~or~~ /guardians can be reached during the hours the child is at the center;

4. Names and telephone numbers of persons other than parents ~~or~~ /guardians who are authorized to take the child from the center;

5. Names, addresses, and telephone numbers of persons who can assume responsibility for the child in the event of an emergency if parents ~~or~~ /guardians cannot be reached immediately;

6. Name, address, and telephone number of the child's physician, dentist, and hospital of choice;

7. ~~Health information including medical history,~~ A COMPLETE HEALTH HISTORY INCLUDING COMMUNICABLE DISEASES, chronic ~~medical problems~~ILLNESSES OR INJURIES, ~~and~~ immunization history, KNOWN DRUG REACTIONS OR ALLERGIES, MEDICATION RECORDS,SPECIAL DIET NEEDS, AND HEALTH CARE PLANS AS REQUIRED IN 7.712.52.A.1;

8. A dated written authorization for emergency medical care signed and submitted annually by the parent or guardian. The authorization must be notarized if required by the local health care facility;

9. Written authorization from a parent or guardian for the child to participate in field trips and to participate in program activities, listing ~~any possible exclusion~~ ALL EXCLUSIONS FROM AUTHORIZATION;

10. Written authorization from a parent/ ~~or~~ guardian for the center to transport the child to and from school, whether by walking or driving; and

11. Reports of serious injuries and accidents occurring during care that result in medical attention, admission to the hospital, or death of a child.

7.712.82 Staff Records [Rev. eff. 6/1/07]

A. The center office must maintain a record for each staff member, paid or volunteer, which includes the following:

1. Name, address, and birth date of the individual;

2. The date that the staff member was employed by the center;

3. Name, address, and ~~daytime tele~~phone number~~, which may include cell phone numbers, pager numbers, fax numbers and e-mail~~ of the person(s) to be notified in the event of an emergency;

4. Verification of the staff member's ~~training, education, and experience~~ CERTIFICATIONS, QUALIFICATIONS AND TRAINING REQUIREMENTS;

~~5~~. ~~Copies of any first aid and CPR certification or other certification confirming the qualifications for the responsibilities assumed at the center, which may include copies of driver's licenses, college transcripts, and diplomas;~~

~~6~~5. Copies of written references or notes of phone references, as required by Section 7.712.41.D.1;

7. Verification that a criminal record check with the Colorado Bureau of Investigation AND FEDERAL BUREAU OF INVESTIGATION is in process, or a copy of the results of the staff member's criminal record check; and

8. Verification that a review of the State Department's automated system for reporting child abuse and neglect has occurred or is in process.

B. Each staff member's personnel file must contain all required information within thirty (30) working days of the first day of employment.

7.712.83 Administrative Records and Reports

A. The following records must be on file at the center:

1. Records of enrollment, daily attendance for each child, and daily record of time child arrives at and departs from the center;

2. Current health department inspection report issued within the past ~~twenty four (24) months~~ TWO (2) YEARS;

3. Current fire department inspection report issued within the past ~~twenty four (24) months~~ TWO (2) YEARS;

4. A list of current staff members, substitutes, and staffing patterns.

B. Each center must ~~immediately~~ SUBMIT A report in writing to the Department USING THE ONLINE INJURY REPORTING SYSTEM OF any accident or illness occurring at the center that resulted in medical treatment by a physician or other health care professional, hospitalization, or death. This report must be made within twenty-four (24) hours after the accident or illness occurred.

C. A report about a fatality must include:

1. The child's name, birth date, address, and telephone number;

2. The names of the child's parents or guardians and their address and telephone number if different from those of the child;

3. Date of the fatality;

4. Brief description of the incident or illness leading to the fatality;

5. Names and addresses of witnesses or persons who were with the child at the time of death; and

6. Name and address of police department or authority to whom the report was made.

D. The center must ~~report to the Colorado Department of Public Health and Environment or its local unit any communicable illness, including but not limited to measles, mumps, diphtheria, rubella, tuberculosis, shigella, hepatitis, meningitis, salmonella, and giardia, contracted by a staff member or a child in care at the center~~ maintain records of reports of communicable illness made to the Colorado Department of Public Health and Environment or local public health agency.

E~~. A medical log must be maintained at the center in which is recorded the name of the child and date of instances of at least the following:~~

~~1. Administration of first aid;~~

~~2. Illness of the child while attending the center;~~

~~3. Accident requiring the child to receive medical attention; and~~

~~4. The administration of any medication to a child.~~

~~F~~E. The center must submit to the ~~d~~Department within twenty-four (24) hours a written report about any child who has been lost from the center and for whom the local authorities have been contacted. Such report must indicate:

1. The name, birth date, address, and telephone number of the child;

2. The names of the parents/ ~~or~~ guardians and their address and telephone number if different from those of the child;

3. The date when the child was lost;

4. The location, time, and circumstances when the child was last seen;

5. Actions taken to locate the child; and

6. The name of the staff person supervising the child.

~~G. Each center must have a written plan for action in case of natural disaster, including, but not limited to, floods, tornadoes, aid severe weather; a lost or missing child; and injuries and illnesses. This plan must be on file at the center. The staff must have received training regarding the implementation of the plan prior to assuming supervisory responsibility for children. Written verification of the training must be in the staff member's personnel file.~~

~~1. The plan of action must include at least:~~

~~a. Prompt notification of parents or guardians;~~

~~b. Notification of the headquarters of the center;~~

~~c. When local authorities are notified;~~

~~d. Emergency transportation; and~~

~~e. Specific procedures for responding to the crisis.~~

~~2. In the case of a mobile school-age child care program or a field trip, the plan must accompany staff members.~~

7.712.84 Confidentiality and Retention

A. The center must maintain complete records of PERSONNEL AND children ~~and personnel~~ as required at Sections 7.712.81, 7.712.82, and 7.712.83.

B. The confidentiality of all personnel and children's records must be maintained (see Section 7.701.7, General Rules for Child Care Facilities).

C. Personnel and children's records must be available, upon request, to authorized personnel of the ~~d~~Department.

D. If records for organizations having more than one center are kept in a central file, duplicate identifying and emergency information for PERSONNEL AND children must also be kept on file at the center attended by the child.

E. The records of ~~PERSONNEL AND~~ children ~~and personnel~~ must be maintained by the school-age child care center for at least THREE (3) years.

Title of Proposed Rule: **Changes to Rules Regulating Children's Resident Camps; Changes to Rules Regulating School-aged Child Care Centers**

CDHS Tracking #: **14-08-14-01**

Office, Division, & Program: OEC, ECL, LU

Rule Author: Carin Rosa

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STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for new rule or rule change.

Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule.

The Department is statutorily required to review rules on a regular basis and is authorized to promulgate rules for licensed child care programs providing less than twenty-four (24) hour care that create standards and regulations for these child care programs. This package expands and clarifies children's health and medication requirements, eliminates unnecessary or duplicate rules, clarifies existing rules, and adds requirements for safety, physical activity and screen time. The previous comprehensive review and revision for the entire rule package for the "Rules Regulating Children's Resident Camps" and the "Rules Regulating School-aged Child Care Centers" was completed in 2007.

State Board Authority for Rule:

Code	Description
26-1-107, C.R.S. (2015)	State Board to promulgate rules
26-1-109, C.R.S. (2015)	State department rules to coordinate with federal programs
26-1-111, C.R.S. (2015)	State department to promulgate rules for public assistance and welfare activities.

Program Authority for Rule: *Give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority.*

Code	Description
26-6-106(1)(a), C.R.S. (2017)	Standards for facilities and agencies, and authority to promulgate rules;
26-6-113, C.R.S. (2017)	Periodic review of rules and procedures, and licensing of child care facilities

Does the rule incorporate material by reference? [ ] Yes [x] No

Does this rule repeat language found in statute? [ ] Yes [x] No

If yes, please explain.

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REGULATORY ANALYSIS

1. List of groups impacted by this rule.

Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?

Licensed school-aged child care centers and children's resident camps are governed by these rules and will both benefit from and bear the burden of these rules. There should be minimal cost associated with these rules for providing copies of policies for families, hiring additional staff for smaller ratios if school-aged child care programs chose to accept younger children or on excursions away from the premises, and health consultation and medication requirements. The majority of the rule package is technical cleanup to simplify rule.

2. Describe the qualitative and quantitative impact.

How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?

For instance, providers may need to alter the way in which they provide policies to families and maintain documentation of staff and children's records; they may need to revise their nutritional meal menus, or ensure staff has additional training.

Currently, there are approximately 1000 licensed school-aged child care centers and approximately 125 licensed children's resident camps in Colorado.

Children in licensed school-aged child care centers and children's resident camps will benefit from the expanded well-being and safety requirements in this rule package.

3. Fiscal Impact

For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources. ***Answer should NEVER be just "no impact" answer should include "no impact because…."***

State Fiscal Impact *(Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)*

No fiscal impacts as these rule revisions are primarily technical cleanup or clarifications to simplify existing rules.

County Fiscal Impact

No County fiscal impact as nothing addressed in this rule revision creates costs for counties.

Federal Fiscal Impact

No fiscal impacts as these rule revisions are primarily technical cleanup or clarifications to simplify existing rules.

Other Fiscal Impact *(such as providers, local governments, etc.)*

Providers should see minimal cost associated with these rules for providing copies of policies for families, hiring additional staff for smaller ratios if school-aged programs chose to accept younger

children or on excursions away from the premises, and health consultation and medication requirements.

4. Data Description

List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?

The Children's Resident Camp Rules Re-write committee and the School-aged Child Care Center Rules Re-write committee work product (stakeholder working group) directed all aspects of this revised rule package, including advising the Department on language and provisions.

Caring for Our Children 2011, Stepping Stones to Caring for Our Children 2013, and Current American Camp Association Standards informed the health and safety portions of the rule revisions to ensure the rules followed nationally recognized standards of care.

5. Alternatives to this Rule-making

Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. **Answer should NEVER be just "no alternative" answer should include "no alternative because…"**

No alternative because these rules are considered minimum requirements for health and safety, which the Department is statutorily mandated to promulgate.

Title of Proposed Rule: **Changes to Rules Regulating Children's Resident Camps; Changes to Rules Regulating School-aged Child Care Centers**

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OVERVIEW OF PROPOSED RULE

Compare and/or contrast the content of the current regulation and the proposed change.

CCDBG REAUTHORIZATION REQUIREMENT – PURPLE

PROVIDER/STAKEHOLDER REQUESTED CHANGE-GREEN

RULE CLARIFICATION – BLUE

TECHNICAL CLEAN UP/RULE REDUCTION-RED

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.711	Technical cleanup	Throughout rule package	Technical cleanup; formatting	Technical cleanup; formatting changes	No
7.711.	Technical cleanup	Rules for Sanitation of Centers	Addition of "Rules Regulating Special Activities; Revised language to reflect current rule title "Rules And Regulations Governing The Health And Sanitation Of Child Care Centers Facilities In The State Of Colorado"	Technical cleanup; revised language	No
7.711.1.A	Rule Clarification	Definitions	Added language of statute section to the definition	Rule clarification	NO
7.711.1.D	Technical cleanup/rule reduction	Definitions	Removed definition for "non-medical religious camp"	Technical cleanup/rule reduction; outdated requirement	NO
7.711.12	Rule Clarification	Governing Body	Defined responsibilities for the Governing Body	Rule Clarification; added language	NO
7.711.14.A, B	Technical cleanup/rule reduction	Insurances	Removed outdated language liability insurance	Technical cleanup/rule reduction; outdated requirement	NO
7.711.15.C	Technical cleanup/rule reduction	Written Agreements, Reports, and Logs	Removed reporting requirement covered in section 7.701	Technical cleanup/rule reduction; outdated requirement	NO
7.711.15.E	Rule Clarification	Written Agreements, Reports, and Logs	Defined lost children	Rule Clarification; added language	NO
7.711.15F	Technical cleanup/rule reduction	Written Agreements, Reports, and Logs	Removed outdated requirement covered in alternate rule section 7.701	Technical cleanup/rule reduction; outdated requirement	NO
7.711.21.B	Provider/stakeholder requested change	General Requirements for All Personnel	Decreased age requirement for staff	Provider/stakeholder requested change	NO
7.711.21.C	Provider/stakeholder requested change	General Requirements for All Personnel	Decreased age requirement for staff	Provider/stakeholder requested change	NO
7.711.21E	Technical cleanup	General Requirements for All Personnel	Timeframe for staff health history stored in a secured location	Technical cleanup; revised language	NO

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Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.711.21F	Technical cleanup	General Requirements for All Personnel	Removed outdated exemption information	Technical cleanup; revised language	NO
7.711.21G	Technical cleanup	General Requirements for All Personnel	Added definitions for emergencies	Technical cleanup; revised language	NO
7.711.22.A	Provider/stakeholder requested change	Camp Personnel	Added experience requirements	Provider/stakeholder requested change; added requirement	NO
7.711.22B,C	Provider/stakeholder requested change	Camp Personnel	Updated language to reflect current definitions to clarify rule and removed outdated language	Provider/stakeholder requested change; clarified rule	Revised language to include additional personnel
7.711.22D	CCDBG REAUTHORIZATION REQUIREMENT	Camp Personnel	Removed outdated requirement and added federal requirement to align with all other programs	CCDBG REAUTHORIZATION REQUIREMENT	Clarified that this is a federal requirement and information covered in training
7.711.22E	Provider/stakeholder requested change	Camp Personnel	Updated language to reflect current definitions to clarify rule and removed outdated language	Provider/stakeholder requested change	NO
7.711.22F	Rule Clarification	Camp Personnel	Added language for caregiver and removed parent	Rule Clarification; defined requirement	NO
7.711.22F	Rule Clarification	Camp Personnel	Added language for qualification	Rule Clarification; defined requirement	NO
7.711.23.B	Provider/stakeholder requested change	Supervision	Added requirement of mechanism for alert	Provider/stakeholder requested change; added requirement	NO
7.711.23E	Provider/stakeholder requested change	Supervision	Added age and qualification requirement	Provider/stakeholder requested change; added requirement	NO
7.711.23H	Technical cleanup/rule reduction	Supervision	Moved requirement for itinerary to alternate section	Technical cleanup/rule reduction; outdated requirement	NO
7.711.31.C	Provider/stakeholder requested change	Health Care	Added requirement for notification for children with special health care needs.	Provider/stakeholder requested change; added requirement	NO

Title of Proposed Rule: **Changes to Rules Regulating Children's Resident Camps; Changes to Rules Regulating School-aged Child Care Centers**

CDHS Tracking #: **14-08-14-01**

Office, Division, & Program: Rule Author: Carin Rosa Phone: 303-866-6246

OEC, ECL, LU E-Mail: carin.rosa@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.711.31.D	Provider/stakeholder requested change	Health Care	Clarified when examination is provided and removed outdated requirements	Provider/stakeholder requested change	Corrected to require examination 10 calendar days prior to admission
7.711.31.E	Provider/stakeholder requested change	Health Care	Clarified immunization requirements	Provider/stakeholder requested change; added requirement	NO
7.711.31.F	Provider/stakeholder requested change	Health Care	Clarified when health care worker is required to meet with campers	Provider/stakeholder requested change; clarified rule	NO
7.711.31.G	Technical cleanup/rule reduction	Health Care	Removed non-medical religious camp requirement	Technical cleanup/rule reduction; outdated	Added exclusion guidelines
7.711.31.H	Technical cleanup/rule reduction	Health Care	Removed communicable disease information regulated by CDPHE	Technical cleanup/rule reduction; unnecessary requirement	NO
7.711.31.J	Technical cleanup/rule reduction	Health Care	Removed non-medical religious camp requirement	Technical cleanup/rule reduction; outdated requirement	NO
7.711.31.J.1,1.a	Provider/stakeholder requested change	Health Care	Added requirements for the disposal of medication and the process for administration of routine and emergency medications	Provider/stakeholder requested change; added requirements	NO
7.711.31.J.1.b	Provider/stakeholder requested change	Health Care	Added option for on-site RN	Provider/stakeholder requested change; added option	NO
7.711.31.J.5	Provider/stakeholder requested change	Health Care	Added requirements for topical preparations	Provider/stakeholder requested change; added requirements	Clarified parental permission required for topical preparations
7.711.31.J.6	Provider/stakeholder requested change	Health Care	Added requirement for home remedies	Provider/stakeholder requested change; added requirements	clarified why home remedies

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Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
					are not allowed
7.711.31.K	Provider/stakeholder requested change	Health Care	Added requirement for treatment procedures	Provider/stakeholder requested change; added requirements	Clarified treatment procedures are standing orders
7.711.31.O	Technical cleanup/rule reduction	Health Care	Removed equipment and location for ill children regulated by CDPHE	Technical cleanup/rule reduction; unnecessary requirement	NO
7.711.31.P	Technical cleanup/rule reduction	Health Care	Removed supervision for ill children regulated by CDPHE	Technical cleanup/rule reduction; unnecessary requirement	No
7.711.31.O.1-4	Provider/stakeholder requested change	Health Care	Added requirement for protection from sun exposure	Provider/stakeholder requested change; added requirements	NO
7.711.32	Technical cleanup/rule reduction	Guidance	Changed Discipline to Guidance	Technical cleanup/rule reduction; outdated language	NO
7.711.32.A	Rule Clarification	Guidance	Removed outdated language and defined appropriate guidance	Rule Clarification; defined requirement	NO
7.711.32.B	Technical cleanup/rule reduction	Guidance	Removed outdated language for discipline	Technical cleanup/rule reduction; outdated language	NO
7.711.32.C	Technical cleanup/rule reduction	Guidance	Removed outdated language for corporal and harsh punishment	Technical cleanup/rule reduction; outdated language	NO
7.711.32.D	Technical cleanup/rule reduction	Guidance	Clarified requirement for disciplinary measures	Technical cleanup/rule reduction; outdated language	NO
7.711.32.E	Rule Clarification	Guidance	Removed outdated language and defined appropriate guidance through separation	Rule Clarification; defined requirement	NO
7.711.33.A	Provider/stakeholder requested change	Security Procedures	Removed outdated security procedures	Provider/stakeholder requested change; removed outdated requirements	NO
7.711.34.F	Technical cleanup/rule reduction	Food and Nutrition	Removed drinking water requirement covered by CDPHE	Technical cleanup/rule reduction; unnecessary requirement	NO
7.711.35.	Provider/stakeholder requested change	Transportation	Removed outdated transportation procedures and added procedures reflecting current requirements including vehicles and drivers	Provider/stakeholder requested change; removed outdated requirements	Provided information on who was

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Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
					included in creation of requirements
7.711.41.A.3	Technical cleanup/rule reduction	Children's Records	Combined home and employment information	Technical cleanup/rule reduction; unnecessary requirement	NO
7.711.41.A.6	Technical cleanup/rule reduction	Children's Records	Removed unauthorized individuals	Technical cleanup/rule reduction; unnecessary requirement	NO
7.711.41.A.7	Technical cleanup/rule reduction	Children's Records	Removed non-medical religious camp	Technical cleanup/rule reduction; outdated language	NO
7.711.41.A.8	Technical cleanup/rule reduction	Children's Records	Removed person or agency and walking or riding language	Technical cleanup/rule reduction; outdated language	NO
7.711.41.A.10	Technical cleanup/rule reduction	Children's Records	moved records requirement for physical, health history and immunization records	Rule Clarification; moved requirement	NO
7.711.41.B.1	Technical cleanup/rule reduction	Children's Records	Relocated requirement for health history	Technical cleanup/rule reduction; outdated language	NO
7.711.41.B.2	Technical cleanup/rule reduction	Children's Records	Removed injury reporting requirement found in alternate section 7.701	Technical cleanup/rule reduction; outdated requirement	NO
7.711.43.A	Rule Clarification	General Information	Clarified records retention	Rule Clarification; defined requirement	NO
7.711.43.C	Technical cleanup/rule reduction	General Information	Removed language for confidentiality of children's records found in alternate section 7.701	Technical cleanup/rule reduction; outdated requirement	NO
7.711.51.A	Technical cleanup/rule reduction	Campsites	Removed sanitation requirements regulated by CDPHE	Technical cleanup/rule reduction; outdated requirement	NO
7.711.51.B	Provider/stakeholder requested change	Campsites	Added requirement submittal for approval must be made to CDPHE 30 days prior to camp.	Provider/stakeholder requested change; added requirements	NO
7.711.51.D	Technical cleanup/rule reduction	Campsites	Removed health and fire requirements found in alternate section 7.701	Technical cleanup/rule reduction; outdated requirement	NO
7.711.51.H.5	Technical cleanup/rule reduction	Campsites	Removed health and fire requirements found in alternate section and included clarification on shade structure	Technical cleanup/rule reduction; outdated requirement	NO
7.711.51.H.9	Clarified language	Campsites	Clarification of approved resilient surfaces	Clarification; language	NO

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7.711.51.H.10	Clarified language	Campsites	Clarification of resilient surfaces required under outdoor climbing equipment	Clarification; language	NO
7.711.51.H.11	Clarified language	Campsites	Clarification of playground safety check	Clarification; language	NO
7.711.51.L.1-2	Provider/stakeholder requested change	Campsites	Added requirement for carbon monoxide detectors.	Provider/stakeholder requested change; added requirements	NO
7.711.52.D	Technical cleanup/rule reduction	Permanent and Semi-Permanent Shelters and Sleeping Facilities	Removed health and fire requirements found in alternate section	Technical cleanup/rule reduction; outdated requirement	NO
7.711.52.E	Technical cleanup/rule reduction	Permanent and Semi-Permanent Shelters and Sleeping Facilities	Removed health requirements found in alternate section	Technical cleanup/rule reduction; outdated requirement	NO
7.711.52.N	Technical cleanup/rule reduction	Permanent and Semi-Permanent Shelters and Sleeping Facilities	Removed insulation requirements	Technical cleanup/rule reduction; outdated requirement	NO
7.711.53A&B	Technical cleanup; language change	Toilet and Bathing Facilities	Updated language	Technical cleanup	Included updated language gender-segregated toilet facilities
7.711.53C1&2	Technical cleanup; rule reduction	Toilet and Bathing Facilities	Removed requirements for maintenance requirements. Eliminate duplicate rule with other agency	Technical cleanup; rule reduction	Included updated language gender-segregated toilet facilities
7.711.53C	Addition to requirement	Toilet and Bathing Facilities	Added a requirement in new construction for hand washing facilities adjacent to where meals are served	Provider/ stakeholder requested change	Clarified that this is for new constructio n
7.711.53D	Technical cleanup; rule reduction	Toilet and Bathing Facilities	Removed requiring vapor proof lights in shower or bathing area	Technical cleanup; rule reduction	No
7.711.53E	Language change	Toilet and Bathing Facilities	Added meeting the Colorado Department of Public Health and Environment requirements.	Technical cleanup	No
7.711.53G1	Technical cleanup; rule	Toilet and Bathing Facilities	Rules removed; eliminate duplication of rule with other	Technical cleanup; rule	No

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Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
	reduction		agency	reduction	
7.711.754	Technical cleanup; rule reduction	Food Preparation Area	Rules removed; eliminate duplication of rule with other agency	Technical cleanup; rule reduction	No
7.711..55B	Added clarifying language	General Building Safety	Clarified complying with local & building ordinances for any installation and/or construction	Added clarification	No
7.711.55B	Added clarifying language	General Building Safety	Clarified permanent structures	Added clarification	No
7.711.55E	Added clarifying language	General Building Safety	Clarified where egress can be	Added clarification	No
7.711.55G	Added clarifying language	General Building Safety	Clarified maintaining exits	Added clarification	No
7.711.55J1	Added clarifying language	General Building Safety	Clarified installation of heating elements	Added clarification	No
7.711.55J5	Technical cleanup	General Building Safety	More specific language	Technical cleanup	No
7.711.55K	Technical cleanup and change in requirement	General Building Safety	Separated from power tools; defined additional weapons	Technical cleanup	No
7.711.55L	Technical cleanup & change in requirement	General Building Safety	Separated from weapons & ammunition	Technical cleanup	No
7.711.55M	Added clarifying language	General Building Safety	Removed old language and clarified hazardous items that must be inaccessible to children	Cleanup and clarification added clarification	No
7.711.55R	Added clarifying language	General Building Safety	Clarified all areas accessible to children, types of items, worn or dangerous.	Added clarification	No
7.711.56F	Added clarifying language	Fire Safety Provisions	Removed close at hand & added immediately accessible	Added Clarification	No
7.711.56G	Technical cleanup; additional requirement	Fire Safety Provisions	Campfires and open flames prohibited within 10 feet of any tent or fabric structure	Technical cleanup	No
7.711.53A&B	Technical cleanup; language change	Toilet and Bathing Facilities	Updated language	Technical cleanup	No
7.711.53C1&2	Technical cleanup; rule reduction	Toilet and Bathing Facilities	Removed requirements for maintenance requirements. Eliminate duplicate rule with other agency	Technical cleanup; rule reduction	No
7.711.53C	Addition to requirement	Toilet and Bathing Facilities	Added a requirement in new construction for hand washing facilities adjacent to where meals are served	Provider/ stakeholder requested change	No
7.711.53D	Technical cleanup; rule reduction	Toilet and Bathing Facilities	Removed requiring vapor proof lights in shower or bathing area	Technical cleanup; rule reduction	No
7.711.53E	Language change	Toilet and Bathing Facilities	Added meeting the Colorado Department of Public Health and Environment requirements.	Technical cleanup	No
7.711.53G1	Technical cleanup; rule reduction	Toilet and Bathing Facilities	Rules removed; eliminate duplication of rule with other agency	Technical cleanup; rule reduction	No
7.711.754	Technical cleanup; rule reduction	Food Preparation Area	Rules removed; eliminate duplication of rule with other agency	Technical cleanup; rule reduction	No
7.711..55B	Added clarifying language	General Building Safety	Clarified complying with local & building ordinances for any installation and/or construction	Added clarification	No
7.711.55B	Added clarifying language	General Building Safety	Clarified permanent structures	Added clarification	No

Title of Proposed Rule: **Changes to Rules Regulating Children's Resident Camps; Changes to Rules Regulating School-aged Child Care Centers**

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Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.711.55E	Added clarifying language	General Building Safety	Clarified where egress can be	Added clarification	No
7.711.55G	Added clarifying language	General Building Safety	Clarified maintaining exits	Added clarification	No
7.711.55J1	Added clarifying language	General Building Safety	Clarified installation of heating elements	Added clarification	No
7.711.55J5	Technical cleanup	General Building Safety	More specific language	Technical cleanup	No
7.711.55K	Technical cleanup and change in requirement	General Building Safety	Separated from power tools; defined additional weapons	Technical cleanup	No
7.711.55L	Technical cleanup & change in requirement	General Building Safety	Separated from weapons & ammunition	Technical cleanup	No
7.711.55M	Added clarifying language	General Building Safety	Removed old language and clarified hazardous items that must be inaccessible to children	Cleanup and clarification added clarification	No
7.711.55R	Added clarifying language	General Building Safety	Clarified all areas accessible to children, types of items, worn or dangerous.	Added clarification	No
7.711.56F	Added clarifying language	Fire Safety Provisions	Removed close at hand & added immediately accessible	Added Clarification	No
7.711.56G	Technical cleanup; additional requirement	Fire Safety Provisions	Campfires and open flames prohibited within 10 feet of any tent or fabric structure	Technical cleanup	No
7.711.53A&B	Technical cleanup; language change	Toilet and Bathing Facilities	Updated language	Technical cleanup	No
7.711.53C1&2	Technical cleanup; rule reduction	Toilet and Bathing Facilities	Removed requirements for maintenance requirements. Eliminate duplicate rule with other agency	Technical cleanup; rule reduction	No
7.711.53C	Addition to requirement	Toilet and Bathing Facilities	Added a requirement in new construction for hand washing facilities adjacent to where meals are served	Provider/ stakeholder requested change	No
7.711.53D	Technical cleanup; rule reduction	Toilet and Bathing Facilities	Removed requiring vapor proof lights in shower or bathing area	Technical cleanup; rule reduction	No
7.711.53E	Language change	Toilet and Bathing Facilities	Added meeting the Colorado Department of Public Health and Environment requirements.	Technical cleanup	No
7.711.53G1	Technical cleanup; rule reduction	Toilet and Bathing Facilities	Rules removed; eliminate duplication of rule with other agency	Technical cleanup; rule reduction	No
7.711.754	Technical cleanup; rule reduction	Food Preparation Area	Rules removed; eliminate duplication of rule with other agency	Technical cleanup; rule reduction	No
7.711..55B	Added clarifying language	General Building Safety	Clarified complying with local & building ordinances for any installation and/or construction	Added clarification	No
7.711.55B	Added clarifying language	General Building Safety	Clarified permanent structures	Added clarification	No
7.711.55E	Added clarifying language	General Building Safety	Clarified where egress can be	Added clarification	No
7.711.55G	Added clarifying language	General Building Safety	Clarified maintaining exits	Added clarification	No
7.711.55J1	Added clarifying language	General Building Safety	Clarified installation of heating elements	Added clarification	No
7.711.55J5	Technical cleanup	General Building Safety	More specific language	Technical cleanup	No
7.711.55K	Technical cleanup and change in requirement	General Building Safety	Separated from power tools; defined additional weapons	Technical cleanup	No

Title of Proposed Rule: **Changes to Rules Regulating Children's Resident Camps; Changes to Rules Regulating School-aged Child Care Centers**

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Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.711.55L	Technical cleanup & change in requirement	General Building Safety	Separated from weapons & ammunition	Technical cleanup	No
7.711.55M	Added clarifying language	General Building Safety	Removed old language and clarified hazardous items that must be inaccessible to children	Cleanup and clarification added clarification	No
7.711.55R	Added clarifying language	General Building Safety	Clarified all areas accessible to children, types of items, worn or dangerous.	Added clarification	No
7.712.	Technical cleanup	Throughout rule package	Technical cleanup; formatting	Technical cleanup; formatting changes	No
7.712.2.A	Changes and additions to ages served.	Definitions	Increased ages of children served to 18 years; allows 4 year old children to be enrolled in summer program.	Provider/stakeholder requested change	Comments to keep new language
7.712.2A	Technical cleanup/ rule reduction	Definitions	Removed unnecessary language and outdated rule language	Technical cleanup; rule reduction.	No
7.712.2B	Changes to ages served	Definitions	Increased ages of children served to 18 years	Provider/ stakeholder requested change	No
7.712.2C	Technical cleanup	Definitions	Removed unnecessary language	Technical cleanup; rule reduction	No
7.712.C2	Clarification	Definitions	Mobile programs can operate under one license in a single county.	Added clarification	Clarified why no longer necessary to allow mobile day camp to operate across counties
7.712.C3	Technical cleanup	Definitions	Removed unnecessary language and revised language	Technical cleanup	No
7.712.31A5	Removed severe and added inclement	Statement of Policies and Procedures	Revised language	Provided clarification	No
7.712.31A6	Removed registration and added enrollment	Statement of Policies and Procedures	Revised language	Provider/ stakeholder requested change	No
7.712.31A8	Language change	Statement of Policies and Procedures	Language revised in this section; changes and additions to requirements	Added clarification	No
7.712.31A10	Technical cleanup	Statement of Policies and Procedures	Removed outdated rule language & updated rule language	Technical cleanup & updated rule language	No
7.712.31A11	Language change	Statement of Policies and Procedures	Revised language	Provided clarification	No

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7.712.31A11	Technical cleanup	Statement of Policies and Procedures	Removed outdated rule; rule is in General Rules for Child Care Facilities	Technical cleanup; rule reduction	No
7.712.31A13	Removed responsibility added role	Statement of Policies and Procedures	Revised language	Added clarification	No
7.712.31A14	Removed policy added procedure	Statement of Policies and Procedures	Revised language	Added clarification	No
7.712.31A18	Added storage	Statement of Policies and Procedures	Revised language	Added clarification	No
7.712.31A21	Added procedure	Statement of Policies and Procedures	Revised language	Added clarification	No
7.712.31A23	Added language	Statement of Policies and Procedures	Revised language	Added clarification	No
7.712.31A24	Added language	Statement of Policies and Procedures	Revised language	Added clarification	No
7.712.31A25	Added additional policy	Statement of Policies and Procedures	Added procedure for transitioning children between school/ community activities	Provider/stakeholder requested change	No
7.712.31A26	Technical cleanup	Statement of Policies and Procedures	Removed unnecessary language and revised language	Technical cleanup	No
7.712.31A32C	Technical cleanup	Statement of Policies and Procedures	Removed rule	Technical cleanup; Rule reduction	No
7.712.31A32F	Technical cleanup	Statement of Policies and Procedures	Removed rule	Technical cleanup; Rule reduction	No
7.712.41A	Technical cleanup	General Requirements for all Personnel	Removed unnecessary language; added clarifying language	Technical cleanup	No
7.712.41B	Added volunteers	General Requirements for all Personnel	Revised language	Added clarification	No
7.712.41C	Technical cleanup	General Requirements for all Personnel	Removed rule; rule is in General Rules for Child Care Facilities	Technical cleanup; rule reduction	Clarified rule is found in general rules
7.712.41C	CCDBG reauthorization requirement	General Requirements for all Personnel	Changes and additions to requirements	Rule change to comply with Federal law	No
7.712.41E	Technical cleanup	General Requirements for all Personnel	Removed rule; rule is in General Rules for Child Care Facilities	Technical cleanup; rule reduction	Clarified rule is found in general rules
7.712.41D	Language revised	General Requirements for all Personnel	Changes and additions to requirements	Provider/ stakeholder requested change	Clarified rule is found in general rules
7.712.41H	Language revised	General Requirements for all Personnel	Modified language & regulation to reflect current requirements	Added clarification	Revised not to apply to

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					day camps
7.712.41I	Language revised	General Requirements for all Personnel	Modified language & regulation to reflect current requirements	Added clarification	
7.712.42A1c	Technical cleanup; language revised	Program Director	Removed unnecessary language and revised language	Technical cleanup; addition to requirement	
7.712.42A1c2	Language revised	Program Director	Revised language; added clarifying language	Added clarification	
7.712.42B	Language revised	Program Leader	Revised language; additions to requirements; added clarifying language	Added clarification	Revised to exclude day camps and clarified will count towards ongoing training
7.712.42D1	Rule added; required experience	Department-Approved Child Care Consultant	Addition of regulation to reflect current requirements; required topic for consultant to cover to meet specific needs of program.	Provider/ stakeholder requested change	NO
7.712.42D2	Rule added; required documentation	Department-Approved Child Care Consultant	Addition of regulation to reflect current requirements; document date of consultation and the content that was covered	Provider/ stakeholder requested change	NO
7.712.42D3	Rule added; required documentation of experience	Department-Approved Child Care Consultant	Addition of regulation to reflect current requirements; documentation of license in good standing; biography if knowledge & experience	Provider/ stakeholder requested change	NO
7.712.42D4	Rule added; documentation of required training	Department-Approved Child Care Consultant	Addition of regulation to reflect current requirements; completion & documentation of required Department-Approved Child Health Consultant training	Provider/ stakeholder requested change	NO
7.712.42D5	Rule added; documentation of immunization course	Department-Approved Child Care Consultant	Addition of regulation to reflect current requirements; completion & documentation of required Department-Approved immunization course	Provider/ stakeholder requested change	Positive to keep language
7.712.42F	Rule added; staff on duty at all times with required training	Required Personnel on duty at all times	Addition of regulation to reflect current requirements; staff member with current Department-Approved medication administration training & delegation on duty at all times	Provider/ stakeholder requested change	NO
7.712.43C	Rule added; 4 year old in attendance	Required Staff Supervision	Addition of regulation for supervision when 4 year old are in attendance	Added clarification	NO
7.712.43D	Rule added; required group size	Required Staff Supervision	Addition of regulation for group size of children	Added clarification	NO
7.712.43E	Rule added; group size may be exceeded	Required Staff Supervision	Addition of regulation for time when group size may be exceeded	Added clarification	NO

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7.712.43F	Rule added; ratio when 4 year olds are in attendance	Required Staff Supervision	Addition of regulation for required ratio when 4 year olds are in attendance.	Added clarification	NO
7.712.43F	Chart added	Required Staff Supervision	Addition of chart for ratio & group size	Provider/ stakeholder requested change	NO
7.712.43I	Revised language	Required Staff Supervision	Clarified requirement anytime program is away from the building.	Added clarification	Clarified why necessary for supervisio n
7.712.44	Technical cleanup; language revised	Volunteers	Language revised and addition of requirements for volunteers who work more than 14 days or 112 hours per year	Rule cleanup; language revised	NO
7.712.51B	Removed attendance	Admission Procedure	Language revised; removed attendance & replaced with first day in care	Added clarification	NO
7.712.52A1	Rule added	Statements of Health Status	Requirement of Statements of Health Status at enrollment	Provider/stakeholder requested change	NO
7.712.52A1a	Revised language; health history	Statements of Health Status	Revised language; addition of overall health history including current medications and special diets	Provider/stakeholder requested change	clarified this is a health history and not a physical
7.712.52A1b	Revised language; specified prior to or on first day of care	Statements of Health Status	Revised language; addition of Colorado law requires proof of immunization prior to or on the first day of care.	Provider/stakeholder requested change	Positive to keep
7.712.52Ab1a bc	Added rule for child care centers at a ski area	Statements of Health Status	Addition of regulations for requirements of immunization exemption for child care centers at a ski area based on attendance and parent notification	Provider/stakeholder requested change	NO
7.712.52A2	Added rule for consultant notification	Statements of Health Status	Addition of regulation for notification of child care health consultant prior to the first day of care of enrollment of a child with specialist health care needs	Provider/ stakeholder requested change	NO
7.712.52A3	Revised language	Statements of Health Status	Clarified center staff and hours the center is open	Added clarification	NO
7.712.52B2	Revised language	Emergency Procedures	Clarified notification of parents when there's an accident, injury, illness, or seek medical attention.	Added clarification	NO
7.712.52B3,4	Revised language	Emergency Procedures	Clarified supervision of ill or injured children until they are picked up or sign out of the program.	Added clarification	NO
7.712.52B5	Revised language	Emergency Procedures	Clarified first aid kids available to staff and out of reach of children. Frequency they must be checked & stocked	Added clarification	NO

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Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.712.52C1	Revised language; medication with current written order given to children	Medication	Addition of un-expired medication; addition of home remedies/ homeopathic medications not given to children.	Provider/ stakeholder requested change	NO
7.712.52C5	Technical cleanup	Medication	Removed verbal orders taken from the licensed prescriber may be accepted by a licensed registered nurse	Technical cleanup; rule reduction	NO
7.712.52C6,a, b,c	Revised language; administration of medication	Medication	Modified language & regulation to reflect current requirements	Provider/stakeholder requested change	NO
7.712.52C7	Revised language; storage of medication	Medication	Modified language & regulation to reflect current requirements	Provider/stakeholder requested change	NO
7.712.52C8	Rule added; storage of emergency medication	Medication	Addition of storage of emergency medications	Provider/ stakeholder requested change	
7.712.52C10	Revised language	Medication	Added auto injectors	Provider/stakeholder requested change	
7.712.52C13	Revised language	Medication	Added consultants must be aware of severe allergies who can administer auto injectors	Provider/ stakeholder requested change	
7.712.52D1	Revised language; authorization for sunscreen	Sun Protection	Modified language & regulation to reflect current requirements	Provider/ stakeholder requested change	clarified parental permission
7.712.52D5	Added rule	Sun Protection	Addition of application of sunscreen	Provider/ stakeholder requested change	clarified child may apply
7.712.52E3	Revised language	Control of Communicable Illness	Modified language & regulation to reflect current requirements	Provider/ stakeholder requested change	
7.712.53	Technical cleanup; rule reduction	Personal Hygiene	Rule reduction; eliminate duplication of regulation with other agency	Technical cleanup; rule reduction	NO
7.712.53B	Revised language	Personal Hygiene	Removed diapering and replaced with Children with specific toileting needs	Provider/ stakeholder requested change	NO
7.712.54A	Rule reduction; added language	Food and Nutrition	Rule reduction; eliminate duplication of regulation. Addition of food provided by center must meet current USDA child and adult meal pattern requirements	Provider/ stakeholder requested change	clarified when meals and snacks are provided by the center
7.712.54B	Added rule	Food and Nutrition	Modified language & regulation to reflect current requirements. Addition of centers must not provide sugar sweetened beverages to children	Provider/ stakeholder requested change	clarified when meals and

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
					snacks are provided by the center
7.712.54C	Added rule	Food and Nutrition	Modified language & regulation to reflect current requirements. Addition of 100% of fruit juice is limited to no more than twice per week	Provider/ stakeholder requested change	clarified when meals and snacks are provided by the center
7.712.54D	Removed rule; added rule	Food and Nutrition	Rule reduction; eliminate duplication of regulation; modified language & regulation to reflect current requirements. Center who don't regularly provide meals must supplement if the meal appears does not appear to meet current USDA	Provider/ stakeholder requested change	clarified when meals and snacks are provided by the center
7.712.54E	Added rule	Food and Nutrition	Modified language & regulation to reflect current requirements. Meal menu planning & recording	Provider/ stakeholder requested change	clarified when meals and snacks are provided by the center
7.712.54F	Added rule	Food and Nutrition	Modified language & regulation to reflect current requirements. Appropriate serving size for child's age & appetite.	Provider/ stakeholder requested change.	clarified when meals and snacks are provided by the center
7.712.55E	Revised language	Guidance	Clarified appropriate separation when used as a form of guidance	Added clarification	NO
7.712.55H	Added rule	Guidance	Addition of physical exercise must not be used as a form of guidance	Provider/ stakeholder requested change	positive to keep language
7.712.56B1d	Added rule	Requirements for Vehicles	Addition of modification to the vehicle must be completed by manufacturer and have documentation available.	Provider/stakeholder requested change	NO

Title of Proposed Rule: **Changes to Rules Regulating Children's Resident Camps; Changes to Rules Regulating School-aged Child Care Centers**

CDHS Tracking #: **14-08-14-01**

Office, Division, & Program: OEC, ECL, LU

Rule Author: Carin Rosa

Phone: 303-866-6246

E-Mail: carin.rosa@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.712.56B2b	Rule reduction; rule added	Requirements for Vehicles	Two or more children restrained in one seat belt was removed; addition of the provider must not transport more children than any vehicle can safely accommodate.	Provider/stakeholder requested change	NO
7.712.56C6,7,8,9	Rules added; driver safety	Requirements for Vehicles	Addition to the requirements for drivers; safety, ratio, driver age, and required driver training	Provider/ stakeholder requested change	Clarified training may be developed by the program
7.712.62A,B,C	Rules added; daily physical activities	Physical Activity	Addition of physical gross motor activities requirements based on hours the program is in operation.	Provider/ stakeholder requested change	positive to keep language
7.712.63A,B,c	Rules added; screen time and media use	Screen Time and Media Use	Addition of rules regarding screen time & media use including: not containing explicit language, prohibited during meals & snacks, and developing a media plan	Provider/stakeholder requested change	positive to keep language
7.712.635A1	Language added; parent notification	Field Trips	Addition of notifying parents in advance of any field trip	Provider/ stakeholder requested change	NO
7.712.635A2,3	Added language	Field Trips	Clarification of supervision of children by qualified staff on field trips	Clarification	Clarified why necessary for supervision
7.712.635A5	Added rule; medication on field trip	Field Trips	Addition of qualified staff to administer medication to a child while attending field trip	Provider/ stakeholder requested change	NO
7.712.635A6	Added rule; filed trip list	Field Trips	Modified language & regulation to reflect current requirements; a list of children and staff out on the field trip must be kept at the center	Provider/ stakeholder requested change	NO
7.712.635A7	Added rule; copy of emergency disaster plan	Field Trips	Modified language & regulation to reflect current requirements; staff must have a copy of the emergency disaster plan when offsite	Provider/ stakeholder requested change	NO
7.712.71.D.4-5	Added language	Building and Facilities	Added requirement of equipment height and resilient surface currently enforced under 7.712.71.C	Clarification; added requirement	clarified height is based on play surface unless equipped with

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Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
					protective barrier
7.712.71E	Technical cleanup; Rule reduction	Building and Facilities	Removed rule; eliminate duplication of regulation with other agency	Technical cleanup; rule reduction	NO
7.712.72B	Added requirement	Toilet Facilities	Addition for new construction after February 1, 2018 must have one sink & toilet for every 15 or fewer children	Provider/ stakeholder requested change	Clarified only for new construction and gender-segregated toilets
7.712.73	Technical cleanup; rule reduction	Food Preparation Area	Removed rule; eliminate duplication of regulation with other agency	Technical cleanup; rule reduction	NO
7.712.73B2	Technical cleanup; revised language	Fire Safety	Revised language and addition of requirement	Technical clean up	NO
7.712.81A7	Addition of requirement	Children's Records	Revised & clarified language	Provider/ stakeholder requested change	NO
7.712.82A5	Technical cleanup; rule reduction	Staff Records	Removed rule; duplicate rule	Technical cleanup; rule reduction	clarified found in general rules
7.712.82A7	Technical cleanup; added language	Staff Records	Addition of Federal Bureau of Investigation	Technical cleanup	NO
7.712.83B	Added language	Administrative Records and Reports	Clarified reporting to the Department using the online injury reporting system	Added clarification	NO
7.712.83D	Technical cleanup; change in requirement	Administrative Records and Reports	Center must maintain records of reports made to Colorado Department of Public Health and Environment or local public health agency	Technical cleanup	NO
7.712.83D	Technical cleanup; rule reduction	Administrative Records and Reports	Removed rule; required in 7.712.52B2, 7.712.83B, & 7.712.52C9	Technical cleanup; rule reduction	NO
7.712.83G	Technical cleanup; rule reduction	Administrative Records and Reports	Removed rule; required in General Regulations for Child Care Centers	Technical cleanup; rule reduction	NO

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STAKEHOLDER COMMENT SUMMARY

Development

The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):

The Children's Resident Camp Rules Re-write committee and the School-aged Child Care Center Rules Re-write committee work product (stakeholder working group) directed all aspects of this revised rule package, including advising the Department on language and provisions.

Committee members include: Colorado Department of Public Health and Environment, Healthy Child Care Colorado, Qualistar Colorado, Denver Public Health and Environment, Avid 4 Adventure, St. Vrain Valley School District, Boulder Valley School District, Adams 12 School District, Children's Hospital Colorado, Colorado Early Education Network, Mesa County Health Department, Institute for Racial Equity and Excellence, Colorado Ski Country USA, Extended Hours Program, Jefferson County school District, Jefferson County Health Department, Louisville City Government, Rocky Mountain Region of the American Camp Association, Indian Hills Camp, Boy Scouts of America, YMCA of the Rockies, Work Bright, Sanborn Western Camps and Pathways.

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:

All licensed School-aged Child Care Centers and Children's Resident camps

Other State Agencies

Are other State Agencies (such as HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

[x] Yes [ ] No

If yes, who was contacted and what was their input?

CDPHE was consulted on the development of these regulations and assisted with removing duplicative regulations

Sub-PAC

Have these rules been reviewed by the appropriate Sub-PAC Committee?

[X] Yes [ ] No

Name of Sub-PAC	EC Sub-PAC		
Date presented	Electronically November 8, 2017		
What issues were raised?			
Vote Count	*For*	*Against*	*Abstain*
	2	0	
If not presented, explain why.			

PAC

Have these rules been approved by PAC?

[ ] Yes [X] No

Date presented	The rules will be presented to PAC on December 7, 2017
What issues were raised?	

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Vote Count	*For*	*Against*	*Abstain*
If not presented, explain why.			

Other Comments

Comments were received from stakeholders on the proposed rules:

[X] Yes [ ] No

If "yes" to any of the above questions, summarize and/or attach the feedback received, including requests made by the State Board of Human Services, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.

12 CCR 2509-8

CCDBG REAUTHORIZATION REQUIREMENT – PURPLE
PROVIDER/STAKEHOLDER REQUESTED CHANGE-GREEN
RULE CLARIFICATION – BLUE
TECHNICAL CLEAN UP/RULE REDUCTION-RED

7.711 RULES REGULATING CHILDREN'S RESIDENT CAMPS [Rev. eff. 6/1/07]

In addition to the General Rules for Child Care Facilities, Children's Resident Camps shall follow the rules specified in this section and the "RULES REGULATING SPECIAL ACTIVITIES" AND " RULES AND Regulations Governing the HEALTH AND Sanitation of Child Care ~~Centers~~ FACILITIES in the State of Colorado".

7.711.1 DEFINITIONS [Rev. eff. 4/1/13]

A. A "residential camp" ~~is defined at Section 26-6-102(2.2), C.R.S.~~ MEANS A FACILITY OPERATING FOR THREE OR MORE CONSECUTIVE TWENTY-FOUR-HOUR DAYS DURING ONE OR MORE SEASONS OF THE YEAR FOR THE CARE OF FIVE OR MORE CHILDREN. THE FACILITY SHALL HAVE AS ITS PURPOSE A GROUP LIVING EXPERIENCE OFFERING EDUCATION AND RECREATIONAL ACTIVITIES IN AN OUTDOOR ENVIRONMENT. THE RECREATIONAL EXPERIENCES MAY OCCUR AT THE PERMANENT CAMP PREMISES OR ON TRIPS OFF THE PREMISES. A CHILDREN'S RESIDENT CAMP SHALL SERVE CHILDREN WHO HAVE COMPLETED KINDERGARTEN OR ARE SIX YEARS OF AGE OR OLDER THROUGH CHILDREN YOUNGER THAN NINETEEN YEARS OF AGE; EXCEPT THAT A PERSON NINETEEN YEARS OF AGE OR TWENTY YEARS OF AGE MAY ATTEND A CHILDREN'S RESIDENT CAMP IF, WITHIN SIX MONTHS PRIOR TO ATTENDING THE CHILDREN'S RESIDENT CAMP, HE OR SHE HAS ATTENDED OR HAS GRADUATED FROM HIGH SCHOOL.

B. A residential camp may have a "primitive camp" which is a portion of the permanent camp premises or another site at which the basic needs for camp operation, such as places of abode, water supply systems, and permanent toilet and/or cooking facilities, are not usually provided.

C. A "travel-trip camp" shall be known as a camp in which there is no permanent camp site and children move from one site to another. The travel-trip camp either originates in Colorado or moves into and/or through Colorado from another state and operates for three or more consecutive 24-hour days during one or more seasons of the year for the care of five or more children who are at least ten (10) years old or have completed the fourth grade. The program shall have as its purpose a group learning experience offering educational and recreational activities utilizing an outdoor environment.

D. ~~A "non-medical religious camp" is a camp operated by a religious organization which does not believe in the use of medical practice in physical examination or treatment of illness or injury.~~

7.711.11 Purpose and Goals [Rev. eff. 11/1/98]

Each camp ~~shall~~ MUST submit to the department a statement of goals and objectives. This statement ~~shall~~ MUST be kept on file, updated periodically, made known to staff, and available for licensing inspection.

7.711.12 Governing Body [Rev. eff. 6/1/07]

The governing body ~~shall~~ MUST be identified by its legal name. The names and addresses of individuals who hold primary financial control and officers of the governing body ~~shall~~ MUST be disclosed fully to the Colorado Department of Human Services. THE GOVERNING BODY IS RESPONSIBLE FOR PROVIDING NECESSARY FACILITIES, ADEQUATE FINANCING, QUALIFIED PERSONNEL, SERVICES, AND PROGRAM FUNCTIONS FOR THE SAFETY AND WELL-BEING OF CHILDREN IN ACCORDANCE WITH THESE RULES. When changes of governing body occur, the new governing body must immediately submit an original application and pay the required fee.

A. If the governing body lets, leases, or rents the licensed facility to any group or organization whose program falls under the definition as found at Section 7.711.1 and verifies in writing to the State Department that the lessee meets the licensing standards, an application is not required of the lessee. If the governing body does not verify that the lessee meets the licensing standards, an application is required of the lessee and the license must be issued to the lessee before the camp opens.

B. When the facility is let, leased, or rented, the governing body ~~shall~~ MUST report the following in writing at the request of the State Department: name of the group, number and ages of children, length of time for use of the facility, and the purpose of the camp.

7.711.13 Financial Support [Rev. eff. 11/1/98]

The governing body ~~shall~~ MUST satisfy the department upon request that there is sufficient financial support to operate and maintain a camp in accordance with these rules and camp goals and objectives.

7.711.14 Insurances [Rev. eff. 11/1/98]

~~A.~~ Every facility ~~shall~~ MUST carry public liability insurance. The applicant or licensee ~~shall~~ MUST submit the amount of the insurance and the name and the address of the insurance agency providing the insurance to the camp. The camp ~~shall~~ MUST maintain information about the insurance at the campsite. ~~A camp need not carry public liability insurance if the camp's governing body determines that insurance is unnecessary due to its financial ability to meet all possible claims. The basis of such judgment must be revealed to the department.~~

~~B. Camps operating their own transportation vehicles shall carry liability insurance in compliance with the minimum limits required by Article 10, Chapter 7, Colorado Revised Statues.~~

7.711.15 Written Agreements, Reports, and Logs [Rev. eff. 6/1/07]

A. There ~~shall~~ MUST be on file at the campsite an~~d~~ annually-dated ~~a written~~ A WRITTEN OR ELECTRONIC agreement with a licensed physician or nearby health care facility TO PROVIDE ~~stating that the physician or health care facility will furnish~~ the necessary medical services for campers at the camp and medical help as a backup to the camp staff members responsible for health supervision.

B. A travel-trip camp is not required to have a written agreement, but IT must have a list of all medical facilities in areas where the travel-trip camp will be traveling.

~~C. The camp shall report to the State Department in writing within 48 hours each injury or illness which required that the camper be permanently sent home. The report shall include name, age and address of the camper; name of camper's parent(s) or guardian(s) and their address if different; date of accident or illness; description of accident or diagnosis of illness; treatment given; name and address of physician prescribing treatment; and, where treatment was given and disposition of the case.~~

~~D~~C. The camp ~~shall~~ MUST maintain at the campsite a medical record keeping system, listing name of camper, ~~ailment~~ ILLNESS OR INJURY, ~~treatment~~ prescribed TREATMENT and ~~administered dale~~ DATE THE TREATMENT WAS ADMINISTERED, and name of person administering care. This record keeping system ~~shall~~ MUST be available to licensing personnel.

~~E~~D. ~~Within 24 hours of each incident, t~~The camp ~~shall~~ MUST submit within 24 hours to the State Department a written report about any camper who has been ~~lost~~ SEPARATED FROM THE GROUP OUTSIDE OF THE SUPERVISION OF THEIR ASSIGNED STAFF MEMBER ~~from the campsite~~ and for whom a report has been made to the local ~~sheriffs~~ SHERIFF'S department for search and rescue. Such report ~~shall~~ MUST indicate the name, age, and address of the camper; the name of parent~~(~~s~~)~~ ~~or~~ /guardian~~(~~s~~)~~ and their address if different; the date when the child was lost; the location, time, and circumstances when the camper was last seen; and~~,~~ circumstances of locating the camper.

~~F. Each camp shall have a plan for action in case of natural disasters, lost campers/swimmers, injuries, and illnesses. These plans shall be in writing and shall be on file at the camp office. The staff shall receive training regarding the implementation of these plans. In the case of a travel trip or primitive camp, these plans shall accompany the staff members and campers.~~

7.711.2 PERSONNEL

7.711.21 General Requirements for All Personnel [Rev. eff. 6/1/07]

A. All paid employees at the camp ~~shall be sixteen (16) years of age or over, except that employment of maintenance staff including kitchen service, grounds, and housekeeping employees under~~ LESS THAN 16 years of age ~~is allowed if~~ MUST BE EMPLOYED in compliance with Colorado labor laws.

B. All counselors and staff members having a supervisory role with campers ~~shall~~ MUST be at least eighteen (18) years of age, OR SEVENTEEN (17) YEARS OF AGE AND GRADUATED HIGH SCHOOL, and have interest in, respect for, and ability to work with children.

C. There ~~shall~~ MUST be a letter of agreement with each volunteer or employed staff member which includes listing of specific responsibilities/job description and referring to information contained in the hiring packet or staff manual. Days or hours of employment/time off, personal conduct, and ~~necessary medical examinations~~ HEALTH HISTORY QUESTIONNAIRE must be provided in writing OR ELECTRONICALLY and may be provided in the hiring packet or the staff manual. The letter of agreement ~~shall~~ MUST be signed by both the employer and the volunteer or staff member. In the case of staff members or volunteers who are younger than eighteen (18) years old, the letter of agreement ~~shall~~ MUST also be signed by the parentS/ ~~or~~ guardianS.

D. There ~~shall~~ MUST be at least three references ~~about~~ FOR each staff member of the camp attesting to the individual's character and suitability to work with children. The written references ~~shall~~ MUST be in the personnel file or there ~~shall~~ MUST be an indication in the personnel file that a reference has been obtained~~. by telephone~~.

E. Each staff member must complete aN ANNUAL ~~current~~ health history~~. and must have been examined within the last 24 months by a licensed medical health care professional approved to perform physical examinations.~~ The health history must ~~be completed within 90 calendar days of the beginning of working at the camp and shall~~ be maintained ~~IN the personnel file~~ A SECURED LOCATION at the camp. ~~The staff members of a non- medical religious camp are exempt from this regulation.~~

~~F. If a staff member wishes an exemption from an examination performed by a licensed medical hearth care professional due to religious beliefs, the staff member shall submit a signed, written statement, which states the reason for the religious exemption and that the individual is in good health. A camp retains the right to ask a staff member for a written statement prior to employment at the camp.~~

~~G~~F. Each staff member ~~shall~~ MUST be trained and given written instructions as to camp policy when emergencies occur INCLUDING BUT NOT LIMITED TO: ~~, such as fires,~~ LOST CAMPERS, MEDICAL SITUATIONS, HAZARDOUS WILDLIFE and ENVIRONMENTAL HAZARDS. IN THE CASE OF TRAVEL TRIP OR PRIMITIVE CAMPS, THESE PLANS MUST ACCOMPANY THE STAFF AND CAMPERS.

7.711.22 ~~Necessary~~ Camp Personnel [Rev. eff. 6/1/07]

A. Each camp ~~shall~~ MUST have an onsite director who ~~shall~~ MUST be at least twenty-one (21) years of age. The director ~~shall~~ MUST have ~~a maturity of judgment and~~ 12 MONTHS (1820 HOURS) ~~prior~~ verified ~~adult~~ leadership experience in an administrative or supervisory position, WITH GROUPS OF CHILDREN FIVE (5) YEARS OF AGE OR OLDER, ~~at an organized camp, and twelve months employed adult leadership with groups of children~~ since he OR ~~/~~she attained the age of EIGHTEEN (18) years.

B. At each permanent camp there ~~shall~~ MUST be AT LEAST one ~~or more~~ health care ~~providers~~ WORKER who ~~shall be~~ IS responsible for monitoring the overall health of the CAMPERS AND STAFF. ~~and creating a healthy camp community.~~ A ~~hearth~~ HEALTH care ~~provider~~ WORKER ~~may~~ MUST be one of the following: a licensed physician, a registered nurse, a licensed practical nurse, a licensed physician's assistant, a certified nursing assistant ~~or a staff member who holds a current American Red Cross Emergency Response Certificate or a current certificate as an Emergency Medical Technician or equivalent. Any health care provider other than a licensed physician, registered nurse, or licensed practical nurse must also hold a current certificate indicating completion of the State Department approved and required medication administration course.~~ OR AN INDIVIDUAL WHO HOLDS CURRENT CERTIFICATION IN EMERGENCY MEDICAL SERVICES. ALL HEALTH CARE WORKERS MUST WORK WITHIN THEIR SCOPE OF PRACTICE, INCLUDING THE ABILITY TO WORK INDEPENDENTLY OR WITH REQUIRED OVERSIGHT.

1. At least one health care ~~provider~~ WORKER ~~shall~~ MUST be at the camp twenty-four (24) hours per day that the camp is in session.

2. If the camp health care ~~provider~~ WORKER is not a physician or RN, a physician or RN currently licensed in Colorado must specifically delegate ~~authority to any camp health care provider or~~ THE camp staff member ~~to~~ THE AUTHORITY TO administer medications. The delegating physician or RN must be aware of the specific medical needs of campers, be available for consultation while the camp is in session, and accept responsibility for monitoring the therapeutic effects of medications administered at camp. ~~As directed by their scope of practice, EMTs may not administer medications in the camp setting; therefore, an EMT may not serve as the sole camp health care provider.~~ Respiratory therapists may administer medication within their scope of practice.

3. IN ORDER TO ADMINISTER MEDICATIONS ~~A~~All health care ~~providers~~WORKERS, except physicians and RNs, must ~~take~~ COMPLETE the Department-approved ~~m~~Medication ~~a~~Administration ~~course~~ TRAINING, RECEIVE DELEGATION and hold ~~a~~ current DEPARTMENT-APPROVED First Aid and CPR ~~card~~ CERTIFICATION.

C. At any ~~primitive~~ camp LESS THAN THIRTY (30) MINUTES FROM EMERGENCY MEDICAL SERVICES, ~~within sixty (60) minutes from definitive medical care of the base camp, where children may be away from the base camp for up to six nights,~~ there must be at least one staff

member WITH EACH GROUP OF CHILDREN qualified with ~~community~~ DEPARTMENT-APPROVED First Aid ~~training~~, CPR, and ~~m~~Medication ~~a~~Administration ~~t~~Training AND DELEGATION. ~~if children taking medicine accompany the trip.~~

D. ~~At any primitive camp where children are either more than one hour from definitive medical care or are away from the base camp for seven or more nights, there must be at least one staff member with each group of children with wilderness First Aid training, CPR, and medication administration training.~~ ALL STAFF MEMBERS MUST COMPLETE A DEPARTMENT-APPROVED STANDARD PRECAUTIONS TRAINING PRIOR TO WORKING WITH CHILDREN. THIS TRAINING MUST BE RENEWED ANNUALLY AND MAY COUNT TOWARDS ONGOING TRAINING REQUIREMENTS.

E. ~~At any primitive camp where children are away from camp for seven or more nights and are more than one hour away from emergency medical services, there must be at least one staff member with each group of children with wilderness first responder training, CPR, and medication administration training if children taking medicine accompany the trip.~~ FOR EVERY THIRTY (30) OR FEWER CHILDREN IN ATTENDANCE, THERE MUST BE AT LEAST ONE (1) STAFF MEMBER WITH EACH GROUP OF CHILDREN WHO HOLDS CURRENT DEPARTMENT-APPROVED FIRST AID AND CPR FOR ALL AGES OF CHILDREN. AT ANY CAMP MORE THAN THIRTY (30) MINUTES AWAY FROM EMERGENCY MEDICAL SERVICES, THERE MUST BE AT LEAST ONE (1) STAFF MEMBER WITH EACH GROUP OF CHILDREN QUALIFIED WITH A MINIMUM OF WILDERNESS FIRST AID TRAINING, DEPARTMENT-APPROVED CPR AND MEDICATION ADMINISTRATION TRAINING. STAFF MEMBERS WITH MEDICATION ADMINISTRATION TRAINING MUST HAVE ANNUAL DELEGATION AS REQUIRED.

F. There ~~shall~~ MUST be sufficient camp counselors or staff members who have a supervisory role with children at the camp to meet the staff ratio as indicated in Section 7.711.23. Children under the age of six (6) years who live at camp or are visiting ~~with their parent~~ must be directly supervised by ~~their parent~~ A CAREGIVER, WHO IS NOT INCLUDED IN THE STAFF TO CAMPER RATIO, at all times when the children are involved in camp activities. Staff members whose children are under six (6) years of age cannot be supervising campers or leading special activities when they are supervising their own children.

G. If the camp has counselors-in-training WHO ARE NOT FULLY QUALIFIED, they must be directly accountable to a qualified counselor or specialized staff member and must be directly supervised by those individuals in their role when caring for children. The counselors-in-training who are less than eighteen (18) years old ~~shall~~ MUST not be counted as staff members in the maintenance of the staff ratio for supervision of children as found at Section 7.711.23.

H. There ~~shall~~ MUST be specialized staff members who are responsible for specific portions of the camp program. Requirements for those specialized staff members are found among the requirements for the specialized activity areas at Section 7.719, et seq.

7.711.23 ~~Necessary Staff~~ Supervision [Rev. eff. 6/1/07]

A. The camp ~~shall~~ MUST have an accurate system whereby staff members who are responsible for the supervision of children ~~shall~~ MUST know where each child is at all times.

B. At no time ~~shall~~ MAY a camper be left without qualified supervision. Sleeping quarters of the counselors ~~shall~~ MUST be ~~in close proximity~~ WITHIN SIGHT OR HEARING DISTANCE ~~to~~ OF THE sleeping quarters of the children whom they supervise ~~so that counselors are within sight or hearing of the children they supervise~~. Children may sleep alone for specific program functions such as solos or survival experiences and then only when regularly monitored pursuant to the camp's written program. THE CAMP'S WRITTEN PROGRAM MUST INCLUDE AN AUDIBLE

MECHANISM FOR A CAMPER TO ALERT A STAFF MEMBER WHO IS ABLE TO IMMEDIATELY RESPOND.

C. Each special activity ~~shall~~ MUST be supervised by a staff member currently qualified in DEPARTMENT-APPROVED First Aid and CPR training, and by the experience and training in that special activity as specified in Section 7.719, et seq.

D. In a residential camp, ratio of one (1) staff member having a supervisory role with children per number of campers ~~or fraction thereof~~ MUST be maintained at all times as follows:

Age of Children	Number of Children	Number of Staff Members
~~6~~ 5 ~~and~~ THROUGH 7 yrs. old	6	1
8 through 10 yrs. old	8	1
11 through 13 yrs. old	10	1
14 ~~through 15~~ yrs. ~~old~~ and ~~over~~ OLDER	12	1

E. In a trip away from the residential camp premises or at the primitive camp, the staff ratio given at Section 7.711.23, D, ~~shall~~ MUST be maintained, but there ~~shall~~ MUST be at least two staff members accompanying each trip, and one staff member ~~shall hold at least a current Red Cross standard First Aid and safety certificate or equivalent~~ MUST MEET THE QUALIFICATIONS AS DEFINED IN 7.711.22.C,E. If the trip exceeds two nights, there ~~shall~~ MUST be with the group a staff member who IS AT LEAST TWENTY-ONE (21) YEARS OF AGE, ~~has maturity of~~ EXERCISES GOOD judgment, ~~and~~ THE ABILITY TO ASSUME LEADERSHIP INDEPENDENTLY AND has been trained in trip leading procedures.

F. In a travel-trip camp, the staff ratio given at Section 7.711.23~~,~~.D, ~~shall~~ MUST be maintained, but there ~~shall~~ MUST be at least two (2) staff members at all times with the campers. One (1) of those staff members must be at least twenty-one (21) years old and one (1) staff member ~~shall~~ MUST meet qualifications of the health care ~~provider~~ WORKER ~~(see~~ AS DEFINED IN Section 7.711.22.B~~)~~.

G. In the case of trips away from the permanent residential camp, including overnights OR TRAVEL-TRIP CAMPS, there ~~shall~~ MUST be a day-to-day itinerary prepared prior to departure. The resident camp headquarters ~~shall~~ MUST keep a copy of the itinerary. The itinerary ~~shall~~ MUST be followed as closely as possible. ~~Resident c~~Camp headquarters ~~shall~~ MUST be notified of an itinerary change as soon as possible.

~~H. A travel-trip camp shall establish a day-to-day itinerary. A copy shall be on file at the camp headquarters. The itinerary shall be followed as closely as possible. In case of emergency, if a change in the itinerary is necessary, the camp headquarters shall be notified as soon as possible~~.

~~**7.711.3 – 7.711.42 None [Rev. eff. 6/1/07]**~~

7.711.~~5~~3 CHILD CARE

7.711.5~~3~~1 Health Care [Rev. eff. 6/1/07]

A. The camp health program ~~shall~~ MUST be under the supervision of an individual qualified as stated at Section 7.711.22, B.

B. ~~At the time of~~ AT LEAST TEN (10) CALENDAR DAYS PRIOR TO admission, each camper ~~shall~~ MUST furnish a health history which indicates communicable diseases and ~~serious~~ CHRONIC illnesses or ~~operations~~ INJURIES the individual has had, any known drug reactions and allergies,

medications being taken, and any necessary HEALTH PROCEDURES OR special diets ~~at the time of camp admission~~.

C. THE CAMP MUST INFORM ITS HEALTH CARE WORKER PRIOR TO THE FIRST DAY OF CARE OF THE ENROLLMENT OF A CHILD WITH SPECIAL HEALTH CARE NEEDS, IF KNOWN, TO ENSURE STAFF RECEIVES TRAINING, DELEGATION AND SUPERVISION AS INDICATED BY THE CHILD'S INDIVIDUALIZED HEALTH CARE PLAN.

~~C~~D. The camper ~~shall~~ MUST present a statement confirming a physical examination, which has been performed within the preceding twenty-four (24) months FROM THE FIRST DAY OF ATTENDANCE AT CAMP by a ~~licensed physician or qualified, licensed nurse practitioner~~ HEALTH CARE PROVIDER, WHICH INCLUDES~~. The physician or nurse practitioner shall be asked to inform the camp as to~~ any physical problems which would limit the camper's activity, AND any special care which the child will need~~., and include a record of up-to-date immunizations which the child has had, including the date of the last tetanus shot~~.

~~D~~E. ~~If the camper wishes an exemption from a statement confirming a physical examination and immunizations due to religious beliefs, the camper shall submit a written statement, signed by the camper's parents or legal guardian, which states the reason for such an exemption and that the individual is in good health. The camp has the right to refuse the admission of a child who has no statement from a physician or nurse practitioner.~~ The camper must submit documentation of immunization status or exemption as required by Colorado Department of Public Health and Environment (CDPHE). Immunizations must be updated and recorded as specified on the certificate of immunization or alternate certificate of immunization as supplied and approved by the Colorado Department of Public Health and Environment (CDPHE). Colorado law requires proof of immunization or exemption be provided prior to or on the first day of admission.

~~E~~F. UPON ARRIVAL OR ~~W~~within TWENTY-FOUR (24) hours ~~after arrival at camp~~, each camper ~~shall~~ MUST be observed by camp staff trained to do so to identify noticeable evidence of any illness, communicable disease, or signs of abuse. The camp health care ~~provider~~ WORKER ~~shall~~ MUST meet with campers ~~upon arrival at camp~~ that have special medications, HEALTH ~~treatment~~ procedures ~~or~~, SPECIAL ~~dietetic~~ restrictions ~~or~~, known allergic reactions, CHRONIC HEALTH CONDITIONS or any known physical limitations.

~~F~~G. If a child shows signs of ~~severe~~ illness or communicable disease listed in the Colorado Department of Public Health and Environment (CDPHE) exclusion guidelines, the camper ~~shall~~ MUST be separated from other campers, parents/GUARDIANS ~~shall~~ MUST be notified, and a doctor or medical facility ~~shall~~ MUST be consulted, if appropriate and as required, as to the child's treatment. All items used by the sick child ~~shall~~ MUST be properly disinfected before use by any other person.

~~G. The non-medical religious camp shall notify parents immediately when a camper becomes ill, but is exempt from the requirement of consultation with the doctor or medical facility.~~

~~H. When communicable diseases occur, parents and staff members shall be advised what protective measures are available and indicated for the particular disease, and the county or state health officer notified.~~

~~I~~H. If a camper requires medical attention away from the camp site, the camper's parents/ ~~or~~ guardian ~~shall~~ MUST be notified and necessary medical care ~~shall~~ MUST be sought from a ~~licensed physician~~ HEALTH CARE PROVIDER or medical facility. Written authorization for medical care ~~shall~~ MUST be in the child's file pursuant to Section 7.711.61~~,~~. A~~,~~.9.

~~J. If a camper requires medical attention away from the campsite of a non-medical religious camp, the parents shall be notified and their instructions followed.~~

~~K~~I. In the case of travel-trip camps, primitive camps, or trips away from the camp, a copy of the statement which has been signed by the parent or guardian indicating that the camp staff may obtain emergency medical care ~~shall~~ MUST be in the possession of staff members accompanying the campers. The original signed statement ~~shall~~ MUST be readily accessible.

~~L~~J. The camp health care ~~provider~~ WORKER ~~shall~~ MUST be responsible for administering medication to campers. If the health care ~~provider~~ WORKER is not a currently Colorado licensed RN or physician, the health care ~~provider~~ WORKER may only administer medication PRESCRIBED FOR INDIVIDUAL CAMPERS AS delegated and supervised by aN RN or physician. Respiratory therapists may administer medication within their scope of practice. ~~The health care provider shall administer only medicines prescribed for an individual camper or medicines listed in written standing treatment procedures from a licensed physician who has agreed to furnish medical services for the camp, pursuant to Section 7.711.61, A. Such medicines shall only be administered by authority of written authorization given to the camp or to the health care provider by the child's physician or camp physician.~~

1. MEDICATION prescribed for campers ~~shall~~ MUST be from a licensed pharmacy; labeled with the name, address, and phone number of the pharmacy; name of the camper; name and strength of the medicine; directions for use; date filled; prescription number~~; ,~~ and~~,~~ the name of THE practitioner prescribing the medicine. When no longer needed OR EXPIRED, the medication ~~shall~~ MUST be returned to the parent or ~~destroyed~~ DISPOSED OF IN ACCORDANCE WITH THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT (CDPHE) REQUIREMENTS.

    a. WHEN THE CAMP HAS AN ON-SITE RN OR PHYSICIAN, AND CAMPERS ARE ON EXCURSIONS AWAY FROM THE CAMP, THE RN OR PHYSICIAN IS RESPONSIBLE FOR DETERMINING A SAFE PROCESS FOR THE ADMINISTRATION OF ROUTINE AND EMERGENCY MEDICATIONS. THIS PROCESS SHOULD INCLUDE:

        i. THE TRANSFER OF MEDICATIONS AND ASSOCIATED DOCUMENTS FROM THEIR USUAL STORAGE PLACE TO PORTABLE STORAGE FOR THE TRIP.

        ii. LABELING WHICH INCLUDES CAMPER'S NAME, MEDICATION, ROUTE, DOSAGE, AND TIME THE MEDICATION SHOULD BE ADMINISTERED AS INDICATED ON THE ORIGINAL MEDICATION CONTAINER.

        iii. SECURE AND TEMPERATURE APPROPRIATE STORAGE DURING THE TRIP.

        iv. HAND HYGIENE DURING THE TRIP.

        v. APPROPRIATE DOCUMENTATION PRACTICES DURING THE TRIP.

        vi. THE RETURN OF MEDICATION AND ASSOCIATED DOCUMENTS FROM PORTABLE STORAGE FOR THE FIELD TRIP TO THEIR USUAL ON-SITE STORAGE.

    b. IF THE CAMP DOES NOT HAVE AN ON-SITE RN OR physician, medications on trips must be in original labeled pharmacy containers

2. A record of any medications administered ~~shall~~ MUST be maintained in a medication administration record pursuant to Section 7.711.15, D.

3. All medication at the permanent camp site ~~shall~~ MUST be kept in a clean, locked container, except emergency medication such as ~~EPI-PENS~~ EPINEPHRINE AUTO INJECTORS or asthma inhalers. On excursions away from the camp, medication MUST be under the control of an adult and ~~shall~~ MUST be stored inaccessible to children.

4. The camp may, with written parental consent and authorization of the prescribing practitioner, permit children who have asthma to carry their own inhalers and use them as directed. All staff must be aware of which children have asthma and which ones may use their own inhalers as needed.

5. TOPICAL PREPARATIONS SUCH AS PETROLEUM JELLY AND BUG SPRAYS MAY BE ADMINISTERED TO CHILDREN WITH WRITTEN PARENTAL AUTHORIZATION. THESE PREPARATIONS MAY NOT BE APPLIED TO OPEN WOUNDS OR BROKEN SKIN UNLESS THERE IS A WRITTEN ORDER BY THE PRESCRIBING PRACTITIONER.

6. HOME REMEDIES, INCLUDING HOMEOPATHIC MEDICATIONS MUST NOT BE ADMINISTERED AT CAMP.

K. STANDING ORDERS FOR OVER THE COUNTER MEDICATIONS MUST BE UPDATED ANNUALLY AND ARE ONLY ALLOWED WITH PARENTAL PERMISSION AND WHEN ADMINISTERED BY A PHYSICIAN OR RN.

~~M~~L. First Aid supplies ~~shall~~ MUST be located near food service operations, program areas, maintenance areas, the headquarters of the medical supervisor, and in motor vehicles which are used to transport campers.

~~N~~M. There ~~shall~~ MUST be an identified headquarters of the health care ~~provider~~ WORKER at the campsite.

~~O~~. ~~There shall be a location at the campsite furnished with necessary equipment to care for an individual who needs to be separated from other campers due to a communicable disease or illness. The isolation quarter shall be located within close proximity of restroom facilities.~~

~~P. A responsible adult shall be present or within hearing distance of any ill child.~~

~~Q~~N. Transportation ~~shall~~ MUST be available at all times in cases of medical emergency according to the written emergency medical evacuation plan of the camp.

O. To ensure the protection of campers from sun exposure the camp must:

1. Obtain the parent or guardian's written authorization and instructions for applying sunscreen or use of another form of parent or guardian approved sun protection to their children's exposed skin prior to going outside. A doctor's permission is not needed to use sunscreen at the camp;

2. Apply sunscreen or use another form of parent or guardian approved sun protection for children prior to campers going outside. Sunscreen must be reapplied as directed by the product label;

3. When supplied for an individual camper, the sunscreen must be labeled with the camper's first and last name; and

4. If sunscreen is provided by the camp, parents must be notified in advance, in writing, of the type of sunscreen the camp will use.

7.711.532 ~~Discipline~~GUIDANCE [Rev. eff. 11/1/98]

A. ~~The camp shall have a written policy regarding the discipline of children, which shall be explained to staff members before the camp session begins.~~ Guidance must be appropriate and constructive or educational in nature and may include such measures as diversion, separation of the child from problem situations talking with the child about the situation, or praise for appropriate behavior.

B. ~~Discipline shall be constructive or educational in nature and may include such measures as diversion, separation from problem situations, talking with the child about the situation, or praise for appropriate behavior.~~

~~1.~~ Children ~~shall~~ MUST not be subjected to physical harm, fear, or humiliation.

~~2~~C. THE PROGRAM DIRECTOR MUST NOT USE, OR PERMIT A STAFF MEMBER TO USE CORPORAL OR OTHER HARSH PUNISHMENT, INCLUDING BUT NOT LIMITED TO ~~Children shall not be punched~~PINCHING, ~~shaken~~SHAKING, ~~bitten~~SPANKING, ~~roughly handled~~ PUNCHING, ~~pinched~~BITING, KICKING, ROUGH HANDLING, HAIR PULLING, or ~~subjected to~~ any HUMILIATING OR FRIGHTENING METHOD OF GUIDANCE ~~physical punishment~~.

D. GUIDANCE MUST NOT BE ASSOCIATED WITH FOOD, REST, OR TOILETING. CHILDREN SHOULD NEVER BE PUNISHED FOR TOILETING ACCIDENTS. CHILDREN MUST NOT BE DENIED FOOD OR FORCED TO EAT AS A DISCIPLINARY MEASURE.

~~3~~E. Separation, when used as ~~discipline~~GUIDANCE, ~~shall~~ MUST ~~be brief~~ NOT EXCEED FIVE (5) MINUTES and MUST BE appropriate ~~to~~ FOR the child's age. ~~and circumstances, and t~~The child ~~shall~~MUST be ~~within hearing of an adult~~ in a safe, lighted, well-ventilated ~~place~~AREA AND BE WITHIN SIGHT AND HEARING OF AN ADULT. ~~No~~ THE child ~~shall~~ MUST NOT be isolated in a locked ~~room~~ or ~~closet~~ CLOSED AREA.

~~4. No child shall be punished for toileting accidents.~~

~~5~~F. Verbal abuse or derogatory remarks about the child~~, his family, his race, religion, or cultural background shall not be used or~~ ARE NOT permitted.

~~6. Meals may not be denied the camper as a disciplinary measure.~~

~~7~~G. Authority ~~to punish shall~~ FOR GUIDANCE MUST not be delegated to other children~~, nor shall~~ AND the camp MUST NOT sanction one ~~camper~~ CHILD punishing another ~~camper~~CHILD.

7.711.533 Security Practices [Rev. eff. 7/1/00]

A. The camp ~~shall~~ MUST establish a written security procedure and ~~shall~~ MUST train staff members and campers regarding this procedure. ~~Such procedures may include, but are not limited to, the following:~~

~~1. The campers and staff organized into a buddy system and trained to report immediately to camp authorities when they believe their buddy is missing.~~

~~2. Whistles issued to campers and/or staff who are instructed as to their usage if a camper or staff member is attacked.~~

~~3. Campers and staff trained to report to the camp administration any strangers or unidentified person who may be at the campsite.~~

~~4. Bumper stickers for each authorized car at camp.~~

~~5. Limited advertisement of camp location.~~

~~6. Use of intra-camp emergency communication.~~

B. The camp ~~shall~~ MUST report to the local law enforcement office or department the dates of the camp sessions and the location of the camp.

C. When a camper is discharged from camp or when the camp session is over, the child ~~shall~~ MUST be returned to the parentS/~~ or~~ guardianS or ~~to~~ aN ~~properly identified~~ adult ~~approved~~ AUTHORIZED by the ~~child's~~ parentS/ ~~or~~ guardianS. IF THE INDIVIDUAL IS UNKNOWN TO THE STAFF, IDENTIFICATION MUST BE REQUIRED.

7.711.5~~3~~4 Food and Nutrition [Rev. eff. 10/1/03]

A. Each camp ~~shall~~ MUST establish a written policy for its nutrition and food service program. This policy ~~shall~~ MUST include meal hours, type of food service, staff responsibilities during the time food is served, authorization of special diets, and the administration of the food service program. This policy ~~shall~~ MUST be available to all staff members.

B. All foods ~~shall~~ MUST be stored and prepared in accordance with the rules and regulations governing the sanitation of food service establishments in the State of Colorado.

C. Foods provided by the camp ~~shall~~ MUST be of sufficient quantity and nutritional quality to provide for the dietary needs of each child. Menus ~~shall~~ MUST meet the most recently revised recommended daily allowances of the Food and Nutrition Board, National Academy of Sciences, National Research Council, adjusted for age, sex, religion, and activity. The only exception ~~shall~~ MUST be by written parental or medical direction.

D. Menus ~~shall~~ MUST be planned at least a week in advance and ~~shall~~ MUST be dated as to the week in use. The current week's menu ~~shall~~ MUST be posted in the food preparation area. Food substitutions ~~shall~~ MUST be noted on the menus in writing. After use, the menus ~~shall~~ MUST be kept on file for the period of the camping season.

E. In travel-trip camps, all menus ~~shall~~ MUST be planned prior to leaving and changes noted in writing. Menus ~~shall~~ MUST be maintained in file of camp.

~~F. Drinking water shall be readily accessible to campers at all times.~~

7.711.5~~3~~5 Transportation [Rev. eff. 6/1/07]

~~A. If the camp transports children from their home to camp, the camp shall assume responsibility for the child between the place where he she is called for and the camp, and from the time he she leaves the camp until delivered to his her parents or to a responsible person designated by the parents or guardians.~~

~~B. Any transportation of the camper during the camp session is the responsibility of the camp.~~

~~C. There shall be at least one adult supervisor in addition to the driver when nine or more children are being transported at any one time. No child shall be permitted to remain unattended in any vehicle.~~

~~D. Only that number of children and adults for whom there is comfortable seating space shall be transported. Standing in the vehicle while it is moving shall be prohibited. No person shall sit on the floor or in aisles, or project head or limbs out of the vehicle.~~

~~E. No more than three persons, including the driver, shall be permitted to occupy the front seat of the vehicle. Each camper permitted to ride in the front seat of the vehicle shall be secured by a seat belt.~~

~~F. If trucks are used by the camp as a means of transportation, the use shall be limited to short periods of time such as no more than thirty minutes. Safe seating arrangements shall be provided. Only trucks with sides may be used. When such trucks are in use, the tailgate shall be closed at all times when the vehicle is in motion. There shall be an adult riding with the campers in the back of the truck. Campers shall be seated whenever the vehicle is in motion.~~

~~G. The camp which provides any transportation shall have a written policy including, but not limited to, the following topics: safety education while riding in the vehicles, seating, highway stops, relief drivers, when necessary, supervision, and emergency procedures on the road.~~

~~H. All vehicles transporting children shall comply with the applicable regulations of the Colorado Department of Revenue, Motor Vehicle Division, and the ordinances of the municipality in which the vehicle is operated.~~

~~I. All persons who transport campers shall be properly licensed to operate the vehicle being driven.~~

~~J. At least one adult in each vehicle shall hold a current Red Cross standard First Aid and safety certificate or equivalent. The vehicle shall be equipped with a First Aid kit.~~

~~K. Any vehicle which transports nine or more passengers shall carry a fire extinguisher, reflective equipment, and road side markers.~~

A. TRANSPORTATION PROVIDED BY THE CAMP MUST MEET THE FOLLOWING REQUIREMENTS:

1. THE CAMP IS RESPONSIBLE FOR ANY CHILDREN IT TRANSPORTS;

2. THE CAMP MUST OBTAIN WRITTEN PERMISSION FROM PARENTS OR GUARDIANS FOR ANY TRANSPORTATION OF THEIR CHILD DURING CAMP HOURS;

3. THE NUMBER OF STAFF MEMBERS WHO ACCOMPANY CHILDREN WHEN BEING TRANSPORTED IN THE VEHICLE MUST MEET THE CHILD CARE STAFF RATIO FOUND AT SECTION 7.711.23. THE DRIVER OF THE VEHICLE IS CONSIDERED A STAFF MEMBER;

4. THE CAMP MUST NOT PERMIT CHILDREN UNDER THE AGE OF 8 OR CHILDREN UNDER 57” TALL TO RIDE IN THE FRONT SEAT OF A VEHICLE. CHILDREN UNDER 8 MUST BE SECURED IN A CHILD RESTRAINT SYSTEM THAT IS APPROPRIATE FOR THE AGE AND DEVELOPMENT OF THAT CHILD. THE CHILD RESTRAINT MUST CONFORM TO ALL APPLICABLE FEDERAL MOTOR VEHICLE SAFETY STANDARDS AND COLORADO CHILD PASSENGER SAFETY LAWS;

5. CAMPERS MUST BE LOADED AND UNLOADED OUT OF THE PATH OF MOVING VEHICLES;

6. CAMPERS MUST NOT BE LEFT UNATTENDED IN THE VEHICLE;

7. FOR TRIPS AWAY FROM THE CAMP, A LIST OF INDIVIDUALS ON EACH TRIP MUST BE READILY AVAILABLE EITHER IN THE VEHICLE(S) OR AT THE CAMP OFFICE.

B. REQUIREMENTS FOR VEHICLES

1. ANY VEHICLE USED FOR THE TRANSPORTATION OF CHILDREN TO AND FROM THE CAMP OR DURING CAMP ACTIVITIES MUST MEET THE FOLLOWING REQUIREMENTS:

a. THE VEHICLE MUST BE ENCLOSED AND HAVE DOOR LOCKS;

b. THE SEATS OF THE VEHICLE MUST BE CONSTRUCTED AND INSTALLED ACCORDING TO THE VEHICLE MANUFACTURER'S SPECIFICATIONS;

c. THE VEHICLE MUST BE KEPT IN SATISFACTORY CONDITION TO ASSURE THE SAFETY OF OCCUPANTS. VEHICLE TIRES, BRAKES, AND LIGHTS MUST MEET SAFETY STANDARDS SET BY THE COLORADO DEPARTMENT OF REVENUE, MOTOR VEHICLE DIVISION;

d. SEATING MUST BE COMFORTABLE WITH A SEAT OF AT LEAST TEN (10) INCHES WIDE FOR EACH CHILD;

e. VEHICLES MUST BE LOADED ONLY WITHIN THE PASSENGER SEATING LIMIT ESTABLISHED BY THE VEHICLE MANUFACTURER; AND

f. EACH VEHICLE MUST HAVE A FIRST AID KIT.

2. IN PASSENGER VEHICLES, WITH A MANUFACTURER'S ESTABLISHED CAPACITY OF SIXTEEN (16) OR FEWER PASSENGERS AND LESS THAN 10,000 POUNDS, THE FOLLOWING IS REQUIRED:

0 a. EACH CAMPER AND STAFF MEMBER MUST BE RESTRAINED IN AN INDIVIDUAL SEAT BELT; AND

b. CAMPERS AND STAFF MUST BE INSTRUCTED AND REQUIRED TO KEEP THE SEAT BELT PROPERLY FASTENED AND ADJUSTED.

3. IN VEHICLES WITH A MANUFACTURER'S ESTABLISHED CAPACITY OF SIXTEEN (16) OR MORE PASSENGERS, SEAT BELTS FOR PASSENGERS ARE NOT REQUIRED.

C. REQUIREMENTS FOR DRIVERS OF VEHICLES

1. ALL DRIVERS OF VEHICLES TRANSPORTING CHILDREN MUST COMPLY WITH APPLICABLE LAWS OF THE COLORADO DEPARTMENT OF REVENUE, MOTOR VEHICLE DIVISION, AND ORDINANCES OF THE MUNICIPALITY IN WHICH THE CENTER OPERATES.

2. THE CAMP MUST VERIFY THAT ALL DRIVERS MEET MINIMUM REQUIREMENTS, INCLUDING:

   a. DRIVING RECORDS THAT HAVE BEEN REVIEWED WITHIN THE LAST FOUR MONTHS FOR SEASONALLY HIRED DRIVERS OR WITHIN THE LAST TWELVE MONTHS FOR YEAR-ROUND DRIVERS TO DETERMINE DRIVER SUITABILITY;

   b. DRIVERS HAVE THE APPROPRIATE LICENSE FOR THE VEHICLES TO BE DRIVEN;

   c. DRIVERS MUST HAVE CURRENT DEPARTMENT-APPROVED FIRST AID AND CPR CERTIFICATION;

   d. ALL DRIVERS MUST BE AT LEAST TWENTY (20) YEARS OF AGE;

   e. DRIVERS MUST COMPLETE A MINIMUM OF FOUR (4) HOURS OF DRIVER TRAINING THAT INCLUDES AT A MINIMUM: BEHIND THE WHEEL TRAINING; PARTICIPANT TRANSPORT ATTENDANCE PROCEDURES INCLUDING TAKING ATTENDANCE AT THE DESTINATION; MANAGING BEHAVIORAL ISSUES; LOADING AND UNLOADING PROCEDURES; DAILY VEHICLE INSPECTION PROCEDURE; PROPER TIRE INFLATION; EMERGENCY EQUIPMENT AND HOW TO USE IT; ACCIDENT PROCEDURES; PASSENGER ILLNESS PROCEDURES; PROCEDURES FOR BACKING UP; AND, IF BUSES ARE USED, EVACUATION PROCEDURES;

3. THE DRIVER MUST ENSURE THAT ALL DOORS ARE SECURED AT ALL TIMES WHEN THE VEHICLE IS MOVING;

4. THE DRIVER MUST MAKE A GOOD FAITH EFFORT TO ENSURE THAT EACH CHILD IS PROPERLY BELTED THROUGHOUT THE TRIP; AND

5. THE DRIVER MUST NOT EAT OR USE A CELLULAR DEVICE WHILE DRIVING.

7.711.~~6~~64 RECORDS FOR CHILDREN AND PERSONNEL

7.711.~~6~~641 Children's Records [Rev. eff. 6/1/07]

A. ~~At the time the child is admitted to the~~ PRIOR TO THE CHILD'S ATTENDANCE AT camp, the following information ~~shall~~ MUST be obtained and maintained at the campsite for each camper:

1. Child's name, birth date, and address.

2. Parent's or guardian's names, HOME AND EMPLOYMENT addresses, ~~and~~ telephone numbers, AND EMAIL ADDRESSES.

~~3. Parents or guardian's place of employment and telephone numbers, which may include work phone, cell phone and fax numbers, e-mail address and employment addresses.~~

~~4~~3. Name, address and telephone number ~~of an adult designated to contact in case~~ of emergency ~~if the camp is unable to~~ contact~~S the parent or guardian~~.

~~5~~4. Name, address, and telephone number of individuals authorized to take the child from camp if different from the parent or guardian.

~~6. Names of individuals that are not authorized to take the child from camp.~~

~~7~~5. Dates of the camp session which the child will attend.

~~8~~6. Name~~, address~~ and telephone number of the child's ~~doctor~~HEALTH CARE PROVIDER. ~~This information need not be obtained in a non-medical religious camp or if the child is exempt for the need for a statement confirming a physical examination pursuant to Section 7.711.51, D.~~

~~9~~7. Authorization signed by the ~~person or agency having custody~~PARENTS/GUARDIANS, giving authority for the camp to obtain emergency medical care. ~~A non-medical religious camp is exempt from this regulation.~~

~~10~~8. Authorization signed by the parentS/GUARDIANS~~, person or agency having custody~~ of the child to participate in all special trips or excursions ~~in which the child may be walking or riding~~ away from the campsite.

~~11~~9. Indication of any camp activity in which the parentS/GUARDIANS~~, person or agency having custody~~ of the child does not wish the child to participate (see Section 7.719, et seq.).

10. Physical examination, health history and immunization as required in Section 7.711.51.C-D.

~~B. The child's records shall also include:~~

~~1. A statement confirming a physical examination signed by the physician or nurse practitioner or a written statement signed by camper's parent or guardian pursuant to Section 7.711.51, D, and a current health history from the parent regarding the child's current physical condition (see Section 7.711.51, B).~~

~~2. Copies of reports submitted to the department regarding injury or illnesses suffered by the camper, the fatality of a camper, or a report of a camper being lost (see Section 7.711.15).~~

7.711.~~6~~42 Staff Records [Rev. eff. 6/1/07]

There ~~shall~~ MUST be maintained at the campsite a record for each staff member, paid or volunteer, ~~which shall~~ THAT MUST include the following:

A. Name, address, and birth date of the individual.

B. Training, education, AND experience of the staff member.

C. Copies of any ~~first aid~~ REQUIRED certification or other ~~certification~~ TRAINING confirming qualifications for the responsibilities ~~assumed~~ ASSIGNED at the camp.

D. Copy of a HEALTH ~~statement~~ HISTORY ~~signed by the physician or the nurse practitioner regarding the physical examination of the staff member or a statement from the staff member pursuant to~~ AS REQUIRED IN Section 7.711.21.E.

E. Name, address, and telephone number of any person(s) to be notified in the event of an emergency~~, which may include home phone number, work phone, cell phone, pager, fax number, and e-mail address if available~~.

F. Copy of the written references or note of phone references pursuant to Section 7.711.21.D.

G. Copy of the signed letter of agreement pursuant to Section 7.711.21.C.

H. The dates ~~that the staff member was on the staff of the camp~~ OF EMPLOYMENT FOR EACH STAFF MEMBER.

7.711.~~6~~43 General Information [Rev. eff. 7/1/00]

A. The camper's file ~~shall~~ MUST be retained by the camp for at least three (3) years after the child'S ~~leaves the~~ LAST DAY OF ATTENDANCE AT THE camp, and ~~shall~~ MUST be available without restriction to the ~~licensing agency, but otherwise shall be treated as confidential. Retention of records for a longer period may be desirable where they reflect an accident, injury, or other unusual circumstances~~ DEPARTMENT.

B. Personnel AND CHILDREN'S records ~~shall~~ MUST be maintained by the camp for at least three (3) years. If the record reflects an accident, injury, or other unusual circumstance, it is suggested that the record be maintained for a longer period of time.

C. ~~Children's records shall be confidential, and facts learned about children and their families shall be kept confidential. The license may be denied, revoked, or made probationary if confidentiality of records or information is not maintained.~~

7.711.~~7~~5 CAMPSITE, PHYSICAL FACILITY, FIRE SAFETY AND SANITATION

7.711.~~7~~51 Campsites [Rev. eff. 6/1/07]

A. ~~All new and remodeled camp buildings, facilities, and equipment must meet the requirements of applicable codes and regulations, such as those governing health, safety, sanitation, building and fire; specifically, the codes of the local fire departments and the Colorado Department of Public Health and Environment.~~

~~B.~~ ~~Prior to issuance of an original license, and at least every two years, the camp shall be inspected and approved by the state health department or its local unit as conforming to sanitary standards. In the case of a t~~Travel-trip camp~~S, the~~ MUST SUBMIT THEIR plans FOR COMPLIANCE WITH THE RULES AND REGULATIONS GOVERNING THE HEALTH AND SANITATION OF CHILD CARE FACILITIES IN THE STATE OF COLORADO FOR APPROVAL BY THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, THIRTY (30) DAYS PRIOR TO ~~that the camp has made to meet the requirements shall be inspected and approved prior to~~ the date the trip camp begins.

~~C~~B. The camp must conform to fire prevention and protection requirements of local fire departments in the locality of the camp. ~~An inspection and approval of the local fire department must be obtained prior to original licensing and at least every two years. If the camp is not located within~~

~~the jurisdiction of a local fire department, such fire department approval is not required.~~ In the case of a travel-trip camp, the fire department approval is not required ~~since the camp has no permanent campsite~~.

~~D. Existing facilities can be required to correct deficiencies caused by non-compliance with regulations of the health or fire departments, which may be hazardous in nature.~~

~~E~~C. The camp ~~shall~~ MUST identify hazard~~ou~~s~~,~~ AND high-risk areas ~~such as cliffs, cellars, mineshafts, etc~~ AND DEVELOP POLICIES THEY FOLLOW TO PREVENT UNAUTHORIZED ACCESS TO THESE HAZARDS AND HIGH-RISK AREAS. ~~These areas shall be guarded of posted to reduce the possibility of accidents.~~

~~F~~D. Each ~~residential~~ camp ~~shall~~ MUST have a telephone or ~~comparable~~ means of communication TO CONTACT EMERGENCY SERVICES. ~~If either of these is impossible, individual arrangements shall be made by the camp and approved by the State Department.~~

~~G~~E. Emergency telephone numbers ~~shall~~ MUST be posted ~~for at least, but no limited to,~~ the camp ~~doctor~~ HEALTH CARE PROFESSIONAL, nearest clinic or hospital, ambulance service, local sheriff's office ~~and rescue unit~~, national or state forest service office (as appropriate), fire department or lookout station, and poison control center ~~(if available)~~.

~~H~~F. In the case of a primitive camp or travel-trip camp, sources of emergency care and methods of communication with such facilities as hospitals, police, AND forest service ~~shall~~ MUST be identified for each campsite on the itinerary.

~~I~~G. When playground equipment is provided at a residential camp, the equipment and playground area ~~shall~~ MUST be free of obstruction and man-made or natural hazards and ~~shall~~ MUST be away from natural pathways of traffic.

H. Playground equipment ~~such as, but not limited to, climbing apparatus, slides, swings, and swing sets shall~~ MUST MEET THE FOLLOWING REQUIREMENTS:

1. Be in good repair, of solid and safe construction, free of rough edges, protruding bolts, and the possibility of entrapment of extremities.

2. Be securely anchored ~~to~~ BY ~~concrete or other~~ suitable footing.

3. Swings must have seats made of a flexible material.

4. Moving equipment must be located toward the edge or corner of a play area or be designed in such a way as to discourage children from running into the path of the moving equipment.

5. Metal equipment ~~shall~~ MUST be placed in the shade ~~when possible and must be arranged so that children playing on one piece of equipment will not interfere with children playing on or running to another piece of equipment~~ OR A SHADE STRUCTURE MUST BE PROVIDED.

6. The maximum height of any piece of playground equipment is six (6) feet.

7. All pieces of playground equipment must be designed to guard against entrapment and strangulation.

8. All pieces of permanently installed playground equipment must be surrounded by a resilient surface of a depth of at least six (6) inches. Rubber mats manufactured for such

use consistent with the guidelines of the Consumer Product Safety Commission may be used in place of resilient material.

9. ~~The use of any materials under permanently installed playground equipment other than wood chips, wood mulch, engineered wood fiber, pea gravel, synthetic pea gravel, and shredded rubber tires must be approved by the State~~ Department APPROVED RESILIENT SURFACING INCLUDES LOOSE FILL MATERIALS SUCH AS WOOD CHIPS, WOOD MULCH, ENGINEERED WOOD FIBER, PEA GRAVEL, SYNTHETIC PEA GRAVEL, SHREDDED RUBBER TIRES, AND FINE LOOSE SAND. SOLID UNITARY MATERIALS INCLUDE POURED IN PLACE SURFACING, APPROVED RUBBER MATS, PLAYGROUND TILES, AND ASTRO TURF WITH BUILT IN RESILIENT PAD.

10. ANY PERMANENTLY INSTALLED OUTDOOR CLIMBING EQUIPMENT OR PORTABLE CLIMBING EQUIPMENT EIGHTEEN (18) INCHES OR HIGHER MUST HAVE RESILIENT SURFACING, MEETING CURRENT FEDERAL SAFETY REQUIREMENTS, UNDERNEATH AND IN THE USE ZONE SURROUNDING THE EQUIPMENT, AND INSTALLED ACCORDING TO MANUFACTURER INSTRUCTIONS.

11. PLAYGROUND SURFACES MUST BE CHECKED PRIOR TO USE FOR THE PRESENCE OF DANGEROUS OR OTHER FOREIGN MATERIALS. PLAYGROUND EQUIPMENT MUST BE CHECKED FOR SAFETY ON A MONTHLY BASIS.

J. If the residential camp is located on or uses national or state lands, the director ~~shall~~ MUST familiarize the staff and campers with rules and ethics governing the use of such property and ~~shall~~ MUST be responsible for compliance.

K. An itinerary ~~shall~~ MUST be filed or an arrangement ~~shall~~ MUST be made with national or state forest service office if such land is to be used by the travel-trip camp. The director ~~shall~~ MUST familiarize the staff and campers with rules governing the use of such property. Should the travel-trip camp pass onto private land, an agreement ~~shall~~ MUST be made with the individual responsible for that land prior to access.

L. IN STRUCTURES WHERE THE PROGRAM USES ANY SOURCE OF COAL, WOOD, CHARCOAL, OIL, KEROSENE, PROPANE, NATURAL GAS OR ANY OTHER PRODUCT THAT CAN PRODUCE CARBON MONOXIDE INDOORS, AN OPERATIONAL CARBON MONOXIDE DETECTOR MUST BE INSTALLED. CARBON MONOXIDE DETECTORS MUST MEET THE FOLLOWING REQUIREMENTS:

1. TESTED MONTHLY TO ENSURE THEY ARE OPERATIONAL.

2. BATTERIES CHANGED AT LEAST YEARLY.

7.711.~~7~~52 Permanent and Semi-Permanent Shelters and Sleeping Facilities

A. All structures used by children ~~shall~~ MUST be kept in good repair at all times.

B. At least one-half of the floor area in each living unit, excluding tents, ~~shall~~ MUST have a minimum ceiling height of seven (7) feet. No portion of a room having a ceiling height of less than five (5) feet ~~shall~~ WILL be considered as usable floor space.

C. If fabric structures are used~~, no plastic material will be permitted. Fabric structures shall~~ THEY ~~shall~~ MUST be CONSTRUCTED of a fire- and flame-retardant material. ~~Existing fabric structures may be required to be removed on the basis of hazard potential.~~

~~D. Campfires and open flames of any type shall be prohibited within ten (10) feet of any tent.~~

~~E. Each camp building used for living or sleeping quarters shall have windows or openings constructed so as to admit adequate light and air.~~

~~F~~D. Each camper ~~shall~~ MUST be provided with his~~/~~ OR her own mat, pad, b~~a~~Ed, or cot.

~~G~~E. The aisles between rows of cots, beds, or bunks ~~shall~~ MUST be kept clear for exiting purposes. There ~~shall~~ MUST be at least two (2) feet of clear space separating sides of COTS, beds OR BUNKS.

~~H~~F. If bunk beds are in use, no bunks ~~shall~~ MAY contain more than two tiers of beds. There ~~shall~~ MUST be at least twenty-seven (27) inches of clear space separating the tiers of beds and thirty-six (36) inches of clear space between the top tier and the ceiling. Electric lights which are within reach of the top bunk ~~shall~~ MUST be protected.

~~I~~G. Each permanent sleeping unit, building, or tent ~~shall~~ MUST have ~~not less than~~ AT LEAST THIRTY (30) square feet of floor space per person, camper, or counselor for single-tier beds and twenty (20) square feet per person, camper, or counselor for two-tier bunks.

~~J~~H. In tent structures which have a platform floor, beds or bunks ~~shall~~ MUST be arranged in such a fashion that no camper who might fall from a bed or bunk could fall through the sides of the tent to the ground below.

~~K~~I. There ~~shall~~ MUST be provision in each sleeping unit for storage of the camper's clothing and personal belongings.

~~L~~J. No camper shall sleep in the same room or tent with any person of the opposite ~~sex~~GENDER, except FOR~~ing~~ members of his OR ~~/~~her immediate family.

~~M~~K. In a primitive camp or travel-trip camp, adequate shelters such as a tent ~~shall~~ MUST be available for each child. ~~There shall be fifteen square feet per occupant in each tent or shelter~~ THE SHELTER OCCUPANCY MUST BE IN COMPLIANCE WITH MANUFACTURERS' RECOMMENDATIONS.

~~N. Reasonable insulation shall be provided from cold/dampness by means of such things as a ground cloth beneath the tent.~~

7.711.~~7~~53 Toilet and Bathing Facilities

A. In a resident camp there ~~shall~~ MUST be one COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT (CDPHE) approved toilet for every twenty (20) OR FEWER campers ~~or fraction thereof~~ for which the camp is licensed. Urinals may be substituted for no more than one-third of the required toilets.

B. CHILDREN MUST BE ALLOWED THE USE OF GENDER-SEGREGATED TOILET FACILITIES THAT ARE CONSISTENT WITH THEIR GENDER IDENTITY OR HAVE Sseparate ~~designated toilet facilities shall be provided for each sex in coed camps~~ OR INDIVIDUAL TOILET FACILITIES.

~~C. Installation, operation, and maintenance requirements for toilet facilities and urinals:~~

~~1. Water-flush toilets and urinals, chemical toilets, pit privies or latrines shall be provided and maintained in a clean and sanitary condition.~~

2. Toilets, privies, and latrines shall have tight seat covers free of splinters.

DC. Hand washing facilities shall MUST be provided throughout the camp. There shall MUST be one basin or lavatory for per eachVERY twenty (20) campers. IN NEW CONSTRUCTION COMPLETED AFTER MARCH 1, 2018, CHANGE OF GOVERNING BODY OR EXTENSIVE REMODELING THE CAMP MUST PROVIDE HAND WASHING FACILITIES LOCATED ADJACENT TO WHERE THE CAMP SERVES MEALS.

ED. Showers or bathtubs shall MUST be located within buildings used for sleeping, such as cabins or dormitories, or in a centrally located shower or bathing structure.

1. There shall MUST be one shower head or bathtub for PER each EVERY twenty (20) campers or fraction thereof for which the camp is licensed.

2. Hand washing facilities shall MUST be available in the shower or bathing area.

3. Shower or bathhouses shall be provided with vapor-proof lights enclosed in a shatterproof container.

FE. All sewage disposable systems shall MUST meet the state and local health department COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT (CDPHE) requirements.

G. In a primitive or travel-trip camp, the following shall be provided:

1. If the camp is not provided with privies or other acceptable type toilets, there shall be separate designated areas; for each gender for toilet use that meets the Health Department's requirements.

7.711.75 Food Preparation Area

A. The kitchen, the food preparation process, dish and utensil washing, food storage, and all other food service areas shall be operated in compliance with the rules and regulations governing food services establishments within the State of Colorado.

B. Garbage and trash removal shall meet the requirements of the state, federal, and local ordinances.

7.711.754 General Building Safety [Ref. eff. 6/1/12]

A. Every building, structure, tent, cabin, and camp premises shall MUST be kept in good repair, and shall MUST be maintained in a safe condition.

B. All new electrical installations shall meet standards of the National Electrical Code. All electrical work must be installed by a licensed electrical contractor with proper permits and inspections. Each electric outlet on the outside of a building shall be mounted in approved, protective weatherproof housing. ALL CONSTRUCTION AND INSTALLATIONS MUST COMPLY WITH LOCAL BUILDING AND PLANNING ORDINANCES.

DC. In buildings accommodating more than 12 persons IN PERMANENT STRUCTURES, exit signs shall MUST be posted at every required exit doorway and wherever otherwise required to clearly indicate the directions of egress. Exit signs shall have letters of at least five inches in height.

ED. A building with an occupancy of more than twelve (12) persons shall MUST be provided with at least two separate and independent means of egress located as far apart as practical and

SEPARATED BY NO ~~in no case~~ less than fifty (50) percent of the largest dimension of the building FROM EACH OTHER.

1. In an existing building, such as a cabin occupied by more than twelve (12) but less than twenty (20) persons, a window may be utilized as an acceptable second exit. The window ~~shall~~ MUST be openable and the distance from the window to the ground ~~shall~~ MUST not be more than four feet.

2. Each exit door ~~shall~~ MUST be hung to swing in the direction of exit travel. Exiting through a food preparation area is not permitted.

~~F~~E. If buildings with second stories are used by campers, there ~~shall~~ MUST be two ~~widely separated~~ INDEPENDENT MEANS OF EGRESS SEPARATED BY NO LESS THAN FIFTY (50) PERCENT OF THE BUILDING FROM EACH OTHER PER FLOOR. ~~exits from each floor.~~

~~G~~F. Each fire escape from any upper level of a building ~~shall~~ MUST be installed in accordance with ~~requirements of the National Fire Protection Association codes~~ LOCAL FIRE PROTECTION ORDINANCES.

~~H~~G. ~~The door hardware on a door, forming part of a means of egress shall be of a type that is non-locking against egress and operated with a single motion. The use of hooks and eyes, bolts, bars, and similar devices is prohibited on any door provided for exiting purposes or designated as an exit when camp is in use~~. IN EVERY BUILDING OR STRUCTURE, EXITS MUST BE ARRANGED AND MAINTAINED SO AS TO PROVIDE FREE AND UNOBSTRUCTED EGRESS FROM ALL PARTS OF THE BUILDING OR STRUCTURE AT ALL TIMES WHEN IT IS OCCUPIED. NO LOCK OR FASTENING TO PREVENT FREE ESCAPE FROM THE INSIDE OF ANY BUILDING CAN BE INSTALLED. ONLY PANIC HARDWARE OR SINGLE-ACTION HARDWARE IS PERMITTED ON A DOOR OR ON A PAIR OF DOORS. ALL DOOR HARDWARE MUST BE WITHIN THE REACH OF CHILDREN.

~~I~~H. ~~When occupancy of a building exceeds 100 persons,~~ eExit doors ~~shall~~ MUST be equipped only with panic OR SINGLE-ACTION hardware.

J. ~~The means of egress or the entire passage to free and safe ground remote from a building shall be unobstructed for easy travel conditions at all times.~~

~~K~~I. There ~~shall~~ MUST be fifteen (15) square feet per occupant in any room having an occupant load of more than FIFTY (50) persons where fixed seaTs are not installed and which is used for classroom, assembly, or similar purposes. The maximum occupancy ~~shall~~ MUST be posted in a conspicuous place near the main exit from the room.

~~L. In an assembly area or classroom such as a recreation room, dining hall, chapel or gymnasium, each door from that room occupied by campers shall enter a one-hour fire-rated corridor between exits or there shall be a direct egress to the outside from each such room.~~

~~M. Where a sleeping occupancy is maintained on the floor over a basement area or on a second floor, the ceiling of the basement or first floor shall be protected with five-eighths inch United Underwriters Laboratory-listed gypsum wallboard or any other proven assembly of materials that will provide a minimum one-hour resistance to fire, unless such construction is of solid or laminated wood timbers not less than three 3 inches in thickness and installed so as to be smoke tight.~~

~~N~~J. Furnaces, fireplaces, heaters, or wood-burning stoves ~~shall~~ MUST meet the following regulations:

1. ~~Furnaces such as forced-air furnaces or hot water boilers~~ ALL HEATING UNITS ~~shall~~ MUST be INSTALLED IN COMPLIANCE WITH LOCAL ORDINANCE ~~separated from the rest of the building by one-hour fire-resistive material (see Section 7.711.75, M) provided with adequate outside combustion air, installed~~ and maintained with safety devices to prevent fire, explosions, and other hazards. NO OPEN-FLAME GAS OR OIL STOVES, UNSCREENED FIREPLACES, HOT PLATES, OR UNVENTED HEATERS CAN BE USED FOR HEATING PURPOSES. ALL HEATING ELEMENTS, INCLUDING HOT WATER PIPES, MUST BE INSULATED OR INSTALLED IN SUCH A WAY THAT CHILDREN CANNOT COME IN CONTACT WITH THEM.

~~2. Only heaters installed with permanent connections and protectors shall be used~~.

~~3. All heaters installed shall be U.L. approved and installed according to manufacturers' specifications.~~

~~4. Boilers used for hot water supply rated at over 200,000 BTU or any boiler used for building heating shall be inspected and a certificate provided as required by the Division of Labor.~~

~~5~~2. A heater or wood-burning stove ~~shall~~ MUST be located and/or protected in such a manner as to prevent injuries to occupants of the building.

~~6~~3. Wood-burning stoves ~~shall~~ MUST be regularly cleaned of ashes, which are immediately removed from the building and properly stored.

~~7~~. ~~Fireplaces shall be protected by a screen or glass device.~~

~~8~~4. Space around furnaces, heaters, and wood-burning stoves ~~shall~~ MUST not be used for storage.

~~9~~5. ~~Fire hazards~~ NOTHING FLAMMABLE OR ~~and~~ combustible ~~materials such as paper and rags shall not be permitted to accumulate upon the premises and shall not~~ CAN be stored ~~near~~ WITHIN THREE (3) FEET OF A FURNACE OR HOT water heater~~, furnaces, heaters, stoves~~.

~~P~~K. ~~Ammunition,~~ ALL firearms~~, explosives, power tools, and special equipment involving unusual risk shall~~ MUST be ~~stored in a~~ locked AND INACCESSIBLE TO ~~place not occupied by~~ children. THIS INCLUDES, BUT IS NOT LIMITED TO AIR RIFLES, BB GUNS, AND PAINTBALL GUNS. AMMUNITION MUST BE LOCKED AND STORED SEPARATELY~~. and shall always be under the custody and direct supervision of authorized personnel when in use.~~

L. POWER TOOLS, EXPLOSIVES AND SPECIAL EQUIPMENT INVOLVING UNUSUAL RISK MUST BE STORED IN A LOCKED PLACE INACCESSIBLE TO CHILDREN, AND MUST ALWAYS BE UNDER THE CUSTODY AND DIRECT SUPERVISION OF AUTHORIZED PERSONNEL WHEN IN USE.

~~Q~~M. ~~All flammables shall be stored in approved containers or storage cabinet or in a building other than buildings which children occupy.~~ VOLATILE SUBSTANCES SUCH AS GASOLINE, KEROSENE, FUEL OIL, AND OIL- BASED PAINTS, FIREARMS, EXPLOSIVES, AND OTHER HAZARDOUS ITEMS MUST NOT BE STORED IN ANY AREA OF THE BUILDING USED FOR CHILDREN UNLESS APPROVED BY THE LOCAL FIRE DEPARTMENT.

~~R~~N. Substances which may be toxic to a child if ingested, inhaled, or handled, including, but not limited to, poisons, drugs, medicines, insecticides, herbicides, rodenticides, bleaches, chemicals,

~~plastic bags~~ and corrosive agents ~~shall~~ MUST be stored in a cabinet or enclosure located in an area not used by children, stored in the original container, and properly labeled.

~~S~~O. Glass doors, walls, or panels ~~shall~~ MUST be clearly marked. Safety glass ~~shall~~ MUST be installed when required.

~~T~~P. Stairways OF A HEIGHT of more than ~~three risers shall~~ THIRTY (30) INCHES MUST be equipped with handrails on each side of the stairways. A stairway which is larger than 88 inches wide ~~shall~~ MUST have an intermediate handrail ~~equidistant~~ EQUAL DISTANCE between the two handrails.

~~U~~Q. All window wells and outside stairwells that are hazardous to children ~~shall~~ MUST be equipped with screens or guards, which ~~shall~~ MUST be attached in such a manner that they may either by removed from the inside or broken in from the outside in case of fire.

~~V~~R. ~~Premises~~ ALL AREAS ACCESSIBLE TO CHILDREN ~~shall~~ MUST be MAINTAINED IN A SAFE CONDITION BY REMOVAL OF DEBRIS, DILAPIDATED STRUCTURES, AND BROKEN OR WORN EQUIPMENT OR DANGEROUS ITEMS. ~~free of all hazards, including, but not linked to, old refrigerators, freestanding walls, open cisterns, grease traps, unsafe fences, worn or hazardous play equipment.~~

7.711.~~75~~5 Fire Safety Provisions [Rev. eff. 4/1/15]

A. Any fire extinguisher used at the camp ~~shall~~ MUST be of a dry chemical type, hung at a level readily available to staff members, and annually inspected by an approved inspector. Indian pump backpack fire extinguishers and fire extinguishers approved for use by the U.S. Forest Services are also acceptable.

1. There must be a fire extinguisher located in the camp kitchen.

2. In each building and/or structure, there must be a fire extinguisher on each floor.

3. In tent areas, there must be a fire extinguisher located within seventy-five (75) feet of each tent or a plan approved by the department.

B. In each camp there must be a fire alarm(s) ~~which~~ THAT sounds a separate and distinctly recognizable tone from all other signaling devices used by the camp. The alarm(s) must be audible throughout the occupied camp premises. The alarm device, once activated, must continue to sound automatically.

C. Within twenty-four (24) hours after arrival at the campsite, all individuals attending the camp must be made familiar with the methods by which the fire alarm may be activated and with procedures to be followed upon notification of fire.

D. Each separate building used for sleeping campers and each multistory building must be protected by a smoke detector on each floor of the building.

E. Areas used for campfires must be cleared and must be away from overhanging branches.

F. Campfires must never be left unattended and must be thoroughly extinguished. Extinguishing equipment must ~~be close at hand~~ IMMEDIATELY ACCESSIBLE.

G. CAMPFIRES AND OPEN FLAMES OF ANY TYPE MUST BE PROHIBITED WITHIN 10 FEET OF ANY TENT OR FABRIC STRUCTURE.

Editor's Notes

History

Sections 7.702; 7.707; 7.712 eff. 05/01/2007.

Sections 7.705, 7.711, 7.712, 7.719 eff. 06/01/2007.

Sections 7.701.2; 7.701.3; 7.708; 7.709; 7.710 eff. 07/30/2007.

Sections 7.701.32-33, 7.710.56.A-J.5 emer. rule eff. 08/03/2007.

Sections 7.710.33.L-M, 7.710.36.A eff. 09/01/2007.

Sections 7.701.32-33; 7.710.56 eff. 10/30/2007.

Sections 7.710.52, 7.710.56 emer. rule eff. 12/07/2007.

Sections 7.710.52; 7.710.56 eff. 01/30/2008.

Section 7.710.32 eff. 04/01/2008.

Sections B&P, 7.701.4, 7.707.42, 7.712.33, eff. 09/01/2008.

Sections 7.709, 7.710.34, 7.710.36 eff. 11/01/2008.

Section 7.707 eff. 01/01/2010.

Sections 7.702.52-7.702.54, 7.702.55.D-7.702.56.A(5), 7.710.1-7.710.25, 7.710.33.A, J, L(6), M, 7.710.34-7.710.42, 7.710.45-7.710.98, 7.716.4-7.716.6.B eff. 05/01/2010.

Section 7.701.33.A emer. rule eff. 09/10/2010.

Section 7.701.33.A eff. 12/01/2010.

Sections 7.716.1, 7.716.2.A.7, 7.716.3 eff. 01/01/2011.

Section 7.710.12 eff. 03/02/2011.

Sections 7.700, 7.701.11, 7.701.2, 7.701.33.A, 7.701.4, 7.720 eff. 04/01/2011.

Section 7.701.33.A-D.1, 7.701.33.H-I emer. rule eff. 08/10/2011.

Sections 7.701.33.A-D.1, 7.701.33.H-I eff. 11/01/2011.

Sections 7.705.9-7.705.96 repealed eff. 01/01/2012; Sections 7.701.2, 7.705.1, 7.705.33, 7.705.42, 7.705.43, 7.714, 7.714.4, 7.714.932 eff. 01/01/2012.

Section 7.17 repealed eff. 02/01/2012.

Section 7.708 eff. 04/01/2012.

Sections 7.701.2, 7.701.31, 7.701.33, 7.701.4, 7.701.9, 7.702.2, 7.702.43, 7.702.91, 7.705, 7.705.22, 7.705.33, 7.705.55, 7.705.6, 7.705.82, 7.705.84, 7.705.100, 7.706, 7.706.1, 7.706.15 - 17, 7.706.19, 7.707.1, 7.707.22, 7.707.31, 7.707.71, 7.707.923, 7.708.11, 7.708.31, 7.708.34-35, 7.708.36, 7.708.61, 7.708.65, 7.709.2, 7.709.21, 7.709.24, 7.710, 7.710.11, 7.710.2, 7.710.21-22, 7.710.24-25, 7.710.33-34, 7.710.36, 7.710.41-42, 7.710.44-45, 7.710.52-53, 7.710.55-56, 7.710.92-93, 7.711.1, 7.712.41-42, 7.712.74, 7.713, 7.713.1, 7.713.21, 7.713.23-25, 7.713.31, 7.713.41, 7.713.56, 7.713.65, 7.714, 7.714.1-2, 7.714.4-5, 7.714.52-53, 7.714.92, 7.714.933, 7.715.11, 7.715.46, 7.715.82, 7.715.84.H, 7.720.41, 7.720.73 eff. 06/01/2012. Sections 7.702.1, 7.705.7, 7.707.32.B.7, 7.710.26, 7.711.75.W, 7.712.1, 7.712.33, 7.718 repealed eff. 06/01/2012.

Sections 7.702.44, 7.708.39.A, 7.709.29.E eff. 07/01/2012.

Section 7.708.11 emer. rule eff. 09/07/2012.

Sections 7.701.21, 7.705.81-82, 7.708.1.B, 7.710.1, 7.710.33.A-J, 7.715.1, 7.715.33, 7.715.43.F-K, 7.715.71.A, 7.721 eff. 09/15/2012.

Sections 7.708.11, 7.708.7 eff. 12/01/2012.

Sections 7.701.2.D, 7.711.1 eff. 04/01/2013.

Sections 7.701.13, 7.701.33 eff. 02/01/2014.

Sections 7.708.21, 7.708.21.I, 7.721.3, 7.721.3.G eff. 07/01/2014.

Section 7.701.35 eff. 08/01/2014.

~~Sections 7.701.100, 7.702.42, 7.702.64, 7.702.73, 7.706.19, 7.707.6, 7.707.75, 7.711.76, 7.712.32, 7.712.74 eff. 04/01/2015. Section 7.702.93 repealed eff. 04/01/2015.~~

~~Sections 7.701.2, 7.701.4, 7.706.1 eff. 10/01/2015.~~

~~Sections 7.701.200, 7.705.22.A, 7.705.83, 7.708.39, 7.708.39, 7.708.61, 7.708.61.K, 7.708.65, 7.709.22, 7.709.22.I, 7.709.25, 7.709.25.E, 7.710.43, 7.710.43.H-.I eff. 11/01/2015.~~

~~Sections 7.701.2, 7.701.32, 7.701.33, 7.701.34, 7.701.56, 7.708, 7.708.1, 7.708.11, 7.708.2-7.708.21-7.708.26, 7.708.3-7.708.31, 7.708.33, 7.708.34, 7.708.35, 7.708.36, 7.708.37, 7.708.38, 7.708.39, 7.708.41, 7.708.42, 7.708.43, 7.708.46, 7.708.51, 7.708.52, 7.708.61, 7.708.62, 7.708.63, 7.708.64, 7.708.65, 7.708.67, 7.708.7, 7.708.71, 7.708.72, 7.708.74, 7.710, 7.710.1, 7.710.3-7.710.31, 7.710.33, 7.710.34, 7.710.36, 7.710.52 eff. 01/01/2016.~~

~~Sections 7.702-7.702.94 eff. 02/01/2016.~~

CCDBG REAUTHORIZATION REQUIREMENT – PURPLE
PROVIDER/STAKEHOLDER REQUESTED CHANGE-GREEN
RULE CLARIFICATION – BLUE
TECHNICAL CLEAN UP/RULE REDUCTION-RED

7.712 RULES REGULATING SCHOOL-AGE CHILD CARE CENTERS

All school-age child care centers must comply with the "General Rules for Child Care Facilities" as well as the "Rules Regulating School-Age Child Care Centers" and the "Rules and Regulations Governing the HEALTH and Sanitation of Child Care ~~Centers~~ FACILITIES in the State of Colorado."

7.712.1 (None) [Rev. eff. 6/1/12]

7.712.2 DEFINITIONS [Rev. eff. 3/1/18]

A. A "school-age child care center" (hereafter referred to as the "center") is a child care center that provides care for five (5) or more children who are between five (5) and ~~sixteen (16)~~ EIGHTEEN (18) years of age. CHILDREN FOUR (4) YEARS OF AGE, WHO WILL TURN FIVE (5) ON OR BEFORE OCTOBER 15TH OF THE CURRENT CALENDAR YEAR, MAY ATTEND THE CENTER AS PART OF A "BUILDING-BASED SCHOOL-AGE CHILD CARE PROGRAM" OR "BUILDING-BASED DAY CAMP" SUMMER PROGRAM PRIOR TO THEIR KINDERGARTEN YEAR. ~~The center's purpose is to provide child care and/or an outdoor recreational experience using a natural environment.~~ The center operates for more than one week during the year. The term includes facilities commonly known as "day camps,"~~,~~ "summer camps,"~~,~~ "summer playground programs,"~~,~~ "before and after school programs,"~~,~~ and "extended day programs."~~.~~ This includes centers operat~~ed~~ING with or without compensation for such care, and with or without stated educational purposes.

B. A "building-based school-age child care program" is a child care program that provides care for five (5) or more children who are between five (5) and ~~sixteen (16)~~ EIGHTEEN (18) years of age. The center is located in a building that is regularly used for the care of children.

C. A "day camp" is a school-age child care program which operates at least four (4) hours a day primarily during one season of the year, and during school vacation periods for children between five (5) and eighteen (18) years of age, which accepts registrations for finite, not necessarily contiguous sessions. Programs may operate daily between 6:00 a.m. and 10:00 p.m. Day camp programs may ~~incidentally~~ offer ~~not~~ NO more than two overnight stays each camp session. ~~The~~

~~day camp provides a creative recreational and educational opportunity through group oriented programs. The day camp utilizes trained leadership and the resources of the natural surroundings to contribute to each child's mental, physical, social, and personal growth.~~

The types of day camps are as follows:

1. A "building based day camp" is a child care program that provides care for five (5) or more children who are between five (5) and eighteen (18) years of age. The day camp is located in a building which, along with the outdoor surroundings, is regularly used by the program.

2. A "mobile day camp" is a child care program that provides programming for five (5) or more children who are at least seven (7) years of age or who have completed the first grade. Children move from one site to another by means of transportation provided by the governing body of the program. The program uses no permanent building on a regular basis. Mobile day camp programs may operate in multiple sites, IN A SINGLE COUNTY, under one license.

3. An "outdoor-based day camp" is a child care program that provides care or five (5) or more children who are at least seven (7) years of age or have completed the first grade. The day camp ~~uses no~~ DOES NOT USE A permanent building on a regular basis and provides programming in a permanent outdoor or park setting.

7.712.3 POLICIES AND PROCEDURES

7.712.31 Statement of Policies and Procedures [Rev. eff. 6/1/07]

A. At the time of enrollment, and upon amendments to policies and procedures, the center must give the parent(s)/guardian(s) the center's policies and procedures, and provide the opportunity to ask questions. Written copies must be available either electronically or in hard copy. The center must obtain a signed document stating that the parent(s)/guardian(s) have received the policies and procedures, and by signing the policies and procedures document, the parent(s)/guardian(s) agree to follow, accept the conditions of, and give authorization and approval for the activities described in the policies and procedures. Policies must include the following:

1. The center's purpose and its philosophy on child care;

2. The ages of children accepted;

3. Services offered for special needs children in compliance with the Americans with Disabilities Act (see Section 7.701.14, General Rules for Child Care Facilities);

4. The hours and dates when the center is in operation, specific hours during which special activities are offered, AND holidays when the center is closed;

5. The policy regarding ~~severe~~ INCLEMENT weather;

6. The procedure concerning admission and ~~registration~~ ENROLLMENT of children;

7. An itemized fee schedule;

8. The procedure ~~for identifying where children are at all times~~ TO ENSURE THE LOCATION OF CHILDREN IS KNOWN AT ALL TIMES, HOW CHILDREN ARE ACCOUNTED FOR THROUGHOUT THE DAY, AND THAT CHILDREN ARE SUPERVISED AT ALL TIMES BY THEIR ASSIGNED STAFF MEMBER;

9. The center's procedure on guidance, positive instruction, supporting positive behavior, discipline and consequences, including how the center will:

   a. Cultivate positive child, staff and family relationships;

   b. Create and maintain a socially and emotionally respectful early learning and care environment;

   c. Implement teaching strategies supporting positive behavior, pro-social peer interaction, and overall social and emotional competence in young children;

   d. Provide individualized social and emotional intervention supports for children who need them, including methods for understanding child behavior; and developing, adopting and implementing a team-based positive behavior support plan with the intent to reduce challenging behavior and prevent suspensions and expulsions; and

   e. Access an early childhood mental health consultant or other specialist as needed.

10. The procedure~~, including notification of parents and guardians,~~ for handling children's illnesses, accidents, and injuries, INCLUDING WHEN CHILDREN WILL BE EXCLUDED FROM CARE AND NOTIFICATION OF PARENTS/GUARDIANS;

11. The procedures ~~for handling~~ FOLLOWED ~~lost children~~ WHEN IT HAS BEEN IDENTIFIED A CHILD IS SEPARATED FROM THEIR GROUP AND NOT UNDER THE DIRECT SUPERVISION OF THEIR ASSIGNED STAFF MEMBER. ~~and other emergencies at all times, including during field trips. An outline of a plan of action in case of natural disaster is found at Section 7.712.83, G;~~

12. The procedure for transporting children, if applicable, including transportation arrangements and parental permission for excursions and related activities;

13. The written policy and procedure governing field trips, television and video viewing, and special activities, including the staff's ~~responsibility~~ ROLE for the supervision of children;

14. The ~~policy~~ PROCEDURE on children's safety related to riding in a vehicle, seating, supervision, and emergency procedures on the road;

15. The procedure for releasing children from the center only to persons for whom the center has written authorization;

16. The procedures followed when a child is picked up from the center after the closing hours of the center or not picked up at all, and the procedure to ensure that all children are picked up before the staff leave for the day;

17. The procedure for caring for children who arrive late to the center and their class/group is away from the center on a field trip or excursion;

18. The procedure for STORING AND administering children's medicines and delegation of medication administration in compliance with Section 12-38-132, C R S., of the "Nurse Practice Act.";

19. The procedure concerning children's personal belongings and money;

20. The policy concerning meals and snacks;

21. The policy AND PROCEDURE regarding visitors;

22. The procedure for filing a complaint about child care (see Section 7.701.5. General Rules for Child Care Facilities);

23. The ~~policy~~ PROCEDURE regarding the reporting of SUSPECTED OR KNOWN child abuse AND/OR NEGLECT (see Section 7.701.5 General Rules for Child Care Facilities);

24. ~~The policy regarding the child care facilities' responsibility to notify parents or guardians when the program will no longer be able to serve children~~ THE POLICY FOR NOTIFICATION WHEN CHILD CARE SERVICE IS WITHDRAWN BY THE PROGRAM, OR WHEN PARENTS OR GUARDIANS WITHDRAW THEIR CHILD(REN) FROM THE CENTER;

25. ~~The policy regarding the parent's or guardian's responsibility to notify the child care program when parents or guardians withdraw their child(ren) from the PROGRAM~~ THE PROCEDURE, IF APPLICABLE, FOR TRANSITIONING CHILDREN BETWEEN SCHOOL OR COMMUNITY SPONSORED ACTIVITIES; and

26. ~~What~~ THE POLICY ON THE steps ~~are taken~~ THE CENTER WILL TAKE prior to the suspension, expulsion or request to parents/~~ or~~ guardians to withdraw a child from care due to concerns about the child's behavioral issues. These procedures must be consistent with the center's policy on guidance, positive instruction, discipline and consequences, and include documentation of the steps taken to understand and respond to challenging behavior.

7.712.32 Communication, Emergency, and Security Procedures [Rev. eff. 4/1/15]

A. The center must notify the parents/~~ or~~guardians in writing of significant changes in its services, policies, or procedures so that they can decide whether the center continues to meet the needs of the child(ren).

B. For security purposes, a DAILY sign-in/sign-out sheet or other mechanism for parents/ ~~and~~ guardians must be maintained ~~daily~~ by the center It must include, for each child in care, the date, the child's name, the time when the child arrived ~~at~~ and left the center, and the parent/~~ or~~ guardian's signature or other identifier. With A parent/ ~~or~~ guardian's approval, a child FIVE (5) YEARS OF AGE OR OLDER may sign in and out instead of the parent/ ~~or~~ guardian. Staff must verify attendance periodically throughout the day.

~~C. Each center is required to have a written mission statement. This statement must be kept on file, updated periodically, and made known to staff and to parents and guardians, and must be available during the licensing inspection.~~

~~D~~C. During the hours the center is in operation, the center must provide an office and/or monitored telephone number known to the public and available to parents/GUARDIANS in order to provide immediate access to the center.

~~E~~D. If the center has a permanent site, there must be a telephone at the site.

~~F. Centers must have an established means of communication between staff and the program office when children are being transported or are away from the permanent site on a field trip.~~

~~G~~E. Emergency telephone numbers must be posted at each permanent site and taken on all field trips and during mobile school-age child care programs. The emergency numbers must include, at a minimum, 911, ~~if available,~~ or A rescue unit if 911 isn't available; the clinic or hospital nearest to the activity location; ambulance service; fire, police, and health departments; and Rocky Mountain Poison Control.

~~H~~F. Mobile school-age child care programs must have a way to be contacted while in transit.

~~I~~G. The center must be able to provide emergency transportation to a health care facility at all times either via program vehicle or the emergency medical services system.

~~J~~H. The director of the center or the director's delegated substitute must have a means for determining ~~at all times~~ who is present at the center AT ALL TIMES.

~~K~~I. A written policy regarding visitors to the center must be posted and a record maintained daily by the center that includes, at a minimum, the visitor's name and address and the purpose of the visit. At least one piece of identification must be inspected for individuals who are strangers to personnel at the center.

~~L~~J. With the exception of children who are allowed to sign themselves in and out, the center must release A ~~the~~ child only to the adult(s) for whom written authorization has been given and is maintained in the child's record (see Section 7.712.81). In an emergency, the child(REN) may also be released to an adult for whom the child's parent or guardian has given verbal authorization. If the staff member who releases the child does not know the adult, identification must be required to assure that the adult is authorized to pick up the child.

~~M~~K. The center must have a procedure for dealing with individuals not authorized by the parent/~~ or~~ guardian of a child who attempts to have the child released to them.

~~N~~L. The center must have a written emergency procedure that explains how AND WHEN it will report communicable illnesses to the local, health department pursuant to regulations of the State Department of Public Health and Environment.

~~O~~M. The center must have a written procedure for closing the center at the end of the day to ensure that all children are picked up.

7.712.4 PERSONNEL

7.712.41 General Requirements for All Personnel [Rev. eff. 6/1/12]

A. ~~All personnel of the center must demonstrate an interest in and knowledge of children and concern for their proper care and well-being.~~ ALL PERSONNEL AND VOLUNTEERS AT THE CENTER MUST DEMONSTRATE KNOWLEDGEABLE DECISION-MAKING, JUDGMENT, AND CONCERN FOR THE PROPER CARE AND WELL-BEING OF CHILDREN.

B. All personnel AND VOLUNTEERS must be free from illness and conduct that would endanger the health, safety, or well-being of children.

~~C. The center must determine if any staff person who works at the center has ever been convicted of a crime as listed at Section 7.701.33, D, 5 or 6, of the General Rules for Child Care Facilities.~~

~~D~~C. A criminal record check request for all ~~in-state~~ staff must be submitted to the Colorado Bureau of Investigation ~~within five (5) days that an individual is employed by the center~~. The personnel file of ~~in-state~~ staff members of the center must contain clearance ~~or arrest~~ report from the Colorado Bureau of Investigation ~~resulting from the caregiver's criminal record check~~. The requirement for a

criminal record check is found in Section 7.701.33 of the General Rules for Child Care Facilities. Seasonal staff that indicate that they will not be returning to the program for employment ~~shall~~ MUST be removed from the CBI list for the program.

~~E. A request for a review of the State Department's automated system must be made within ten (10) working days of each staff member's first day of employment. The method for making the request is found in 7.701.32 (General Rules for Child Care Facilities).~~

~~F~~D. Each staff member and REGULAR volunteer must ~~furnish the center with information concerning chronic health problems, any known drug reactions, allergies, medications being taken, and/or other health problems that could affect the staff member's ability to perform the duties of the job assigned~~ COMPLETE AN ANNUAL HEALTH HISTORY. THE HEALTH HISTORY MUST BE MAINTAINED IN A SECURE LOCATION.

~~G~~E. The duties and responsibilities of each staff position and the lines of authority and responsibility within the center must be in writing. At the time of employment, staff members must be informed of their duties and assigned a supervisor.

~~H~~F. Prior to working with children, the staff member must read and be instructed on the policies and procedures of the center, including those relating to hygiene, sanitation, food preparation practices, proper supervision of children, and reporting of child abuse. Staff members must sign a statement indicating that they have read and understand the center's policies and procedures.

~~I~~G. Day camp staff ~~shall~~ MUST receive a minimum of fifteen (15) hours of pre-camp training, ~~not including~~ IN ADDITION TO DEPARTMENT-APPROVED First Aid and CPR. Pre-camp training must include all training activities that staff MEMBERS participate in as a whole. Training should include, but not be limited to, familiarizing staff with the camp mission, site emergency policy and procedures, how to supervise and facilitate activities with campers, and health care policies and procedures. Policies and procedures must be in writing. Staff will be supervised and additional training may be provided if needed. Day camps must have a system in place to provide staff the essential training information for late hires.

~~J~~H. The center must have a staff development plan that includes a minimum of fifteen (15) clock hours of ONGOING training each year for all staff. This requirement does not apply to day camps. ~~This training must relate to one or more of the following general areas: child growth and development, healthy and safe environment, developmentally appropriate practices, guidance, family relationships, cultural and individual diversity, and professionalism. At least three (3) clock hours per year must be in the focus of social emotional development.~~ The fifteen (15) clock hours of training does not include recertification in First Aid and CPR. ONGOING TRAINING AND COURSES MUST DEMONSTRATE A DIRECT CONNECTION TO ONE OR MORE OF THE FOLLOWING COMPETENCY AREAS:

1. CHILD GROWTH AND DEVELOPMENT, AND LEARNING OR COURSES THAT ALIGN WITH THE COMPETENCY DOMAINS OF CHILD GROWTH AND DEVELOPMENT;

2. CHILD OBSERVATION AND ASSESSMENT;

3. FAMILY AND COMMUNITY PARTNERSHIP;

4. GUIDANCE;

5. HEALTH, SAFETY AND NUTRITION;

6. PROFESSIONAL DEVELOPMENT AND LEADERSHIP;

7. PROGRAM PLANNING AND DEVELOPMENT;

8. TEACHING PRACTICES:

a. EACH ONE (1) SEMESTER HOUR COURSE WITH A DIRECT CONNECTION TO THE COMPETENCY AREA LISTED IN SECTION 7.712.41, J, 1-8, TAKEN AT A REGIONALLY ACCREDITED COLLEGE OR UNIVERSITY MAY COUNT AS FIFTEEN (15) CLOCK HOURS OF ONGOING TRAINING.

b. TRAINING HOURS COMPLETED CAN ONLY BE COUNTED DURING THE YEAR TAKEN AND CANNOT BE CARRIED OVER.

I. TO BE COUNTED FOR ONGOING TRAINING, THE TRAINING CERTIFICATE MUST HAVE DOCUMENTATION THAT INCLUDES:

1. THE TITLE OF THE TRAINING; AND,

2. THE COMPETENCY DOMAIN; AND,

3. THE DATE AND CLOCK HOURS OF THE TRAINING; AND,

4. THE NAME OR SIGNATURE, OR OTHER APPROVED METHOD OF VERIFYING THE IDENTITY OF TRAINER OR ENTITY; AND,

5. EXPIRATION OF TRAINING IF APPLICABLE; AND,

6. CONNECTION TO SOCIAL EMOTIONAL FOCUS IF APPLICABLE.

~~K~~J. All staff MEMBERS must complete a ~~d~~Department~~-~~approved standard precautions training ~~that meets current occupational safety and health administration (OSHA) requirements~~ prior to working with children. This training must be renewed annually and may count toward~~s~~ ongoing training requirements.

~~L~~K. ~~Effective DECEMBER 31, 2016 a~~All staff MEMBERS must complete a building and physical premises safety training prior to working with children. The training must include:

a. Identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water~~,~~ and vehicular traffic; and

b. Handling and storage of hazardous materials and the appropriate disposal of bioLOGICAL contaminants.

~~M~~L. ~~Effective December 31, 2016 each provider or~~ ALL staff memberS responsible for the collection, review and maintenance of the child immunizations records must complete the Colorado Department of Public Health and Environment (CDPHE) immunization course within ~~thirty (~~30~~)~~ calendar days of employment. This training must be renewed annually and may count towards ongoing training requirements.

~~N~~M. ~~Effective December 31, 2016 each provider,~~ ALL staff memberS ~~or~~ AND regular volunteerS must complete a ~~d~~Department~~-~~approved training about child abuse prevention, including common symptoms and signs of child abuse within ~~thirty (~~30~~)~~ calendar days of employment. This training must be renewed annually and may count towards ongoing training requirements.

7.712.42 Required Personnel and Qualifications [Rev. eff. 6/1/12]

A. Program Director

Each center must have an on-site program director who ~~shall~~ MUST be at least twenty-one (21) years of age. The program director must have demonstrated to the hiring authority maturity of judgment, administrative ability~~,~~ and the skill to appropriately supervise and direct school-age children in an unstructured setting.

1. The program director must have verifiable education or training in work with school-age children in such areas as recreation, education, scouting~~,~~ or 4-H; and the program director must have completed at least one of the following qualifications:

   a. A four (4) year college degree with a major such as recreation, OUTDOOR EDUCATION, education with a specialty in art, elementary or early childhood education, or a subject in the human service field; or

   b. Two years of college training and six (6) months (910 HOURS) of satisfactory and verifiable full-time or equivalent part-time, paid or volunteer, experience, since attaining the age of eighteen (18), in the care and supervision of four (4) or more children; or

   c. ~~Three years of satisfactory and verifiable full-time or equivalent part-time, paid or volunteer, experience, since attaining the age of eighteen (18), in the care and supervision of four (4) or more children. The program director must complete six (6) semester hours, nine (9) quarter hours in course work from a regionally accredited college or university, or forty (40) clock hours of training in course work applicable to school-age children within the first nine (9) months of employment.~~ THREE YEARS (5460 HOURS) OF SATISFACTORY AND VERIFIABLE FULL-TIME OR EQUIVALENT PART-TIME, PAID OR VOLUNTEER, EXPERIENCE AND ONE OF THE FOLLOWING QUALIFICATIONS:

      1) COMPLETE SIX SEMESTER HOURS, OR NINE QUARTER HOURS IN COURSE WORK FROM A REGIONALLY ACCREDITED COLLEGE OR UNIVERSITY; OR

      2) 40 CLOCK HOURS OF TRAINING IN COURSE WORK APPLICABLE TO SCHOOL-AGE CHILDREN AND THE DEPARTMENT-APPROVED COURSES IN INJURY PREVENTION, AND PLAYGROUND SAFETY FOR SCHOOL-AGED CHILD CARE CENTERS WITHIN THE FIRST NINE MONTHS OF EMPLOYMENT.

1. ~~The program director is responsible for planning and implementing the program and supervising the staff.~~ SATISFACTORY EXPERIENCE INCLUDES EXPERIENCE IN THE CARE AND SUPERVISION OF FOUR OR MORE CHILDREN FROM THE AGES OF FOUR (4)-EIGHTEEN (18) YEARS OLD, UNRELATED TO THE INDIVIDUAL, SINCE ATTAINING THE AGE OF EIGHTEEN (18).

2. THE PROGRAM DIRECTOR IS RESPONSIBLE FOR PLANNING AND IMPLEMENTING THE PROGRAM AND SUPERVISING THE STAFF.

B. Program Leaders

EACH PROGRAM LEADER MUST BE AT LEAST 18 YEARS OF AGE, DEMONSTRATE ABILITY TO WORK WITH CHILDREN, AND MUST MEET THE FOLLOWING QUALIFICATIONS:

1. COMPLETE THE DEPARTMENT-APPROVED COURSE IN INJURY PREVENTION;

2. COMPLETE THE DEPARTMENT-APPROVED COURSE IN PLAYGROUND SAFETY FOR SCHOOL-AGED CHILD CARE CENTERS. THIS REQUIREMENT DOES NOT APPLY TO DAY CAMPS THAT DO NOT REGULARLY USE A PLAYGROUND.; AND

3. ~~Program leaders must be at least eighteen (18) years of age and demonstrate an ability to work with children. Program leaders m~~Must have at least three (3) months (460 HOURS) of full-time or equivalent part-time satisfactory and verifiable experience with school-age children.

C. Program Aides

1. Program aides ~~shall~~ MUST be at least sixteen (16) years of age. Program aides ~~shall shall~~ MUST work directly under the supervision of the program director or program leaders and ~~shall shall~~ MUST never be left alone with children.

2. Program aides can be counted as staff in determining child care staff ratios.

D. DEPARTMENT- APPROVED CHILD CARE HEALTH CONSULTANT

1. STAFF MUST CONSULT WITH A CURRENT DEPARTMENT-APPROVED COLORADO CHILD CARE HEALTH CONSULTANT. TO BE APPROVED THE CHILD CARE HEALTH CONSULTANT MUST BE ONE OF THE FOLLOWING: A LICENSED REGISTERED NURSE WITH KNOWLEDGE AND EXPERIENCE IN MATERNAL AND CHILD HEALTH, A PEDIATRIC NURSE PRACTITIONER, A FAMILY NURSE PRACTITIONER, OR A PEDIATRICIAN. THE CONSULTATION MUST BE SPECIFIC TO THE NEEDS OF THE FACILITY AND INCLUDE SOME OF THE FOLLOWING TOPICS: TRAINING, DELEGATION AND SUPERVISION OF MEDICATION ADMINISTRATION AND SPECIAL HEALTH PROCEDURES, HEALTH CARE, HYGIENE, DISEASE PREVENTION, EQUIPMENT SAFETY, INTERACTION BETWEEN CHILDREN AND ADULT CAREGIVERS, AND NORMAL GROWTH AND DEVELOPMENT. CONSULTATION MUST OCCUR AS OFTEN AS THE CHILD CARE HEALTH CONSULTANT WHO IS DELEGATING MEDICATIONS AND/OR MEDICAL PROCEDURES REQUIRES.

2. THE DATE AND CONTENT OF EACH CONSULTATION MUST BE RECORDED AND MAINTAINED IN THE CENTER'S FILES.

3. THE CENTER MUST MAINTAIN DOCUMENTATION INCLUDING THE CHILD CARE HEALTH CONSULTANT'S (CCHC) DEPARTMENT OF REGULATORY AGENCIES (DORA) PROOF OF RN OR MD CURRENT LICENSURE IN GOOD STANDING, A BRIEF BIOGRAPHY HIGHLIGHTING APPLICABLE KNOWLEDGE, EXPERIENCE AND APPROXIMATE DATES WORKED AS A SCHOOL NURSE OR CHILD CARE HEALTH CONSULTANT COMMENCED.

4. CHILD CARE HEALTH CONSULTANTS (CCHC) MUST COMPLETE THE DEPARTMENT-APPROVED CHILD CARE HEALTH CONSULTANT (CCHC) TRAINING PRIOR TO CONSULTING WITH THE CENTER. THE CENTER MUST OBTAIN AND MAINTAIN PROOF OF COURSE COMPLETION.

5. ALL CHILD CARE HEALTH CONSULTANTS (CCHC) MUST COMPLETE THE DEPARTMENT-APPROVED COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT (CDPHE) IMMUNIZATION COURSE ANNUALLY.

~~D~~E. Employment of maintenance staff, including kitchen service, grounds, and housekeeping employees less than sixteen (16) years of age, must be in compliance with Colorado labor laws.

F. AT LEAST ONE STAFF MEMBER WITH CURRENT DEPARTMENT-APPROVED MEDICATION ADMINISTRATION TRAINING AND DELEGATION MUST BE ON DUTY AT ALL TIMES.

~~E~~G. First Aid and CPR Certified Staff

1. For every thirty (30) or fewer children in attendance, there must be at least one (1) staff member who holds ~~a~~ current Department-approved First Aid, and ~~safety certificate that includes~~ CPR for all ages of children. Such individuals must be with the children at all times when the center is in operation. If children are at different locations, there must be a First Aid and CPR qualified staff member at each location. In a day camp, all staff MEMBERS ~~that~~ WHO are eighteen (18) years of age and ~~over~~ OLDER ~~are required to~~ MUST have ~~a~~ current DEPARTMENT-APPROVED First Aid and CPR certificate~~S from a nationally recognized provider~~. Uncertified staff MEMBERS must work with another certified staff member.

2. All employees caring for children, not required by rule to be certified in First Aid and CPR, must complete a DEPARTMENT-APPROVED basic First Aid and CPR module within THIRTY (30) calendar days of employment and the module must be renewed every TWO (2) years.

7.712.43 Required Staff Supervision [Rev. eff. 6/1/07]

A. A program director must be present at the center at least 60~~%~~ PERCENT of any day the center is in operation. An individual who meets one of the following requirements must be present for the remaining 40~~%~~ PERCENT of the day:

1. A QUALIFIED program leader who is at least twenty-one (21) years of age ~~and has at least three (3) months of full-time or equivalent part time verifiable experience working with children~~; OR

2. A QUALIFIED program leader who is at least eighteen (18) years of age and has at least one (1) year (1820 HOURS) full-time or equivalent part-time verifiable experience working with children; or

3. Two QUALIFIED program leaders who are at least nineteen (19) years of age ~~and have at least three (3) months of full-time or equivalent part-time verifiable experience working with children~~.

B. If the program director cannot be present 60 PERCENT ~~%~~ of any day the center is in operation, an individual who meets program director qualifications must substitute for the director.

C. There must be at least one (1) program leader providing supervision with each group of THIRTY (30) or fewer children cared for by the center. ~~At all times, staff must be actively supervising children.~~ WHEN FOUR (4) YEAR OLDS ARE IN ATTENDANCE, THERE MUST BE AT LEAST ONE PROGRAM LEADER PROVIDING SUPERVISION WITH EACH GROUP OF TWENTY-FOUR (24) OR FEWER CHILDREN CARED FOR BY THE CENTER.

D. THE MAXIMUM GROUP SIZE FOR CHILDREN OVER THE AGE OF FIVE (5) IS THIRTY (30) CHILDREN. WHEN FOUR (4) YEAR OLDS ARE IN ATTENDANCE THE MAXIMUM GROUP SIZE IS TWENTY-FOUR (24). WHEN THE CENTER HAS THE CAPACITY TO CARE FOR MULTIPLE GROUPS OF CHILDREN, THEY MUST BE SEPARATED INTO DEVELOPMENTALLY AND AGE APPROPRIATE ACTIVITIES. GROUPS ARE NOT REQUIRED TO BE SEPARATED FROM EACH OTHER BY PERMANENT OR PORTABLE DIVIDERS OR WALLS.

E. GROUP SIZE FOR CHILDREN IN CARE MAY BE EXCEEDED FOR ATTENDANCE TIME, MEAL AND SNACK TIME, SPECIAL OCCASIONS AND ACTIVITIES. THE ROOM CAPACITY MUST NOT BE EXCEEDED.

~~D~~F. There must be one (1) staff member for each fifteen (15) children in attendance. WHEN FOUR (4) YEAR OLDS ARE IN ATTENDANCE, THERE MUST BE AT LEAST ONE STAFF MEMBER FOR EACH TWELVE (12) OR FEWER CHILDREN CARED FOR BY THE CENTER.

Ages of Children	Number of Staff	Maximum Group Size
Mixed age group with 4 year olds	1 staff member to 12 children	24 children
5 years and older	1 staff member to 15 children	30 children

~~E~~G. At any time when nine (9) or more children are ~~present~~ IN CARE at the center, there must be at least one (1) program leader actively supervising children and another responsible person at least sixteen (16) years of age on the premises. When EIGHT ~~8~~ or fewer children are present, there must be at least ONE (1) program leader on duty and a second staff member on call ~~and~~ WHO IS immediately available in an emergency.

~~F~~H. At all times, school-age child care personnel must be ~~actively~~ DIRECTLY supervising the children.

~~G~~I. In a mobile day camp program, ~~or~~ an outdoor-based day camp program, OR ANYTIME A BUILDING BASED PROGRAM IS AWAY FROM THE FACILITY, the staff ratio given at Section 7.712.43, ~~C and D~~F, must be maintained, but there must be at least two (2) program leaders at all times with the children.

7.712.44 Volunteers [Rev. eff. 11/1/98]

A. If volunteers are used by the center, there must be a clearly established policy in regard to their function, orientation, and supervision.

B. REFERENCES MUST BE OBTAINED FOR ~~I~~f volunteers WHO are counted in the staff to child ratio, ~~references must be obtained for them~~ consistent with Section ~~7.712.41, D~~7.701.33B.

C. ~~Volunteers must have qualifications suitable to the tasks assigned~~ VOLUNTEERS THAT WORK MORE THAN FOURTEEN (14) CALENDAR DAYS (112 HOURS) PER CALENDAR YEAR WHO ARE USED TO MEET STAFF TO CHILD RATIO MUST BE EQUALLY QUALIFIED AS A PROGRAM DIRECTOR, PROGRAM LEADER OR PROGRAM AIDE AND MUST HAVE COMPLETE STAFF RECORDS AS DEFINED IN 7.712.82.

D. Volunteers UNLESS EQUALLY QUALIFIED must be~~:~~

~~1.~~ ~~D~~irectly supervised by a program director or program leader~~; and~~.

~~2~~E. VOLUNTEERS MUST BE Given instruction as to the center's policies and procedures.

7.712.5 CHILD CARE SERVICES

7.712.51 Admission Procedure [Rev. eff. 6/1/07]

A. The center can accept children only of the ages AND CAPACITY for which it has been licensed. ~~At no time can the number of children in attendance exceed the number for which the center has been licensed.~~

B. Admission procedures must be completed prior to the child's ~~attendance~~ FIRST DAY IN CARE at the center and must include:

1. Completion of the registration information for inclusion in the child's record, as required in Section 7.712.81; and

2. Providing the parent(s)/ ~~or~~ guardian(s) with a copy of the center's policies and procedures.

7.712.52 Health Care [Rev. eff. 6/1/07]

~~A. Statements of Health Status~~

~~1. At the time of admission, health information must be provided for every child entering the center, including any known drug reactions and allergies, medications being taken, and any special diets required. The name, address, and phone number of the child's physician and dentist must be provided.~~

A. STATEMENTS OF HEALTH STATUS

1. AT THE TIME OF ENROLLMENT, THE PARENT(S)/GUARDIAN(S) MUST PROVIDE FOR EACH CHILD ENTERING THE CENTER:

a. A COMPLETE HEALTH HISTORY FOR EACH CHILD, INCLUDING ANY COMMUNICABLE DISEASES, CHRONIC ILLNESSES OR INJURIES, KNOWN DRUG REACTIONS AND ALLERGIES, CURRENT MEDICATIONS AND ANY SPECIAL DIETS NEEDED, THE NAME ADDRESS AND PHONE NUMBER FOR THE CHILD'S HEALTH CARE PROVIDER AND DENTIST.

b. DOCUMENTATION OF IMMUNIZATION STATUS OR EXEMPTION AS REQUIRED BY COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT (CDPHE). IMMUNIZATIONS MUST BE UPDATED AND RECORDED AS SPECIFIED ON THE CERTIFICATE OF IMMUNIZATION OR ALTERNATE CERTIFICATE OF IMMUNIZATION AS SUPPLIED AND APPROVED BY THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT (CDPHE). COLORADO LAW REQUIRES PROOF OF IMMUNIZATION BE PROVIDED PRIOR TO OR ON THE FIRST DAY OF ADMISSION.

1) CHILD CARE CENTERS AS DEFINED IN SECTION 26-6-102 (1.5), C.R.S., LOCATED AT A SKI AREA, ARE EXEMPT FROM OBTAINING IMMUNIZATION RECORDS FOR STUDENTS WHEN ALL OF THE FOLLOWING CONDITIONS ARE MET:

a) STUDENTS ATTEND FOR FIFTEEN (15) DAYS OR LESS IN A FIFTEEN-CONSECUTIVE-DAY PERIOD, NO MORE THAN TWICE IN A CALENDAR YEAR; AND

b) AT LEAST SIXTY (60) CALENDAR DAYS SEPARATE THE TWO SESSIONS WITHIN THE CALENDAR YEAR; AND

c) THE CENTER NOTIFIES PARENTS/GUARDIANS THAT NON-IMMUNIZED CHILDREN ARE ENROLLED ON THE ABOVE SHORT-TERM BASIS.

2. ~~At the time of admission, information regarding all immunizations a child has had, including month and year each immunization was administered, must be provided to the center, or a plan must be developed with the parent or guardian for submitting the information within thirty (30) days of enrollment. Immunizations must be recorded on the Certificate of Immunization or alternate approved immunization form supplied and approved by the Colorado Department of Public Health and Environment (CDPHE) and kept on file at the center~~ THE CENTER MUST INFORM ITS CHILD CARE HEALTH CONSULTANT (CCHC) PRIOR TO THE FIRST DAY OF CARE OF THE ENROLLMENT OF A CHILD WITH SPECIAL HEALTH CARE NEEDS, IF KNOWN, SO STAFF RECEIVES TRAINING, DELEGATION AND SUPERVISION AS INDICATED BY THE CHILD'S INDIVIDUALIZED HEALTH CARE PLAN.

3. If the center is located at an elementary school and all the children attend that school, the immunization records may be maintained at the school office but must be accessible to CENTER STAFF MEMBERS AND licensing specialists DURING THE HOURS THE CENTER IS OPEN.

B. Emergency Procedures

1. Written authorization for emergency medical care must be in the child's file as required in Section 7.712.81.

2. WHEN ACCIDENTS, INJURIES, OR ILLNESSES OCCUR, THE PROGRAM DIRECTOR OR RESPONSIBLE ADULT IN CHARGE MUST NOTIFY THE CHILD'S PARENT OR GUARDIAN AND, IF NECESSARY, SEEK MEDICAL CARE FOR THE CHILD. ~~If a child requires medical attention away from the program site, the child's parent(s) or guardian(s) must be notified, and necessary medical care sought from a licensed physician or medical facility.~~

3. Children too ill OR INJURED to remain in the group must be comfortably cared for and supervised until they can be PICKED UP OR SIGNED OUT FROM THE PROGRAM. ~~taken home or suitably cared for elsewhere.~~ For building-based programs, a cot or mat, plus a sheet and blanket must be provided.

4. A responsible staff member must be ~~present or within hearing distance of~~ DIRECTLY SUPERVISING any ill OR INJURED child.

5. ~~First aid supplies must be available at the program site and in all vehicles operated by the center.~~ PORTABLE FIRST AID KITS MUST BE AVAILABLE TO STAFF AT ALL TIMES, INCLUDING FIELD TRIPS, AND MUST BE LOCATED OUT OF REACH OF CHILDREN AND MAINTAINED IN A SANITARY CONDITION. FIRST AID KITS MUST BE CHECKED AND RESTOCKED ON AT LEAST A MONTHLY BASIS.

C. Medication

1. ANY UN-EXPIRED ROUTINE MEDICATION, ~~P~~Prescription and non-prescription (over-the-counter) medications ~~for eyes or ears, all oral medications, topical medications, inhaled medications, and certain emergency injections can~~ MUST be administered only with ~~the~~ A CURRENT written order of a ~~person~~ HEALTH CARE PROVIDER with prescriptive authority and with written parental consent. ~~Centers may administer medications for chronic health conditions or emergency situations~~ HOME REMEDIES, INCLUDING HOMEOPATHIC MEDICATIONS, MUST NEVER BE GIVEN TO A CHILD.

2. The written order by the prescribing practitioner must include:

   a. Child's name;

   b. Licensed prescribing practitioner name, telephone number, and signature;

   c. Date authorized;

   d. Name of medication and dosage;

   e. Time of day medication is to be given;

   f. Route of medication;

   g. Length of time the medication is to be given;

   h. Reason for medication (unless this information needs to remain confidential);

   i. Side effects or reactions to watch for; and

   j. Special instructions.

3. Medications must be kept in the original labeled bottle or container. Prescription medications must contain the original pharmacy label. ~~that lists:~~

   ~~a. Child's name;~~

   ~~b. Prescribing practitioner's name;~~

   ~~c. Pharmacy name and telephone number;~~

   ~~d. Date prescription was filled;~~

   ~~e. Expiration date of the medication;~~

   ~~f. Name of the medication;~~

   ~~g. Dosage;~~

   ~~h. How often to give the medication; and~~

   ~~i. Length of time the medication is to be given.~~

4. Over-the-counter medication must be kept in the originally labeled container and be labeled with the child's first and last name.

45. In the case medication needs to be given on an ongoing, long-term basis, the authorization and consent forms must be reauthorized on an annual basis. Any changes in the original medication authorization require a new written order by the prescribing practitioner and a change in the prescription label. ~~Verbal orders taken from the licensed prescriber may be accepted only by a licensed registered nurse.~~

~~56~~. ~~All child care staff designated by the center director to give medications must complete the 4-hour Department-approved medication administration training and have current First Aid and universal precautions training.~~ STAFF DESIGNATED BY THE PROGRAM DIRECTOR TO GIVE MEDICATIONS MUST COMPLETE THE DEPARTMENT-APPROVED MEDICATION ADMINISTRATION TRAINING AND HAVE CURRENT ANNUAL DELEGATION OR MORE OFTEN AS DETERMINED BY THE CHILD CARE HEALTH CONSULTANT. DELEGATION MUST BE FROM THE CENTER'S CURRENT CHILD CARE HEALTH CONSULTANT WHO MUST OBSERVE AND DOCUMENT THE COMPETENCY OF EACH STAFF MEMBER INVOLVED IN MEDICATION ADMINISTRATION. ALL STAFF ADMINISTERING MEDICATION MUST HAVE CURRENT DEPARTMENT-APPROVED CPR, FIRST AID TRAINING PRIOR TO ADMINISTERING MEDICATION WITH THE FOLLOWING EXCEPTIONS:

a. STAFF DETERMINED BY THE PROGRAM DIRECTOR, IN CONSULTATION WITH THE CHILD CARE HEALTH CONSULTANT, TO BE RESPONSIBLE FOR PROVIDING ROUTINE EMERGENCY MEDICATIONS COVERED IN THE APPROVED MEDICATION ADMINISTRATION TRAINING FOR THE TREATMENT OF SEVERE ALLERGIES OR INHALED MEDICATIONS FOR THE TREATMENT OF ASTHMA MUST RECEIVE TRAINING AND DELEGATION FROM THEIR CHILD CARE HEALTH CONSULTANT FOR THOSE MEDICATIONS ONLY. STAFF MUST THEN PROVIDE THOSE MEDICATIONS TO CHILDREN BASED ON THE INSTRUCTIONS FROM THE CHILD'S INDIVIDUALIZED HEALTH CARE PLAN.

b. STAFF DETERMINED BY THE DIRECTOR, IN CONSULTATION WITH THE CHILD CARE HEALTH CONSULTANT, TO BE RESPONSIBLE FOR PROVIDING MEDICATIONS NOT COVERED IN THE APPROVED MEDICATION ADMINISTRATION TRAINING ~~SHALL~~ MUST ALSO BE PERMITTED TO ADMINISTER MEDICATIONS AND/OR MEDICAL TREATMENTS SUCH AS EMERGENCY SEIZURE MEDICATION, INSULIN OR OXYGEN WITH INDIVIDUALIZED TRAINING AND DELEGATION FROM THE CHILD CARE HEALTH CONSULTANT BASED ON INSTRUCTIONS FROM THE CHILD'S INDIVIDUALIZED HEALTH CARE PLAN.

c. STAFF MAY BE TRAINED AND DELEGATED IN THE ADMINISTRATION OF A SINGLE RESCUE MEDICATION OR RESCUE MEDICAL INTERVENTION BY THE CENTER'S CHILD CARE HEALTH CONSULTANT. SUCH TRAINING AND DELEGATION ~~SHALL~~ MUST QUALIFY THE STAFF MEMBER TO PROVIDE A RESCUE MEDICATION OR TREATMENT FOR A SPECIFIC CHILD BASED ON INSTRUCTIONS FROM THE CHILD'S INDIVIDUALIZED HEALTH CARE PLAN.

~~67~~. ~~Medications must be kept in an area inaccessible to children. Controlled medications must be counted and safely secured, and specific policies regarding their handling require special attention in the center's policies. Access to these medications must be limited.~~ ALL MEDICATIONS, EXCEPT THOSE MEDICATIONS SPECIFIED IN THE DEPARTMENT'S APPROVED MEDICATION ADMINISTRATION TRAINING AS EMERGENCY MEDICATIONS, MUST BE KEPT IN AN AREA INACCESSIBLE TO CHILDREN, BUT AVAILABLE TO STAFF TRAINED IN ADMINISTERING MEDICATION. IF REFRIGERATION IS REQUIRED, THE MEDICATION MUST BE STORED IN EITHER A SEPARATE REFRIGERATOR OR A LEAK PROOF CONTAINER IN A

DESIGNATED AREA OF A FOOD STORAGE REFRIGERATOR, SEPARATE FROM FOOD AND INACCESSIBLE TO CHILDREN. CONTROLLED MEDICATIONS MUST BE COUNTED AND SAFELY SECURED, AND SPECIFIC POLICIES REGARDING THEIR HANDLING REQUIRE SPECIAL ATTENTION IN THE CENTER'S POLICIES. ACCESS TO THESE MEDICATIONS MUST BE LIMITED (SEE SECTION 12-22-318, C.R.S.).

~~7~~8. EMERGENCY MEDICATIONS MUST BE STORED IN ACCORDANCE WITH THE CHILD CARE HEALTH CONSULTANT'S RECOMMENDATION. EMERGENCY MEDICATIONS ARE NOT REQUIRED TO BE STORED IN A LOCKED AREA. EMERGENCY MEDICATIONS MAY BE STORED IN AN AREA EASILY ACCESSIBLE AND IDENTIFIABLE TO STAFF BUT OUT OF REACH OF CHILDREN. WHEN AWAY FROM THE CLASSROOM, STAFF MUST CARRY EMERGENCY MEDICATIONS IN A BAG ON THEIR PERSON.

~~8~~9. A written medication log must be kept for each child. This log is part of the child's records. The log must contain the following:

a. Child's name;

b. Name of the medication, dosage, and route;

c. Time medication is to be given;

d. Special instructions;

e. Name and initials of the individuals giving the medication; and

f. Notation if the medication was not given and the reason.

~~9~~10. Topical preparations such as petroleum jelly AND~~, diaper rash ointments, sunscreen,~~ bug sprays~~, and other ointments~~ may be administered to children with written parental authorization. These preparations may not be applied to open wounds or broken skin unless there is a written order by the prescribing practitioner.

~~10~~11. The center must have a written policy on the storage and access of inhalers and epinephrine AUTO INJECTORS for all children in care. This policy must be reviewed by the C~~c~~hild C~~c~~are H~~h~~ealth C~~c~~onsultant.

~~11~~12. The center may, with written parental consent and authorization of the prescribing health care provider, permit children who have asthma to carry their own inhalers or children who are at risk of anaphylaxis to carry their own epinephrine, and use them as directed. The center must have a specific written policy on the storage and access of inhalers and epinephrine for children who are permitted to carry or self-administer these medications. The policy must include a contract with the parent(s)/guardian(s), and child acknowledgement, assigning levels of responsibility of each individual. THIS CONTRACT MUST ACCOMPANY orders for the medication from the health care provider, along with confirmation from ~~the health care provider~~ CHILD CARE HEALTH CONSULTANT that the student has been instructed and is capable of self- administration of the prescribed medications.

~~12~~13. All staff MEMBERS AND CHILD CARE HEALTH CONSULTANTS must be aware of which children have asthma AND SEVERE ALLERGIES, and which of those may ADMINISTER ~~use~~ their own inhaler~~s~~ OR AUTO INJECTORS ~~as needed~~. ~~All staff must be aware of which children are at risk of anaphylaxis, and which of those may administer their own epinephrine as needed.~~

D. Sun Protection

1. The center must OBTAIN THE PARENT/GUARDIAN'S WRITTEN AUTHORIZATION AND INSTRUCTIONS FOR APPLYING SUNSCREEN OR USE OF ANOTHER FORM OF PARENT/GUARDIAN APPROVED SUN PROTECTION. ~~supervise that sunscreen is applied to children prior to outside play or outside activities unless parents provide written notice that they have applied the sunscreen themselves~~. A ~~doctor's~~ HEALTH CARE PROVIDERS permission is not needed to use sunscreen at the center.

2. When supplied for an individual child, the sunscreen must be labeled with the child's first and last name.

3. If sunscreen is provided by the center, parents must be notified in advance, in writing, of the type of sunscreen the center will use.

4. Children may apply sunscreen to themselves under the direct supervision of a staff member.

5. THE CENTER MUST APPLY SUNSCREEN, HAVE THE CHILD APPLY SUNSCREEN, HAVE THE PARENT OR GUARDIAN APPLY SUNSCREEN, OR USE ANOTHER FORM OF PARENT OR GUARDIAN APPROVED SUN PROTECTION FOR CHILDREN PRIOR TO CHILDREN GOING OUTSIDE. SUNSCREEN MUST BE REAPPLIED AS DIRECTED BY THE PRODUCT LABEL.

E. Control of Communicable Illness

1. When children show signs of ~~severe or~~ communicable illness, they must be separated from other children, the parent(s) or guardian(s) notified, and a doctor or medical facility consulted as needed regarding treatment.

2. Staff members with a communicable illness must not be permitted to work or have contact with children or other staff members if the illness could be readily transmitted during normal working activities.

3. When children have been diagnosed with a communicable illness such as hepatitis, measles, mumps, meningitis, diphtheria, rubella, salmonella, tuberculosis, giardia or shigella, the center must immediately notify the local or state department of health, all staff members, and all parents and guardians of children in care. Children's confidentiality must be maintained. THE PROGRAM DIRECTOR MUST ASK PARENTS TO REPORT EXPOSURE OF A CHILD TO COMMUNICABLE ILLNESS OUTSIDE OF THE CENTER, AND THE CHILD SHOULD BE EXCLUDED FROM THE CENTER FOR THE PERIOD OF TIME PRESCRIBED BY THE CHILD'S HEALTH CARE PROVIDER OR BY THE LOCAL HEALTH DEPARTMENT.

7.712.53 Personal Hygiene

~~A. Hand Washing/Clothing~~

~~Children's hand washing must be supervised and must be taught when necessary.~~

~~B~~A. ~~Diapering~~ CHILDREN WITH SPECIFIC TOILETING NEEDS

The center must have one or more designated ~~diaper~~ change areas for all children in need of ~~diaper~~ changing. The ~~diaper~~ change area must:

1. MEET A CHILD'S INDIVIDUAL AND DEVELOPMENTAL NEEDS AND ~~B~~be ~~a minimum of thirty six (36) by eighteen (18) inches in size and~~ large enough to accommodate the size of the child;

2. Have a place inaccessible to children for storing all ~~diaper~~ change supplies and disinfecting solutions and products; and

3. Have ~~a~~ sufficient supplIES~~y of diapers at all times~~.

7.712.54 Food and Nutrition

A. ~~Drinking water must be freely available to children at all times.~~ ALL MEALS AND SNACKS PROVIDED BY THE CENTER MUST MEET CURRENT USDA CHILD AND ADULT CARE FOOD PROGRAM MEAL PATTERN REQUIREMENTS AND BE OFFERED AT SUITABLE INTERVALS. CHILDREN WHO ARE AT THE CENTER FOR MORE THAN 4 HOURS, DAY OR EVENING, MUST BE OFFERED A MEAL.

B. ~~Nutritious snacks must be served at suitable intervals.~~ CENTERS MUST NOT PROVIDE SUGAR SWEETENED BEVERAGES TO CHILDREN. THESE ARE LIQUIDS THAT HAVE BEEN SWEETENED WITH VARIOUS FORMS OF SUGARS THAT ADD CALORIES AND INCLUDE, BUT ARE NOT LIMITED TO: SODA, FRUITADES, FRUIT DRINKS, FLAVORED MILKS, AND SPORTS AND ENERGY DRINKS.

C. ~~Children who are at the center for more than four (4) hours, day or evening, or come directly to the center from a morning kindergarten class must receive a meal.~~ IF 100% FRUIT JUICE, WHICH IS NOT A SUGAR SWEETENED BEVERAGE, IS OFFERED AS PART OF MEALS AND/OR SNACKS, IT MUST BE LIMITED TO NO MORE THAN TWICE PER WEEK.

1. ~~If the center provides a meal, it must meet one third of the child's daily nutritional needs.~~

~~2. The center staff must check lunches brought from children's homes to determine if they meet one third of the child's daily nutritional needs.~~

~~3. If the child fails to bring a meal, or if the meal meets less than one-third of the child's daily nutritional needs, the center must supply an adequate meal.~~

D. ~~All food prepared by the center must be from sources approved by the health authority. All food must be stored, prepared, and served in such a manner as to be clean, wholesome, free from spoilage, and safe for human consumption. Home canned foods cannot be served.~~ IN CENTERS THAT DO NOT REGULARLY PROVIDE A MEAL, IF A CHILD BRINGS A MEAL FROM HOME THAT DOES NOT APPEAR TO MEET CURRENT USDA CHILD AND ADULT CARE FOOD PROGRAM MEAL PATTERN REQUIREMENTS, THE CENTER MUST HAVE FOODS AVAILABLE TO OFFER AS A SUPPLEMENT TO THAT MEAL.

E. MEAL MENUS MUST BE PLANNED AT LEAST ONE WEEK IN ADVANCE, DATED, AND AVAILABLE TO PARENTS. AFTER USE, MENUS MUST BE FILED AND RETAINED FOR THREE (3) MONTHS. RECORDS MUST BE AVAILABLE FOR PERIODIC REVIEW AND EVALUATION.

F. THE SIZE OF SERVINGS MUST BE SUITABLE FOR THE CHILD'S AGE AND APPETITE, AND SUFFICIENT TIME MUST BE ALLOWED SO THAT MEALS ARE UNHURRIED.

7.712.55 ~~Discipline~~GUIDANCE

A. ~~Discipline~~ GUIDANCE must be appropriate and constructive or educational in nature and may include such measures as diversion, separation of the child from problem situations talking with the child about the situation, or praise for appropriate behavior

B. Children must not be subjected to physical or emotional harm or humiliation

C. The director must not use, or permit a staff ~~person~~ MEMBER or child to use, corporal or other harsh punishment, including but not limited to pinching, shaking, spanning punching, biting, kicking, rough handling, hair pulling, or any humiliating or frightening method of discipline.

D. ~~Discipline~~ GUIDANCE must not be associated with food, rest, or toileting ~~No c~~ChildREN should NEVER be punished for toileting accidents. ~~Food~~ CHILDREN must not be denied FOOD ~~to~~ or forced ~~upon a child~~ TO EAT as a disciplinary measure.

E. Separation, when used as ~~discipline~~GUIDANCE, must ~~be brief~~ NOT EXCEED FIVE MINUTES and MUST BE appropriate for the child's age ~~and circumstances~~. The child must be in a safe, lighted, well-ventilated area and be within SIGHT AND hearing ~~and vision~~ of aN ~~staff member~~ADULT. The child must not be isolated in a locked OR CLOSED ~~room, bathroom, closet, or pantry~~AREA.

F. Verbal abuse and derogatory remarks about the child are not permitted.

G. Authority ~~to discipline~~ FOR GUIDANCE must not be delegated to other children, and the center must not sanction one child punishing another child.

H. PHYSICAL EXERCISE MUST NOT BE USED AS A FORM OF GUIDANCE.

7.712.56 Transportation [Rev. eff. 6/1/07]

A. Transportation Provided by the Center

1. The center is responsible for any children it transports and must abide by applicable State and Federal motor vehicle laws.

2. The center must obtain written permission from parents/ ~~or~~ guardians for any transportation of their child during child care hours.

3. The number of staff members who accompany children when being transported in the vehicle must meet the child care staff ratio found at Section 7.712.43. The driver of the center vehicle is considered a staff member.

4. Children must not be permitted to ride in the front seat of a vehicle unless they are secured in a seat belt that conforms to all applicable Federal Motor Vehicle Safety Standards. Children must remain seated while the vehicle is in motion.

5. Children must be loaded and unloaded out of the path of moving vehicles.

6. Children must not be permitted to stand or sit on the floor of a moving vehicle, and their arms, legs, and heads must remain inside the vehicle at all times.

7. Transportation arrangements for school-age children must be by agreement between the center and the children's parents/GUARDIANS, i.e., whether the children can walk, ride a bicycle or travel in a car. The center must monitor the children to ~~be sure~~ ENSURE they arrive at the center when expected and follow up on their whereabouts if they are late.

Written permission from parents or guardians for their children to attend community functions after school hours must include agreements regarding transportation.

8. Prior to a field trip or other excursion, the center must obtain information on liability insurance from parents/GUARDIANS and staff who transport children in their own cars and verify that all drivers have valid driver's licenses.

B. Requirements for Vehicles

1. Any vehicle used for transporting children to and from the center or during program activities must meet the following requirements:

   a. The vehicle must be enclosed and have door locks;

   b. The seats of the vehicle must be constructed and installed according to the vehicle manufacturer's specifications; AND

   c. The vehicle must be kept in satisfactory condition to assure the safety of occupants. Vehicle tires, brakes, and lights must meet safety standards set by the Colorado Department of Revenue, Motor Vehicle Division; and

   d. ~~Seating must be comfortable, with a seat of at least ten (10) inches wide for each child.~~ MODIFICATIONS TO VEHICLES INCLUDING, BUT NOT LIMITED TO, THE ADDITION OF SEATS AND SEAT BELTS MUST BE COMPLETED BY THE MANUFACTURER OR AN AUTHORIZED REPRESENTATIVE OF THE MANUFACTURER. DOCUMENTATION OF SUCH MODIFICATIONS MUST BE AVAILABLE FOR REVIEW.

2. In passenger vehicles~~, which include automobiles, station wagons and vans~~ with a manufacturer's established capacity of sixteen (16) or fewer passengers and less than 10~~.~~,000 pounds, the following is required:

   a. Each child must be restrained in an individual seat belt OR CHILD RESTRAINT SYSTEM;

   b. ~~Two or more children must never be restrained in one seat belt~~ THE PROVIDER MUST NOT TRANSPORT MORE CHILDREN THAN ANY VEHICLE IS ABLE TO SAFELY ACCOMMODATE WHEN CHILD RESTRAINT SYSTEMS AND SEAT BELTS ARE PROPERLY INSTALLED AND USED IN THE VEHICLE;

   c. Lap belts must be secured low and tight across the upper thighs and under the belly; and

   d. Children must be instructed and required to keep the seat belt properly fastened and adjusted.

3. In vehicles with a manufacturer's established capacity of sixteen (16) or more passengers, seat belts for passengers are not required, but ~~shall~~ MUST be used if provided.

C. Requirements for Drivers of Vehicles

1. All drivers of vehicles transporting children must comply with applicable laws of the Colorado Department of Revenue, Motor Vehicle Division, and ordinances of the municipality in which the child care program is operated.

2. All drivers of vehicles owned or leased by the center in which children are transported must have a current Department-approved First Aid and safety certificate that includes CPR for all ages of children

3. In each vehicle used to transport children, drivers must have access to a First Aid kit.

4. The driver must ensure that all doors are secured at all times when the vehicle is moving.

5. The driver must make a good faith effort to ensure that each child is properly belted throughout the trip.

6. THE DRIVER MUST NOT EAT, SMOKE OR USE A CELLULAR DEVICE WHILE DRIVING.

7. THE REQUIRED STAFF TO CHILD RATIO MUST BE MAINTAINED AT ALL TIMES.

8. ALL DRIVERS MUST BE AT LEAST 20 YEARS OF AGE.

9. DRIVERS MUST COMPLETE A MINIMUM OF FOUR HOURS OF DRIVER TRAINING PRIOR TO TRANSPORTING CHILDREN. THE DRIVER TRAINING CURRICULUM MAY BE DEVELOPED AND ADMINISTERED BY THE CENTER AND MUST INCLUDE AT A MINIMUM: BEHIND THE WHEEL TRAINING; PARTICIPANT TRANSPORT ATTENDANCE PROCEDURES INCLUDING TAKING ATTENDANCE AT THE DESTINATION; MANAGING BEHAVIORAL ISSUES; LOADING AND UNLOADING PROCEDURES; DAILY VEHICLE INSPECTION PROCEDURE; PROPER TIRE INFLATION; EMERGENCY EQUIPMENT AND HOW TO USE IT; ACCIDENT PROCEDURES; PASSENGER ILLNESS PROCEDURES; PROCEDURES FOR BACKING UP; AND VEHICLE EVACUATION.

7.712.6 PROGRAM ACTIVITIES

7.712.61 Activity Schedules [Rev. eff. 6/1/07]

A. The center must provide parents/~~ or~~ guardians with a list of activities it offers.

B. Parents or guardians must be given the opportunity to indicate to the staff of the center if they do not want their child to participate in an activity.

C. Parents/~~ or~~ guardians must be notified in advance of all activities that will occur away from the center.

D. Television viewing, including videos, should not be permitted without the approval of a child's parents/GUARDIANS, who must be advised of the center's policy regarding television and video viewing.

E. A mobile day camp program must establish a daily itinerary and make available a copy to each child's parent or guardian. A copy must also be or file at the program's headquarters. The itinerary should be followed as closely as possible. In case of an emergency or change in the itinerary, the headquarters of the mobile day camp must be notified immediately. Parents/GUARDIANS must be instructed to contact the main headquarters to determine the exact location of their child.

7.712.62 PHYSICAL ACTIVITY

A. DAILY PHYSICAL GROSS MOTOR ACTIVITIES, WITH OR WITHOUT EQUIPMENT OR MATERIALS, MUST BE PROVIDED OUTDOORS, OR INDOORS DURING INCLEMENT WEATHER, FOR NO LESS THAN 60 MINUTES TOTAL FOR PROGRAMS OPERATING OVER FIVE HOURS PER DAY. ACTIVITIES DO NOT HAVE TO OCCUR ALL AT ONE TIME.

B. DAILY PHYSICAL GROSS MOTOR ACTIVITIES, WITH OR WITHOUT EQUIPMENT OR MATERIALS, MUST BE PROVIDED OUTDOORS OR INDOORS DURING INCLEMENT WEATHER, FOR NO LESS THAN 30 MINUTES TOTAL FOR PROGRAMS OPERATING FROM THREE TO FIVE HOURS PER DAY. ACTIVITIES DO NOT HAVE TO OCCUR ALL AT ONE TIME.

C. DAILY PHYSICAL GROSS MOTOR ACTIVITIES, WITH OR WITHOUT EQUIPMENT OR MATERIALS, MUST BE PROVIDED OUTDOORS OR INDOORS DURING INCLEMENT WEATHER, FOR NO LESS THAN 15 MINUTES TOTAL FOR PROGRAMS OPERATING LESS THAN 3 HOURS PER DAY. ACTIVITIES DO NOT HAVE TO OCCUR ALL AT ONE TIME.

7.712.63 SCREEN TIME AND MEDIA USE

A. ALL MEDIA THAT CHILDREN ARE EXPOSED TO MUST NOT CONTAIN EXPLICIT LANGUAGE OR TOPICS.

B. ALL TELEVISION, RECORDED MEDIA, COMPUTER, TABLET, CELL PHONES, VIDEO GAMES AND OTHER MEDIA DEVICES ARE PROHIBITED DURING SNACK OR MEAL TIMES.

C. THE CENTER MUST DEVELOP A MEDIA AND INTERNET USEAGE PLAN OUTLINING SCREEN TIME AND MEDIA USE RELATED TO THEIR CURRICULUM. THE MEDIA PLAN MUST HAVE INFORMATION ON ONGOING COMMUNICATION WITH CHILDREN ABOUT SAFE ONLINE PRACTICES. THE CENTER MUST OBTAIN A SIGNED DOCUMENT STATING THAT THE PARENTS/GUARDIANS HAVE RECEIVED THIS PLAN, AND AGREE TO THE ACTIVITIES DESCRIBED IN THE PLAN.

7.712.6~~2~~4 Equipment and Materials [Rev. eff. 6/1/07]

A. In a building based school-age child care center, a rest time and rest equipment must be provided for school-age children who require a rest time.

B. Children at the center must have access to age-appropriate materials and equipment from at least the following categories:

1. Activity supplies;

2. Manipulatives and games;

3. Recreation equipment;

4. Library items; and

5. Science equipment and materials.

C. Children must wear helmets when riding scooters, bicycling, skateboarding, or rollerblading.

7.712.6~~3~~5 Field Trips [Rev. eff. 11/1/98]

A. ~~The program may include field trips, where children and staff leave the center to visit some site in the community.~~ On a field trip or during a mobile school-age child care program:

1. THE CENTER MUST NOTIFY THE CHILDREN'S PARENTS /GUARDIANS IN ADVANCE OF ANY FIELD TRIP. THE Staff-child ratios FOUND AT SECTION 7.712.43.C, D, I must be maintained at all times;

2. ALL GROUPS OF ~~C~~Children must be ~~actively~~ DIRECTLY supervised BY A QUALIFIED PROGRAM DIRECTOR OR PROGRAM LEADER at all times;

3. An accurate itinerary OF EACH FIELD TRIP must remain at the ~~headquarters/office of the~~ center; ~~and~~

4. The staff must have ~~with them on a field trip~~ the following information about each child: PARENTS/GUARDIANS CONTACT INFORMATION, HEALTH CARE PROVIDER'S name, address, and phone number~~, of the child's physician or other appropriate health care professional~~ and the written authorization from parent~~(~~s~~)~~/ ~~or~~ guardian~~(~~s~~)~~ for emergency medical care~~.~~;

5. IF CHILDREN ATTENDING THE FIELD TRIP REQUIRE MEDICATIONS BE ADMINISTERED DURING THE FIELD TRIP OR HAVE SPECIAL HEALTH NEEDS, A STAFF MEMBER WITH CURRENT MEDICATION ADMINISTRATION TRAINING AND DELEGATION MUST ATTEND ON THE FIELD TRIP;

6. A LIST OF ALL CHILDREN AND STAFF ON A FIELD TRIP MUST BE KEPT AT THE CENTER; AND

7. A COPY OF THE EMERGENCY DISASTER PLAN MUST ACCOMPANY STAFF OFFSITE.

~~B. A list of all children and staff on a field trip must be kept at the headquarters of the center.~~

7.712.64 - 7.712.66 None

7.712.7 BUILDING AND FACILITIES

7.712.71 Facility Requirements [Rev. eff. 6/1/07]

A. The mobile day camp program and the outdoor-based day camp program may use as a gathering place a public park or playground if the program primarily includes field trips away from the gathering place. Such programs must have a contingency plan for facilities to use during increment weather. The plan must be available to parents/GUARDIANS on a daily basis.

B. If a room(S) ~~or rooms~~ inside a building are used for indoor care~~, the following ratio must be maintained: open indoor play space of~~ at least thirty (30) square feet of floor space per child IS REQUIRED.~~, including space for readily movable furniture and equipment~~ Indoor space is exclusive of kitchen, toilet rooms, office, staff rooms, hallways and stairways, closets, laundry rooms, furnace rooms~~, and space occupied by permanent built-in cabinets and permanent storage shelves~~.

C. When a building is being used during the summer months by a center specifically as a gathering place at the beginning and end of the day, the thirty (30) square feet requirement need not apply. The total amount of time during which the number of children present may exceed the THIRTY (30) square feet requirement must not exceed THREE (3) hours. This time must be divided evenly between the morning and the evening.

D. The building based school-age child care center must provide access to an outdoor play area. The outdoor play area may be a city park or public school ground. The play area must meet the following requirements:

1. The center must provide a total outside play area of at least seventy-five (75) square feet per child for a minimum of one-third of the licensed capacity of the center or a minimum of 1500 square feet, whichever is greater;

2. Access to a shaded area, sheltered area, or inside building area must be provided at all times to guard children against the hazards of excessive sun and heat; and

3. The outdoor play area must be maintained in a safe condition by removing debris, dilapidated structures, and worn and broken play equipment. The center must identify hazardous, high-risk areas. These areas must be monitored to reduce the possibility of injury and accidents.

4. OUTDOOR PLAY AREAS PROVIDED BY THE CENTER MUST NOT HAVE EQUIPMENT THAT EXCEEDS SIX (6) FEET IN HEIGHT FOR ANY SURFACE AREA INTENDED FOR CHILDREN'S PLAY UNLESS EQUIPPED WITH A PROTECTIVE BARRIER TO PREVENT CHILDREN FROM FALLING.

5. ALL OUTDOOR CLIMBING EQUIPMENT OVER EIGHTEEN (18) INCHES PROVIDED BY THE CENTER MUST HAVE LEAST SIX (6) INCHES RESILIENT SURFACE THROUGHOUT THE USE ZONE.

~~E. A safe, comfortable place for relaxing and for sick children must be available at all times for children in care.~~

7.712.72 Toilet Facilities

A. ~~Boys and girls~~ CHILDREN ~~OF DIFFERENT GENDERS~~ must BE ALLOWED THE USE OF GENDER-SEGREGATED TOILET FACILITIES THAT ARE CONSISTENT WITH THEIR GENDER IDENTITY ~~have separate OR INDIVIDUAL, clearly identified toilet facilities~~, with toilets separated by partitions to provide privacy.

B. There must be a minimum of one (1) toilet per thirty (30) or fewer children for which the center is licensed. Hand-washing facilities must be available at the ratio of one (1) sink per thirty (30) or fewer children. AFTER FEBRUARY 1, 2018 ALL NEW CONSTRUCTION MUST HAVE A MINIMUM OF ONE (1) TOILET AND ONE (1) HAND WASHING SINK PER EVERY FIFTEEN (15) OR FEWER CHILDREN FOR WHICH THE CENTER IS LICENSED.

~~**7.712.73 Food Preparation Area**~~

~~Areas used for food preparation, dish and utensil washing, and storage must be in compliance with the requirements of the Colorado Department of Public Health and Environment or its local unit.~~

7.712.~~74~~73 Fire and Other Safety Requirements [Rev. eff. 4/1/15]

A. General Requirements

1. Buildings must be kept in good repair and maintained in a safe condition.

2. Major cleaning is prohibited in rooms occupied by children.

3. Volatile substances, such as gasoline, kerosene, fuel oil, and oil-based paints, firearms, explosives, and other hazardous items, must be stored away from the area used for child care and be inaccessible to children.

4. Combustibles, such as cleaning rags, mops~~,~~ and cleaning compounds, must be stored in well-ventilated areas separated from flammable materials and stored in areas inaccessible to children.

5. Closets, atticS, basementS, cellarS, furnace roomS~~,~~ and exit routes must be kept free from accumulation of extraneous materials.

6. All heating units, gas or electric, must be installed and maintained with safety devices to prevent fire, explosions, and other hazards. No open-flame gas or oil stoves, unscreened fireplaces, hot plates, or unvented heaters can be used for heating purposes. All heating elements, including hot water pipes, must be insulated or installed in such a way that children cannot come in contact with them. Nothing flammable or combustible can be stored within three (3) feet of a hot water heater or furnace.

7. Indoor and outdoor equipment, materials, and furnishings must be sturdy, safe and free of hazards.

8. Equipment, materials, and furnishings, including durable furniture such as tables and chairs, must be stored in a manner that is safe for children.

9. Extension cords cannot be used in place of permanent wiring.

10. Corridors, halls, stairs, and porches must be adequately lighted. Operable battery-powered lights must be provided in locations readily accessible to staff in the event of electric power failure.

B. Fire Safety

1. Every building and structure must be constructed, arranged, equipped, maintained, and operated so as to avoid undue danger to the lives and safety of its occupants from fire, smoke, fumes, or resulting panic during the period of time reasonably necessary for escape from the building or structure in case of fire or other emergency.

2. Every building and structure ~~must have at least two (2) exits that permit the prompt escape of occupants in case of fin; or other emergency~~. MUST HAVE AT LEAST TWO (2) APPROVED, ALTERNATE MEANS OF EGRESS FROM EACH FLOOR OF THE BUILDING OR TO A COMMON HALLWAY LEADING TO THE EXTERIOR. THEY MUST BE AT DIFFERENT LOCATIONS.

3. Every exit must be clearly visible, or the route to reach it must be conspicuously indicated. Each path of escape must be clearly marked.

4. In every building or structure, exits must be arranged and maintained so as to provide free and unobstructed egress from all parts of the building or structure at all times when it is occupied. ~~No l~~LockS or fastening DEVICES to prevent free escape from the inside of any building ~~can~~ MUST NOT be installed. Only panic hardware or single-action hardware is permitted on a door or on a pair of doors. All door hardware must be within the reach of children.

5. If the building in which the center operates has a security lock on outside exit doors, the center must obtain written permission from the local fire department; and there must be a

written sign attached to the door instructing staff that the security lock is not to be utilized when children are present and the center is in operation.

6. Every building and structure must have an automatic or Department-approved manually operated fire alarm system to warn occupants of the existence of fire or to facilitate the orderly conduct of fire exit drills.

7.712.8 RECORDS AND REPORTS

7.712.81 Children's Records [Rev. eff. 6/1/07]

A. The center must maintain and update annually a record on each child that includes:

1. The child's full name, age, current address, and date of enrollment;

2. Names, ~~and~~ home and employment addresses and telephone numbers, which may include cell phone numbers~~, pagers, fax~~ and e-mail of parents ~~or~~ /guardians if available;

3. Any special instructions as to how the parents ~~or~~ /guardians can be reached during the hours the child is at the center;

4. Names and telephone numbers of persons other than parents ~~or~~ /guardians who are authorized to take the child from the center;

5. Names, addresses, and telephone numbers of persons who can assume responsibility for the child in the event of an emergency if parents ~~or~~ /guardians cannot be reached immediately;

6. Name, address, and telephone number of the child's physician, dentist, and hospital of choice;

7. ~~Health information including medical history,~~ A COMPLETE HEALTH HISTORY INCLUDING COMMUNICABLE DISEASES, chronic ~~medical problems~~ILLNESSES OR INJURIES, ~~and~~ immunization history, KNOWN DRUG REACTIONS OR ALLERGIES, MEDICATION RECORDS,SPECIAL DIET NEEDS, AND HEALTH CARE PLANS AS REQUIRED IN 7.712.52.A.1;

8. A dated written authorization for emergency medical care signed and submitted annually by the parent or guardian. The authorization must be notarized if required by the local health care facility;

9. Written authorization from a parent or guardian for the child to participate in field trips and to participate in program activities, listing ~~any possible exclusion~~ ALL EXCLUSIONS FROM AUTHORIZATION;

10. Written authorization from a parent/ ~~or~~ guardian for the center to transport the child to and from school, whether by walking or driving; and

11. Reports of serious injuries and accidents occurring during care that result in medical attention, admission to the hospital, or death of a child.

7.712.82 Staff Records [Rev. eff. 6/1/07]

A. The center office must maintain a record for each staff member, paid or volunteer, which includes the following:

1. Name, address, and birth date of the individual;

2. The date that the staff member was employed by the center;

3. Name, address, and ~~daytime tele~~phone number~~, which may include cell phone numbers, pager numbers, fax numbers and e-mail~~ of the person(s) to be notified in the event of an emergency;

4. Verification of the staff member's ~~training, education, and experience~~ CERTIFICATIONS, QUALIFICATIONS AND TRAINING REQUIREMENTS;

~~5~~. ~~Copies of any first aid and CPR certification or other certification confirming the qualifications for the responsibilities assumed at the center, which may include copies of driver's licenses, college transcripts, and diplomas;~~

~~6~~5. Copies of written references or notes of phone references, as required by Section 7.712.41.D.1;

7. Verification that a criminal record check with the Colorado Bureau of Investigation AND FEDERAL BUREAU OF INVESTIGATION is in process, or a copy of the results of the staff member's criminal record check; and

8. Verification that a review of the State Department's automated system for reporting child abuse and neglect has occurred or is in process.

B. Each staff member's personnel file must contain all required information within thirty (30) working days of the first day of employment.

7.712.83 Administrative Records and Reports

A. The following records must be on file at the center:

1. Records of enrollment, daily attendance for each child, and daily record of time child arrives at and departs from the center;

2. Current health department inspection report issued within the past ~~twenty four (24) months~~ TWO (2) YEARS;

3. Current fire department inspection report issued within the past ~~twenty four (24) months~~ TWO (2) YEARS;

4. A list of current staff members, substitutes, and staffing patterns.

B. Each center must ~~immediately~~ SUBMIT A report in writing to the Department USING THE ONLINE INJURY REPORTING SYSTEM OF any accident or illness occurring at the center that resulted in medical treatment by a physician or other health care professional, hospitalization, or death. This report must be made within twenty-four (24) hours after the accident or illness occurred.

C. A report about a fatality must include:

1. The child's name, birth date, address, and telephone number;

2. The names of the child's parents or guardians and their address and telephone number if different from those of the child;

3. Date of the fatality;

4. Brief description of the incident or illness leading to the fatality;

5. Names and addresses of witnesses or persons who were with the child at the time of death; and

6. Name and address of police department or authority to whom the report was made.

D. The center must ~~report to the Colorado Department of Public Health and Environment or its local unit any communicable illness, including but not limited to measles, mumps, diphtheria, rubella, tuberculosis, shigella, hepatitis, meningitis, salmonella, and giardia, contracted by a staff member or a child in care at the center~~ maintain records of reports of communicable illness made to the Colorado Department of Public Health and Environment or local public health agency.

E~~. A medical log must be maintained at the center in which is recorded the name of the child and date of instances of at least the following:~~

~~1. Administration of first aid;~~

~~2. Illness of the child while attending the center;~~

~~3. Accident requiring the child to receive medical attention; and~~

~~4. The administration of any medication to a child.~~

~~F~~E. The center must submit to the ~~d~~Department within twenty-four (24) hours a written report about any child who has been lost from the center and for whom the local authorities have been contacted. Such report must indicate:

1. The name, birth date, address, and telephone number of the child;

2. The names of the parents/ ~~or~~ guardians and their address and telephone number if different from those of the child;

3. The date when the child was lost;

4. The location, time, and circumstances when the child was last seen;

5. Actions taken to locate the child; and

6. The name of the staff person supervising the child.

~~G. Each center must have a written plan for action in case of natural disaster, including, but not limited to, floods, tornadoes, aid severe weather; a lost or missing child; and injuries and illnesses. This plan must be on file at the center. The staff must have received training regarding the implementation of the plan prior to assuming supervisory responsibility for children. Written verification of the training must be in the staff member's personnel file.~~

~~1. The plan of action must include at least:~~

~~a. Prompt notification of parents or guardians;~~

~~b. Notification of the headquarters of the center;~~

~~c. When local authorities are notified;~~

~~d. Emergency transportation; and~~

~~e. Specific procedures for responding to the crisis.~~

~~2. In the case of a mobile school-age child care program or a field trip, the plan must accompany staff members.~~

7.712.84 Confidentiality and Retention

A. The center must maintain complete records of PERSONNEL AND children ~~and personnel~~ as required at Sections 7.712.81, 7.712.82, and 7.712.83.

B. The confidentiality of all personnel and children's records must be maintained (see Section 7.701.7, General Rules for Child Care Facilities).

C. Personnel and children's records must be available, upon request, to authorized personnel of the ~~d~~Department.

D. If records for organizations having more than one center are kept in a central file, duplicate identifying and emergency information for PERSONNEL AND children must also be kept on file at the center attended by the child.

E. The records of ~~PERSONNEL AND~~ children ~~and personnel~~ must be maintained by the school-age child care center for at least THREE (3) years.

Permanent Rules Adopted

Department

Department of Revenue

Agency

Taxpayer Service Division - Tax Group

CCR number

1 CCR 201-2

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1 CCR 201-2 INCOME TAX 1 - eff 01/01/2018

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DEPARTMENT OF REVENUE

Taxpayer Service Division - Tax Group

INCOME TAX

1 CCR 201-2

Regulation 39-22-604.5.

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Opinion of the Attorney General rendered in connection with the rules adopted by the

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on 11/09/2017

1 CCR 201-2

INCOME TAX

The above-referenced rules were submitted to this office on 11/09/2017 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.

November 21, 2017 14:36:39

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
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Permanent Rules Adopted

Department

Department of Revenue

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DEPARTMENT OF REVENUE

Taxpayer Service Division – Tax Group

SALES AND USE TAX

1 CCR 201-4

Rule 39-26-109. Sales Tax Filing Schedules

Basis and Purpose

The basis for this rule is §§ 39-21-112(1), 39-26-105 and 109, C.R.S. The purpose of this rule is to prescribe sales tax filing schedules and conditions for the modification thereof.

(1) **General Rule.** Retailers shall file returns and remit tax to the Department in accordance with the filing schedules and due dates prescribed by this rule.

(2) **Standard Filing Schedules.**

(a) A retailer must file returns and remit sales tax on a monthly basis unless the Department has granted the retailer approval to file returns and remit sales tax on a less frequent basis. Unless permission is denied or revoked pursuant to paragraph (3) or (4) of this rule, the Department shall permit the retailer to file returns and remit sales tax on a basis less frequent than monthly if the retailer's average monthly Colorado sales tax collection is less than three hundred dollars.

(b) On the application for a sales tax license, a retailer must indicate the amount of its estimated monthly sales tax collection. The retailer's required filing frequency shall be determined initially on the basis of this estimate.

(I) If the retailer's estimated monthly sales tax collection is three hundred dollars or more, the retailer shall file returns and remit tax on a monthly basis.

(II) If the retailer's estimated monthly tax collection is less than three hundred dollars, the retailer shall file returns and remit tax on a quarterly basis or as provided in paragraph (3) of this rule.

(3) **Alternate Filing Schedules.** A retailer may request a filing schedule other than monthly or quarterly as provided in this paragraph (3). The Department shall grant approval for an alternate filing schedule only if such alternate schedule will not jeopardize the collection of tax. The Department shall notify a retailer of the approval or denial of any request for an alternate filing schedule submitted pursuant to this rule.

(a) If a retailer's average or estimated monthly sales tax collection is $15 or less and filing sales tax returns on a monthly or quarterly basis would impose unnecessary hardship, the retailer may request permission to file returns and remit tax on an annual basis. The retailer may make such request by checking the appropriate box of the retailer's initial sales tax application or by submitting such request to the Department in writing.

(b) If a retailer is engaged in a seasonal business (a business that the retailer does not operate in Colorado during certain months of the year), the retailer may request permission to file returns and remit tax only for the months of the year that the business operates. The request shall indicate the months the retailer expects to operate the business in Colorado. The retailer may make such request by checking the appropriate boxes of the retailer's initial sales tax application or by submitting such request to the Department in writing. The retailer must immediately notify the Department if the retailer operates its business in any month for which the retailer's request indicated the retailer would not operate the business.

(c) If a retailer regularly employs accounting methods involving reporting periods other than calendar months (such as thirteen four-week periods over the course of the year), the retailer may request permission to file returns and remit tax on a filing schedule consistent with such accounting methods. Any retailer requesting such permission must make such request to the Department in writing.

(4) **Changes to Filing Schedules.**

(a) For any retailer for which the Department has not approved an alternate filing schedule pursuant to paragraphs (2)(b) or (2)(c) of this rule, the Department shall, on an annual basis, calculate the retailer's average monthly sales tax collection and adjust the retailer's filing schedule to increase the frequency of filing as necessary pursuant to this paragraph (4)(a). Such adjustments shall be made effective January 1. The Department shall not make any automatic adjustment to a retailer's filing schedule to decrease the frequency of filing, but a retailer may, pursuant to paragraph (3)(b) of this rule, request a change to their filing schedule.

(I) If a retailer's average monthly sales tax collection is three hundred dollars or more, the Department shall require the retailer to file returns and remit tax on a monthly basis.

(II) If a retailer's average monthly sales tax collection is less than three hundred dollars, but more than fifteen dollars, the Department shall require the retailer to file returns and remit tax on a quarterly basis.

(b) A retailer may submit a written request to the Department to change the retailer's filing schedule. The Department shall not approve any requested filing schedule that would jeopardize the collection of tax or any request made by a retailer that is delinquent in the filing of any required sales tax return or the remittance of any sales tax.

(I) The Department shall not approve a retailer's request for a quarterly filing schedule if the retailer's average monthly sales tax collection exceeds three hundred dollars.

(II) The Department shall not approve a retailer's request for an annual filing schedule if the retailer's average monthly sales tax collection exceeds fifteen dollars.

(c) If a retailer becomes delinquent in the filing of any required sales tax returns or the remittance of any sales tax, the Department may revoke any prior approval of a quarterly or alternate filing schedule. Upon such revocation the retailer will be required to file returns and remit tax on a monthly basis.

(d) The Department shall notify a retailer, in writing, of any change made in accordance with this paragraph (4) to the retailer's filing schedule along with the effective date of any such change.

(5) **Due Dates.** Sales tax returns and payments of tax reported thereon are due the twentieth day following the close of the tax period. If the twentieth day following the close of the tax period falls on a Saturday, Sunday, or legal holiday, the due date shall be the next business day.

(6) **Wholesalers.** Wholesalers that make no retail sales must file returns on an annual basis to report their gross sales and allowable subtractions therefrom. A wholesaler that makes retail sales in addition to wholesale sales is subject to the requirements of this rule and must file returns and remit tax monthly or quarterly, as applicable, unless the wholesaler has received permission to file less frequently.

Cross references

1. See § 39-21-120(3), C.R.S. for due dates that fall on Saturdays, Sundays, or legal holidays.

2. Colorado Sales Tax Withholding Account Application (CR 0100AP)

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1 CCR 201-4

SALES AND USE TAX

The above-referenced rules were submitted to this office on 11/09/2017 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.

November 21, 2017 14:37:44

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
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Permanent Rules Adopted

Department

Department of Revenue

Agency

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DEPARTMENT OF REVENUE

Taxpayer Service Division - Tax Group

RETAIL MARIJUANA TAX

1 CCR 201-18

Rule 39-28.8-101. Definitions.

Basis and Purpose

The basis for this rule is §§ 39-21-112(1), 39-28.8-101, 205, and 308, C.R.S. The purpose of this rule is to establish definitions for terms used in 1 CCR 201-18 regarding retail marijuana sales tax and retail marijuana excise tax.

With respect to rules promulgated under Article 28.8 of Title 39, the following terms have the following meanings:

(1) Unless the context clearly requires otherwise, terms defined by section 39-28.8-101, C.R.S. section 12-43.4-103, C.R.S., or in Rule R 103 of 1 CCR 212-2, the Marijuana Enforcement Division's rules related to the Colorado Retail Marijuana Code, shall have the same meanings in these rules as therein defined.

(2) "Affiliated Marijuana Business Licensees" shall have the same meaning as defined in subsection 39-28.8-101(1), C.R.S.

(3) "Average Market Rate" shall have the same meaning as defined in subsection 39-28.8-101(1.5), C.R.S., and shall be calculated pursuant to Department Rule 39-28.8-302(5) in the following categories:

(a) Bud

(b) Trim

(c) Bud Allocated for Extraction

(d) Trim Allocated for Extraction

(e) Immature Plant

(f) Wet Whole Plant

(g) Seed

(4) "Bud" shall have the same meaning as the product of the "Flowering" stage as set forth by Rule R 103 of 1 CCR 212-2 including the actual flower.

(5) "Bud Allocated for Extraction" means Bud that is designated for the extraction of Retail Marijuana Concentrate and not for direct sale to consumers.

(6) "Immature Plant" shall have the same meaning as set forth by Rule R 103 of 1 CCR 212-2.

(7) "Inventory Tracking System" shall have the same meaning as set forth by Rule R 103 of 1 CCR 212-2.

(8) "Marijuana" means Medical Marijuana or Retail Marijuana.

(9) "Retail Marijuana" shall have the same meaning as defined in subsection 39-28.8-101(7), C.R.S..

(10) "Retail Marijuana Concentrate" shall have the same meaning as "Retail Marijuana Concentrate" as set forth by Rule R 103 of 1 CCR 212-2.

(11) "Retail Marijuana Cultivation Facility" shall have the same meaning as defined in subsection 39-28.8-101(8), C.R.S..

(12) "Retail Marijuana Excise Tax" or "Excise Tax" means excise tax imposed by Part 3 of Article 28.8 of Title 39, C.R.S.

(13) "Retail Marijuana Excise Tax Return" means the excise tax return upon which all sales or Transfers of Retail Marijuana subject to Retail Marijuana Excise Tax and the amount of Retail Marijuana Excise Tax are reported.

(14) "Retail Marijuana Plant" means a plant of the genus cannabis, other than an Immature Plant, whether growing or harvested, that is cultivated by a licensed Retail Marijuana Cultivation Facility.

(15) "Retail Marijuana Product Manufacturing Facility" shall have the same meaning as defined in subsection 39-28.8-101(10), C.R.S.

(16) "Retail Marijuana Sales Tax" means sales tax imposed by Part 2 of Article 28.8 of Title 39, C.R.S.

(17) "Retail Marijuana Sales Tax Return" means the sales tax return upon which all sales of Retail Marijuana and Retail Marijuana Products and the amount of state and local Retail Marijuana Sales Tax are reported.

(18) "Retail Sales Tax" means the sales tax imposed by Part 1 of Article 26 of Title 39, C.R.S.

(19) "Test Period" means the period of time used to calculate the Average Market Rate. The Test Period shall be each November 1st to the subsequent January 31st, each February 1st to the subsequent April 30th, each May 1st to the subsequent July 31st, and each August 1st to the subsequent October 31st.

(20) "Transfer(s)(ed)(ing)" means to grant, convey, hand over, assign, sell, exchange, or barter, in any manner or by any means, with or without consideration, any Retail Marijuana or Retail Marijuana Product from one licensee to another licensee or to a consumer. A Transfer includes the movement of Retail Marijuana or Retail Marijuana Product from one licensed premises to another, even if both premises are contiguous, and even if both premises are owned by a single entity or individual or group of individuals and also includes a virtual transfer that is reflected on the Inventory Tracking System, even if no physical movement of the Retail Marijuana or Retail Marijuana Product occurs.

(21) "Trim" means any part of a Retail Marijuana Plant other than Bud or Wet Whole Plant. Trim includes "sweet leaf" or "sugar leaf".

(22) "Trim Allocated for Extraction" means Trim that is designated for the extraction of Retail Marijuana Concentrate and not for direct sale to consumers.

(23) "Unaffiliated Marijuana Business Licensees" shall mean Retail Marijuana business licensees that are not owned or controlled by the same or related interests, where "related interests" includes individuals who are related by blood or marriage or entities that are directly or indirectly controlled by an entity or individual or related individuals.

(24) "Unprocessed Retail Marijuana" means all Retail Marijuana that is first Transferred by a Retail Marijuana Cultivation Facility to a Retail Marijuana Store or a Retail Marijuana Products Manufacturing Facility, even though it may have gone through some processing, and even though it may be subject to further processing by another licensee.

(25) "Wet Whole Plant" means a Retail Marijuana Plant that is cut off just above the roots and is not trimmed, dried, or cured. The weight of the Wet Whole Plant includes all bud, leaves, stems, and stalk. The Wet Whole Plant must be weighed within 2 hours of the plant being harvested. The plant must not undergo any further processing prior to being weighed, and tax must be paid on the weight of the entire unprocessed plant.

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RETAIL MARIJUANA TAX

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November 21, 2017 14:28:27

Cynthia H. Coffman
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by Frederick R. Yarger
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DEPARTMENT OF REVENUE

Taxpayer Service Division - Tax Group

RETAIL MARIJUANA TAX

1 CCR 201-18

Rule 39-28.8-302. Retail Marijuana Excise Tax.

Basis and Purpose

The basis for this rule is §§ 39-21-112(1), 39-28.8-101, 301, 302, and 308, C.R.S. The purpose of this rule is to provide guidance regarding the imposition and calculation or retail marijuana excise tax and he record keeping requirements therefor.

(1) **Incidence of Tax.** The Excise Tax is imposed upon the Retail Marijuana Cultivation Facility, which shall pay the Excise Tax to the Department on the first Transfer of Retail Marijuana to a Retail Marijuana Store or a Retail Marijuana Product Manufacturing Facility. No Colorado Retail Marijuana Excise Tax is imposed on the Transfer of Retail Marijuana from one Retail Marijuana Cultivation Facility to another Retail Marijuana Cultivation Facility. In the case of such Transfer, the Colorado Retail Marijuana Excise Tax will be imposed on the subsequent Transfer of the Retail Marijuana to a Retail Marijuana Store or a Retail Marijuana Product Manufacturing Facility.

(a) *Virtual Transfers.* Except as provided in this paragraph (1)(a), Transfers subject to the Excise Tax include virtual Transfers of Retail Marijuana or Retail Marijuana Product between Unaffiliated Marijuana Licensees if such Transfers are accurately reflected in the Inventory Tracking System, even if the physical movement of the Retail Marijuana or Retail Marijuana Product does not follow the virtual Transfer. No Excise Tax is imposed on the Transfer or virtual Transfer of seeds or Immature Plants for subsequent cultivation in a Retail Marijuana Cultivation Facility, in which case the Excise Tax is imposed on the subsequent Transfer of Retail Marijuana cultivated from such seeds and Immature Plants. Any Retail Marijuana Cultivation Facility utilizing a virtual Transfer shall maintain documentation required by paragraph (6)(a) of this rule regarding the virtual Transfer and any subsequent Transfer of the Retail Marijuana. The Inventory Tracking System will not determine whether any Transfer from a Retail Marijuana Cultivation Facility is subject to Retail Marijuana Excise Tax. If any Transfer does not accurately represent legitimate business activity or is in any way designed to avoid or defeat the proper imposition and calculation of the Excise Tax, the Executive Directory may determine the Transfer of the Retail Marijuana upon which the Excise Tax is properly imposed.

(i) *Examples*

(A) Virtual Transfer would be recognized. A Retail Marijuana Store owned by Company A purchases Retail Marijuana from a Retail Marijuana Cultivation Facility owned by Company B through a documented point-of-sale transaction in the Inventory Tracking System reflecting the actual contract price paid. A second Transfer is then documented in the Inventory Tracking System Transferring the Retail Marijuana from the Retail Marijuana Store owned by Company A to a Retail Marijuana Cultivation Facility owned by Company A. The physical movement of Retail Marijuana need not follow all virtual Transfers. In this scenario, the

Retail Marijuana Excise Tax would be imposed at the time of the first Transfer from the Retail Marijuana Cultivation Facility owned by Company B to the Retail Marijuana Store owned by Company A, even though that Transfer is virtual. No additional Excise Tax is imposed on the subsequent Transfer of that Retail Marijuana from the Retail Marijuana Cultivation Facility owned by Company A to the Retail Marijuana Store owned by Company A.

(B) Virtual Transfer would not be recognized. A Retail Marijuana Store owned by Company A purchases seeds and Immature Plants from a Retail Marijuana Cultivation Facility owned by Company B through a documented point-of-sale transaction in the Inventory Tracking System. A second Transfer is then documented in the Inventory Tracking System Transferring the seeds and Immature Plants from the Retail Marijuana Store owned by Company A to a Retail Marijuana Cultivation Facility owned by Company A. The seeds and Immature Plants are cultivated and harvested at the Retail Marijuana Cultivation Facility owned by Company A. After cultivation and harvest, the Retail Marijuana Cultivation Facility owned by Company A Transfers the resulting Retail Marijuana to the Retail Marijuana Store owned by Company A. In this scenario, payment of Excise Tax on the Transfer from Company B to Company A would defeat the proper imposition and calculation of the Excise Tax. Instead, the Executive Director would impose the Excise Tax on the Transfer of the Retail Marijuana from the Retail Marijuana Cultivation Facility owned by Company A to the Retail Marijuana Store owned by Company A, using the applicable Average Market Rate(s).

(2) **Local Incidence of Tax**. See §§ 29-2-114 and 32-1-1004, C.R.S. and the applicable local ordinance or resolution for information about the application of any local excise taxes to Retail Marijuana Transfers.

(3) **Exempt Transfers**. The Transfer of Retail Marijuana to a Retail Marijuana Testing Facility for testing purposes is exempt from Retail Marijuana Excise Tax so long as the marijuana is destroyed by the Retail Marijuana Testing Facility during or following the testing.

(4) **Inventory Tracking System.** When a Transfer is entered into the Inventory Tracking System, all Transfers between Unaffiliated Marijuana Business Licensees, whether virtual or physical, must be entered in a manner that allows the price to be recorded in such Inventory Tracking System. When entering the price, the actual price charged, exclusive of tax, must be recorded in such Inventory Tracking System.

(5) **Calculation and Payment of Tax.**

(a) The method for calculating Retail Marijuana Excise Tax depends upon whether the first Transfer of Retail Marijuana from a Retail Marijuana Cultivation Facility to a Retail Marijuana Store or a Retail Marijuana Product Manufacturing Facility is between Unaffiliated Marijuana Business Licensees or Affiliated Marijuana Business Licensees.

(i) Unaffiliated Marijuana Business Licensees –

(A) If the first Transfer is between Unaffiliated Marijuana Business Licensees, the Excise Tax is calculated based on the actual contract price of the Retail Marijuana Transferred.

(B) If no contract price is established at the time of the first Transfer the Excise Tax is calculated based on the Average Market Rate of the Retail Marijuana Transferred. Examples of such Transfers include:

(I) a temporary Transfer, that does not constitute a sale, of Retail Marijuana from a Retail Marijuana Cultivation Facility to an unaffiliated Retail Marijuana Product Manufacturing Facility that will process or manufacture the Retail Marijuana before returning it to the Retail Marijuana Cultivation Facility or to a Retail Marijuana Store affiliated with the Retail Marijuana Cultivation Facility; or

(II) a Transfer of Retail Marijuana from a Retail Marijuana Cultivation Facility to an unaffiliated Retail Marijuana Store for which a price is not established at the time of Transfer, but instead depends upon the revenue generated from the subsequent sale of the Retail Marijuana to the end consumer.

(ii) Affiliated Marijuana Business Licensees - If the first Transfer is between Affiliated Marijuana Business Licensees, the Excise Tax is calculated based on the Average Market Rate of the Retail Marijuana Transferred.

(b) *Contract Price*

(i) The contract price is the invoice price charged by a Retail Marijuana Cultivation Facility to each licensed purchaser for each Transfer of Unprocessed Retail Marijuana, exclusive of any tax that is included in the written invoice price, and exclusive of any discount or other reduction. In the case of multiple invoices reflecting multiple prices for the same transaction, the contract price used to calculate the tax is the highest such price. For the purpose of this paragraph (5)(b)(i), the invoice price charged includes all consideration the seller receives from the buyer in whatever form and regardless of the time of receipt.

(c) *Calculation of Average Market Rate.*

(i) The Department will calculate the Average Market Rate using reported sales of each category during the Test Period. The Department will determine the best methodology to arrive at the Average Market Rate. The Department may, from time to time, change its method of calculating the Average Market Rate if, in the judgment of the Department, such change is necessary to arrive at the most accurate Average Market Rate given the market conditions.

(d) In the case of Retail Marijuana Excise Tax calculated using Average Market Rate, the Excise Tax shall be calculated based on the category of Retail Marijuana (i.e., Bud, Trim, Immature Plant, Wet Whole Plant, Seed, Bud Allocated for Extraction, or Trim Allocated for Extraction) being Transferred. The provisions of this paragraph (5)(d) apply only to Excise Tax calculated using Average Market Rate.

(i) For the categories of Bud, Trim, Bud Allocated for Extraction, and Trim Allocated for Extraction, the Excise Tax is computed on the total weight of the Retail Marijuana Transferred. If multiple categories of Retail Marijuana are included in the Transfer, the Excise Tax shall be calculated separately for each category of Retail Marijuana included in the Transfer by separately calculating the total weight of the Retail Marijuana included in each category and multiplying the weight by the Average Market Rate of each category and the applicable Excise

Tax rate. Notwithstanding this rule, inconsequential amounts of Bud inadvertently included in a Transfer that is otherwise Trim shall be treated as Trim and not as Bud.

(A) Retail Marijuana categorized for the purpose of Excise Tax calculation as Bud Allocated for Extraction or Trim Allocated for Extraction may not be subsequently Transferred for direct sale to consumers unless it has first been subject to extraction as allocated.

(B) If Bud Allocated for Extraction or Trim Allocated for Extraction is subsequently Transferred for direct sale to consumers and has not been subjected to extraction, the Retail Marijuana Cultivation Facility shall amend the Retail Marijuana Excise Tax Return upon which the Excise Tax was initially paid in order to recalculate the Excise Tax, and any applicable penalty and interest, using the Average Market Rates for the category of Bud or Trim, respectively.

(C) The Retail Marijuana Product Manufacturing Facility shall notify, in writing, the Retail Marijuana Cultivation Facility of any subsequent Transfer of Bud Allocated for Extraction or Trim Allocated for Extraction that has not first been subjected to extraction within seven (7) days of the Transfer by the Retail Marijuana Product Manufacturing Facility. Any failure by a Retail Marijuana Production Manufacturing Facility to notify a Retail Marijuana Cultivation Facility in accordance with this paragraph (5)(d)(i)(C) shall not relieve the Retail Marijuana Cultivation Facility of liability for any additional tax, penalty, and interest due pursuant to paragraph (5)(d)(i)(B) of this rule.

(ii) The Retail Marijuana Excise Tax for Immature Plants is calculated on the total number of Immature Plants being sold or Transferred.

(iii) The Retail Marijuana Excise Tax for Wet Whole Plants is calculated on the total weight of the entire Retail Marijuana Wet Whole Plant. The weight of the entire Retail Marijuana Wet Whole Plant is subject to the Excise Tax because the Average Market Rate for Wet Whole Plant already reflects an allowance for water weight and waste. The Wet Whole Plant may not undergo any further processing (i.e., drying the plant and subsequently selling separately the Bud and Trim) prior to being weighed when using the Wet Whole Plant basis. The Wet Whole Plant must be harvested and packaged in the same day.

(A) The Retail Marijuana Wet Whole Plant must be weighed within 2 hours of the plant being harvested and without any further processing, including any artificial drying such as increasing the ambient temperature of the room or any other form of drying, curing, or trimming. The Retail Marijuana Excise Tax must be calculated and paid on the total Wet Whole Plant weight. If the Wet Whole Plant is not weighed within 2 hours of being harvested or is subjected to further processing before being weighed, the Excise Tax on such plant cannot be calculated and paid on the Wet Whole Plant basis and must instead be calculated and paid at the Bud and Trim rates.

(B) A Retail Marijuana Cultivation Facility that calculates and pays the Excise Tax using the Wet Whole Plant rate must maintain records of the time each Wet Whole Plant (identified by its RFID tag) was harvested and weighed and the weight of each Wet Whole Plant. The records must be

in writing and created contemporaneously with the harvesting and weighing.

(iv) The Retail Marijuana Excise Tax for seeds is calculated on the total number of seeds being Transferred.

(v) The Retail Marijuana Excise Tax for Retail Marijuana Concentrate produced by a Retail Marijuana Cultivation Facility shall be calculated either pursuant to paragraph (5)(d)(i) of this rule based on the weight of Bud Allocated for Extraction and/or Trim Allocated for Extraction used in the extraction or pursuant to paragraph (5)(d)(iii) of this rule based on the weight of Wet Whole Plant(s) used in the extraction.

(6) **Evidence of Payment of Tax.**

(a) Both the Retail Marijuana Cultivation Facility and the first purchaser or transferee shall maintain documentation sufficient to determine the Excise Tax due for the Transfer. Such documentation must include:

(i) the name and license number of the Retail Marijuana Cultivation Facility,

(ii) the name and license number of first purchaser or transferee,

(iii) the category of Retail Marijuana Transferred,

(iv) the date of Transfer,

(v) the weight of the Retail Marijuana Transferred, and

(vi) the contract price for the Transfer, if applicable.

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Tracking number: 2017-00438

Opinion of the Attorney General rendered in connection with the rules adopted by the

Taxpayer Service Division - Tax Group

on 11/09/2017

1 CCR 201-18

RETAIL MARIJUANA TAX

The above-referenced rules were submitted to this office on 11/09/2017 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.

November 21, 2017 14:28:50

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
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 MEDICAL MARIJUANA RULES 1 - eff 01/01/2018

Effective date

01/01/2018

M 100 Series – General Applicability

Basis and Purpose – M 101

The statutory authority for this rule includes but is not limited to sections 12-43.3-102(2), 12-43.3-202(1)(b)(I), and 12-43.3-901(2), C.R.S. Unless such activity is authorized by the Colorado Constitution, article XVIII, Section 14 or Section 16, the Medical Marijuana Code, section 25-1.5-106.6, C.R.S., or these rules, any Person who buys, Transfers, or acquires Medical Marijuana is engaging in illegal activity pursuant to Colorado law. This rule clarifies that those engaged in the business of possessing, cultivating, dispensing, Transferring, transporting, or testing Medical Marijuana must be properly licensed to be in compliance with Colorado law.

M 101 – Engaging in Business

Except as authorized by the Colorado Constitution, article XVIII, sections 14 or 16, the Medical Marijuana Code, or section 25-1.5-106.5, C.R.S., no person shall, possess, cultivate, dispense, Transfer, transport, or offer to sell, manufacture, test, or research Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product unless said Person is duly licensed by the State Licensing Authority and the relevant local licensing authority(-ies).

Basis and Purpose – M 103

The statutory authority for this rule includes but is not limited to sections 12-43.3-104, 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a), 12-43.3-202(2)(a)(XX), C.R.S. , and all of the Medical Code. 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.

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, of visual, oral, or written communication, to induce directly or indirectly any Person to patronize a particular 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.
>
> "Affiliated Interest" means any Business Interest related to a Medical Marijuana Business that does not rise to the level of a Financial Interest in a Medical Marijuana Business license. An Affiliated Interest may include, but shall not be limited to, an Indirect Beneficial Interest Owner that is not a Financial Interest, an indirect financial interest, a lease agreement, secured or unsecured loan, or security interest in fixtures or equipment with a direct nexus to the cultivation, manufacture, Transfer, transportation, or testing of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product. A Person who provides funding for a Research Project conducted by a Licensed Research Business is an Affiliated Interest for the Licensed Research Business, unless that Person is a Direct Beneficial Interest Owner or an Indirect Beneficial Interest Owner. Except as otherwise provided by these rules, an Affiliated Interest holder shall neither exercise control of nor be positioned so as to enable the exercise of control over the Medical Marijuana Business or its operations. A Medical Marijuana Business

shall report each of its Affiliated Interests to the Division with each application for initial licensure, renewal, change of ownership or change of corporate structure.

“Agreement” means any unsecured convertible debt option, option agreement, warrant, or at the Division’s discretion, other document that establishes a right for a person to obtain a Permitted Economic Interest that might convert to an ownership interest in a Retail Marijuana Establishment or Medical Marijuana Business.

“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 for licensure or registration, or for renewal of licensure or registration, 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 a Direct Beneficial Interest Owner of the Medical Marijuana Business, other than a Qualified Limited Passive Investor, and any Person who controls or is positioned so as to enable the exercise of control over a Medical Marijuana Business. Each shareholder, officer, director, member, or partner of a Closely Held Business Entity that is a Direct Beneficial Interest Owner and any Person who controls or is positioned as to enable the exercise of control over a Medical Marijuana Business must hold an Associated Key License.

“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.

“Business Interest” means any Person that holds a Financial Interest or an Affiliated Interest in a Medical Marijuana Business.

“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. 1700.15 (1995) and 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 regulations, 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; and

c. Resealable for any product intended for more than a single use or containing multiple servings.

“Closely Held Business Entity” means an “entity” as defined in section 7-90-102, C.R.S., that has no more than fifteen shareholders, officers, directors, members, partners or owners, each of whom are natural persons, each of whom holds an Associated Key License, and each of whom is a United States citizen prior to the date of application. There must be no publicly traded market for interests in the entity. A Closely Held Business Entity and each of the natural persons who are its shareholders, officers, directors, members, partners or owners, are Direct Beneficial Interest Owners. A Closely Held Business Entity is an associated business of the Medical Marijuana Business for which it is a Direct Beneficial Interest Owner.

“Commercially Reasonable Royalty” means a right to compensation in the form of a royalty payment for the use of intellectual property with a direct nexus to the cultivation, manufacture, Transfer, or testing of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product. A Commercially Reasonable Royalty must be limited to specific intellectual property the Commercially Reasonable Royalty Interest Holder owns or is otherwise authorized to license or to a product or line of products. A Commercially Reasonable Royalty will not be approved where it could cause reasonable consumer confusion or violate any federal copyright, trademark, or patent law or regulation. The Commercially Reasonable Royalty shall provide for compensation to the Commercially Reasonable Royalty Holder as a percentage of gross revenue or gross profit. The royalty payment must be at a reasonable percentage rate. To determine whether the percentage rate is reasonable, the Division will consider the totality of the circumstances, including but not limited to the following factors:

a. The percentage of royalties received by the recipient for the licensing of the intellectual property.

b. The rates paid by the Licensee for the use of other intellectual property.

c. The nature and scope of the license, as exclusive or non-exclusive; or as restricted or non-restricted in terms of territory or with respect to whom the product may be sold.

d. The licensor’s established policy and marketing program to maintain his intellectual property monopoly by not licensing others or by granting licenses under special conditions designed to preserve that monopoly.

e. The commercial relationship between the recipient and Licensee, such as, whether they are competitors in the same territory in the same line of business.

f. The effect of selling the intellectual property in promoting sales of other products of the Licensee; the existing value of the intellectual property to the recipient as a generator of sales of his non-intellectual property items; and the extent of such derivative sales.

g. The duration of the term of the license for use of the intellectual property.

h. The established or projected profitability of the product made using the intellectual property; its commercial success; and its current popularity.

i. The utility and advantages of the intellectual property over products or businesses without the intellectual property.

j. The nature of the intellectual property; the character of the commercial embodiment of it as owned and produced by the licensor; and the benefits to those who have used the intellectual property.

k. The portion of the profit or of the selling price that may be customary in the particular business or in comparable businesses to allow for the use of the intellectual property.

l. The portion of the realizable profit that should be credited to the intellectual property as distinguished from non-intellectual property elements, the manufacturing process, business risks, or significant features or improvements added by the Licensee.

“Commercially Reasonable Royalty Interest Holder” means a Person that receives a Commercially Reasonable Royalty in exchange for a Licensee’s use of the Commercially Reasonable Royalty Interest Holder’s intellectual property. A Commercially Reasonable Royalty Interest Holder is an Indirect Beneficial Interest Owner.

“Container” means the receptacle directly containing Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product that is labeled according to the requirements in Rules M 1001 *et. seq.* or Rules M 1001-1 *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.

“Direct Beneficial Interest Owner” means a natural person or a Closely Held Business entity that owns a share or shares of stock in a licensed Medical Marijuana Business, including the officers, directors, members, or partners of the licensed Medical Marijuana Business or Closely Held Business Entity, or a Qualified Limited Passive Investor. Each natural person that is a Direct Beneficial Interest Owner must hold an Associated Key License. Except that a Qualified Limited Passive Investor need not hold an Associated Key License and shall not engage in activities for which an Occupational License is required.

“Director” means the Director of the Marijuana Enforcement Division.

“Division” means the Marijuana Enforcement Division.

“Edible Medical Marijuana-Infused Product” means any Medical Marijuana-Infused Product for which the intended use is oral consumption, 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 an Opaque bag or other similar Opaque covering provided at the point of sale, in which Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product already in a Container is placed. If Medical Marijuana flower, trim, or seeds are placed into a Container that is not Child-Resistant, then the Exit Package must be Child-Resistant.

“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.

“Financial Interest” means any Direct Beneficial Interest Owner, a Commercially Reasonable Royalty Interest Holder who receives more than 30 percent of the gross revenue or gross profit, a Permitted Economic Interest holder, and any other Person who controls or is positioned so as to enable the exercise of control over the Medical Marijuana Business.

“Finished Marijuana” means post-harvest Medical Marijuana including flower and trim that has been harvested for more than 90 days or that has completed the curing and drying process according to the Optional Premises Cultivation Operation’s written standard operating procedures that were last submitted to the Division. Standard operating procedures for curing and drying may provide a curing and drying period that is longer than 90 days but any such period must be commercially reasonable and shall not exceed 12 months. Among other factors, the Division may consider the Optional Premises Cultivation Operation’s prior business years’ business

transactions to determine whether the Optional Premises Cultivation Operation's standard operating procedures are commercially reasonable.

"Flammable Solvent" means a liquid that has a flash point below 100 degrees Fahrenheit.

"Flowering" means the reproductive state of the Cannabis plant in which there are physicial signs of flower or budding out of the nodes in the stem.

"Food-Based Medical Marijuana Concentrate" means a Medical Marijuana Concentrate that was produced by extracting Cannabinoids from Medical Marijuana through the use of propylene glycol, glycerin, butter, olive oil or other typical cooking fats.

"Good Cause" for purposes of denial of an initial, renewal or reinstatement license application or certification, or for purposes of discipline of a license or certification, means:

a. The Licensee or Applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of the Medical Code, any rules promulgated pursuant it, or any supplemental relevant state or local law, rule, or regulation;

b. The Licensee or Applicant has failed to comply with any special terms or conditions that were placed upon the license pursuant to an order of the State Licensing Authority or the relevant local licensing authority; or

c. The Licensee's or the Applicant's Licensed Premises have been operated in a manner that adversely affects the public health or welfare or the safety of the immediate neighborhood in which the establishment is located.

"Good Moral Character" means having a personal history that demonstrates 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.

"Heat/Pressure-Based Medical Marijuana Concentrate" means a Medical Marijuana Concentrate that was produced by extracting Cannabinoids from Medical Marijuana through the use of heat and/or pressure. The method of extraction may be used by only a Medical Marijuana-infused Products Manufacturer and can be used alone or on a Production Batch that also includes Water-Based Medical Marijuana Concentrate or Solvent-Based Medical Marijuana Concentrate.

"Identity Statement" means the name of the business as it is commonly known and used in any Advertising.

"Immature plant" means a nonflowering Medical Marijuana plant that is no taller than eight inches and no wider than eight inches produced from a cutting, clipping or seedling and that is in a growing container that is no larger than two inches wide and two inches tall that is sealed on the sides and bottom. 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.

"Indirect Beneficial Interest Owner" means a holder of a Permitted Economic Interest, a recipient of a Commercially Reasonable Royalty associated with the use of intellectual property by a Licensee, a Profit-Sharing Plan Employee, a Qualified Institutional Investor, or another similarly situated Person as determined by the State Licensing Authority. An Indirect Beneficial Interest

Owner is not a Licensee. The Licensee must obtain Division approval for an Indirect Beneficial Interest Owner that constitutes a Financial Interest before such Indirect Beneficial Interest Owner may exercise any of the privileges of the ownership or interest with respect to the Licensee.

“Industrial Hemp” means a plant of the genus Cannabis and any part of the plant, whether growing or not, containing a delta-9 tetrahydrocannabinol (THC) concentration of no more than three-tenths of one percent (0.3%) on a dry weight basis.

“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 and 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 patient at a Medical Marijuana Center, Transferred to a Medical Research Facility, Transferred to a Pesticide Manufacturer, destroyed by a Medical Marijuana Business or used in a Research Project by a Licensed Research Business.

“Inventory Tracking System Trained Administrator” means an Associated Key Licensee of a Medical Marijuana Business or an occupationally licensed employee of a Medical Marijuana Business, each of whom has attended and successfully completed Inventory Tracking System training and has completed any additional training required by the Division.

“Inventory Tracking System User” means an Associated Key Licensee of a Medical Marijuana Business 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. Each Inventory Tracking System Usermust

have 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 central to the Medical Marijuana Business’ operation. An individual holding a Key License has the highest level of responsibility. An example of a Key Licensee includes, but is not limited to, managers.

“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, store, transport, test, or research Medical Marijuana in accordance with the provisions of the Medical Code and these rules.

“Licensed Research Business” means a Marijuana Research and Development Facility or a Marijuana Research and Development Cultivation.

“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, Transferred, or processed for Transfer, 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 Medical Marijuana-Infused Product” means an Edible Medical Marijuana-Infused Product that is a liquid beverage or liquid food-based product for which the intended use is oral consumption, such as a soft drink or cooking sauce.

“Marijuana-Based Workforce Development Training Program” means a program designed to train individuals to work in the legal Medical or Retail Marijuana industry operated by an entity licensed under the Medical Code and/or the Retail Code or by a school that is authorized by the Division of Private Occupational Schools.

“Marketing Layer” means that packaging in addition to the Container that is the outermost layer visible to the consumer at the point of sale. The Marketing Layer is optional, but if used by a Licensee in addition to the required Container, it must be labeled according to the requirements in Rules M 1001 *et. seq.* or Rules M 1001-1 *et. seq.*

“Marijuana Research and Development Cultivation” means a Person that is licensed pursuant to the Medical Code to grow, cultivate, and possess Medical Marijuana, and to Transfer Medical Marijuana to a Medical Research and Development Facility or another Medical Research and Development Cultivation, all for limited research purposes authorized pursuant to section 12-43.3-408, C.R.S. A Marijuana Research and Development Cultivation is a Licensed Research Business.

“Marijuana Research and Development Facility” means a Person that is licensed pursuant to the Medical Code to possess Medical Marijuana for limited research purposes authorized pursuant to

section 12-43.3-408, C.R.S. A Marijuana Research and Development Facility is a Licensed Research Business.

“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. Unless the context otherwise requires, Medical Marijuana Concentrate is considered Medical Marijuana and is included in the term Medical Marijuana as used in these rules.

“Medical Marijuana Business” means a licensed Medical Marijuana Center, a Medical Marijuana-Infused Products Manufacturer, an Optional Premises Cultivation Operation, a Medical Marijuana Testing Facility, a Medical Marijuana Business Operator, a Medical Marijuana Transporter, a Marijuana Research and Development Facility, or a Marijuana Research and Development Cultivation.

“Medical Marijuana Business Operator” means an entity that holds a registration or license from the State Licensing Authority to provide professional operational services to one or more Medical Marijuana Businesses, other than Licensed Research Businesses, for direct remuneration from the Medical Marijuana Business(es), which may include compensation based upon a percentage of the profits of the Medical Marijuana Business(es) being operated. A Medical Marijuana Business Operator may contract with Medical Marijuana Business(es) to provide operational services. A Medical Marijuana Business Operator’s contract with a Medical Marijuana Business does not in and of itself constitute ownership. The Medical Code and rules apply to all Medical Marijuana Business Operators regardless of whether such operator holds a registration or license. Any reference to “license” or “licensee” shall mean “registration” or “registrant” when applied to a Medical Marijuana Business Operator that holds a registration issued by the State Licensing Authority.

“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, Solvent-Based Medical Marijuana Concentrate, and Heat/Pressure-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.

“Medical Marijuana Testing Facility” means a public or private laboratory licensed and certified, or approved by the Division, to conduct testing and research on Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product.

“Medical Marijuana Transporter” means a Person that is licensed to transport Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product from one Medical Marijuana Business to another Medical Marijuana Business or to a Medical Research Facility or Pesticide Manufacturer, and to temporarily store the transported Medical Marijuana and Medical Marijuana-Infused Product at its licensed premises, but is not authorized to sell, give away, buy, or receive complimentary Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product under any circumstances. A Medical Marijuana Transporter does not include a Licensee that transports its own Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product.

“Medical Research Facility” means a Person approved and grant-funded by the State Board of Health pursuant to section 25-1.5-106.5, C.R.S., to conduct Medical Marijuana research. A Medical Marijuana Research Facility is neither a Medical Marijuana Business, a Retail Marijuana Establishment, nor a Licensee.

“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, except where the context otherwise requires, a Direct Beneficial Interest Owner.

“Permitted Economic Interest” means an Agreement to obtain an ownership interest in a Retail Marijuana Establishment or Medical Marijuana Business when the holder of such interest is a natural person who is a lawful United States resident and whose right to convert into an ownership interest is contingent on the holder qualifying and obtaining a license as a Direct Beneficial Interest Owner under the Retail Code or Medical Code. A Permitted Economic Interest holder is an Indirect Beneficial Interest Owner.

“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.

“Pesticide Manufacturer” means a Person who: (1) manufactures, prepares, compounds, propagates, or processes any Pesticide or device or active ingredient used in producing a Pesticide; (2) who possesses an establishment number with the U.S. Environmental Protection Agency pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 *et. seq.;* (3) who conducts research to establish safe and effective protocols, including but not limited to establishing efficacy and toxicity, for the use of Pesticides on Medical Marijuana; (4) who has applied for and received any necessary license, registration, certifications, or permits from the Colorado Department of Agriculture pursuant to the Pesticide Act, section 35-9-101 *et. seq.*, C.R.S., and/or the Pesticide Applicators’ Act, sections 35-10-101 *et seq.*, C.R.S.; (5) who is authorized to conduct business in the State of Colorado; and (6) who has physical possession of the location in the State of Colorado where its research activities occur. A Pesticide Manufacturer is neither a Medical Marijuana Business, a Retail Marijuana Establishment, nor a Licensee.

“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” means an assessment of the performance of a Medical Marijuana Testing Facility’s methodology and processes. Proficiency Testing is also known as inter-laboratory comparison. The goal of Proficiency Testing is to ensure results are accurate, reproducible, and consistent.

“Profit-Sharing Plan” means a profit-sharing plan that is qualified pursuant to 26 U.S.C. § 401 of the Internal Revenue Code and subject to the Employee Retirement Income Security Act, and which provides for employer contributions in the form of cash, but not in the form of stock or other equity interests in a Medical Marijuana Business.

“Profit-Sharing Plan Employee” means an employee holding an Occupational License who receives a share of a Medical Marijuana Business’s profits through a Profit-Sharing Plan. A Profit-Sharing Plan Employee is an Indirect Beneficial Interest Owner.

“Propagation” means the reproduction of Medical Marijuana plants by seeds, cuttings or grafting.

“Public Institution” means any entity established or controlled by the federal government, a state government, or a local government or municipality, including but not limited to institutions of higher education or public higher education research institutions.

“Public Money” mean any funds or money obtained by the holder from any governmental entity, including but not limit to research grants.

“Qualified Institutional Investor” means:

a. A bank as defined in Section 3(a) (6) of the Federal Securities Exchange Act of 1934, as amended;

b. An insurance company as defined in Section 2(a) (17) of the Investment Company Act of 1940, as amended;

c. An investment company registered under Section 8 of the Investment Company Act of 1940, as amended;

d. An investment adviser registered under Section 203 of the Investment Advisers Act of 1940, as amended;

e. Collective trust funds as defined in Section 3(c) (11) of the Investment Company Act of 1940, as amended;

f. An employee benefit plan or pension fund that is subject to the Employee Retirement Income Security Act of 1974, as amended, excluding an employee benefit plan or pension fund sponsored by a licensed or an intermediary or holding company licensee which directly or indirectly owns five percent or more of a licensee;

g. A state or federal government pension plan; or

h. A group comprised entirely of persons specified in (a) through (g) of this definition.

A Qualified Institutional Investor is an Indirect Beneficial Interest Owner.

"Qualified Limited Passive Investor" means a natural person who is a United States citizen and is a passive investor who owns less than a five percent share or shares of stock in a licensed Medical Marijuana Business. A Qualified Limited Passive Investor is a Direct Beneficial Interest Owner.

"RFID" means Radio Frequency Identification.

"Remediation" means the process by which Medical Marijuana flower or trim, which has failed microbial testing, is processed into Solvent-Based Medical Marijuana Concentrate and retested as required by these rules.

"Resealable" means that the Container maintains its Child-Resistant effectiveness for multiple openings.

"Research Project" means a discrete scientific endeavor to answer a research question or a set of research questions. A Research Project must include a description of a defined protocol, clearly articulated goal(s), defined methods and outputs, and a defined start and end date. The description must demonstrate that the Research Project will comply with all requirements in the M 1900 Series. All research and development conducted by a Licensed Research Business must be conducted in furtherance of an approved Research Project.

"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, Medical Marijuana Concentrate, 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 but not limited to Retail 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. Unless the context otherwise requires, Retail Marijuana Concentrate is considered Retail Marijuana and is included in the term “Retail Marijuana” as used in these rules.

“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, Solvent-Based Retail Marijuana Concentrate, and Heat/Pressure-Based Retail Marijuana Concentrate.

“Retail Marijuana Cultivation Facility” means an entity licensed to cultivate, prepare, and package Retail Marijuana and Transfer Retail Marijuana to Retail Marijuana Establishments, Medical Research Facilities, and Pesticide Manufacturers, but not to consumers.

“Retail Marijuana Establishment” means a Retail Marijuana Store, a Retail Marijuana Cultivation Facility, a Retail Marijuana Products Manufacturing Facility, a Retail Marijuana Testing Facility, a Retail Marijuana Establishment Operator, or a Retail Marijuana Transporter.

“Retail Marijuana Establishment Operator” means an entity that holds a license from the State Licensing Authority to provide professional operational services to one or more Retail Marijuana Establishments for direct remuneration from the Retail Marijuana Establishment(s), which may include compensation based upon a percentage of the profits of the Retail Marijuana Establishment(s) being operated. A Retail Marijuana Establishment Operator contracts with Retail Marijuana Establishment(s) to provide operational services. A Retail Marijuana Establishment Operator’s contract with a Retail Marijuana Establishment does not in and of itself constitute ownership.

“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 Transfer Retail Marijuana and Retail Marijuana Product to other Retail Marijuana Products Manufacturing Facilities,Retail Marijuana Stores, Medical Research Facilities, and Pesticide Manufacturers, 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 Transfer 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 testing and research on Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Products.

“Retail Marijuana Transporter” means a Person that is licensed to transport Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Products from one Retail Marijuana Establishment to another Retail Marijuana Establishment or to a Medical Research Facility or Pesticide Manufacturer, and to temporarily store the transported Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Products at its Licensed Premises, but is not authorized to sell, give away, buy, or receive complimentary Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Products under any circumstances. A Retail Marijuana Transporter does not include a Licensee that transports and distributes its own Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Products.

“Sample” means any item collected from a Medical Marijuana Business and provided to a Medical Marijuana Testing Facility for testing. 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 a hard-sided container with a lid or other enclosure that can be secured in place. A Shipping Container is used solely for the transport of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product between Medical Marijuana Businesses, a Medical Research Facility, or a Pesticide Manufacturer.

“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.

“Standardized Graphic Symbol” means a graphic image or small design adopted by a Licensee to identify its business.

“State Licensing Authority” means the authority created for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, and Transfer 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. A Support Licensee is a Person with less decision-making authority than a Key Licensee and who is reasonably supervised by a Key Licensee or 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 derived from a single Harvest Batch, Production Batch, or Inventory Tracking System package, and that are collectively submitted to a Medical Marijuana Testing Facility or a Retail Marijuana Testing Facility for testing purposes. “Total THC” means the sum of the percentage by weight of THCA multiplied by 0.877 plus the percentage by weight of THC, i.e., Total THC = (% THCA x 0.877) + % THC.

"Transfer(s)(ed)(ing)" means to grant, convey, hand over, assign, sell, exchange, donate, or barter, in any manner or by any means, with or without consideration, any Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product from one Licensee to another Licensee or to a patient. A Transfer includes the movement of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product from one Licensed Premises to another, even if both premises are contiguous, and even if both premises are owned by a single entity or individual or group of individuals, and also includes a virtual Transfer that is reflected in the Inventory Tracking System, even if no physical movement of the Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product occurs.

"Universal Symbol" means the image established by the Division and made available to Licensees through the Division's website indicating the Medical Marijuana or Medical Marijuana Infused-Product contains marijuana.

"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.

M 200 Series – Licensing and Interests

Basis and Purpose – M 201

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(a), 12-43.3-202(1)(b)(I), 12-43.3-202(1)(e), 12-43.3-202(2)(a)(XVI), 12-43.3-202(2)(a)(XX), 12-43.3-301(3), 12-43.3-401(1)(a)-(e), 12-43.3-104, 12-43.3-305, 12-43.3-306, 12-43.3-307.5, 12-43.3-310, 12-43.3-311, 12-43.3-313, 12-43.3-401, and 24-76.5-103, C.R.S. The purpose of this rule is to establish that only materially complete applications for licenses or registrations, accompanied by all required fees, will be accepted and processed by the Division. The purpose of this rule is also to clarify that when an initial application is materially complete, but the Division determines further information is required before the application can be fully processed, the Applicant must provide the additional requested information within the time frame provided by the Division. Otherwise, the Division cannot act on the application in a timely manner, and the application may be denied.

M 201 – Application Process

A. General Requirements

1. All applications for licenses or registrations authorized pursuant to subsections 12-43.3-401(1)(a)-(h), C.R.S., shall be made upon current forms prescribed by the Division.

2. A license or registration issued to a Medical Marijuana Business or an individual constitutes a revocable privilege. The burden of proving an Applicant's qualifications for licensure or registration rests at all times with the Applicant.

3. Each application shall identify the local licensing authority.

4. Applicants must submit a complete application to the Division before it will be accepted or considered.

a. All applications must be complete and accurate in every material detail.

b. All applications must include all attachments or supplemental information required by the current forms supplied by the Division.

c. All applications must be accompanied by a full remittance for the whole amount of the application and license fees. *See* Rule M 207 – Schedule of Application Fees: Medical Marijuana Businesses; Rule M 208 – Schedule of Business License and Registration Fees: Medical Marijuana Businesses; Rule M 209 – Schedule of Business Renewal License and Registration Fees: Medical Marijuana Businesses; Rule M 235 – Schedule of License Fees: Individuals; and Rule M 236 – Schedule of Renewal License Fees: Individuals.

d. All applications must include all information required by the Division related to the Applicant's proposed Direct Beneficial Interest Owners, Indirect Beneficial Interest Owners and Qualified Limited Passive Investors, and all other direct and indirect financial interests in the Applicant.

e. At a minimum, each Applicant for a new license or registration shall provide, at the time of application, the following information:

    i. For each Associated Key License Applicant, evidence of proof of lawful presence, citizenship, if applicable, residence, if applicable, and Good Moral Character as required by the current forms prescribed by the Division;

    ii. For each Medical Marijuana Business Applicant and each Associated Key License Applicant, all requested information concerning financial and management associations and interests of other Persons in the business;

    iii. If the Applicant for any license pursuant to the Medical Code is a Closely Held Business Entity it shall submit with the application:

        A. The Associated Key License applications for all of its shareholders, members, partners, officers and directors who do not already hold an Associated Key License;

        B. If the Closely Held Business Entity is a corporation, a copy of its articles of incorporation or articles of organization; evidence of authorization from the Colorado Secretary of State to do business within this State, and for each shareholder: his or her name, mailing address, state of residence and certification of Colorado residency for at least one officer and all officers with day-to-day operational control over the business;

        C. If the Closely Held Business Entity is a limited liability company, a copy of its articles of organization and its operating agreement; evidence of authorization from the Colorado Secretary of State to do business within this State, and for each member: his or her name, mailing address, state of residence and certification of Colorado residency for at least one officer and all officers with day-to-day operational control over the business; and

D. If the Closely Held Business Entity is a general partnership, limited partnership, limited liability partnership, or limited liability limited partnership, a copy of the partnership agreement and, for each partner, his or her name, mailing address and state of residency and certification of Colorado residency for at least one officer and all officers with day-to-day operational control over the business.

iv. For each Medical Marijuana Business Applicant and each Associated Key License Applicant, documentation establishing compliant return filing and payment of taxes related to any Medical Marijuana Business or Retail Marijuana Establishment in which such Applicant is, or was, required to file and pay taxes;

v. For each Medical Marijuana Business Applicant and each Associated Key License Applicant, documentation verifying and confirming the funds used to start and/or sustain the operation of the Medical or Retail Marijuana Establishment were lawfully earned or obtained;

vi. Accurate floor plans for the premises to be licensed; and

vii. The deed, lease, sublease, contract, or other document(s) governing the terms and conditions of occupancy of the premises to be licensed.

5. All applications to reinstate a license or registration will be deemed an application for a new license or registration. This includes, but is not limited to, Associated Key licenses that have expired, Medical Marijuana Business licenses or registrations that have been expired for more than 90 days, licenses or registrations that have been voluntarily surrendered, and licenses that have been revoked.

6. The Division may refuse to accept an incomplete application.

B. Additional Information May Be Required

1. Upon request by the Division, an Applicant shall provide any additional information required to process and fully investigate the application. The additional information must be provided to the Division no later than seven days after the request is made unless otherwise specified by the Division.

2. An Applicant's failure to provide the requested information by the Division deadline may be grounds for denial of the application.

C. Information Must Be Provided Truthfully. All Applicants shall submit information to the Division in a full, faithful, truthful, and fair manner. The Division may recommend denial of an application where the Applicant made misstatements, omissions, misrepresentations, or untruths in the application or in connection with the Applicant's background investigation. This type of conduct may be considered as the basis for additional administrative action against the Applicant and it may also be the basis for criminal charges against the Applicant.

D. Application Forms Accessible. All application forms supplied by the Division and filed by an Applicant for a license, including attachments and any other documents associated with the investigation, may be used for a purpose authorized by the Medical Code, the Retail Code, of for any other state or local law enforcement purpose or as otherwise required by law.

E. Division Application Management and Local Licensure.

1. Repealed.2. If the Division grants a license before the local licensing authority approves the application or grants a local license, the license will be conditioned upon local approval. Such condition will not be viewed as a denial pursuant to the Administrative Procedure Act. If the local licensing authority denies the application, the state license will be revoked.

3. An Applicant is prohibited from operating a Medical Marijuana Business prior to obtaining all necessary licenses, registrations or approvals from both the State Licensing Authority and the local licensing authority.

4. Each Financial Interest is void and of no effect unless and until approved by the Division. A Financial Interest shall not exercise any privilege associated with the proposed interest until approved by the Division. Any violation of this requirement may be considered a license or registration violation affecting public safety.

Basis and Purpose – M 202.1

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(1)(e), 12-43.3-202(2)(a)(XVI), 12-43.3-202(2)(a)(XVIII.5), 12-43.3-202(2)(a)(XX), 12-43.3-202(2)(a)(XXI), and sections 12-43.3-104(1.7), 12-43.3-104(12.4), 12-43.3-305 and 12-43.3-306, 12-43.3-307.5, 12-43.3-310 and 12-43.3-313 C.R.S. The purpose of this rule is to clarify the process to be followed when a Medical Marijuana Business applies to obtain financing or otherwise have a relationship with an Indirect Beneficial Interest Owner. This rule establishes that only materially complete Medical Marijuana Business applications for Indirect Beneficial Interest Owners, accompanied by all required fees, will be accepted and processed by the Division. This rule also clarified that when an initial application is materially complete and accepted, but the Division determines further information is required before the application can be fully processed, the Medical Marijuana Business Applicant must provide the additional requested information within the time frame provided by the Division. Otherwise, the Division cannot act on the application in a timely manner and the Medical Marijuana Business' application may be denied. The rule also sets forth requirements for the contents of the contract or Agreement between Medical Marijuana Businesses and Indirect Beneficial Interest Owners, which reflect basic legal requirements surrounding the relationship between the parties.

M 202.1 – Applications, Agreements, Contracts and Certifications Required for Indirect Beneficial Interest Owners: Medical Marijuana Businesses

A. Medical Marijuana Business Initiates Process. The Medical Marijuana Business seeking to obtain financing or otherwise establish any type of relationship with an Indirect Beneficial Interest Owner, including a Permitted Economic Interest, a Commercially Reasonably Royalty Interest Holder, a Profit-Sharing Plan Employee, or a Qualified Institutional Investor, must file all required documents with the Division, including any supplemental documents requested by the Division in the course of its review of the application.

B. General Requirements. The Medical Marijuana Business seeking approval of an Indirect Beneficial Interest Owner must meet the following requirements:

1. All applications for approval of an Indirect Beneficial Interest Owner shall be made upon current forms prescribed by the Division.

2. The burden of proving that a proposed Indirect Beneficial Interest Owner is qualified to hold such an interest rests at all times with the Medical Marijuana Business submitting the application.

3. The Medical Marijuana Business applying for approval of any type of Indirect Beneficial Interest Owner must submit a complete application to the Division before it will be accepted or considered.

4. All applications must be complete and accurate in every material detail.

5. All applications must include all attachments or supplemental information required by the current forms supplied by the Division.

6. All applications must be accompanied by a full remittance of the required fees.

7. The Division may refuse to accept an incomplete application.

8. The proposed holder of the Indirect Beneficial Interest is not a publicly traded company.

9. Additional Information May Be Required

   a. Upon request by the Division, a Medical Marijuana Business applying to have any type of Indirect Beneficial Interest Owner shall provide any additional information required to process and fully investigate the application. The additional information must be provided to the Division no later than seven days after the request is made unless otherwise specified by the Division.

   b. Failure to provide the requested information by the Division's deadline may be grounds for denial of the application.

C. Information Must Be Provided Truthfully. A Medical Marijuana Business applying for approval of any type of Indirect Beneficial Interest Owner shall submit information to the Division in a full, faithful, truthful, and fair manner. The Division may recommend denial of an application where any party made misstatements, omissions, misrepresentations, or untruths in the application or in connection with the background investigation of the proposed Indirect Beneficial Interest Owner. This type of conduct may be considered as the basis for additional administrative action against the Medical Marijuana Business and it may also be the basis for criminal charges against either the Medical Marijuana Business Applicant or the Indirect Beneficial Interest Owner.

D. Application Forms Accessible. All application forms supplied by the Division and filed by an Applicant for a license, including attachments and any other documents associated with the investigation, may be used for a purpose authorized by the Medical Code, the Retail Code or for any other state or local law enforcement purpose, or as otherwise required by law.

E. Approval of Financial Interest. Each Financial Interest in a Medical Marijuana Business is void and of no effect unless and until approved by the Division. Any amendment of a Financial Interest is also void and of no effect unless and until approved by the Division.

F. Ongoing Qualification and Violation Affecting Public Safety. If at any time the Division finds any Indirect Beneficial Interest Owner is not qualified, or is no longer qualified, the Division may require the Medical Marijuana Business to terminate its relationship with and financial ties to the Indirect Beneficial Interest Owner within a specified time period. Failure to terminate such relationship and financial ties within the specified time period may constitute a violation affecting public safety and be a basis for administrative action against the Medical Marijuana Business.

G. Permitted Economic Interest Holder Requirements. At the time of application, a Medical Marijuana Business seeking to obtain approval of a Permitted Economic Interest shall provide evidence to establish that the natural person seeking to become a Permitted Economic Interest

holder is a lawful resident of the United States and shall provide documentation verifying and confirming the funds used for the Permitted Economic Interest were lawfully earned or obtained.

H. Permitted Economic Interest Agreement Requirements. The Medical Marijuana Business Applicant seeking to obtain financing from a Permitted Economic Interest must submit a copy of the Agreement between the Medical Marijuana Business and the person seeking to hold a Permitted Economic Interest. The following requirements apply to all Agreements:

1. The Agreement must be complete, and must fully incorporate all terms and conditions.

2. The following provisions must be included in the Agreement:

a. Any interest in a Medical Marijuana Business, whether held by a Permitted Economic Interest or any other person, must be acquired in accordance with the provisions of the Medical Code and/or Retail Code, as applicable, and the rules promulgated thereunder. The issuance of any Agreement or other interest in violation thereof shall be void. The Permitted Economic Interest holder shall not provide funding to the Medical Marijuana Business until the Permitted Economic Interest is approved by the Division.

b. No Agreement or other interest issued by the Medical Marijuana Business and no claim or charge therein or thereto shall be transferred except in accordance with the provisions of the Medical Code and/or Retail Code as applicable, and the rules promulgated thereunder. Any transfer in violation thereof shall be void.

c. The Medical Marijuana Business and the Permitted Economic Interest holder must sign an affirmation of passive investment on a form approved by the Division.

d. The Medical Marijuana Business must initiate any process to convert a Permitted Economic Interest to a Direct Beneficial Interest Owner and the process to convert the Permitted Economic Interest into a Direct Beneficial Interest Owner must be completed prior to the expiration or termination of the Agreement. The holder of the Permitted Economic Interest must meet all qualifications for licensure and ownership pursuant to the Medical Code and/or Retail Code and any rules promulgated thereunder prior to conversion of the Permitted Economic Interest to a Direct Beneficial Interest Owner.

e. At the election of the Medical Marijuana Business, if the holder of the Permitted Economic Interest is not qualified for licensure as a Direct Beneficial Interest Owner but is qualified as a holder of the Permitted Economic Interest, and the Permitted Economic Interest is also approved by the Division then the Permitted Economic Interest may remain in force and effect for as long as it remains approved by the Division under the Medical Code and/or Retail Code as applicable, and any rules promulgated thereunder.

f. The Permitted Economic Interest holder shall disclose in writing to the Division and to the Medical Marijuana Business any and all disqualifying events, within ten days after occurrence of the event, that could lead to a finding that the holder no longer qualifies to hold the Permitted Economic Interest and/or that could lead to a denial of licensure pursuant to the Medical Code and/or Retail Code and any rules promulgated thereunder.

g. The Medical Marijuana Business shall disclose in writing to the Division any and all disqualifying events, within ten days after receiving notice of the event, which

could lead to a finding that the holder is no longer qualified to hold the Permitted Economic Interest and/or that could lead to a denial of licensure pursuant to the Medical Code and/or Retail Code as applicable, and any rules promulgated thereunder.

h. A Permitted Economic Interest holder's or a Medical Marijuana Business' failure to make required disclosures may be grounds for administrative action including but not limited to denial of a subsequent request to convert the Permitted Economic Interest into an ownership interest in the Medical Marijuana Business. Failure to make required disclosures may lead to a finding that the Permitted Economic Interest is no longer approved, and a requirement that the Medical Marijuana Business terminate its relationship with the Permitted Economic Interest holder.

i. The Permitted Economic Interest holder agrees and acknowledges that it has no entitlement or expectation of being able to invest in, or have a relationship with, the Medical Marijuana Business unless and until the Division determines the Permitted Economic Interest is approved. The Permitted Economic Interest holder agrees and acknowledges that its relationship with the Medical Marijuana Business is contingent upon Division approval. The Permitted Economic Interest holder understands and acknowledges that approval by the Division is wholly discretionary and the Division may, at any time, deny approval of the Permitted Economic Interest or find that the Permitted Economic Interest is no longer qualified. The Permitted Economic Interest Holder agrees and acknowledges it has no entitlement to or expectation of the Division approving the Permitted Economic Interest. The Permitted Economic Interest holder further agrees that any administrative or judicial review of a determination by the Division regarding the qualification or approval of the Permitted Economic Interest will only occur through licensing or enforcement proceedings involving the Medical Marijuana Business. The Permitted Economic Interest holder further agrees and acknowledges that the Permitted Economic Interest holder shall only be entitled to notice of a denial or administrative action concerning the Medical Marijuana Business if the denial or administrative action is based upon, or directly related to, the qualifications or actions of the Permitted Economic Interest holder. The Permitted Economic Interest holder also agrees and acknowledges that the Permitted Economic Interest holder may only request leave to intervene in an administrative proceeding against the Medical Marijuana Business, pursuant to subsection 24-4-105(2)(c), C.R.S., if the administrative proceeding is based upon, or directly related to, the qualifications or actions of the Permitted Economic Interest holder. Furthermore, the Permitted Economic Interest holder agrees and acknowledges that the Permitted Economic Interest holder may only seek judicial review of an action against the Medical Marijuana Business, pursuant to subsection 24-4-106(4), C.R.S., if the administrative action is based upon, or directly related to, the qualifications or actions of the Permitted Economic Interest Holder. THE PERMITTED ECONOMIC INTEREST HOLDER KNOWINGLY, FREELY, AND VOLUNTARILY WAIVES ANY RIGHT OR CLAIM TO SEEK ANY INDEPENDENT REVIEW OF APPROVAL OR DENIAL OF THE PERMITTED ECONOMIC INTEREST BY THE DIVISION, OR OF AN ADMINISTRATIVE ACTION AGAINST THE MEDICAL MARIJUANA BUSINESS, THAT IS BASED UPON, OR DIRECTLY RELATED TO, THE QUALIFICATIONS OR ACTIONS OF THE PERMITTED ECONOMIC INTEREST, AND EXPRESSLY AGREES THAT THE ONLY ADMINISTRATIVE OR JUDICIAL REVIEW OF SUCH A DETERMINATION OR ACTION WILL OCCUR THROUGH A LICENSING OR ENFORCEMENT PROCEEDING FOR THE MEDICAL MARIJUANA BUSINESS.

I. Commercially Reasonable Royalty Interest Contract Requirements. A Medical Marijuana Business seeking to utilize the intellectual property of a Commercially Reasonable Royalty Interest Holder must submit a copy of the contract between the Medical Marijuana Business and the Person seeking to hold a Commercially Reasonable Royalty Interest. The following requirements apply to all such contracts:

1. The contract must be complete, and must fully incorporate all terms and conditions.

2. The following provisions must be included in the contract:

   a. Any interest in a Medical Marijuana Business, whether held by a Commercially Reasonable Royalty Interest Holder or any other Person, must be acquired in accordance with the provisions of the Medical Code and/or Retail Code, as applicable, and the rules promulgated thereunder. The issuance of any contract or other interest in violation thereof shall be void.

   b. No contract, royalty or other interest issued by the Medical Marijuana Business and no claim or charge therein or thereto shall be transferred except in accordance with the provisions of the Medical Code and/or Retail Code as applicable, and the rules promulgated thereunder. Any transfer in violation thereof shall be void.

   c. The Medical Marijuana Business and the Commercially Reasonable Royalty Interest Holder must sign an affirmation of passive investment on a form approved by the Division.

   d. The Commercially Reasonable Royalty Interest Holder shall disclose in writing to the Division and to the Medical Marijuana Business any and all disqualifying events, within ten days after occurrence of the event, that could lead to a finding that the Commercially Reasonable Royalty Interest Holder is not qualified to hold the Commercially Reasonable Royalty Interest.

   e. The Medical Marijuana Business shall disclose in writing to the Division any and all disqualifying events, within ten days after receiving notice of the event, which would lead to a finding that the Commercially Reasonable Royalty Interest Holder is not qualified to hold the Commercially Reasonable Royalty Interest.

   f. A Commercially Reasonable Royalty Interest Holder's or a Medical Marijuana Business' failure to make required disclosures may lead to a finding that the Commercially Reasonable Royalty Interest is not approved, or is no longer approved, and may lead to a requirement that the Medical Marijuana Business terminate its relationship with the Commercially Reasonable Royalty Interest Holder.

   g. The Commercially Reasonable Royalty Interest Holder agrees and acknowledges that its relationship with the Medical Marijuana Business is contingent upon Division approval throughout the entire term of its relationship with the Medical Marijuana Business. The Commercially Reasonable Royalty Interest Holder understands and acknowledges that approval by the Division is wholly discretionary and the Division may, at any time, find that the Commercially Reasonable Royalty Interest Holder does not qualify or no longer qualifies. The Commercially Reasonable Royalty Interest Holder agrees and acknowledges it has no entitlement to or expectation to approval of the Commercially Reasonable Royalty Interest.

h. The Commercially Reasonable Royalty Interest Holder further agrees that any administrative or judicial review of a determination by the Division approving or denying the Commercially Reasonable Royalty will only occur through licensing or enforcement proceedings involving the Medical Marijuana Business. The Commercially Reasonable Royalty Interest Holder further agrees and acknowledges that the Commercially Reasonable Royalty Interest Holder shall only be entitled to notice of a denial or administrative action concerning the Medical Marijuana Business if the denial or administrative action is based upon, or directly related to, the qualifications or actions of the Commercially Reasonable Royalty Interest Holder. The Commercially Reasonable Royalty Interest Holder also agrees and acknowledges that the Commercially Reasonable Royalty Interest Holder may only request leave to intervene in an administrative proceeding against the Medical Marijuana Business, pursuant to subsection 24-4-105(2)(c), C.R.S., if the administrative proceeding is based upon, or directly related to, the qualifications or actions of the Commercially Reasonable Royalty Interest Holder. Furthermore, the Commercially Reasonable Royalty Interest Holder agrees and acknowledges that the Commercially Reasonable Royalty Interest Holder may only seek judicial review of an action against the Medical Marijuana Business, pursuant to subsection 24-4-106(4), C.R.S., if the administrative action is based upon, or directly related to, the qualifications or actions of the Commercially Reasonable Royalty Interest Holder. THE COMMERCIALLY REASONABLE ROYALTY INTEREST HOLDER KNOWINGLY, FREELY, AND VOLUNTARILY WAIVES ANY RIGHT OR CLAIM TO SEEK ANY INDEPENDENT REVIEW OF APPROVAL OR DENIAL OF THE COMMERCIALLY REASONABLE ROYALTY INTEREST BY THE DIVISION, OR OF AN ADMINISTRATIVE ACTION AGAINST THE MEDICAL MARIJUANA BUSINESS, THAT IS BASED UPON, OR DIRECTLY RELATED TO, THE QUALIFICATIONS OR ACTIONS OF THE COMMERCIALLY REASONABLE ROYALTY INTEREST HOLDER, AND EXPRESSLY AGREES THAT THE ONLY ADMINISTRATIVE OR JUDICIAL REVIEW OF SUCH A DETERMINATION OR ACTION WILL OCCUR THROUGH A LICENSING OR ENFORCEMENT PROCEEDING FOR THE MEDICAL MARIJUANA BUSINESS.

i. If the Division determines the Commercially Reasonable Royalty Interest Holder is not in compliance with the Medical Code, the Retail Code, or these rules, then the recipient shall discontinue use of such Commercially Reasonable Royalty Interest Holder's intellectual property within thirty (30) days of the Division finding. The recipient shall not pay any remuneration to a Commercially Reasonable Royalty Interest Holder that does not qualify under the Medical Code and these rules, including but not limited to Rule M 231.2(B).

j. The Commercially Reasonable Royalty Interest Holder shall neither exercise control over nor be positioned so as to enable the exercise of control over the Medical Marijuana Business. Notwithstanding the foregoing, a Commercially Reasonable Royalty Interest Holder may influence the marketing, advertising, labeling and display of any product or line of products for which the Commercially Reasonably Royalty Interest exists so long as such influence is not inconsistent with the Medical Code or these rules.

J. Profit-Sharing Plan Documents. A Medical Marijuana Business offering licensed employees a share of the profits through a Profit-Sharing Plan must submit a list of all proposed participants in the Profit-Sharing Plan along with their names, addresses and occupational license numbers and submit a copy of all documentation regarding the Profit-Sharing Plan in connection with the Medical Marijuana Business' application:

1. The documents establishing the Profit-Sharing Plan must be complete and must fully incorporate all terms and conditions.

2. The following provisions must be included in the documents establishing the Profit-Sharing Plan:

    a. Any interest in a Medical Marijuana Business, whether held by a Profit-Sharing Plan Employee or any other person, must be acquired in accordance with the provisions of the Medical Code and/or Retail Code, as applicable, and the rules promulgated thereunder. The issuance of any contract or other interest in violation thereof shall be void. Any distributions from a Profit-Sharing Plan must be made in cash, not in the form of stock or other equity interests in the Medical Marijuana Business.

    b. No contract or other interest issued by the Medical Marijuana Business and no claim or charge therein or thereto shall be transferred except in accordance with the provisions of the Medical Code and/or Retail Code as applicable, and the rules promulgated thereunder. Any transfer in violation thereof shall be void.

    c. The Medical Marijuana Business shall disclose in writing to the Division any and all disqualifying events, within ten days after receiving notice of the event, which would lead to a finding that any Profit-Sharing Plan Employee does not qualify under the Medical Code and these rules, including but not limited to Rule M 231.2(B), to participate in the Profit-Sharing Plan.

    d. A Profit-Sharing Plan Employee shall disclose in writing to the Division and to the Medical Marijuana Business any and all disqualifying events, within ten days after occurrence of the event that could lead to a finding that the Profit-Sharing Plan Employee does not qualify or no longer qualifies under the Medical Code and these rules, including but not limited to Rule M 231.2(B), to participate in the Profit-Sharing Plan.

    e. A Medical Marijuana Business' or a Profit-Sharing Plan Employee's failure to make required disclosures may lead to a finding that the Profit-Sharing Plan is not approved, and may lead to a requirement that the Medical Marijuana Business terminate or modify the Profit-Sharing Plan.

    f. The Profit-Sharing Plan Employee agrees and acknowledges that its relationship with the Medical Marijuana Business is contingent upon Division approval throughout the entire term of its relationship with the Medical Marijuana Business. The Profit-Sharing Plan Employee understands and acknowledges that approval by the Division is wholly discretionary and the Division may, at any time, deny approval of the Profit-Sharing Plan. The Profit-Sharing Plan Employee agrees and acknowledges he or she has no entitlement to or expectation to Division approval of the Profit-Sharing Plan or the Profit-Sharing Plan Employee's participation in the plan. The Profit-Sharing Plan Employee further agrees that any administrative or judicial review of a determination by the Division approving or denying the Profit-Sharing Plan or the Profit-Sharing Plan Employee will only occur through licensing or enforcement proceedings involving the Medical Marijuana Business. Each Profit-Sharing Plan Employee further agrees and acknowledges that the Profit-Sharing Plan Employee shall only be entitled to notice of a denial or administrative action concerning the Medical Marijuana Business if the denial or administrative action is based upon, or directly related to, the qualifications or actions of the Profit-Sharing Plan Employee. The Profit-Sharing Plan Employee also agrees and acknowledges that the Profit-Sharing Plan Employee may only request leave to intervene in an

administrative proceeding against the Medical Marijuana Business, pursuant to subsection 24-4-105(2)(c), C.R.S., if the administrative proceeding is based upon, or directly related to, the qualifications or actions of the Profit-Sharing Plan Employee. Furthermore, the Profit Sharing Plan Employee agrees and acknowledges that the Profit-Sharing Plan Employee may only seek judicial review of an action against the Medical Marijuana Business, pursuant to subsection 24-4-106(4), C.R.S., if the administrative action is based upon, or directly related to, the qualifications or actions of the Profit-Sharing Plan Employee. THE PROFIT-SHARING PLAN EMPLOYEE KNOWINGLY, FREELY, AND VOLUNTARILY WAIVES ANY RIGHT OR CLAIM TO SEEK ANY INDEPENDENT REVIEW OF APPROVAL OR DENIAL OF THE PROFIT-SHARING PLAN OR THE PROFIT-SHARING PLAN EMPLOYEE BY THE DIVISION, OR OF AN ADMINISTRATIVE ACTION AGAINST THE MEDICAL MARIJUANA BUSINESS, THAT IS BASED UPON, OR DIRECTLY RELATED TO, THE PROFIT-SHARING PLAN OR THE PROFIT-SHARING PLAN EMPLOYEE'S QUALIFICATIONS OR ACTIONS OF THE PROFIT-SHARING PLAN EMPLOYEE, AND EXPRESSLY AGREES THAT THE ONLY ADMINISTRATIVE OR JUDICIAL REVIEW OF SUCH A DETERMINATION OR ACTION WILL OCCUR THROUGH A LICENSING OR ENFORCEMENT PROCEEDING FOR THE MEDICAL MARIJUANA BUSINESS.

K. Qualified Institutional Investor Requirements. Before a Medical Marijuana Business may permit a Qualified Institutional Investor to own any portion of the Medical Marijuana Business, the Medical Marijuana Business must submit the following documentation to the Division in connection with the Medical Marijuana Business' application:

1. A description of the Qualified Institutional Investor's business and a statement as to why the Qualified Institutional Investor meets the definition of Qualified Institutional Investor in Rule M 103 and subsection 12-43.3-307.5(7), C.R.S.

2. A certification made under oath and the penalty of perjury by the Qualified Institutional Investor:

    a. That the ownership interests were acquired and are held for investment purposes only and were acquired and are held in the ordinary course of business as a Qualified Institutional Investor and not for the purposes of causing, directly or indirectly, the election of a majority of the board of directors, any change in the corporate charter, bylaws, management, policies, or operations of a Medical Marijuana Business.

    b. That the Qualified Institutional Investor is bound by and shall comply with the Medical Code and the rules adopted pursuant thereto, is subject to the jurisdiction of the courts of Colorado, and consents to Colorado as the choice of forum in the event any dispute, question, or controversy arises regarding the Qualified Institutional Investor's relationship with the Medical Marijuana Business or activities pursuant to the Medical Code and rules adopted pursuant thereto.

    c. The Qualified Institutional Investor agrees and acknowledges that its relationship with the Medical Marijuana Business is contingent upon Division approval throughout the entire term of its relationship with the Medical Marijuana Business. The Qualified Institutional Investor understands and acknowledges that approval by the Division is wholly discretionary and the Division may, at any time, deny approval of the Qualified Institutional Investor. The Qualified Institutional Investor agrees and acknowledges it has no entitlement to or expectation to Division approval of the Qualified Institutional Investor. The Qualified Institutional Investor further agrees that any administrative or judicial

review of a determination by the Division approving or denying the Qualified Institutional Investor will only occur through licensing or enforcement proceedings involving the Medical Marijuana Business. The Qualified Institutional Investor further agrees and acknowledges that the Qualified Institutional Investor shall only be entitled to notice of a denial or administrative action concerning the Medical Marijuana Business if the denial or administrative action is based upon, or directly related to, the qualifications or actions of the Qualified Institutional Investor. The Qualified Institutional Investor also agrees and acknowledges that the Qualified Institutional Investor may only request leave to intervene in an administrative proceeding against the Medical Marijuana Business, pursuant to subsection 24-4-105(2)(c), C.R.S., if the administrative proceeding is based upon, or directly related to, the qualifications or actions of the Qualified Institutional Investor. Furthermore, the Qualified Institutional Investor agrees and acknowledges that the Qualified Institutional Investor may only seek judicial review of an action against the Medical Marijuana Business, pursuant to subsection 24-4-106(4), C.R.S., if the administrative action is based upon, or directly related to, the qualifications or actions of the Qualified Institutional Investor. THE QUALIFIED INSTITUTIONAL INVESTOR KNOWINGLY, FREELY, AND VOLUNTARILY WAIVES ANY RIGHT OR CLAIM TO SEEK ANY INDEPENDENT REVIEW OF APPROVAL OR DENIAL OF THE QUALIFIED INSTITUTIONAL INVESTOR BY THE DIVISION, OR OF AN ADMINISTRATIVE ACTION AGAINST THE MEDICAL MARIJUANA BUSINESS, THAT IS BASED UPON, OR DIRECTLY RELATED TO, THE QUALIFICATIONS OR ACTIONS OF THE QUALIFIED INSTITUTIONAL INVESTOR, AND EXPRESSLY AGREES THAT THE ONLY ADMINISTRATIVE OR JUDICIAL REVIEW OF SUCH A DETERMINATION OR ACTION WILL OCCUR THROUGH A LICENSING OR ENFORCEMENT PROCEEDING FOR THE MEDICAL MARIJUANA BUSINESS.

d. An explanation of the basis of the signatory's authority to sign the certification and to bind the Qualified Institutional Investor to its terms.

3. The name, address, telephone number and any other information requested by the Division as required on its approved forms for the officers and directors, or their equivalent, of the Qualified Institutional Investor as well as those Persons that have direct control over the Qualified Institutional Investor's ownership interest in the Medical Marijuana Business.

4. The name, address, telephone number and any other information requested by the Division as required on its approved forms for each Person who has the power to direct or control the Qualified Institutional Investor's voting of its shares in the Medical Marijuana Business.

5. The name of each Person that beneficially owns 5 percent or more of the Qualified Institutional Investor's voting securities or other equivalent.

6. A list of the Qualified Institutional Investor's affiliates.

7. A list of all regulatory agencies with which the Qualified Institutional Investor files periodic reports, and the name, address, and telephone number of the individual, if known, to contact at each agency regarding the Qualified Institutional Investor.

8. A disclosure of all criminal or regulatory sanctions imposed during the preceding 10 years and of any administrative or court proceedings filed by any regulatory agency during the preceding 5 years against the Qualified Institutional Investor, its affiliates, any current officer or director, or any former officer or director whose tenure ended within the preceding 12 months. As to a former officer or director, such information need be

provided only to the extent that it relates to actions arising out of or during such person's tenure with the Qualified Institutional Investor or its affiliates.

9. A copy of any filing made under 16 U.S.C § 18a with respect to the acquisition or proposed acquisition of an ownership interest in the Medical Marijuana Business.

10. Any additional information requested by the Division.

Basis and Purpose – M 204

The statutory authority for this rule includes but is not limited to sections 12-43.3-104(1), 12-43.3-104(1.7), 12-43.3-104(12.4), 12-43.3-104(14.3), 12-43.3-202(1)(b)(I), 12-43.3-202(1)(e), 12-43.3-202(2)(a)(I), 12-43.3-202(2)(a)(XVI), , 12-43.3-202(2)(a)(XXI), 12-43.3-310(7), (8)(a), and (11), and 12-43.3-601(1), 12-43.3-307.5, 12-43.3-313 and 12-43.3-901, C.R.S. The purpose of this rule is to provide clarity regarding the nature of a Direct Beneficial Interest Owner and an Indirect Beneficial Interest Owner, and to clarify what factors the State Licensing Authority generally considers regarding the same. The Division will review all relevant information to determine ownership of a Medical Marijuana Business.

M 204 – Ownership Interests of a License: Medical Marijuana Businesses

A. Licenses Held By Direct Beneficial Interest Owners. Each Medical Marijuana Business License must be held by its Direct Beneficial Interest Owner(s). Each natural person other than a Qualified Limited Passive Investor must hold an Associated Key License. A Direct Beneficial Interest Owner shall not be a publicly traded company.

B. 100% Ownership.

1. The sum of the percentages of ownership of all Direct Beneficial Interest Owners of a Medical Marijuana Business and Qualified Institutional Investors must equal 100%.

a. Qualified Institutional Investors may hold ownership interests, in the aggregate, of 30% or less in the Medical Marijuana Business.

b. A Qualified Limited Passive Investor must be a natural person who is a United States citizen and may hold an ownership interest of less than five percent in the Medical Marijuana Business.

c. Each Direct Beneficial Interest Owner, including but not limited to each officer, director, managing member, or partner of a Medical Marijuana Business, must hold a current and valid Associated Key License. See Rule M 233 – Retail Code or Medical Code Occupational Licenses Required. Except that this requirement shall not apply to Qualified Limited Passive Investors.

d. With the exception of Qualified Institutional Investors, only Direct Beneficial Interest Owners may hold a partnership interest, limited or general, a joint venture interest, or ownership of a share or shares in a corporation or a limited liability company which is licensed.

e. In the event of the death, disability, disqualification, divestment, termination, or revocation of the license of a Direct Beneficial Interest Owner or of approval of a Qualified Institutional Investor, a Medical Marijuana Business shall have 45 days to submit a change of ownership application to the Division detailing the Licensee’s plan for redistribution of ownership among the remaining Direct Beneficial Interest Owners and Qualified Institutional Investors. Such plan is subject to approval by the Division. If a change of ownership application is not

timely submitted, the Medical Marijuana Business and its Associated Key Licensee(s) may be subject to administrative action.

C. At Least One Associated Key License Required. No Medical Marijuana Business may operate or be licensed unless it has at least one Associated Key Licensee that is a Direct Beneficial Interest Owner who has been a Colorado resident for at least one year prior to application. Any violation of this requirement may be considered a license violation affecting public safety.

D. Loss Of Occupational License As An Owner Of Multiple Businesses. If an Associated Key License is suspended or revoked as to one Medical Marijuana Business or Retail Marijuana Establishment, that Owner's Occupational License shall be suspended or revoked as to any other Medical Marijuana Business or Retail Marijuana Establishment in which that Person possesses an ownership interest. See Rule M 233 – Medical Code or Retail Code Occupational Licenses Required.

E. Management Companies. Any Person contracted to manage the overall operation of a Licensed Premises must hold a Medical Marijuana Operator license.

F. Role of Managers. Associated Key Licensees may hire managers, and managers may be compensated on the basis of profits made, gross or net. A Medical Marijuana Business license may not be held in the name of a manager who is not a Direct Beneficial Interest Owner. A manager who does not hold an Associated Key License as a Direct Beneficial Interest Owner of the Medical Marijuana Business, must hold a Key License as an employee of the Medical Marijuana Business. Any change in manager must be reported to the Division and any local licensing authority before the new manager begins managing the Medical Marijuana Business. Additionally, a Medical Marijuana Operator may include management services as part of the operational services provided to a Medical Marijuana Business. A Medical Marijuana Business and its Direct Beneficial Interest Owners may be subject to license denial or administrative action, including but not limited to, fine, suspension or revocation of their license(s), based on the acts and omissions of any manager, Medical Marijuana Business Operator, or agents and employees thereof engaged in the operations of the Medical Marijuana Business.

G. Prohibited Third-Party Acts. No Licensee may employ, contract with, hire, or otherwise retain any Person, including but not limited to an employee, agent, or independent contractor, to perform any act or conduct of the Licensee's behalf or for the Licensee's benefit if the Licensee is prohibited by law or these rules from engaging in such conduct itself.

1. A Licensee may be held responsible for all actions and omissions of any Person the Licensee employs, contacts with, hires, or otherwise retains, including but not limited to an employee, agent, or independent contractor, to perform any act or conduct on the Licensee's behalf or for the Licensee's benefit.

2. A Licensee may be subject to license denial or administrative action, including but not limited to fine, suspension, or revocation of its license(s), based on the act and/or omissions of any Person the Licensee employs, contacts with, hires, or otherwise retains, including but not limited to an employee, agent, or independent contractor, to perform any act or conduct on the Licensee's behalf or for the Licensee's benefit.

Basis and Purpose – M 204.5

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(I), 12-43.3-202(2)(a)(XVIII.5), 12-43.3-202(2)(a)(XX), 12-43.3-202(2)(a)(XXI) and 12-43.3-202(3)(a)(XVI) and sections 12-43.3-104(1), 12-43.3-104(1.7), 12-43.3-305, 12-43.3-307, 12-43.3-307.5, 12-43.3-309, 12-43.3-310, 12-43.3-311 and 12-43.3-313, C.R.S. The purpose of this rule is to clarify the application, review and approval process for various types of Business Interests. The Division will review

all relevant information to determine ownership of, interests in, and control of a Medical Marijuana Business.

M 204.5 – Disclosure, Approval and Review of Business Interests

A. Business Interests. A Medical Marijuana Business shall disclose all Business Interests at the time of initial application and at the time of each renewal application. Business Interests include Financial Interests and Affiliated Interests. Any Financial Interest must be pre-approved by the Division. It shall be unlawful to fail to completely report all Business Interests in each license issued. It shall be unlawful for a person other than a Financial Interest holding an Associated Key License to exercise control over a Medical Marijuana Business or to be positioned so as to enable the exercise of control over a Medical Marijuana Business. Except that a Qualified Institutional Investor and a Qualified Limited Passive Investor may vote his, her or its shares in the Medical Marijuana Business.

B. Financial Interests. A Medical Marijuana Business shall not permit any Person to hold or exercise a Financial Interest in the Medical Marijuana Business unless and until such Person's Financial Interest has been approved by the Division. If a Medical Marijuana Business wishes to permit a Person to hold or exercise a Financial Interest, and that Person has not been previously approved in connection with an application for the Medical Marijuana Business, the Medical Marijuana Business shall submit a change of ownership or financial interest form approved by the Division. A Financial Interest shall include:

1. Any Direct Beneficial Interest Owner;

2. The following types of Indirect Beneficial Interest Owners:

    a. A Commercially Reasonable Royalty Interest Holder who receives, in the aggregate, a royalty of more than 30 percent; and

    b. A Permitted Economic Interest holder.

3. Control. Any other Person who exercises control or is positioned so as to enable the exercise of control over the Medical Marijuana Business must hold an Associated Key License. A natural person who exercises control or is positioned so as to enable the exercise of control over a Medical Marijuana Business shall include but shall not be limited to a natural person who:

    a. Bears the risk of loss and opportunity for profit;

    b. Has final decision making authority over any material aspect of the operation of the Medical Marijuana Business;

    c. Manages the overall operations of a Medical Marijuana Business or its Licensed Premises, or who manages a material portion of the Medical Marijuana Business or its Licensed Premises;

    d. Guarantees the Medical Marijuana Business' debts or production levels;

    e. Is a beneficiary of the Medical Marijuana Business' insurance policies;

    f. Receives the majority of the Medical Marijuana Business' profits as compared to other recipients of the Medical Marijuana Business' profits; or

g. Acknowledges liability for the Medical Marijuana Business' federal, state or local taxes.

C. Affiliated Interests. A Medical Marijuana Business shall disclose all Affiliated Interests in connection with each application for licensure, renewal or reinstatement of the Medical Marijuana Business. The Division may conduct such background investigation as it deems appropriate regarding Affiliated Interests. An Affiliated Interest shall include any Person who does not hold a Financial Interest in the Medical Marijuana Business and who has any of the following relationships with the Medical Marijuana Business:

1. The following Indirect Beneficial Interest Owners:

a. A Commercially Reasonable Royalty Interest Holder who receives, in the aggregate, a royalty of 30 percent or less;

b. A Profit Sharing Plan Employee; and

c. A Qualified Institutional Investor.

2. Any other Person who holds any other disclosable interest in the Medical Marijuana Business other than a Financial Interest. Such disclosable interests shall include but shall not be limited to an indirect financial interest, a lease agreement, a secured or unsecured loan, or security interest in fixtures or equipment with a direct nexus to the cultivation, manufacture, Transfer, transportation, testing, or researching of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product. If the Division determines any Person disclosed as an Affiliated Interest should have been pre-approved as a Financial Interest, approval and further background investigation may be required. Additionally, the failure to seek pre-approval of a Financial Interest holder may form the basis for license denial or administrative action against the Medical Marijuana Business.

D. Secured Interest In Marijuana Prohibited. No Person shall at any time hold a secured interest in Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product.

Basis and Purpose – M 206

The statutory authority for this rule includes but is not limited to sections 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), 12-43.3-305, 12-43.3-310(7), and 12-43.3-310(13), C.R.S. The purpose of this rule is to clarify the application process for changing location of a Licensed Premises.

M 206 – Changing Location of the Licensed Premises: Medical Marijuana Businesses

A. Application Required to Change Location of Licensed Premises

1. A Direct Beneficial Interest Owner of a Medical Marijuana Business seeking to change the physical location or address of its Licensed Premises must make application to the Division for permission to change location of its Licensed Premises.

2. Such application shall:

a. Be made upon current forms prescribed by the Division;

b. Be complete in every material detail and include remittance of all applicable fees;

c. Be submitted at least 30 days prior to the proposed change;

d. Explain the reason for requesting such change;

e. Be supported by evidence that the application complies with any local licensing authority requirements; and

f. Contain a report of the relevant local licensing authority(-ies) in which the Medical Marijuana Business is to be situated, which report shall demonstrate the approval of the local licensing authority(-ies) with respect to the new location.

B. Permit Required Before Changing Location

1. No change of location shall be permitted until after the Division considers the application, and such additional information as it may require, and issues to the Applicant a permit for such change.

2. The permit shall be effective on the date of issuance, and the Licensee shall, within 120 days, change the location of its business to the place specified therein and at the same time cease to operate a Medical Marijuana Business at the former location. At no time may a Medical Marijuana Business operate or exercise any of the privileges granted pursuant to the license in both locations. For good cause shown, the 120 day deadline may be extended for an additional 120 days. If the Licensee does not change the location of its business within the time period granted by the Division, including any extension, the Licensee shall submit a new application, pay the requisite fees and receive a new permit prior to completing any change of the location of the business.

3. The permit shall be conspicuously displayed at the new location, immediately adjacent to the license to which it pertains.

4. Repealed.

C. General Requirements

1. Repealed.

2. An Applicant for change of location shall file a change of location application with the Division and pay the requisite change of location fee. *See* Rule M 207 - Schedule of Other Application Fees: All Licensees.

Basis and Purpose – M 207

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(a), 12-43.3-202(1)(b)(I), 12-43.3-202(1)(e), 12-43.3-202(2)(a)(XVI), 12-43.3-202(2)(a)(XVIII.5), 12-43.3-202(2)(a)(XX), 12-43.3-401(1)(a)-(e), and sections, 12-43.3-104, 12-43.3-310, 12-43.3-401, 12-43.3-501, and 12-43.3-502, C.R.S. The purpose of this rule is to clarify the schedules of application fees for Medical Marijuana Business Applicants.

M 207 – Schedule of Application Fees: Medical Marijuana Businesses

A. Base Medical Marijuana Application Fees

1. Medical Marijuana Center Application Fees

a. Type 1 Center (1-300 patients) - $6,000.00

b. Type 2 Center (301-500 patients) - $10,000.00

c. Type 3 Center (501 or more patients) - $14,000.00

2. Medical Marijuana-Infused Products Manufacturer Application Fee - $1,000.00

3. Optional Premises Cultivation Location Application Fee - $1,000.00

4. Medical Marijuana Testing Facility Application Fee - $1,000.00

5. Medical Marijuana Transporter Application Fee - $1,000.00

6. Medical Marijuana Business Operator Registration Application Fee - $1,000.00

7. Medical Marijuana Businesses Converting to Retail Marijuana Establishments. Medical Marijuana Center Applicants or Licensees that want to convert to Retail Marijuana Establishments should refer to 1 CCR 212-2, Rule R 207 – Schedule of Application Fees: Retail Marijuana Establishments.

B. Medical Marijuana Business Application Fees for Indirect Beneficial Interest Owners, Qualified Limited Passive Investors and Other Affiliated Interests

1. Affiliated Interest that is not an Indirect Beneficial Interest Owner - $200.00

2. Commercially Reasonable Royalty Interest Holder receiving, in the aggregate, a royalty of more than 30 percent - $400.00

3. Commercially Reasonable Royalty Interest Holder receiving, in the aggregate, a royalty of 30 percent or less - $200.00

4. Permitted Economic Interest - $400.00

5. Employee Profit Sharing Plan - $200.00

6. Qualified Limited Passive Investor

a. Standard limited initial background check - $75.00

b. Full background check for reasonable cause - $125.00

7. Qualified Institutional Investor - $200.00

C. When Application Fees Are Due. All application fees are due at the time a Medical Marijuana Business submits an application and/or at the time a Medical Marijuana Business submits an application for a new Financial Interest.

Basis and Purpose – M 210

The statutory authority for this includes but is not limited to sections 12-43.3-202(1)(a), 12-43.3-202(1)(b)(I), 12-43.3-202(1)(e), 12-43.3-202(2)(a)(XVI), 12-43.3-202(2)(a)(XX), 12-43.3-104, 12-43.3-310, 12-43.3-401, 12-43.3-501, 12-43.3-502, 12-43.3-1101, and 12-43.3-1102, C.R.S. The purpose of this rule is to establish basic requirements for all Division applications and help the regulated community understand procedural licensing requirements.

M 210 – Schedule of Other Application Fees: All Licensees

A. Other Application Fees. The following other application fees apply:

1. Transfer of Ownership - New Owners - $1,600.00

2. Transfer of Ownership - Reallocation of Ownership - $1,000.00

3. Change of Corporation or LLC Structure - $800.00

4. Change of Trade Name - $50.00

5. Change of Location Application Fee - $500.00

6. Modification of Licensed Premises - $100.00

7. Duplicate Business License - $20.00

8. Duplicate Occupational License - $20.00

9. Off Premises Storage Permit - $1,500.00

10. Medical Marijuana Transporter Off Premises Storage Permit - $2,200.00

11. Responsible Vendor Program Provider Application Fee: $850.00

12. Responsible Vendor Program Provider Renewal Fee: $350.00

13. Responsible Vendor Program Provider Duplicate Certificate Fee: $50.00

B. When Other Application Fees Are Due. All other application fees are due at the time the application and/or request is submitted.

C. Subpoena Fee - See Rule M 106 – Subpoena Fees

Basis and Purpose – M 231

The statutory authority for this rule includes but is not limited to sections 12-43.3-201(4), 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(4), 12-43.3-310(7), and 24-18-105(3), and 12-43.3-104, 12-43.3-306, 12-43.3-307, 12-43.307.5, 12-43.3-401 24-76.5-101 et. seq, C.R.S. 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 Direct Beneficial Interest Owners, contractors, employees, and other support staff of licensed entities.

M 231 – Qualifications for Licensure and Residency

A. Any Applicant may be required to establish his or her identity and age by any document required for a determination of Colorado residency, United States citizenship or lawful presence.

B. Maintaining Ongoing Licensing Qualification: 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, 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. Applicants and Licensees shall notify the Division within ten days of any other event that renders the Applicant or Licensee no longer qualified under these rules. 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.

C. Application Forms Accessible to Law Enforcement and Licensing Authorities. All application forms supplied by the Division and filed by an Applicant for licensure shall be accessible by the State Licensing Authority, local licensing authorities, and any state or local law enforcement agent.

D. Associated Key Licenses. Each Direct Beneficial Interest Owner who is a natural person, including but not limited to each officer, director, member or partner of a Closely Held Business Entity, must apply for and hold at all times a valid Associated Key License. Except that these criteria shall not apply to Qualified Limited Passive Investors, who are not required to hold Associated Key Licenses. Each such Direct Beneficial Interest Owner must establish that he or she meets the following criteria before receiving an Associated Key License:

1. The Applicant has paid the annual application and licensing fees;

2. The Applicant's criminal history indicates 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 Medical Marijuana Business or Retail Marijuana Establishment, if applicable;

6. The Applicant is not currently subject to and 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 meets qualifications for licensure that directly and demonstrably relate to the operation of a Medical Marijuana Business.

8. The Applicant is not currently subject to and 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 28, 2013, whichever is longer; except that the State Licensing Authority may grant a license to a person if the Applicant has a state felony conviction based on possession or use of marijuana or marijuana concentrate that would not be a felony of the Applicant were convicted of the offense on the date he or she applied for licensure'

9. The Applicant does not employ another person who does not have a valid Occupational License issued pursuant to either the Medical Code or Retail Code;

10. The Applicant is not a sheriff, deputy sheriff, police officer, or prosecuting officer, or an officer or employee of the State Licensing Authority or a local licensing authority;

11. The Applicant has not been a State Licensing Authority employee with regulatory oversight responsibilities for individuals, Retail Marijuana Establishments and/or Medical Marijuana Businesses licensed by the State Licensing Authority in the six months immediately preceding the date of the Applicant's application;

12. The premises that the Applicant proposes to be licensed is not currently licensed as a retail food establishment or wholesale food registrant;

13. The Applicant either:

    a. Has been a resident of Colorado for at least one year prior to the date of the application, or

    b. Has been a United States citizen since a date prior to the date of the application and has received a Finding of Suitability from the Division prior to filing the application. See Rule M 231.1 – Finding of Suitability, Residency and Reporting Requirements for Direct Beneficial Interest Owners; Rule M 232 – Factors Considered When Determining Residency and Citizenship: Individuals.

14. For Associated Key Licensees who are owners of a Closely Held Business Entity, the Applicant is a United States citizen.

E. Occupational Licenses. An Occupational License Applicant who is not applying for an Associated Key License must establish that he or she meets the following criteria before receiving an Occupational License:

1. The Applicant has paid the annual application and licensing fees;

2. The Applicant's criminal history indicates that he or she is of Good Moral Character;

3. The Applicant is at least 21 years of age;

4. An Applicant is currently a resident of Colorado. See Rule M 232 – Factors Considered When Determining Residency and Citizenship: Individuals;

5. The Applicant has paid all taxes, interest, or penalties due the Department of Revenue relating to a Medical Marijuana Business or Retail Marijuana Establishment;

6. The Applicant is not currently subject to and 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 meets qualifications for licensure that directly and demonstrably relate to the operation of a Medical Marijuana Business;

8. The Applicant is not currently subject to and 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 28, 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 of the person were convicted of the offense on the date he or she applied for licensure;

9. The Applicant is not a sheriff, deputy sheriff, police officer, or prosecuting officer, or an officer or employee of the State Licensing Authority or a local licensing authority; and

10. The Applicant has not been a State Licensing Authority employee with regulatory oversight responsibilities for occupational licensees, Medical Marijuana Businesses and/or Retail Marijuana Establishments licensed by the State Licensing Authority in the six months immediately preceding the date of the Applicant’s application.

F. 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 after July 1, 2015 may also work in a Medical Marijuana Business; no separate Occupational License is required.

G. Associated Key License Privileges. A person who holds an Associated Key License must associate that license separately with each Medical Marijuana Business or Retail Marijuana Establishment with which the person is associated by submitting a form approved by the Division. A person who holds an Associated Key License may exercise the privileges of a licensed employee in any licensed Medical Marijuana Business or Retail Marijuana Establishment in which they are not an owner so long as the person does not exercise privileges of ownership.

H. Qualified Limited Passive Investor. An Applicant who wishes to be a Qualified Limited Passive Investor and hold an interest in a Medical Marijuana Business as a Direct Beneficial Interest Owner must establish that he or she meets the following criteria before the ownership interest will be approved:

1. He or she is a natural person;

2. The Applicant qualifies under Rule M 231.2(B);

3. He or she has been a United States citizen since a date prior to the date of the application, and

4. He or she has signed an affirmation of passive investment.

I. Workforce Training or Development Residency Exempt License. An Applicant who wishes to obtain a workforce development or training exemption to the license residency requirement may only apply for a Support License or Key License and must:

1. Submit a complete application on the Division's approved forms;

2. Establish he or she meets the licensing criteria of Rule M 231(E)(1)-(3) and 231(E)(5)-(10) for Occupational Licensees;

3. Provide evidence of proof of lawful presence; and

4. Provide a complete Workforce Training or Development Affirmation form executed under penalty of perjury.

Basis and Purpose – M 231.1

The statutory authority for this rule includes but is not limited to sections 12-43.3-201(4), 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(4), 12-43.3-310(7), and 24-18-105(3), and sections 12-43.3-104(1), 12-43.3-104(12.4), 12-43.3-307, 12-43.3-307.5, 12-43.3-313, 12-43.3-401, and 24-76.5-101 et. seq,, C.R.S. The purpose of this rule is to clarify the qualifications for Direct Beneficial Interest Owners.

M 231.1 – Finding of Suitability, Residency and Reporting Requirements for Direct Beneficial Interest Owners

A. Finding of Suitability – Non-Resident Direct Beneficial Interest Owners. A natural person, owner, shareholder, director, officer, member or partner of an entity that intends to apply to become a Direct Beneficial Interest Owner who has not been a resident of Colorado for at least one year prior to the application shall first submit a request to the State Licensing Authority for a finding of suitability to become a Direct Beneficial Interest Owner as follows:

1. A request for a finding of suitability for a non-resident natural person shall be submitted on the forms prescribed by the State Licensing Authority.

2. A natural person or all owners, shareholders, directors, officers, members or partners of an entity who have not been a resident of Colorado for at least one year shall obtain a finding of suitability prior to submitting an application to become a Direct Beneficial Interest Owner to the State Licensing Authority. d.

3. A finding of suitability is valid for one year from the date it is issued by the Division. If more than one year has passed since the Division issued a finding of suitability to a natural person, owner, shareholder, director, officer, member, or partner of an entity that intends to apply to become a Direct Beneficial Interest Owner who has not been a resident of Colorado for at least one year prior to the application, then such applicant shall submit a new request for a finding of suitability to the State Licensing Authority and obtain a new finding of suitability before submitting any application to become a Direct Beneficial Interest Owner to the State Licensing Authority. All recipients of a finding of suitability shall disclose in writing to the Division any and all disqualifying events within 10 days after occurrence of the event that could lead to a finding that the recipient no longer qualifies to become a Direct Beneficial Interest Owner.

4. The failure of a non-Colorado resident, who is not already a Direct Beneficial Interest Owner, to obtain a finding of suitability within the year prior to submission of an application to become a Direct Beneficial Interest Owner to the State Licensing Authority shall be grounds for denial of the application.

B. Number of Permitted Direct Beneficial Interest Owners.

1. A Medical Marijuana Business may be comprised of an unlimited number of Direct Beneficial Interest Owners that have been residents of Colorado for at least one year prior to the date of the application.

2. On and after January 1, 2017, a Medical Marijuana Business that is comprised of one or more Direct Beneficial Interest Owners who have not been Colorado residents for at least one year is limited to no more than fifteen Direct Beneficial Interest Owners, each of whom is a natural person. Further, a Medical Marijuana Business that is comprised of one or more Direct Beneficial Interest Owners who have not been Colorado residents for at least one year shall have at least one officer who is a Colorado resident. All officers with day-to-day operational control over a Medical Marijuana Business must be Colorado residents for at least one year, must maintain their Colorado residency during the period while they have day-to-day operational control over the Medical Marijuana Business and shall be licensed as required by the Medical Code. Rule 231 – Qualifications for Licensure and Residency: Individuals.

C. Notification of Change of Residency. A Medical Marijuana Establishment with more than fifteen Direct Beneficial Interest Owners shall provide thirty days prior notice to the Division of any Direct Beneficial Interest Owners' intent to change their residency to a residency outside Colorado. A Medical Marijuana Business with no more than fifteen Direct Beneficial Interest Owners shall notify the Division of the change of residency of any Direct Beneficial Interest Owner at the time of its license renewal. Failure to provide timely notice pursuant to this rule may lead to

administrative action against the Medical Marijuana Business and its Direct Beneficial Interest Owners.

D. A Direct Beneficial Interest Owner shall not be a publicly traded company.

Basis and Purpose – M 231.2

The statutory authority for this rule includes but is not limited to sections 12-43.3-104(1.7), 12-43.3-104(12.4), 12-43.3-201(4), 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(XVI), 12-43.3-202(2)(a)(XX), 12-43.3-202(2)(a)(XXI), 12-43.3-307.5, 24-18-105(3), and 24-76.5-101 et. seq., C.R.S. The purpose of this rule is to clarify the qualifications for an Indirect Beneficial Interest Owner other than a Permitted Economic Interest.

M 231.2 – Qualifications for Indirect Beneficial Interest Owners and Qualified Limited Passive Investors

A. General Requirements

1. An Applicant applying to become a Commercially Reasonable Royalty Interest holder who receives a royalty of more than 30 percent or the holder of a Permitted Economic Interest must be pre-approved by the Division.

2. An Applicant applying to become an Indirect Beneficial Interest Owner or Qualified Limited Passive Investor shall submit information to the Division in a full, faithful, truthful, and fair manner. The Division may recommend denial of an application where the Applicant made misstatements, omissions, misrepresentations, or untruths in the application. This type of conduct may be considered as the basis of additional administrative action against the Applicant and the Medical Marijuana Business.

3. The Division may deny the application when the Applicant fails to provide any requested information by the Division's deadline.

4. The Division's determination that an Indirect Beneficial Interest Owner or Qualified Limited Passive Investor is qualified constitutes a revocable privilege held by the Medical Marijuana Business. The burden of proving the Indirect Beneficial Interest Owner or Qualified Limited Passive Investor is qualified rests at all times with the Medical Marijuana Business Applicant. Indirect Beneficial Interest Owners and Qualified Limited Passive Investors are not separately licensed by the Division. Any administrative action regarding an Indirect Beneficial Interest Owner or Qualified Limited Passive Investor may be taken directly against the Medical Marijuana Business.

5. Permitted Economic Interest Fingerprints Required. Any individual applying to hold his or her first Permitted Economic Interest shall be fingerprinted for a criminal history record check. In the Division's discretion, an individual may be required to be fingerprinted again for additional criminal history record checks.

6. No publicly traded company can be an Indirect Beneficial Interest Owner or Qualified Limited Passive Investor.

B. Qualification. The Division may consider the following non-exhaustive list of factors to determine whether an Indirect Beneficial Interest Owner or Qualified Limited Passive Investor is qualified:

1. The Applicant's criminal history indicates that he or she is of Good Moral Character;

2. The Applicant is at least 21 years of age;

3. The Applicant has paid all taxes, interest, or penalties due the Department of Revenue relating to a Medical Marijuana Business or Retail Marijuana Establishment, if applicable;

4. The Applicant is not currently subject to and has not discharged a sentence for a conviction of a felony in the five years immediately preceding his or her application date;

5. The Applicant is not currently subject to or 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 28, 2013, whichever is longer, except, in the Division's discretion, 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 may not disqualify an Indirect Beneficial Interest Owner or Qualified Limited Passive Investor;

6. The Applicant is not a sheriff, deputy sheriff, police officer, or prosecuting officer, or an officer or employee of the State Licensing Authority or a local licensing authority;

7. The Applicant has not been a State Licensing Authority employee with regulatory oversight responsibilities for individuals, Medical Marijuana Businesses and/or Retail Marijuana Establishments licensed by the State Licensing Authority in the six months immediately preceding the date of the Applicant's application.

8. The Applicant has provided all documentation requested by the Division to establish qualification to be an Indirect Beneficial Interest Owner.

C. Maintaining Qualification:

1. An Indirect Beneficial Interest Owner or Qualified Limited Passive Investor 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. This duty to report includes, but is not limited to, deferred sentences, prosecutions, or judgments that are not sealed. If the Division lawfully finds a disqualifying event and the individual asserts that the record was sealed, the Division may require the individual to provide proof from a court evidencing the sealing of the case

2. An Indirect Beneficial Interest Owner, Qualified Limited Passive Investor and Medical Marijuana Business shall cooperate in any investigation into whether an Indirect Beneficial Interest Owner or Qualified Limited Passive Investor continues to be qualified that may be conducted by the Division.

D. Divestiture of Indirect Beneficial Interest Owner or Qualified Limited Passive Investor. If the Division determines an Indirect Beneficial Interest Owner or Qualified Limited Passive Investor is not permitted to hold their interest, the Medical Marijuana Business shall have 60 days from such determination to divest the Indirect Beneficial Interest Owner or Qualified Limited Passive Investor. The Division may extend the 60-day deadline for good cause shown. Failure to timely divest any Indirect Beneficial Interest Owner or Qualified Limited Passive Investor the Division determines is not qualified, or is no longer qualified, may constitute grounds for denial of license or administrative action against the Medical Marijuana Business and/or its Associated Key Licensee(s).

M 300 Series – The Licensed Premises

Basis and Purpose – M 301

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(X), 12-43.3-202(2)(a)(XI), 12-43.3-202(2)(a)(XX), and 12-43.3-105, C.R.S. The purpose of this rule is to establish regulations governing Limited Access Areas for inside a Licensed Premises. In addition, this rule clarifies that businesses and individuals cannot use the visitor system as a means to employ an individual who does not possess a valid and current Occupational License.

M 301 – Limited Access Areas

A. Proper Display of License Badge. All persons in a Limited Access Area as provided for in section 12-43.3-105, C.R.S., shall be required to hold and properly display a current license badge issued by the Division at all times. Proper display of the license badge shall consist of wearing the badge in a plainly visible manner, at or above the waist, and with the photo of the Licensee visible. The Licensee shall not alter, obscure, damage, or deface the badge in any manner.

B. Visitors in Limited Access Areas

1. Prior to entering a Limited Access Area, all visitors, including outside vendors, contractors or others, must obtain a visitor identification badge from management personnel of the Licensee that shall remain visible while in the Limited Access Area.

2. Visitors shall be escorted by the Medical Marijuana Business's licensed personnel at all times. No more than five visitors may be escorted by a single employee. Except that trade craftspeople not normally engaged in the business of cultivating, processing or selling Medical Marijuana need not be accompanied on a full-time basis, but only reasonably monitored.

2.1 A Medical Marijuana Business and a Licensee employed by the Medical Marijuana Business shall report any discovered plan of or other act or omission by any visitor or other Person: (1) to commit theft, burglary, underage sales, diversion of Medical Marijuana or Medical Marijuana Infused-Product, or other crime related to the operation of the subject Medical Marijuana Business; (2) to compromise the integrity of the Inventory Tracking System; or (3) that results in serious bodily injury to any Person on the Licensed Premises of the Medical Marijuana Business or otherwise creates a material risk to public health or safety Such discovered plan or other act or omission shall be reported to the Division in accordance with Rule M 904 – Medical Marijuana Business Reporting Requirements.

3. The Licensee shall maintain a log of all visitor activity, for any purpose, within the Limited Access Area and shall make such logs available for inspection by the Division or relevant local licensing authority.

4. All visitors admitted into a Limited Access Area must provide acceptable proof of age and must be at least 21 years of age. See Rule M 405 – Acceptable Forms of Identification for Medical Sales.

5. The Licensee shall check an acceptable form of identification for all visitors to verify that the name on the identification matches the name in the visitor log. See Rule M 405 – Acceptable Forms of Identification for Medical Sales

6. A Licensee may not receive consideration or compensation for permitting a visitor to enter a Limited Access Area.

7. Use of a visitor badge to circumvent the Occupational License requirements of Rule M 233 is prohibited and may constitute a license violation affecting public safety.

C. Required Signage. All areas of ingress and egress to Limited Access Areas on the Licensed Premises shall be clearly identified by the posting of a sign which shall be not less than 12 inches wide and 12 inches long, composed of letters not less than a half inch in height, which shall state, "Do Not Enter - Limited Access Area – Access Limited to Licensed Personnel and Escorted Visitors".

D. Diagram for Licensing Licensed Premises. All Limited Access Areas shall be clearly identified to the Division or relevant local licensing authority and described by the filing of a diagram of the Licensed Premises reflecting walls, partitions, counters and all areas of ingress and egress. The diagram shall also reflect all Propagation, cultivation, manufacturing, and Restricted Access Areas. See Rule M 901 – Business Records Required.

E. Modification of a Limited Access Area. A Licensee's proposed modification of designated Limited Access Areas shall be approved by Division or local licensing authorities. See Rule M 303 – Changing, Altering, or Modifying Licensed Premises.

F. Law Enforcement Personnel Authorized. Notwithstanding the requirements of subsection A of this Rule, nothing shall prohibit investigators and employees of the Division, authorities from local licensing authority or any state or local law enforcement agency, for a purpose authorized by the Medical Code or for any other state or local law enforcement purpose, from entering a Limited Access Area upon presentation of official credentials identifying them as such.

Basis and Purpose – M 302

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(XX), and 12-43.3-308(1)(b), C.R.S. The purpose of this rule is to establish and clarify the means by which the Licensee can establish lawful possession of the Licensed Premises.

M 302 – Possession of Licensed Premises

A. Evidence of Lawful Possession. Persons licensed pursuant to sections 12-43.3-402, 12-43.3-403, 12-43.3-404, 12-43.3-405, 12-43.3-406, 12-43.3-407, or 12-43.3-408, C.R.S., or those making application for such licenses, must demonstrate proof of lawful possession of the premises to be licensed or Licensed Premises. Evidence of lawful possession consists of properly executed deeds of trust, leases, or other written documents acceptable to the State Licensing Authority and local licensing authorities.

B. Relocation Prohibited. The Licensed Premises shall only be those geographical areas that are specifically and accurately described in executed documents verifying lawful possession. Licensees are not authorized to relocate to other areas or units within a building structure without first filing a change of location application and obtaining approval from the Division and the local licensing authority. Licensees shall not add additional contiguous units or areas, thereby altering the initially-approved premises, without filing an Application to modify the Licensed Premises on current forms prepared by the Division, including any applicable processing fee. See Rule M 303 - Changing, Altering, or Modifying Licensed Premises.

C. Subletting Not Authorized. Licensees are not authorized to sublet any portion of a Licensed Premises for any purpose, unless all necessary applications to modify the existing Licensed Premises to accomplish any subletting have been approved by the Division and local licensing authority.

M 304 – Repealed.

Basis and Purpose – M 304.1

The statutory authority for this Rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(X), 12-43.3-202(2.5)(a)(I)(A)-(F), 12-43.4-104(1)(a)(V), 12-43.4-202(b), 12-43.4-401(2), 12-43.4-404(2), 12-43.3-406, 12-43.4-405, and 12-43.4-406, C.R.S.. The purpose of this rule is to establish guidelines for the manner in which a Medical Marijuana Business may share its existing Licensed Premises with a Licensed Retail Marijuana Establishment, and to ensure the proper separation of a Medical Marijuana Business operation from a Retail Marijuana Establishment operation.

M 304.1 – Medical Marijuana Business and Retail Marijuana Establishment – Shared Licensed Premises and Operational Separation

A. Co-Located Medical Marijuana Centers and Retail Marijuana Stores.

1. Medical Marijuana Center that authorizes patients that are over the age of 21. A Medical Marijuana Center that authorizes only Medical Marijuana patients who are over the age of 21 years to be on the Licensed Premises may also hold a Retail Marijuana Store license and operate at the same location under the following circumstances:

    a. The relevant local licensing authority and local jurisdiction permit a dual operation at the same location;

    b. The Medical Marijuana Center and Retail Marijuana Store are commonly owned;

    c. The Medical Marijuana Center and Retail Marijuana Store shall maintain physical or virtual separation between (i) Medical Marijuana, Medical Marijuana Concentrate, Medical Marijuana-Infused Product, and other Medical Marijuana-related inventory and (ii) Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Products, and other Retail Marijuana-related inventory;

    d. The Medical Marijuana Center and Retail Marijuana Store shall maintain separate displays between (i) Medical Marijuana, Medical Marijuana Concentrate, Medical Marijuana-Infused Product, and other Medical Marijuana-related inventory and (ii) Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Products, and other Retail Marijuana-related inventory;

    e. Record-keeping, inventory tracking, packaging, and labeling for the Medical Marijuana Center and Retail Marijuana Store shall enable the Division and local licensing authority to clearly distinguish the inventories and business transactions of the Medical Marijuana Center from the inventories and business transactions of the Retail Marijuana Store; and

    f. The Medical Marijuana Center shall post and maintain signage the clearly conveys that persons under the age of 21 years may not enter.

2. Medical Marijuana Center that authorizes patients under the age of 21. A Medical Marijuana Center that authorizes Medical Marijuana Patients under the age of 21 years to be on the premises may operate in the same location with a Retail Marijuana Store under the following circumstances:

    a. The relevant local licensing authority and local jurisdiction permit a dual operation at the same location;

b. The Medical Marijuana Center and Retail Marijuana Store are commonly owned;

c. The Medical Marijuana Center and the Retail Marijuana Store maintain physical separation, including separate entrances and exits, between their respective Restricted Access Areas;

d. No point of sale operations occur at any time outside the physically separated Licensed Premises;

e. All Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product in a Restricted Access Area must be physically separated from all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product in a Restricted Access Area, and such physical separation must include separate entrances and exits;

f. Any display areas shall be located in the physically separated Restricted Access Areas;

g. In addition to the physically separated sales and display areas, the Medical Marijuana Center and Retail Marijuana Store shall maintain physical or virtual separation for storage of Medical Marijuana, Medical Marijuana Concentrate, Medical Marijuana-Infused Product and other Medical Marijuana-related inventory from storage of Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Products and other Retail Marijuana-related inventory; and

h. Record-keeping, inventory tracking, packaging, and labeling for the Medical Marijuana Center and Retail Marijuana Store shall enable the Division and local licensing authority to clearly distinguish the inventories and business transactions of the Medical Marijuana Center from the inventories and business transactions of the Retail Marijuana Store.

B. Co-located Optional Premises Cultivation Operation and Retail Marijuana Cultivation Facility. An Optional Premises Cultivation Operation and a Retail Marijuana Cultivation Facility may share a single Licensed Premises and operate at the same location under the following circumstances:

1. The relevant local licensing authority and local jurisdiction permit a dual operation at the same location;

2. The Optional Premises Cultivation Operation and the Retail Marijuana Cultivation Facility are commonly owned;

3. The co-located Optional Premises Cultivation Operation and Retail Marijuana Cultivation Facility shall maintain either physical or virtual separation between (i) Medical Marijuana and Medical Marijuana Concentrate and (ii) and Retail Marijuana and Retail Marijuana Concentrate; and

4. Record keeping, inventory tracking, packaging and labeling for the Optional Premises Cultivation Operation and Retail Marijuana Cultivation Facility must enable the Division and relevant local licensing authority to clearly distinguish the inventories and business transactions of the Optional Premises Cultivation Operation from the Retail Marijuana Cultivation Facility.

C. Co-located Medical Marijuana-Infused Products Manufacturer and Retail Marijuana Products Manufacturing Facility. A Medical Marijuana-Infused Products Manufacturer and a Retail

Marijuana Products Manufacturing Facility may share a single Licensed Premises and operate at the same location under the following circumstances:

1. The relevant local licensing authority and local jurisdiction permit a dual operation at the same location;

2. The Medical Marijuana-Infused Products Manufacturer and the Retail Marijuana Products Manufacturing Facility are commonly owned;

3. The Medical Marijuana-Infused Products Manufacturer and Retail Marijuana Products Manufacturing Facility shall maintain either physical or virtual separation between (i) Medical Marijuana, Medical Marijuana Concentrate, Medical Marijuana-Infused Products and other Medical Marijuana-related inventory and (ii) Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Products and other Retail Marijuana-related inventory. Nothing in this Rule prohibits a co-located Retail Marijuana Products Manufacturing Facility and Medical Marijuana-Infused Products Manufacturer from sharing raw ingredients in bulk, for example flour or sugar, except Retail Marijuana and Medical Marijuana may not be shared under any circumstances; and

4. Record keeping, inventory tracking, packaging and labeling for the Medical Marijuana-Infused Products Manufacturer and Retail Marijuana Products Manufacturing Facility must enable the Division and local licensing authority to clearly distinguish the inventories and business transactions of the Medical Marijuana-Infused Product Manufacturer from the Retail Marijuana Product Manufacturing Facility.

D. Co-located Medical Marijuana Testing Facility and Retail Marijuana Testing Facility. A Medical Marijuana Testing Facility and a Retail Marijuana Testing Facility may share a single Licensed Premises and operate at the same location under the following circumstances:

1. The relevant local licensing authority and local licensing jurisdiction permit dual operation at the same location;

2. The Medical Marijuana Testing Facility and Retail Marijuana Testing Facility are identically owned;

3. The Medical Marijuana Testing Facility and Retail Marijuana Testing Facility shall maintain either physical or virtual separation between (i) Medical Marijuana, Medical Marijuana Concentrate, Medical Marijuana-Infused Product and other Medical Marijuana-related inventory and (ii) Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Products and other Retail Marijuana-related inventory; and

4. Record keeping, inventory tracking, packaging and labeling for the Medical Marijuana Testing Facility and Retail Marijuana Testing Facility must enable the Division and local licensing authority to clearly distinguish the inventories and business transactions of the Medical Marijuana Testing Facility from the Retail Marijuana Testing Facility.

E. Co-Located Medical Marijuana Transporter and Retail Marijuana Transporter. A Medical Marijuana Transporter and a Retail Marijuana Transporter may share a single Licensed Premises and operate dual transporting, logistics, and temporary storage business operation at the same location under the following circumstances:

1. The relevant local licensing authority and local licensing jurisdiction permit dual operation at the same location;

2. The Medical Marijuana Transporter and Retail Marijuana Transporter are identically owned;

3. The Medical Marijuana Transporter and Retail Marijuana Transporter shall maintain either physical or virtual separation between (i) Medical Marijuana, Medical Marijuana Concentrate, Medical Marijuana-Infused Products, and other Medical Marijuana-related inventory and (ii) Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Products and other Retail Marijuana-related inventory; and

4. Record keeping, inventory tracking, packaging and labeling for the Medical Marijuana Transporter and Retail Marijuana Transporter must enable the Division and local licensing authority to clearly distinguish the inventories and business transactions of the Medical Marijuana Transporter from the Retail Marijuana Transporter.

F. Violation of this Rule may be considered a violation affecting public safety.

Basis and Purpose – M 305

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(X), and 12-43.3-202(2)(a)(XX), C.R.S. The purpose of this rule is to ensure adequate control of the Licensed Premises and the Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product contained therein. This rule also establishes the minimum guidelines for security requirements for alarm systems, and commercial locking mechanisms for maintaining adequate security.

M 305 – Security Alarm Systems and Lock Standards

A. Security Alarm Systems – Minimum Requirements

1. Each Licensed Premises shall have a Security Alarm System, installed by an Alarm Installation Company, on all perimeter entry points and perimeter windows.

2. Each Licensee must ensure that all of its Licensed Premises are continuously monitored. Licensees may engage the services of a Monitoring Company to fulfill this requirement.

3. The Licensees shall maintain up to date and current records and existing contracts on the Licensed Premises that describe the location and operation of each Security Alarm System, a schematic of security zones, the name of the Alarm Installation Company, and the name of any Monitoring Company. See Rule M 901 – Business Records Required.

4. Upon request, Licensees shall make available to agents of the Division or relevant local licensing authority or other state or local law enforcement agency, for a purpose authorized by the Medical Code or any other state or local law enforcement purpose, all information related to Security Alarm Systems, Monitoring, and alarm activity.

5. Any outdoor or greenhouse Optional Premises Cultivation Operation, or outdoor or greenhouse Marijuana Research and Development Cultivation, is a Limited Access Area and must meet all of the requirements for Security Alarm Systems described in this rule. An outdoor or greenhouse Optional Premises Cultivation Operation or outdoor or greenhouse Marijuana Research and Development Cultivation must provide sufficient security measures to demonstrate that outdoor or greenhouse areas are not readily accessible by unauthorized individuals. It shall be the responsibility of the Licensee to maintain physical security in a manner similar to an Optional Premises Cultivation Operation or Marijuana Research and Development Cultivation located in an indoor Licensed Premises so it can be fully secured and alarmed. The fencing requirements

shall, at a minimum, include, perimeter fencing designed to prevent the general public from entering the Limited Access Areas and shall meet at the least the following requirements:

a. The entire Limited Access Area shall be surrounded by a fence that measures at least eight feet from the ground to the top of the fence and is constructed of at least six gauge or higher metal chain link fence or another similarly secure material but may not be wood. All support posts shall be steel and securely anchored.

b. All entry gates shall measure at least eight feet from the ground to the top of the entry gate and shall be constructed of six gauge or higher metal chain link fence or a similarly secure material but may not be wood.

c. The fence shall obscure the Limited Access Area so that it is not easily viewed from outside the fence.

d. The perimeter of the fence shall be surrounded with lights illuminating all sides of the fence for at least 20 feet from the fence. The required lights may be, but are not required to be, motion sensing.

e. A Licensee may, in writing, request that the Division waive one or more of the security requirements described in subparagraphs (a) through (d) of this Rule, by submitting on a form prescribed by the Division a security waiver request for Division approval. The Division may, in its discretion and on a case by case basis, approve the security waiver if it finds that the alternative safeguard proposed by the Licensee meets the goals of the above security requirements. Approved security waivers expire at the same time as the underlying License. The Licensee's request for a waiver shall include:

   i. The specific rules and subsections of a rule that is requested to be waived;

   ii. The reason for the waiver;

   iii. A description of an alternative safeguard the Licensee will implement in lieu of the requirement that is the subject of the waiver; and

   iv. An explanation of how and why the alternative safeguard accomplishes the goals of the security rules, specifically public safety, prevention of diversion, accountability, and prohibiting access to minors.

f. During the period January 1, 2018, to January 1, 2019, a Licensee that is currently in compliance with the Security Alarm Systems requirements will not be required to comply with this revised Rule M 305. Compliance with this revised Rule M 305 shall be required effective January 1, 2019.

B. Lock Standards – Minimum Requirement

1. At all points of ingress and egress, the Licensee shall ensure the use of a commercial-grade, non-residential door locks.

2. Any outdoor or greenhouse Optional Premises Cultivation Operation, or outdoor or greenhouse Marijuana Research and Development Cultivation, must meet all of the requirements for the lock standards described in this rule.

Basis and Purpose – M 306

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(X), 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 ensure adequate control of the Licensed Premises and the Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product contained therein. This rule also establishes the minimum guidelines for security requirements for video surveillance systems for maintaining adequate security.

M 306 – Video Surveillance

A. Minimum Requirements The following video surveillance requirements shall apply to all Medical Marijuana Businesses:

1. Prior to exercising the privileges of a Medical Marijuana Business, an Applicant must install fully operational video surveillance and camera recording system. The recording system must record in digital format and meet the requirements outlined in this rule.

2. All video surveillance records and recordings must be stored in a secure area that is only accessible to a Licensee's management staff.

3. Video surveillance records and recordings must be made available upon request to the Division, the relevant local licensing authority, or any other state or local law enforcement agency for a purpose authorized by the Medical Code or for any other state or local law enforcement purpose.

4. Video surveillance records and recordings of point-of-sale areas shall be held in confidence by all employees and representatives of the Division, except that the Division may provide such records and recordings to the relevant local licensing authority, or any other state or local law enforcement agency for a purpose authorized by the Medical Code or for any other state or local law enforcement purpose.

B. Video Surveillance Equipment

1. Video surveillance equipment shall, at a minimum, consist of digital or network video recorders, cameras capable of meeting the recording requirements described in this Rule, video monitors, digital archiving devices, and a color printer capable of delivering still photos.

2. All video surveillance systems must be equipped with a failure notification system that provides prompt notification to the Licensee of any prolonged surveillance interruption and/or the complete failure of the surveillance system.

3. Licensees are responsible for ensuring that all surveillance equipment is properly functioning and maintained so that the playback quality is suitable for viewing and the surveillance equipment is capturing the identity of all individuals and activities in the monitored areas.

4. All video surveillance equipment shall have sufficient battery backup to support a minimum of four hours of recording in the event of a power outage.

C. Placement of Cameras and Required Camera Coverage

1. Camera coverage is required for all Limited Access Areas, point-of-sale areas, security rooms, all points of ingress and egress to Limited Access Areas, all areas where Medical

Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product is displayed for sale, and all points of ingress/egress to the exterior of the Licensed Premises.

2. Camera placement shall be capable of identifying activity occurring within 20 feet of all points of ingress and egress and shall allow for the clear and certain identification of any individual and activities on the Licensed Premises.

3. At each point-of-sale location, camera coverage must enable recording of the patients, caregiver or customer(s) and employee(s) facial features with sufficient clarity to determine identity.

4. All entrances and exits to the facility shall be recorded from both indoor and outdoor vantage points.

5. The system shall be capable of recording all pre-determined surveillance areas in any lighting conditions. If the Licensed Premises has a Medical Marijuana cultivation area, a rotating schedule of lighted conditions and zero-illumination can occur as long as ingress and egress points to Flowering areas remain constantly illuminated for recording purposes.

6. Areas where Medical Marijuana is grown, tested, cured, manufactured, researched, or stored shall have camera placement in the room facing the primary entry door at a height which will provide a clear unobstructed view of activity without sight blockage from lighting hoods, fixtures, or other equipment.

7. Cameras shall also be placed at each location where weighing, packaging, transport, preparation, or tagging activities occur.

8. At least one camera must be dedicated to record the access points to the secured surveillance recording area.

9. All outdoor cultivation areas must meet the same video surveillance requirements applicable to any other indoor Limited Access Areas.

D. Location and Maintenance of Surveillance Equipment

1. The surveillance room or surveillance area shall be a Limited Access Area.

2. Surveillance recording equipment must be housed in a designated, locked and secured room or other enclosure with access limited to authorized employees, agents of the Division and relevant local licensing authority, state or local law enforcement agencies for a purpose authorized by the Medical Code or for any other state or local law enforcement purpose, and service personnel or contractors.

3. Licensees must keep a current list of all authorized employees and service Personnel who have access to the surveillance system and/or room on the Licensed Premises. Licensees must keep a surveillance equipment maintenance activity log on the Licensed Premises to record all service activity including the identity of the individual(s) performing the service, the service date and time and the reason for service to the surveillance system.

4. Off-site Monitoring and video recording storage of the Licensed Premises by the Licensee or an independent third-party is authorized as long as standards exercised at the remote location meets or exceeds all standards for on-site Monitoring.

5. Each Medical Marijuana Licensed Premises located in a common or shared building must have a separate surveillance room/area that is dedicated to that specific Licensed Premises. Commonly-owned Medical Marijuana Businesses located in the same local jurisdiction may have one central surveillance room located at one of the commonly owned Licensed Premises which simultaneously serves all of the commonly-owned Medical Marijuana Businesses. The facility that does not house the central surveillance room is required to have a review station, printer, and map of camera placement on the premises. All minimum requirements for equipment and security standards as set forth in the section apply to the review station.

6. A co-located Medical Marijuana Business and a Retail Marijuana Establishment may have one central surveillance room located at the shared Licensed Premises. See Rule M 304 – Medical Marijuana Business and Retail Marijuana Establishment: Shared Licensed Premises and Operational Separation.

E. Video Recording and Retention Requirements

1. All camera views of all Limited Access Areas must be continuously recorded 24 hours a day. The use of motion detection is authorized when a Licensee can demonstrate that monitored activities are adequately recorded.

2. All surveillance recordings must be kept for a minimum of 40 days and be in a format that can be easily accessed for viewing. Video recordings must be archived in a format that ensures authentication of the recording as legitimately-captured video and guarantees that no alteration of the recorded image has taken place.

3. The Licensee's surveillance system or equipment must have the capabilities to produce a color still photograph from any camera image, live or recorded, of the Licensed Premises.

4. The date and time must be embedded on all surveillance recordings without significantly obscuring the picture. The date and time must be synchronized with any point-of-sale system.

5. Time is to be measured in accordance with the official United States time established by the National Institute of Standards and Technology and the U.S. Naval Observatory at: http://www.time.gov/timezone.cgi?Mountain/d/-7/java.

6. After the 40-day surveillance video retention schedule has lapsed, surveillance video recordings must be erased or destroyed prior to sale or transfer of the facility or business to another Licensee, or being discarded or disposed of for any other purpose. Surveillance video recordings may not be destroyed if the Licensee knows or should have known of a pending criminal, civil or administrative investigation or any other proceeding for which the recording may contain relevant information.

F. Other Records

1. All records applicable to the surveillance system shall be maintained on the Licensed Premises. At a minimum, Licensees shall maintain a map of the camera locations, direction of coverage, camera numbers, surveillance equipment maintenance activity log, user authorization list and operating instructions for the surveillance equipment.

2. A chronological point-of-sale transaction log must be made available to be used in conjunction with recorded video of those transactions.

Basis and Purpose – M 307

The statutory authority for this rule includes but is not limited to sections 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 sanitary requirements for Medical Marijuana Businesses.

M 307 – Waste Disposal

A. All Applicable Laws Apply. Medical Marijuana, Medical Marijuana Concentrate and Medical Marijuana-Infused Product waste must be stored, secured and managed in accordance with all applicable state and local statutes, regulations, ordinances or other requirements.

B. Liquid Waste. Liquid waste from Medical Marijuana Businesses shall be disposed of in compliance all applicable federal, state and local laws, regulations, rules and other requirements.

C. Chemical, Dangerous and Hazardous Waste. Disposal of chemical, dangerous or hazardous waste must be conducted in a manner consistent with federal, state and local laws, regulations, rules or other requirements. This may include, but is not limited to, the disposal of all Pesticide or other chemicals used in the cultivation process, certain solvents or other chemicals used in the production of Medical Marijuana Concentrate or any Medical Marijuana soaked in a Flammable Solvent for purposes of producing a Medical Marijuana Concentrate.

D. Waste Must Be Made Unusable and Unrecognizable. Medical Marijuana, Medical Marijuana Concentrate and Medical Marijuana-Infused Product waste must be made unusable and Unrecognizable prior to leaving the Licensed Premises.

E. Methods to Make Waste Unusable and Unrecognizable. Medical Marijuana, Medical Marijuana Concentrate and Medical Marijuana-Infused Product waste shall be rendered unusable and Unrecognizable through one of the following methods:

1. Grinding or compacting and incorporating the marijuana waste with non-consumable, solid wastes listed below such that the resulting mixture is at least 50 percent non-marijuana waste, and such that the resulting mixture cannot easily be separated and sorted:

    a. Paper waste;

    b. Plastic waste;

    c. Cardboard waste;

    d. Food waste;

    e. Grease or other compostable oil waste;

    f. Bokashi, or other compost activators;

    g. Soil;

    h. Sawdust; and

    i. Other wastes approved by the State Licensing Authority that will render the Medical Marijuana, Medical Marijuana Concentrate and Medical Marijuana-Infused Product waste unusable and Unrecognizable as marijuana.

F. After Waste is Made Unusable and Unrecognizable. After the Medical Marijuana, Medical Marijuana Concentrate and Medical Marijuana-Infused Product waste is made unusable and Unrecognizable, then the rendered waste shall be:

1. Disposed of at a solid waste site and disposal facility that has a Certificate of Designation from the local governing body;

2. Deposited at a compost facility that has a Certificate of Designation from the Colorado Department of Public Health and Environment, if required; or

3. Composted on-site at a facility owned by the generator of the waste and operated in compliance with the Colorado Department of Public Health and Environment Regulations Pertaining to Solid Waste Sites and Facilities (6 CCR 1007-2, Part 1).

G. Proper Disposal of Waste. A Licensee shall not dispose of Medical Marijuana, Medical Marijuana Concentrate and Medical Marijuana-Infused Product waste in an unsecured waste receptacle not in possession and control of the Licensee.

H. Inventory Tracking Requirements

1. In addition to all other tracking requirements set forth in these rules, a Licensee shall utilize the Inventory Tracking System to ensure its post-harvest waste materials are identified, weighed and tracked while on the Licensed Premises until disposed of.

2. All Medical Marijuana, Medical Marijuana Concentrate and Medical Marijuana-Infused Product waste must be weighed before leaving any Medical Marijuana Business. A scale used to weigh Medical Marijuana waste prior to entry into the Inventory Tracking System shall be tested and approved in accordance with section 35-14-127, C.R.S. *See* Rule M 309 – Medical Marijuana Business: Inventory Tracking System.

3. A Licensee is required to maintain accurate and comprehensive records regarding waste material that accounts for, reconciles, and evidences all waste activity related to the disposal of Marijuana. *See* Rule M 901 – Business Records Required.

4. A Licensee is required to maintain accurate and comprehensive records regarding any waste material produced through the trimming or pruning of a Medical Marijuana plant prior to harvest, which must include weighing and documenting all waste. Unless required by an Inventory Tracking System procedure, records of waste produced prior to harvest must be maintained on the Licensed Premises. All waste, whether produced prior to or subsequent to harvest, must be disposed of in accordance with this Rule and be made unusable and Unrecognizable.

Basis and Purpose – M 309

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(XX), 12-43.3-403(2), and 12-43.4-104(1)(a)(III) C.R.S. The purpose of this rule is to establish a system that will allow the State Licensing Authority and the industry to jointly track Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product from either seed or immature plant stage until the Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product is sold to the patient or destroyed.

The Inventory Tracking System is a web-based tool coupled with RFID technology that allows both the Inventory Tracking System User and the State Licensing Authority the ability to identify and account for all Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product. Through the use of RFID technology, an Optional Premises Cultivation facility will tag either the seed or immature

plant with an individualized number which will follow the Medical Marijuana through all phases of production and final sale to a patient. This will allow the State Licensing Authority and the Inventory Tracking System user the ability to monitor and track Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product. The Inventory Tracking System will also provide a platform for the State Licensing Authority to exchange information and provide compliance notifications to the industry.

The State Licensing Authority finds it essential to regulate, monitor, and track all Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product to eliminate diversion, inside and outside of the state, and to ensure that all marijuana grown, processed, sold and disposed of in the Medical Marijuana market is transparently accounted for. An existing Medical Marijuana Business must have an active and functional Inventory Tracking System account on or before December 31, 2013 or it may not excise the privileges of its license.

The State Licensing Authority will engage the industry and provide training opportunities and continue to evaluate the Inventory Tracking System to promote an effective means for this industry to account for and monitor its Medical Marijuana inventory.

M 309 – Medical Marijuana Business: Inventory Tracking System

A. Inventory Tracking System Required. A Medical Marijuana Business is required to use the Inventory Tracking System as the primary inventory tracking system of record. A Medical Marijuana Business without an Inventory Tracking System account that is activated and functional shall not operate or exercise any privileges of a license. Medical Marijuana Businesses converting to or adding a Retail Marijuana Establishment must follow the inventory transfer guidelines detailed in Rule R 309 (D) below.

B. Inventory Tracking System Access - Inventory Tracking System Administrator

1. Inventory Tracking System Administrator Required. A Medical Marijuana Business must have at least one individual Owner who is an Inventory Tracking System Administrator. A Medical Marijuana Business may also designate additional Owners and occupationally licensed employees to obtain Inventory Tracking System Administrator accounts.

2. Training for Inventory Tracking System Administrator Account. In order to obtain an Inventory Tracking System Administrator account, a person must attend and successfully complete all required Inventory Tracking System training. The Division may also require additional ongoing, continuing education for an individual to retain his or her Inventory Tracking System Administrator account.

C. Inventory Tracking System Access - Inventory Tracking System User Accounts. A Medical Marijuana Business may designate licensed Owners and employees who hold a valid Occupational License as an Inventory Tracking System User. A Medical Marijuana Business shall ensure that all Owners and Occupational Licensees who are granted Inventory Tracking System User account access for the purposes of conducting inventory tracking functions in the system are trained by Inventory Tracking System Administrators in the proper and lawful use of Inventory Tracking System.

D. Medical Marijuana Business License Conversions - Declaring Inventory Prior to Exercising Licensed Privileges as a Medical Marijuana Business

1. Medical Marijuana Inventory Transfer to Retail Marijuana Establishments.

a. Repealed.

b. Beginning July 1, 2016:

i. The only allowed Transfer of marijuana between a Medical Marijuana Business and Retail Marijuana Establishment is Medical Marijuana and Medical Marijuana Concentrate that was produced at the Optional Premises Cultivation Operation, from the Optional Premises Cultivation Operation to a Retail Marijuana Cultivation Facility.

ii. Each Optional Premises Cultivation Operation that is either converting to or adding a Retail Marijuana Cultivation Facility license must create a Retail Marijuana Inventory Tracking System account for each license it is converting or adding.

iii. An Optional Premises Cultivation Operation must Transfer all relevant Medical Marijuana and Medical Marijuana Concentrate into the Retail Marijuana Cultivation Facility's Inventory Tracking System account and affirmatively declare those items as Retail Marijuana or Retail Marijuana Concentrate as appropriate.

iv. The declared Retail Marijuana or Retail Marijuana Concentrate that was subject to the one-time Transfer is subject to the excise tax upon the first Transfer from the Retail Marijuana Cultivation Facility to another Retail Marijuana Establishment.

v. All other Transfers are prohibited, including but not limited to Transfers from a Medical Marijuana Center or Medical Marijuana-Infused Products Manufacturer to any Retail Marijuana Establishment.

2. No Further Transfer Allowed. Once a Licensee has declared any portion of its Medical Marijuana inventory as Retail Marijuana, no further Transfers of inventory from Medical Marijuana to Retail Marijuana shall be allowed.

E. RFID Tags Required

1. Authorized Tags Required and Costs. Licensees are required to use RFID tags issued by a Division-approved vendor that is authorized to provision RFID tags for the Inventory Tracking System. Each licensee is responsible for the cost of all RFID tags and any associated vendor fees.

2. Use of RFID Tags Required. A Licensee is responsible to ensure its inventories are properly tagged where the Inventory Tracking System requires RFID tag use. A Medical Marijuana Business must ensure it has an adequate supply of RFID tags to properly tag Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product as required by the Inventory Tracking System. An RFID tag must be physically attached to every Medical Marijuana plant being cultivated that is greater than eight inches tall or eight inches wide. An RFID tag must be assigned to all Finished Marijuana, Medical Marijuana Concentrate and Medical Marijuana-Infused Product. See also Rule M 801(G.5) – Required RFID Tags; Rule M 1001-1(F) – Shipping Containers.

3. Reuse of RFID Tags Prohibited. A Licensee shall not reuse any RFID tag that has already been affixed or assigned to any Finished Marijuana, Medical Marijuana, Medical Marijuana Concentrate or Medical Marijuana-Infused Product.

F. General Inventory Tracking System Use

1. Reconciliation with Inventory. All inventory tracking activities at a Medical Marijuana Business must be tracked through use of the Inventory Tracking System. A Licensee must reconcile all on-premises and in-transit Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product inventories each day in the Inventory Tracking System at the close of business.

2. Common Weights and Measures.

    a. A Medical Marijuana Business must utilize a standard of measurement that is supported by the Inventory Tracking System to track all Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product.

    b. A scale used to weigh such product prior to entry into the Inventory Tracking System shall be tested and approved in accordance with section 35-14-127, C.R.S.

3. Inventory Tracking System Administrator and User Accounts – Security and Record

    a. A Medical Marijuana Business shall maintain an accurate and complete list of all Inventory Tracking System Administrators and Inventory Tracking System Users for each Licensed Premises. A Medical Marijuana Business shall update this list when a new Inventory Tracking System User is trained. A Medical Marijuana Business must train and authorize any new Inventory Tracking System Users before those Owners or employees may access Inventory Tracking System or input, modify, or delete any information in the Inventory Tracking System.

    b. A Medical Marijuana Business must cancel any Inventory Tracking System Administrators and Inventory Tracking System Users from their associated Inventory Tracking System accounts once any such individuals are no longer employed by the Licensee or at the Licensed Premises.

    c. A Medical Marijuana Business is accountable for all actions employees take while logged into the Inventory Tracking System or otherwise conducting Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product inventory tracking activities.

    d. Each individual user is also accountable for all of his or her actions while logged into the Inventory Tracking System or otherwise conducting Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product inventory tracking activities, and must maintain compliance with all relevant laws.

4. Secondary Software Systems Allowed

    a. Nothing in this rule prohibits a Medical Marijuana Business from using separate software applications to collect information to be used by the business including secondary inventory tracking or point of sale systems.

    b. A Licensee must ensure that all relevant Inventory Tracking System data is accurately transferred to and from the Inventory Tracking System for the purposes of reconciliations with any secondary systems.

    c. A Medical Marijuana Business must preserve original Inventory Tracking System data when transferred to and from a secondary application(s). Secondary software applications must use Inventory Tracking System data as the primary

source of data and must be compatible with updating to the Inventory Tracking System.

G. Conduct While Using Inventory Tracking System

1. Misstatements or Omissions Prohibited. A Medical Marijuana Business and its designated Inventory Tracking System Administrator(s) and Inventory Tracking System User(s) shall enter data into the Inventory Tracking System that fully and transparently accounts for all inventory tracking activities. Both the Medical Marijuana Business and the individuals using the Inventory Tracking System are responsible for the accuracy of all information entered into the Inventory Tracking System. Any misstatements or omissions may be considered a license violation affecting public safety.

2. Use of Another User's Login Prohibited. Individuals entering data into the Inventory Tracking System shall only use that individual's Inventory Tracking System account.

3. Loss of System Access. If at any point a Medical Marijuana Business loses access to the Inventory Tracking System for any reason, the Medical Marijuana Business must keep and maintain comprehensive records detailing all Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product tracking inventory activities that were conducted during the loss of access. See Rule M 901 – Business Records Required. Once access is restored, all Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana- Infused Product inventory tracking activities that occurred during the loss of access must be entered into the Inventory Tracking System. A Medical Marijuana Business must document when access to the system was lost and when it was restored. A Medical Marijuana Business shall not Transfer any Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product to another Medical Marijuana Business until such time as access is restored and all information is recorded into the Inventory Tracking System.

H. System Notifications

1. Compliance Notifications. A Medical Marijuana Business must monitor all compliance notifications from the Inventory Tracking System. The Licensee must resolve the issues detailed in the compliance notification in a timely fashion. Compliance notifications shall not be dismissed in the Inventory Tracking System until the Medical Marijuana Business resolves the compliance issues detailed in the notification.

2. Informational Notifications. A Medical Marijuana Business must take appropriate action in response to informational notifications received through the Inventory Tracking System, including but not limited to notifications related to RFID billing, enforcement alerts, and other pertinent information.

I. Lawful Activity Required. Proper use of the Inventory Tracking System does not relieve a Licensee of its responsibility to maintain compliance with all laws, rules, and other requirements at all times.

J. Inventory Tracking System Procedures Must Be Followed. A Medical Marijuana Business must utilize the Inventory Tracking System in conformance with these rules and Inventory Tracking System procedures, including but not limited to:

1. Properly indicating the creation of a Harvest Batch and/or Production Batch including the assigned Harvest Batch and/or Production Batch Number;

2. Accurately identifying the cultivation rooms and location of each plant within those rooms on the Licensed Premises;

3. Accurately identifying when inventory is no longer on the Licensed Premises;

4. Properly indicating that a Test Batch is being used as part of achieving process validation;

5. Accurately indicating the Inventory Tracking System category for all Medical Marijuana, Medical Marijuana Concentrate and Medical Marijuana-Infused Product; and

6. Accurately including a note explaining the reason for any destruction of Medical Marijuana, Medical Marijuana Concentrate and/or Medical Marijuana-Infused Product, and reason for any adjustment of weights to Inventory Tracking System packages.

M 400 Series – Medical Marijuana Centers

Basis and Purpose – M 401

The statutory authority for this rule includes but is not limited to sections 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), 12-43.3-202(2.5)(a)(I)(A-F),12-43.3-310(7), 12-43.3-310(4), 12-43.3-402 and 12-43.3-406, C.R.S. The purpose of this rule is to establish that it is unlawful for a Medical Marijuana Center Licensee to exercise any privileges other than those granted by the State Licensing Authority, and to clarify the license privileges.

M 401 – Medical Marijuana Center: License Privileges

A. Privileges Granted. A Medical Marijuana Center shall only exercise those privileges granted to it by the State Licensing Authority.

B. Licensed Premises. To the extent authorized by Rule M 304 – Medical Marijuana Business and Retail Marijuana Establishment – Shared Licensed Premises and Operational Separation, a Medical Marijuana Center may share a location with a commonly-owned Retail Marijuana Store. However, a separate license is required for each specific business or business entity, regardless of geographical location.

C. Authorized Sources of Medical Marijuana. A Medical Marijuana Center may only Transfer Medical Marijuana that it has purchased from another Medical Marijuana Center or that the Medical Marijuana Center has cultivated itself, after first obtaining an Optional Premises Cultivation Operation License. See Rule M 501 – Optional Premises Cultivation Operation: License Privileges.

D. Authorized Sources of Medical Marijuana-Infused Product Inventory. A Medical Marijuana Center may Transfer Medical Marijuana-Infused Product that it has purchased from a Medical Marijuana-Infused Products Manufacturer, so long as each product are pre-packaged and labeled upon purchase from the manufacturer.

E. Samples Provided for Testing.

1. Repealed.

1.5. A Medical Marijuana Center may provide Samples of its products to a Medical Marijuana Testing Facility for testing and research purposes. The Medical Marijuana Center shall maintain the testing results as part of its business books and records. See Rule M 901 – Business Records Required.

F. Authorized On-Premises Storage. A Medical Marijuana Center is authorized to store inventory on the Licensed Premises. All inventory stored on the Licensed Premises must be secured in a Limited Access Area or Restricted Access Area, and tracked consistently with the inventory tracking rules.

G. Authorized Marijuana Transport. A Medical Marijuana Center is authorized to utilize a licensed Medical Marijuana Transporter for transportation of its Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product so long as the place where transportation orders are taken and delivered is a licensed Medical Marijuana Business. Nothing in this Rule prevents a Medical Marijuana Center from transporting its own Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product.

Basis and Purpose – M 402

The statutory authority for this rule includes but is not limited to sections 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), 12-43.3-310(4), 12-43.3-402, and 12-43.3-403, 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 possess in the aggregate, only the amount of Medical Marijuana and number of Medical Marijuana plants permitted by Rule M 403(A.5) for each patient who has designated the Medical Marijuana Center as being his or her primary center. A patient's designation of a Medical Marijuana Center as his or her primary Medical Marijuana Center in accordance with these Rules establishes the Medical Marijuana Center registration requirements set forth in sections 12-43.3-901(4)(e), and 25-1.5-106(8)(f), C.R.S.

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. Notification to Former Medical Marijuana Center. A Medical Marijuana Center must maintain a copy of a written or electronic notification that it provided to a patient's former primary Medical Marijuana Center advising that the Medical Marijuana Center has been designated as the patient's new primary Medical Marijuana Center.

D. Documents Required. The new primary Medical Marijuana Center shall maintain written authorization from the patient, any relative plant count waiver to support the number of plants designated for that patient, a copy of the patient's registry card, and a copy of the patient's proof of identification. *See also* Rule M 901 – Business Records Required.

E. Violation of Public Safety. Notwithstanding the provisions in Rule 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 includes but is not limited to sections 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), 12-43.3-310(4), 12-43.4-401(4), 12-43.3-402, and 12-43.3-406, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 14(4). 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.

The quantity limitations on sales provision is intended to inform stakeholders in order to aid in compliance with a patient's lawful Medical Marijuana limit. Clarifying the quantity limitations on sales provides Medical Marijuana Centers and their employees with necessary information to avoid being complicit in a patient acquiring more Medical Marijuana than is lawful under the Colorado Constitution pursuant to Article XVIII, Subsection 14(4).

M 403 – Medical Marijuana Sales: General Limitations or Prohibited Acts

A. 30 Percent Rule. Pursuant to section 12-43.3-402(4), C.R.S., a Medical Marijuana Center may accept Transfers of not more than 30 percent of its total on-hand medical marijuana inventory from another licensed Medical Marijuana Center in Colorado. A Medical Marijuana Center may Transfer no more than thirty percent of its total on-hand Medical Marijuana inventory to another Medical Marijuana Center.

1. Total on-hand inventory as used in section 12-43.3-402(4), C.R.S., means the total amount of Medical Marijuana that a Medical Marijuana Center received from its dedicated Optional Premises Cultivation Operation or any other Medical Marijuana Center in the preceding 12 months.

2. A Medical Marijuana Center may apply for a temporary waiver from the requirements set forth in this Rule and section 12-43.3-402(4), C.R.S. under the following circumstances:

    a. A Medical Marijuana Center that suffers a catastrophic event related to its total on-hand inventory; examples of a catastrophic event include, but are not limited to: blight, crop failure, crop contamination, or natural disasters; or

    b. To a new Medical Marijuana Center Licensee for a period not to exceed 90 days from the commencement of the first cultivation activities.

A.5 Possession Limits. Possession limits set forth in this Rule refer to the maximum total quantity possessed by the Medical Marijuana Center and its designated Optional Premises Cultivation Operation collectively. For purposes of section 12-43.3-901(4)(e), C.R.S., a Medical Marijuana Center and its designated Optional Premises Cultivation Operation may possess six (6) Medical Marijuana plants and two (2) ounces of Finished Marijuana for each patient who has registered the Medical Marijuana Center as his or her primary Medical Marijuana Center.

1. Subject to the requirement in Paragraph A.5(2) of this Rule, a Medical Marijuana Center and its designated Optional Premises Cultivation Operation may exceed the six (6) Medical Marijuana plant and two (2) ounces of Finished Marijuana per-patient limits for patients registered with the Medical Marijuana Center who are authorized by the registered patient's physician to exceed the six (6) Medical Marijuana plant and two (2) ounces of Medical Marijuana limits.

2. A Medical Marijuana Center and its designated Optional Premises Cultivation Operation shall not exceed the six (6) Medical Marijuana plant and two (2) ounces of Finished Marijuana per-patient limits unless it obtains and maintains documentation from the registered patient's physician authorizing the patient to exceed the six (6) Medical Marijuana plant and two (2) ounces of Medical Marijuana limits.

3. Under no circumstance shall a Medical Marijuana Center and its designated Optional Premises Cultivation Operation possess Medical Marijuana plants and Finished Marijuana in excess of the total amount of Medical Marijuana plants and Finished Marijuana that its registered patients are authorized to possess.

B. 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.

C. Consumption Prohibited. Licensees shall not permit the consumption of marijuana or a marijuana product on the Licensed Premises.

D. Quantity Limitations On Transfers. During a single transaction to a patient, a Medical Marijuana Center and its employees are prohibited from Transferring:

a. More than two ounces of Medical Marijuana unless the patient has designated the Medical Marijuana Center as his or her primary center and supplied it with documentation from the patient's physician allowing the patient more than two ounces of Medical Marijuana;.

b. More than the patient's extended ounce count to a patient who designated the Medical Marijuana Center as his or her primary center and supplied it with documentation from the patient's physician allowing the patient more than two ounces of Medical Marijuana;

c. More than six Immature plants unless the patient has designated the Medical Marijuana Center as his or her primary center and supplied it with documentation from the patient's physician allowing the patient more than six plants;

d. More than half of the patient's extended plant count to a patient who has designated the Medical Marijuana Center as his or her primary center and supplied it with documentation from the patient's physician allowing the patient more than six plants.

D.5 For purposes of Rule M 403(D), a single transaction to a patient includes multiple sales to the same patient during the same business day where the Medical Marijuana Center employee knows or reasonably should know that such sale would result in the patient possessing more than the quantities of Medical Marijuana or Immature plants set forth above. In determining the imposition of any penalty for violation of this Rule 403(D), the State Licensing Authority will consider any mitigating and aggravating factors set forth in Rule M 1307(C).

E. Licensees May Refuse Sales. Nothing in these rules prohibits a Licensee from refusing to Transfer Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product to a patient.

F. Storage and Display Limitations. A Medical Marijuana Center shall not display Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product outside of a designated Restricted Access Area or in a manner in which Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product can be seen from outside the Licensed Premises. Storage of Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product shall otherwise be maintained in Limited Access Areas or Restricted Access Area.

G. Transfer of Expired Product Prohibited. A Medical Marijuana Center shall not Transfer any expired Medical Marijuana-Infused Product.

G.1 Transfer Restrictions. A Medical Marijuana Center shall not sell or give away Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product to a Medical Marijuana Transporter, and shall not buy, or receive complimentary Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product from a Medical Marijuana Transporter.

G.2 Performance-Based Sales Incentives Prohibited. A Medical Marijuana Center shall not compensate its employees using performance-based sales incentives. Performance-based incentives that are not sales-based are acceptable. Examples of performance-based incentives that are not sales-based include recognition for providing quality information to consumers, or the duration of the employee's employment with the Medical Marijuana Center.

G.3 Edibles Prohibited that are Shaped like a Human, Animal, or Fruit. This paragraph (G.3) is effective beginning October 1, 2017.

1. The Transfer of Edible Medical Marijuana-Infused Product in the following shapes is prohibited:

    a. The distinct shape of a human, animal, or fruit; or

    b. A shape that bears the likeness or contains characteristics of a realistic or fictional human, animal, or fruit, including artistic, caricature, or cartoon renderings.

2. The prohibition on human, animal, and fruit shapes does not apply to the logo of a licensed Medical Marijuana Business. Nothing in this subparagraph (G.3)(2) alters or eliminates a Licensee's obligation to comply with the requirements of Rule M 1001.5 – Labeling and Packaging Requirements: General Applicability or Rule M 1000-1 Series – Packaging, Labeling, and Product Safety.

3. Edible Medical Marijuana-Infused Products that are geometric shapes and simply fruit flavored are not considered fruit and are permissible; and

4. Edible Medical Marijuana-Infused Products that are manufactured in the shape of a marijuana leaf are permissible.

H. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – M 405

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(XX), and 12-43.3-402(5), C.R.S. The Medical Code requires Medical Marijuana Center employees to verify that the purchaser has a valid registration card issued pursuant to section 25-1.5-106, C.R.S., and a valid picture identification card that matches the name on the registration card. Accordingly, this rule was adopted to explain exactly what types of picture identification cards can be accepted. Not only will this rule alleviate any confusion on the part of Medical Marijuana Center employees, but it will help reduce the amount of fraudulent transactions, thereby helping to maintain the integrity of Colorado's Medical Marijuana Businesses.

M 405 – Acceptable Forms of Identification for Medical Marijuana Sales

A. When Sales Allowed. Medical Marijuana Centers shall only Transfer Medical Marijuana to any patient or caregiver permitted to deliver Medical Marijuana to homebound patients as permitted by section 25-1.5-106(9)(e), C.R.S., if the patient or caregiver can produce:

1. A valid patient registry card and adequate, currently valid proof of identification; or

2. A copy of a current and complete new application for the Medical Marijuana registry that is documented by a certified mail return receipt as having been submitted to the Colorado Department of Public Health and Environment within the preceding thirty-five days and adequate, currently valid proof of identification.

B. Acceptable Forms of Identification. As long as it contains a picture and date of birth, the kind and type of identification deemed adequate shall be limited to the following:

1. An operator's, chauffeur's or similar type driver's license, issued by any state within the United States, any U.S. Territory;

2. An identification card, issued by any state for the purpose of proof of age using requirements similar to those in sections 42-2-302 and 42-2-303, C.R.S.;

3. A United States military identification card;

4. A passport; or

5. An enrollment card issued by the governing authority of a federally recognized Indian tribe located in the state of Colorado, if the enrollment card incorporates proof of age requirements similar to sections 42-2-302 and 42-2-303, C.R.S.

C. Physical Inspection Required. A Licensee must physically view and inspect the patient or caregiver's registry card and proof of identification to confirm the information contained on the documents and also to judge the authenticity of the documents presented.

Basis and Purpose – M 406

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(1)(h), 12-43.3-202(2)(a)(XX), and 12-43.3-402(1)(b), C.R.S. The purpose of this rule is to require all Medical Marijuana-Centers to track all inventory from the point it is received to the point-of-sale or Transfer to another Medical Marijuana Center.

M 406 – Medical Marijuana Center: Inventory Tracking System

A. Minimum Tracking Requirement. Medical Marijuana Centers must use the Inventory Tracking System to ensure its Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Products are identified and tracked from the point of Transfer to or from another Medical Marijuana Business through the point-of-sale. See Rule M 309 – Inventory Tracking System. Medical Marijuana Center: Inventory Tracking System. The Medical Marijuana Center must have the ability to reconcile its inventory records with the Inventory Tracking System and the associated transaction history and sale receipts. See also Rule M 901 – Business Records Required.

1. A Medical Marijuana Center is prohibited from accepting any Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Products without receiving a valid transport manifest generated from the Inventory Tracking System.

2. A Medical Marijuana Center must immediately input all Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product delivered to its Licensed Premises, accounting for all RFID tags, into the Inventory Tracking System at the time of delivery to the Medical Marijuana Center.

3. A Medical Marijuana Center must immediately account for all Medical Marijuana Transferred to another Medical Marijuana Center in the Inventory Tracking System.

4. A Medical Marijuana Center must reconcile transactions from their point of sale processes and inventory to the Inventory Tracking System at the close of business each day.

Basis and Purpose – M 407

The statutory authority for this rule includes but is not limited to sections 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 minimum health and safety regulations for Medical Marijuana Centers. It sets forth general standards and basic sanitary requirements for Medical Marijuana Centers. It covers the physical premises where the products are made as well as the individuals handling the products. This rule also authorizes the State Licensing Authority to require an independent consultant conduct a health and sanitary audit of a Medical Marijuana Center. This rule explains when an independent health and sanitary audit may be deemed necessary and sets forth possible consequences of a Medical Marijuana Business's refusal to cooperate or pay for the audit. The State Licensing Authority modeled this rule after those adopted by the Colorado Department of Public Health and Environment. The State Licensing Authority intends this rule to help maintain the integrity of Colorado's Medical Marijuana Centers.

M 407 - Health and Safety Regulations: Medical Marijuana Center

A. Local Safety Inspections. Licensees may be subject to inspection of the Medical Marijuana Center 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 Medical Marijuana. An annual fire safety inspection may result in the required installation of fire suppression devices, or other means necessary for adequate fire safety.

B. 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 Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product shall be excluded from any operations which may be expected to result in 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 where good sanitary practices require employees to wash 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 Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused 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 and at any other time when the hands may have become soiled or contaminated; and

c. Refraining from having direct contact with Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused 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 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 Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product are exposed;

5. That floors, walls, and ceilings are constructed in such a manner that they may be adequately cleaned and each is kept clean and in good repair;

6. That there is adequate lighting in all areas where Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product are stored or sold, and where equipment or utensils are cleaned;

7. That the Licensee 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;

8. That any buildings, fixtures, and other facilities are maintained in a sanitary condition;

9. That toxic cleaning compounds, sanitizing agents, and other chemicals shall be identified, held, stored and disposed of in a manner that protects against contamination of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product and in a manner that is in accordance with any applicable local, state or federal law, rule, regulation or ordinance;

10. That all operations in the receiving, inspecting, transporting, segregating, preparing, manufacturing, packaging, and storing of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product shall be conducted in accordance with adequate sanitation principles;

11. That each Medical Marijuana Center provides its employees with adequate and readily accessible toilet facilities that are maintained in a sanitary condition and good repair; and

12. That Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product that can support the rapid growth of undesirable microorganisms are held in a manner that prevents the growth of these microorganisms.

C. Independent Health and Sanitary Audit

1. State Licensing Authority May Require A 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 Medical Marijuana Center

to undergo such an audit. The scope of the audit may include, but need not be limited, to whether the Medical Marijuana Center is in compliance with the requirements set forth in this Rule and other applicable health, sanitary or food handling laws, rules and regulations.

b. In such instances, the Division may attempt to mutually agree upon the selection of the independent consultant with a Medical Marijuana Center. However, the Division always retains the authority to select the independent consultant regardless of whether mutual agreement can be reached.

c. The Medical Marijuana Center 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. The Division has reasonable grounds to believe that the Medical Marijuana Center is in violation of one or more of the requirements set forth in this Rule or other applicable public health or sanitary laws, rules or regulations; or

b. The Division has reasonable grounds to believe that the Medical Marijuana Center was the cause or source of contamination of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product.

3. Compliance Required. A Medical Marijuana Center 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 Medical Marijuana Center's license. See Rule M 1302 – Disciplinary Process: Summary Suspensions.

b. Prior to or following the issuance of such an order, the Medical Marijuana Center 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 M 1302 – Disciplinary Process: Summary Suspensions.

ii. If an agreement to suspend operations is reached, then the Medical Marijuana Center may continue to care for its inventory and conduct any necessary internal business operations but it may not sell any Medical Marijuana, Medical Marijuana Concentrate or Medical Marijuana-Infused

Product to a patient or other Medical Marijuana Business during the period of time specified in the agreement.

5. Repealed.

D. Contaminated Product. A Medical Marijuana Center shall not accept or Transfer to any Person any Medical Marijuana, Medical Marijuana Concentrate or Medical Marijuana-Infused Product that has failed required testing pursuant to Rule M 1501 or Rule M 1503, unless otherwise permitted in these rules. If, despite the prohibitions in these rules, another Medical Marijuana Business Transfers to the Medical Marijuana Center any Medical Marijuana, Medical Marijuana Concentrate or Medical Marijuana-Infused Product that has failed or subsequently fails required testing pursuant to Rule M 1501 or Rule M 1503, the Medical Marijuana Center shall assure that all Medical Marijuana, Medical Marijuana Concentrate and Medical Marijuana-Infused Products that failed required testing are safely disposed of in accordance with Rule R 307.

E. 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 includes but is not limited to sections 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), 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 Transfer 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 Transfer 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 statutes, rules, and regulations. .

3. Quantity limitations on Transfers to patients. Training shall cover all pertinent Colorado statutes, rules, and regulations.

4. Acceptable forms of Identification. Training shall include:

    a. How to check identification;

b. Spotting false identification;

c. Patient Registry Cards issued by the Colorado Department of Public Health and Environment and equivalent patient verification documents;

d. Provisions for confiscating fraudulent identifications; and

e. Common mistakes made in verification.

5. 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.

500 Series – Medical Marijuana Optional Premises Cultivation Operation: License Privileges

Basis and Purpose – M 501

The statutory authority for this rule includes but is not limited to sections 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), 12-43.4-401(4), 12-43.3-310, 12-43.4-402, 12-43.3-403, 12-43.3-404, and 12-43.4-406, C.R.S. The purpose of this rule is to establish that it is unlawful for an Optional Premises Cultivation Operation to exercise any privileges other than those granted by the State Licensing Authority, and to clarify the license privileges.

M 501 – Medical Marijuana Optional Premises Cultivation Operation: License Privileges

A. Privileges Granted. A Medical Marijuana Optional Premises Cultivation Operation shall only exercise those privileges granted to it by the State Licensing Authority.

B. Licensed Premises. To the extent authorized by Rule M 304 – Medical Marijuana Business and Retail Marijuana Establishment – Shared Licensed Premises and Operational Separation, a Medical Marijuana Optional Premises Cultivation Facility may share a location with a commonly-owned Retail Marijuana Cultivation Facility. However, a separate license is required for each specific business entity regardless of geographical location.

C. Cultivation of Medical Marijuana Authorized. A Medical Marijuana Optional Premises Cultivation Operation may Propagate, cultivate, harvest, prepare, cure, package, store, and label Medical Marijuana, whether in concentrated form or otherwise.

D. Authorized Transfers. A Medical Marijuana Optional Premises Cultivation Operation may only Transfer Medical Marijuana and Water-Based Medical Marijuana Concentrate to the Medical Marijuana Center or Medical Marijuana Infused Products Manufacturer it is designated to pursuant to section 12-43.3-403, C.R.S.

1. A Medical Marijuana Optional Premises Cultivation Operation is also authorized to Transfer Medical Marijuana to a Licensed Research Business pursuant to section 12-43.3-408, C.R.S., a Medical Research Facility pursuant to section 25-1.5-106.5, C.R.S., or Pesticide Manufacturer pursuant to section 12-43.3-202(1)(h)(II), C.R.S. Until such Transfer, any Finished Marijuana at the Optional Premises Cultivation Operation shall count against the possession limits for the Medical Marijuana Center the Optional Premises Cultivation Operation is designated to pursuant to section 12-43.3-403, C.R.S. See Rule M 403(A.5).

2. An Optional Premises Cultivation shall not Transfer Flowering plants or Vegetative plants to any Person except as authorized pursuant to Rule M 801.

E. Packaging Processed Medical Marijuana. Processed Medical Marijuana plants shall be packaged in units of ten pounds or less and labeled pursuant to Rule M 1002 - Labeling Requirements: General Requirements or the Rule M 1000-1 Series – Labeling, Packaging, and Product Safety, and securely sealed in a tamper-evident manner.

F. Authorized Marijuana Transport. A Medical Marijuana Optional Premises Cultivation is authorized to utilize a licensed Medical Marijuana Transporter for transportation of its Medical Marijuana so long as the place where transportation orders are taken is a Medical Marijuana Business and the transportation order is delivered to a licensed Medical Marijuana Business, Medical Research Facility, or Pesticide Manufacturer. Nothing in this Rule prevents a Medical Marijuana Optional Premises Cultivation from transporting its own Medical Marijuana.

G. Performance-Based Incentives. A Medical Marijuana Optional Premises Cultivation may compensate its employees using performance-based incentives.

H. Authorized Sources of Medical Marijuana Seeds and Immature Plants. A Medical Marijuana Optional Premises Cultivation Operation shall only obtain Medical Marijuana seeds or Immature Plants from its own Medical Marijuana or properly transferred from another Medical Marijuana Business pursuant to the inventory tracking requirements in this Rule, and as long as there is first a documented point-of-sale transaction at that Optional Premises Cultivation Operation's designated Medical Marijuana Center or Medical Marijuana-Infused Products Manufacturer.

Basis and Purpose – M 502

The statutory authority for this rule includes but is not limited to sections 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), and 12-43.3-202(2)(a)(XX), 12-43.3-310, 12-43.3-402, 12-43.3-403, 12-43.3-406, 12-43.3-201, C.R.S. The purpose of this rule is to clarify what activity is or is not allowed at an Optional Premises Cultivation Operation.

M 502 – Medical Marijuana Optional Premises Cultivation Operation: General Limitations or Prohibited Acts

A. Transfer Restriction. An Optional Premises Cultivation Operation may only Transfer Medical Marijuana to its commonly-owned Medical Marijuana Center or to a Medical Marijuana-Infused Products Manufacturer.

B. Packaging and Labeling Standards Required. An Optional Premises Cultivation Operation is prohibited from Transferring Medical Marijuana and Medical Marijuana Concentrate that is not packaged and labeled in accordance with these rules. See Rules M 1001.5 *et. seq.* and the Rule M 1000-1 Series– Labeling, Packaging, and Product Safety.

C. Transfer to Patient Prohibited. An Optional Premises Cultivation Operation is prohibited from Transferring Medical Marijuana to a patient.

D. Consumption Prohibited. An Optional Premises Cultivation Operation shall not permit the consumption of marijuana or marijuana products on its Licensed Premises.

E. Sales and Gift to Transporters Prohibited. A Medical Marijuana Optional Premises Cultivation shall not sell or give away Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product to a Medical Marijuana Transporter, and shall not buy or receive complimentary Medical Marijuana, Medical Marijuana Concentrate, or Medical-Marijuana Infused Product from a Medical Marijuana Transporter.

F. Inventory Limit. An Optional Premises Cultivation Operation shall not possess more plants than its commonly-owned Medical Marijuana Center is authorized to possess. See Rule M 403(A.5) – Medical Marijuana Sales: General Limitations or Prohibited Acts.

Basis and Purpose – M 503

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(1)(h), 12-43.3-202(2)(a)(XX), and 12-43.3-403(3), C.R.S. The purpose of this rule is to eliminate diversion of Medical Marijuana.

M 503 – Medical Marijuana Optional Premises Cultivation Operation: Inventory Tracking System

A. Minimum Tracking Requirement. An Optional Premises Cultivation Operation must use the Inventory Tracking System to ensure its inventories are identified and tracked from the point Medical Marijuana is Propagated from seed or cutting to the point when it is delivered to a Medical Marijuana Business, Medical Research Facility, or Pesticide Manufacturer. *See* Rule M 309, Medical Marijuana Business: Inventory Tracking System. An Optional Premises Cultivation Operation must have the ability to reconcile its inventory records generated from the Inventory Tracking System and the associated transaction history and sale receipts. *See* Rule M 901 – Business Records Required.

1. An Optional Premises Cultivation Operation is prohibited from accepting any Medical Marijuana without receiving a valid transport manifest generated from the Inventory Tracking System.

2. An Optional Premises Cultivation Operation must immediately input all Medical Marijuana delivered to its Licensed Premises and account for all RFID tags into the Inventory Tracking System at the time of delivery to the Optional Premises Cultivation Operation.

3. An Optional Premises Cultivation Operation must reconcile its transaction history and on-hand Medical Marijuana to the Inventory Tracking System at the close of business each day.

Basis and Purpose – M 504

The statutory authority for this rule includes but is not limited to sections 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 minimum health and safety regulations for Optional Premises Cultivation Operations. The rule prohibits an Optional Premises Cultivation Operation from treating or otherwise adulterating Medical Marijuana with any chemical or other compound whatsoever to alter its color, appearance, weight or smell. This rule also authorizes the State Licensing Authority to require an independent consultant conduct an independent health and sanitary audit of an Optional Premises Cultivation Operation. This rule explains when an independent health and sanitary audit may be deemed necessary and sets forth possible consequences of a Medical Marijuana Business's refusal to cooperate or pay for the audit. The State Licensing Authority intends this rule to help maintain the integrity of Colorado's Medical Marijuana Businesses.

M 504 – Optional Premises Cultivation Operation: Health and Safety Regulations

A. Local Safety Inspections. An Optional Premises Cultivation Operation may be subject to inspection of its Licensed Premises 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 Medical Marijuana or other local businesses. An annual fire safety inspection may result in the required installation of fire suppression devices, or other means necessary for adequate fire safety.

B. General Sanitary Requirements. An Optional Premises Cultivation Operation 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 Medical Marijuana shall be excluded from any operations which may be expected to result in such contamination until the condition is corrected;

2. That all persons working in direct contact with Medical Marijuana 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 and at any other time when the hands may have become soiled or contaminated;

c. 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 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; and

d. Refraining from having direct contact with Medical Marijuana 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.

3. 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 Medical Marijuana is exposed;

4. 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;

5. That there is adequate lighting in all areas where Medical Marijuana is stored and where equipment or utensils are cleaned;

6. That the Licensee 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;

7. That any buildings, fixtures, and other facilities are maintained in a sanitary condition;

8. That toxic cleaning compounds, sanitizing agents, and solvents shall be identified, held, stored and disposed of in a manner that protects against contamination of Medical Marijuana or Medical Marijuana Concentrate, and in a manner that is in accordance with any applicable local, state, or federal law, rule, regulation or ordinance. All Pesticides must be stored and disposed of in accordance with the information provided on the product's label;

9. That all contact surfaces, including utensils and equipment used for the preparation of Medical Marijuana or Medical Marijuana Concentrate 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 an Optional Premises Cultivation Operation and used in accordance with labeled instructions;

10. 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. Reclaimed water may also be used only for the cultivation of Medical Marijuana to the extent authorized under the Reclaimed Water Control Regulations (5 CCR 1002-84), and subject to approval of the Water Quality Control Division of the Colorado Department of Public Health and Environment and the local water provider;

11. 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 water, reclaimed water, and waste water lines;

12. That all operations in the receiving, inspecting, transporting, segregating, preparing, manufacturing, packaging, and storing of Medical Marijuana, Medical Marijuana or Concentrate shall be conducted in accordance with adequate sanitation principles;

13. That each Optional Premises Cultivation Operation shall provide its employees with adequate and readily accessible toilet facilities that are maintained in a sanitary condition and good repair; and

14. That Medical Marijuana that can support the rapid growth of undesirable microorganisms shall be held in a manner that prevents the growth of these microorganisms.

C. Pesticide Application. An Optional Premises Cultivation Operation may only use Pesticide in accordance with the "Pesticide Act" sections 35-9-101 et seq., C.R.S., the "Pesticides Applicators' Act," sections 35-10-101 et seq., C.R.S., and all other applicable federal, state, and local laws, statutes, rules and regulations. This includes, but shall not be limited to, the prohibition on detaching, altering, defacing or destroying, in whole or in part, any label on any Pesticide. The Colorado Department of Agriculture's determination that the Licensee used any quantity of a Pesticide that would constitute a violation of the Pesticide Act or the Pesticide Applicators' Act shall constitute *prima facie* evidence of a violation of this Rule.

D. Application of Other Agricultural Chemicals. An Optional Premises Cultivation Operation may only use agricultural chemicals, other than Pesticide, in accordance with all applicable federal, state, and local laws, statutes, rules and regulations.

E. Required Documentation

1. Standard Operating Procedures. An Optional Premises Cultivation Operation must establish written standard operating procedures for the cultivation, harvesting, drying, curing, packaging, storing, and sampling of Medical Marijuana, and the processing, packaging, storing, and sampling of Medical Marijuana Concentrate. The standard operating procedures must also include when, and the manner in which, all Pesticide and other agricultural chemicals are to be applied during its cultivation process. A copy of all standard operating procedures must be maintained on the Licensed Premises of the Optional Premises Cultivation Operation.

2. Material Change. If an Optional Premises Cultivation Operation makes a Material Change to its cultivation procedures, 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.

3. Safety Data Sheet. An Optional Premises Cultivation Operation must obtain a safety data sheet for any Pesticide or other agricultural chemical used or stored on its Licensed Premises. An Optional Premises Cultivation Operation must maintain a current copy of the safety data sheet for any Pesticide or other agricultural chemical on the Licensed Premises where the product is used or stored.

4. Labels of Pesticide and Other Agricultural Chemicals. An Optional Premises Cultivation Operation must have the original label or a copy thereof at its Licensed Premises for all Pesticide and other agricultural chemicals used during its cultivation process.

5. Pesticide Application Documentation. An Optional Premises Cultivation Operation that applies any Pesticide or other agricultural chemical to any portion of a Medical Marijuana plant, water or feed used during cultivation or generally within the Licensed Premises must document, and maintain a record on its Licensed Premises of, the following information:

a. The name, signature and Occupational License number of the individual who applied the Pesticide or other agricultural chemical;

b. Applicator certification number if the applicator is licensed through the Department of Agriculture in accordance with the "Pesticides Applicators' Act," sections 35-10-101 et seq., C.R.S.;

c. The date and time of the application;

d. The EPA registration number of the Pesticide or CAS number of any other agricultural chemical(s) applied;

e. Any of the active ingredients of the Pesticide or other agricultural chemical(s) applied;

f. Brand name and product name of the Pesticide or other agricultural chemical(s) applied;

g. The restricted entry interval from the product label of any Pesticide or other agricultural chemical(s) applied;

h. The RFID tag number of the Medical Marijuana plant(s) that the Pesticide or other agricultural chemical(s) was applied to or if applied to all plants throughout the Licensed Premises, a statement to that effect; and

i. The total amount of each Pesticide or other agricultural chemical applied.

F. Prohibited Chemicals. The following chemicals are prohibited and shall not be used in Medical Marijuana cultivation. Possession of chemicals and/or containers from these chemicals upon the Licensed Premises shall be a violation of this Rule. Additionally, possession of Medical Marijuana or Medical Marijuana Concentrate on which any of the following chemicals is detected shall constitute a violation of this Rule.

1. Any Pesticide the use of which would constitute a violation of the Pesticide Act, section 35-9-101 *et seq.*, C.R.S., the Pesticide Applicators' Act, section 35-10-101 et seq., C.R.S., or the rules and regulations pursuant thereto.

2. Other chemicals (listed by chemical name and CAS Registry Number (or EDF Substance ID)):

ALDRIN

309-00-2

ARSENIC OXIDE (3)

1327-53-3

ASBESTOS (FRIABLE)

1332-21-4

AZODRIN

6923-22-4

1,4-BENZOQUINONE, 2,3,5,6-TETRACHLORO-

118-75-2

BINAPACRYL

485-31-4

2,3,4,5-BIS (2-BUTENYLENE) TETRAHYDROFURFURAL

126-15-8

BROMOXYNIL BUTYRATE

EDF-186

CADMIUM COMPOUNDS

CAE750

CALCIUM ARSENATE [2ASH3O4.2CA]

7778-44-1

CAMPHECHLOR

8001-35-2

CAPTAFOL

2425-06-1

CARBOFURAN

1563-66-2

CARBON TETRACHLORIDE

56-23-5

CHLORDANE

57-74-9

CHLORDECONE (KEPONE)

143-50-0

CHLORDIMEFORM

6164-98-3

CHLOROBENZILATE

510-15-6

CHLOROMETHOXYPROPYLMERCURIC ACETATE [CPMA] EDF-

183

COPPER ARSENATE

10103-61-4

2,4-D, ISOOCTYL ESTER

25168-26-7

DAMINOZIDE

1596-84-5

DDD

72-54-8

DDT

50-29-3

DI(PHENYLMERCURY)DODECENYLSUCCINATE [PMDS] EDF-

187

1,2-DIBROMO-3-CHLOROPROPANE (DBCP)

96-12-8

1,2-DIBROMOETHANE

106-93-4

1,2-DICHLOROETHANE

107-06-2

DIELDRIN

60-57-1

4,6-DINITRO-O-CRESOL

534-52-1

DINITROBUTYL PHENOL

88-85-7

ENDRIN

72-20-8

EPN

2104-64-5

ETHYLENE OXIDE

75-21-8

FLUOROACETAMIDE

640-19-7

GAMMA-LINDANE

58-89-9

HEPTACHLOR

76-44-8

HEXACHLOROBENZENE

118-74-1

1,2,3,4,5,6-HEXACHLOROCYCLOHEXANE (MIXTURE OF ISOMERS)

608-73-1

1,3-HEXANEDIOL, 2-ETHYL-

94-96-2

LEAD ARSENATE

7784-40-9

LEPTOPHOS

21609-90-5

MERCURY

7439-97-6

METHAMIDOPHOS

10265-92-6

METHYL PARATHION

298-00-0

MEVINPHOS

7786-34-7

MIREX

2385-85-5

NITROFEN

1836-75-5

OCTAMETHYLDIPHOSPHORAMIDE

152-16-9

PARATHION

56-38-2

PENTACHLOROPHENOL

87-86-5

PHENYLMERCURIC OLEATE [PMO]

EDF-185

PHOSPHAMIDON

13171-21-6

PYRIMINIL

53558-25-1

SAFROLE

94-59-7

SODIUM ARSENATE

13464-38-5

SODIUM ARSENITE

7784-46-5

2,4,5-T

93-76-5

TERPENE POLYCHLORINATES (STROBANE6)

8001-50-1

THALLIUM(I) SULFATE

7446-18-6

2,4,5-TP ACID (SILVEX)

93-72-1

TRIBUTYLTIN COMPOUNDS

EDF-184

2,4,5-TRICHLOROPHENOL

95-95-4

VINYL CHLORIDE

75-01-4

G. DMSO. The use of Dimethylsulfoxide (DMSO) in the production of Medical Marijuana shall be prohibited and possession of DMSO upon the Licensed Premises is prohibited.

H. Adulterants. An Optional Premises Cultivation Operation may not treat or otherwise adulterate Medical Marijuana with any chemical or other compound whatsoever to alter its color, appearance, weight or smell.

I. Independent Health and Sanitary Audit

1. State Licensing Authority May Require A 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 an Optional Premises Cultivation Operation to undergo such an audit. The scope of the audit may include, but need not be limited, to whether the Optional Premises Cultivation Operation is in compliance with the requirements set forth in this Rule and other applicable public health or sanitary laws and regulations.

b. In such instances, the Division may attempt to mutually agree upon the selection of the independent consultant with an Optional Premises Cultivation Operation. However, the Division always retains the authority to select the independent consultant regardless of whether mutual agreement can be reached.

c. The Optional Premises Cultivation Operation 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. An Optional Premises Cultivation Operation does not provide requested records related to the use of Pesticide or other agricultural chemicals during in the cultivation process;

b. The Division has reasonable grounds to believe that the Optional Premises Cultivation Operation is in violation of one or more of the requirements set forth in this rule or other applicable public health or sanitary laws, rules or regulations;

c. The Division has reasonable grounds to believe that the Optional Premises Cultivation Operation was the cause or source of contamination of Medical Marijuana or Medical Marijuana Concentrate; or

d. Multiple Harvest Batches or Production Batches produced by the Optional Premises Cultivation Operation failed contaminant testing.

3. Compliance Required. An Optional Premises Cultivation Operation 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 Optional Premises Cultivation Operation's license. See Rule M 1302 – Disciplinary Process: Summary Suspensions.

b. Prior to or following the issuance of such an order, Optional Premises Cultivation Operation 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 M 1302 – Disciplinary Process: Summary Suspensions.

ii. If an agreement to suspend operations is reached, then the Optional Premises Cultivation Operation may continue to care for its inventory and conduct any necessary internal business operations but it may Transfer Medical Marijuana or Medical Marijuana Concentrate to other Medical Marijuana Business during the period of time specified in the agreement.

J. Contaminated Product. Unless otherwise permitted by these rules:

1. A Medical Marijuana Optional Premises Cultivation Operation shall not accept or Transfer to another Medical Marijuana Business or any other Person any Medical Marijuana or Medical Marijuana Concentrate that has failed required testing pursuant to Rule M 1501 or Rule M 1503.

2. If A Medical Marijuana Optional Premises Cultivation Operation possesses any Medical Marijuana or Medical Marijuana Concentrate that failed required testing pursuant to Rule M 1501 or Rule M 1503, the Optional Premises Cultivation Operation shall assure that all Medical Marijuana and Medical Marijuana Concentrate that failed required testing is destroyed safely in accordance with Rule M 307.

K. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – M 505

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(XII), 12-43.3-202(2)(a)(XX), 12-43.3-202(2.5)(a)(I)(A-F),12-43.3-402(6), and 12-43.3-404(10), C.R.S. The purpose of this rule is to permit laboratory testing of Medical Marijuana and establish minimum health and safety regulation for Optional Premises Cultivation Operation. The State Licensing Authority intends this rule to help maintain the integrity of Colorado's Medical Marijuana Businesses.

M 505 – Optional Premises Cultivation Operation: Testing

A. Samples on Demand. Medical Marijuana Optional Premises Cultivation Operation shall, upon request of the Division, submit a sufficient quantity of Medical Marijuana to a Retail or Medical Marijuana Testing Facility to enable laboratory or chemical analysis thereof. The Division will notify the Licensee of the results of the analysis. See Rule M. 309 – Medical Marijuana Business: Inventory Tracking System and Rule M 901 – Business Records Required.

B. Samples Provided for Testing.

1. Repealed.1.5. This Rule M 505(B)(1.5) is effective beginning July 1, 2016. A Medical Marijuana Optional Premises Cultivation Operation may provide Samples of its Medical Marijuana to a Medical Marijuana Testing Facility for testing and research purposes. The Optional Premises Cultivation Operation shall maintain the testing results as part of its business books and records. See Rule M 901 – Business Records Required.

Basis and Purpose – M 506

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(XII), 12-43.3-202(2)(a)(XV), 12-43.3-202(2)(a)(XX), and 12-43.3-202(2.5)(a)(1)(A) - (F), C.R.S. The purpose of this rule is to establish the categories of Medical Marijuana Concentrate that may be produced at an Optional Premises Cultivation Operation and standards for the production of those concentrate.

M 506 – Optional Premises Cultivation Operation: Medical Marijuana Concentrate Production

A. Permitted Production of Certain Categories of Medical Marijuana Concentrate. An Optional Premises Cultivation Operation may only produce Water-Based Medical Marijuana Concentrate on its Licensed Premises and only in an area clearly designated for concentrate production on the current diagram of the Licensed Premises. See Rule M 901- Business Records Required. No other method of production or extraction for Medical Marijuana Concentrate may be conducted within the Licensed Premises of an Optional Premises Cultivation Operation unless the Owner(s) of the Optional Premises Cultivation Operation also has a valid Medical Marijuana-Infused Products Manufacturer license and the room in which Medical Marijuana Concentrate is to be produced is physically separated from all cultivation areas and has clear signage identifying the room.

B. Safety and Sanitary Requirements for Concentrate Production. If an Optional Premises Cultivation Operation produces Water-Based Medical Marijuana Concentrate, then all areas in which those concentrate are produced and all Owners and Occupational Licensees engaged in the production of those concentrate shall be subject to all of requirements imposed upon a Medical Marijuana-Infused Products Manufacturer that produces Medical Marijuana Concentrate, including general requirements. See Rule M 604 – Medical Marijuana-Infused Products

Manufacturer: Health and Safety Regulations and Rule M 605 Medical Marijuana-Infused Products Manufacturer: Medical Marijuana Concentrate Production.

C. Possession of Other Categories of Medical Marijuana Concentrate.

1. It shall be considered a violation of this rule if an Optional Premises Cultivation Operation possesses a Medical Marijuana Concentrate other than a Water-Based Medical Marijuana Concentrate on its Licensed Premises unless the Owner(s) of the Optional Premises Cultivation Operation also has a valid Medical Marijuana-Infused Products Manufacturer license.

2. Notwithstanding subparagraph (C)(1) of this Rule M 505, an Optional Premises Cultivation Operation shall be permitted to possess Solvent-Based Medical Marijuana Concentrate only when the possession is due to the Transfer of Medical Marijuana flower or trim that failed microbial testing to a Medical Marijuana-Infused Products Manufacturing Facility for processing into a Solvent-Based Medical Marijuana Concentrate, and the Medical Marijuana-Infused Products Manufacturing Facility Transfers the resultant Solvent-Based Medical Marijuana Concentrate back to the originating Optional Premises Cultivation Operation.

a. The Optional Premises Cultivation Operation shall comply with all requirements in Rule M 1507(B.1) when having Solvent-Based Medical Marijuana Concentrate manufactured out of Medical Marijuana flower or trim that failed microbial testing.

b. The Optional Premises Cultivation Operation is responsible for submitting the Solvent-Based Medical Marijuana Concentrate for all required testing for contaminants pursuant to Rule M 1501 – Medical Marijuana Testing Program – Contaminant Testing, for potency pursuant to Rule M 1503 – Medical Marijuana Testing Program – Potency Testing, and any other testing required or allowed by the Medical Marijuana Rules or Medical Marijuana Code.

M 600 Series – Medical Marijuana-Infused Products Manufacturers

Basis and Purpose – M 601

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I) , 12-43.3-202(2)(a)(XX), 12-43.3-202(2.5)(a)(I)(A-F), 12-43.3-406(1)(c), 12-43.3-406(4)(b), and 12-43.3-404, C.R.S. The purpose of this rule is to establish that it is unlawful for a Medical Marijuana-Infused Products Manufacturer to exercise any privileges other than those granted by the State Licensing Authority and to clarify the license privileges.

M 601 – Medical Marijuana-Infused Products Manufacturer: License Privileges

A. Privileges Granted. A Medical Marijuana-Infused Products Manufacturer shall only exercise those privileges granted to it by the State Licensing Authority.

B. Licensed Premises. A separate license is required for each specific business or business entity and geographical location. A Retail Marijuana Products Manufacturing Facility may share a location with a commonly owned Medical Marijuana-Infused Products Manufacturer. However, a separate license is required for each specific business or business entity, regardless of geographical location.

C. Authorized Transfers. A Medical Marijuana-Infused Products Manufacturer may only Transfer: (1) its own Medical Marijuana-Infused Product and Medical Marijuana Concentrate to Medical Marijuana Centers, other Medical Marijuana-Infused Products Manufacturers, Licensed Research

Businesses, Medical Research Facilities, and Pesticide Manufactures; (2) Medical Marijuana that was not cultivated at its own Optional Premises Cultivation to another Medical Marijuana-Infused Products Manufacturer.

D. Manufacture of Medical Marijuana-Infused Product Authorized. A Medical Marijuana-Infused Products Manufacturer may manufacture, prepare, package, and label Medical Marijuana-Infused Product, whether in concentrated form or that are comprised of Medical Marijuana and other ingredients intended for use or consumption, such as Edible Medical Marijuana-Infused Products, ointments, or tinctures.

E. Location Prohibited. A Medical Marijuana-Infused Products Manufacturer may not manufacture, prepare, package, store, or label Medical Marijuana-Infused Product in a location that is operating as a retail food establishment or a wholesale food registrant.

F. Samples Provided for Testing.

1. Repealed.

1.5. This Rule M 601(F)(1.5) is effective beginning July 1, 2016. A Medical Marijuana-Infused Products Manufacturer may provide samples of its Medical Marijuana-Infused Product to a Medical Marijuana Testing Facility for testing and research purposes. The Medical Marijuana-Infused Products Manufacturer shall maintain the testing results as part of its business books and records. *See* Rule M 901 – Business Records Required.

G. Authorized Marijuana Transport. A Medical Marijuana-Infused Products Manufacturer is authorized to utilize a Medical Marijuana Transporter for transportation of its Medical Marijuana-Infused Product or Medical Marijuana Concentrate so long as the place where transportation orders are taken is a licensed Medical Marijuana Business and the transportation order is delivered to a Medical Marijuana Business, Medical Research Facility, or Pesticide Manufacturer. Nothing in this Rule prevents a Medical Marijuana-Infused Products Manufacturer from transporting its own Medical Marijuana or Medical Marijuana Concentrate.

H. Compensation. A Medical Marijuana-Infused Products Manufacturer may compensate its employees using performance-based incentives.

Basis and Purpose – M 602

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(XVII.6), 12-43.3-202(2)(a)(XX), 12-43.3-404(3), and 12-43.3-406(1)(a), C.R.S. The Medical Code sets forth minimum requirements for written agreements between Medical Marijuana-Infused Products Manufacturers and Medical Marijuana Centers. Specifically, the written agreements must set forth the total amount of Medical Marijuana obtained from a Medical Marijuana Center Licensee to be used in the manufacturing process, and the total amount of Medical Marijuana-Infused Product to be manufactured from the Medical Marijuana obtained from the Medical Marijuana Center. This rule clarifies that the Division must approve such written agreements to ensure they meet those requirements.

M 602 – Medical Marijuana-Infused Products Manufacturer: General Limitations or Prohibited Acts

A. Contract Required. Any contract required pursuant to section 12-43.3-404(3), C.R.S., shall contain such minimum requirements as to form and substance as required by statute. All contracts need to be current and available for inspection on the Licensed Premises by the Division when requested. See Rule M 901 – Business Records and Reporting.

B. Packaging and Labeling Standards Required. A Medical Marijuana-Infused Products Manufacturer is prohibited from Transferring Medical Marijuana-Infused Product that are not

properly packaged and labeled. See Rule M 1000 Series – Labeling, Packaging, and Product Safety and Rule M 1000-1 Series – Labeling, Packaging, and Product Safety

C. Transfer to Consumer Prohibited. A Medical Marijuana-Infused Products Manufacturer is prohibited from Transferring Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product to a consumer.

D. Consumption Prohibited. A Medical Marijuana-Infused Products Manufacturer shall not permit the consumption of marijuana or marijuana products on its Licensed Premises.

E. Adequate Care of Perishable Product. A Medical Marijuana-Infused Products Manufacturer must provide adequate refrigeration for perishable Medical Marijuana-Infused Product that will be consumed and shall utilize adequate storage facilities and transport methods.

F. Homogeneity of Edible Retail Marijuana Product. A Medical Marijuana-Infused Products Manufacturer must ensure that its manufacturing processes are designed so that the Cannabinoid content of any Edible Medical Marijuana-Infused Product is homogenous.

G. A Medical Marijuana-Infused Products Manufacturer shall not sell or give away Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product to a Medical Marijuana Transporter, and shall not buy or receive complimentary Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product from a Medical Marijuana Transporter.

H. Cultivated Medical Marijuana Sales Prohibited. A Medical Marijuana-Infused Products Manufacturer that also has an Optional Premises Cultivation Operation shall not Transfer any Medical Marijuana that it cultivates except for the Medical Marijuana contained in its Medical Marijuana-Infused Products or Medical Marijuana Concentrate.

Basis and Purpose – M 603

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(XVIII.6) and (XX), 12-43.3-406(3) and 12-43.3-404, C.R.S. The purpose of this rule is to require all Medical Marijuana-Infused Products Manufacturers to track all inventory from the point it is received, through any manufacturing processes, to the point of sale or transfer to another Medical Marijuana Business.

M 603 – Medical Marijuana-Infused Products Manufacturer: Inventory Tracking System

A. Minimum Tracking Requirement. A Medical Marijuana-Infused Products Manufacturer must use the Inventory Tracking System to ensure its inventories are identified and tracked from the point they are Transferred from a commonly owned Optional Premises Cultivation Operation, Medical Marijuana Center, Medical Marijuana Transporter, or another Medical Marijuana-Infused Products Manufacturer through Transfer. *See* Rule M 309 – Medical Marijuana Business: Inventory Tracking System. A Medical Marijuana-Infused Products Manufacturer must have the ability to reconcile its inventory records with the Inventory Tracking System and the associated transaction history and sale receipts. *See* Rule M 901 – Business Records Required.

1. A Medical Marijuana-Infused Products Manufacturer is prohibited from accepting any Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product without receiving a valid transport manifest generated from the Inventory Tracking System.

2. A Medical Marijuana-Infused Products Manufacturer must immediately input all Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product

delivered to its Licensed Premises, accounting for all RFID tags, into the Inventory Tracking System at the time of delivery to the Medical Marijuana-Infused Products Manufacturer..

3. A Medical Marijuana-Infused Products Manufacturer must reconcile transactions to the Inventory Tracking System at the close of business each day.

Basis and Purpose – M 604

The statutory authority for this rule includes but is not limited to 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(XII), 12-43.3-202(2)(a)(XIV),12-43.3-202(2)(a)(XV), 12-43.3-202(2)(a)(XX), 12-43.3-202(2.5)(a)(I), 12-43.3-202(2.5)(a)(III)(A)&(B), and 12-43.3-404, C.R.S. The purpose of this rule is to establish minimum health and safety regulations for Medical Marijuana-Infused Products Manufacturers. It requires all Owners and Occupational Licensees to attend a food handler training course prior to manufacturing any Edible Medical Marijuana Product. This rule also authorizes the State Licensing Authority to require that an independent consultant conduct an independent food safety audit of a Medical Marijuana Infused-Products Manufacturing Facility. This rule explains when an independent food safety audit may be deemed necessary and sets forth possible consequences of a Medical Marijuana-Infused Products Manufacture's refusal to cooperate or pay for the audit. It sets forth general standards and basic sanitary requirements for Medical Marijuana-Infused Products Manufacturers. It covers the physical premises where the products are made as well as the individuals handling the products. The State Licensing Authority modeled this rule after those adopted by the Colorado Department of Public Health and Environment. The State Licensing Authority intends this rule to help maintain the integrity of Colorado's Medical Marijuana Businesses and the safety of the public. Product safety requirements are being adopted to aid in making Medical Marijuana-Infused Products more readily identifiable to the general public outside of packaging as containing Medical Marijuana. While product safety requirements are stated in this rule, nothing in the requirements interferes with a manufacturer's ability to determine portions for its products or to provide a mechanism with the product for accurately measuring a portion.

M 604 – Medical Marijuana-Infused Products Manufacturer: Health and Safety Regulations

A. Training

1. Prior to engaging in the manufacture of any Edible Medical Marijuana-Infused 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 Medical Marijuana-Infused Products Manufacturer must obtain documentation evidencing that each Owner or 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 Medical Marijuana-Infused Product.

B. General Standards

1. A Medical Marijuana-Infused Products Manufacturer 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 Medical 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 Medical Marijuana-Infused Products Manufacturer that manufacturers Edible Medical Marijuana-Infused Product shall comply with all kitchen-related health and safety standards of the relevant local licensing authority 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. 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 Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused 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 Medical Marijuana Concentrate or Medical Marijuana-Infused 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 Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused 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 Medical Marijuana Concentrate or manufacture of a Medical Marijuana-Infused 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 Medical Marijuana or Medical Marijuana-Infused 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 Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused 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 Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused 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 Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused 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 Medical Marijuana, Medical Marijuana Concentrate or Medical Marijuana-Infused 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 Medical Marijuana-Infused Products Manufacturer and used in accordance with labeled instructions;

11. That toxic cleaning compounds, sanitizing agents, solvents used in the production of Medical Marijuana Concentrate and other chemicals shall be identified, held, stored and disposed of in a manner that protects against contamination of Medical Marijuana, Medical Marijuana Concentrate or Medical Marijuana-Infused 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 Medical Marijuana-Infused Products Manufacturer 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 Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product shall be conducted in accordance with adequate sanitation principles;

16. That Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused 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 Medical Marijuana-Infused Product shall be under conditions that will protect products against physical, chemical, and microbial contamination as well as against deterioration of any Container.

C.5. Product Safety.

Paragraph (C.5) is effective beginning October 1, 2016.

1. A Medical Marijuana-Infused Products Manufacturer that manufactures Edible Medical Marijuana-Infused Product shall create and maintain standard production procedures and detailed manufacturing processes for each Edible Medical Marijuana-Infused Product it manufactures. These procedures and processes must be documented and made available on the Licensed Premises for inspection by the Division, the Colorado Department of Public Health & Environment, and local licensing authorities.

2. A Medical Marijuana-Infused Products Manufacturer may determine a standard portion of THC for each Edible Medical Marijuana-Infused Product it manufactures. If a Medical Marijuana-Infused Products Manufacturer determines a standard portion for an Edible Medical Marijuana-Infused Product, that information must be documented in the product's standard production procedure.

3. For each Edible Medical Marijuana-Infused Product, the total amount of active THC contained within the product must be documented in the standard production procedures.

4. Universal Symbol Marking Requirements.

   a. The following categories of Edible Medical Marijuana-Infused Products shall be marked, stamped, or otherwise imprinted with the Universal Symbol directly on the Medical Marijuana-Infused Product in a manner to cause the Universal Symbol to be distinguishable and easily recognizable.

      i. Chocolate

      ii. Soft confections

      iii. Hard confections or lozenges

      iv. Consolidated baked goods (e.g. cookie, brownie, cupcake, granola bar)

      v. Pressed pills and capsules

   b. The Universal Symbol marking shall:

i. Be marked, stamped, or otherwise imprinted on at least one side of the Edible Medical Marijuana-Infused Product;

ii. Be centered either horizontally or vertically on the Edible Medical Marijuana-Infused Product; and

iii. If centered horizontally on the Edible Medical Marijuana-Infused Product, the height and width of the Universal Symbol shall be of a size that is at least 25% of the product's width, but not less than ¼ inch by ¼ inch; or

iv. If centered vertically on the Edible Medical Marijuana-Infused Product, the height and width of the Universal Symbol shall be of a size that is at least 25% of the product's height, but not less than ¼ inch by ¼ inch.

c. If a Medical Marijuana-Infused Products Manufacturer elects to determine portions for an Edible Medical Marijuana-Infused Product, then the Universal Symbol shall be applied to each portion in accordance with the requirements of subsubparagraph (C.5)(4)(b) of this Rule M 604. Except that the size of the Universal Symbol marking shall be determined by the size of the portion instead of the overall product size, and shall not be less than ¼" by ¼".

d. The following categories of Edible Medical Marijuana-Infused Products are considered to be per se impracticable to mark with the Universal Symbol marking requirements, provided that they comply with the labeling and Container requirements of Rule M 1004.5 or the Rule M 1000-1 Series.

i. Loose bulk goods (e.g. granola, cereals, popcorn);

ii. Powders; and

iii. Liquid Edible Medical Marijuana-Infused Products.

5. Remanufactured Products Prohibited. A Medical Marijuana-Infused Products Manufacturer shall not utilize a commercially manufactured food product as its Edible Medical Marijuana-Infused Product. The following exceptions to this prohibition apply:

a. A food product that was commercially manufactured specifically for use by the Medical Marijuana-Infused Products Manufacturer Licensee to infuse with marijuana shall be allowed. The Licensee shall have a written agreement with the commercial food product manufacturer that declares the food product's exclusive use by the Medical Marijuana-Infused Products Manufacturer.

b. Commercially manufactured food products may be used as ingredients in a Medical Marijuana-Infused Products Manufacturer's Edible Medical Marijuana-Infused Product so long as: (1) they are used in a way that renders them unrecognizable as the commercial food product in the final Edible Medical Marijuana-Infused Product, and (2) the Medical Marijuana-Infused Products Manufacturer does not state or advertise to the consumer that the final Edible Medical Marijuana-Infused Product contains the commercially manufactured food product.

6. Trademarked Food Products. Nothing in this Rule alters or eliminates a Medical Marijuana-Infused Products Manufacturer's responsibility to comply with the trademarked food product provisions required by the Medical Code per 12-43.3-404(11)(a-c), C.R.S.

7. Edibles Prohibited that are Shaped like a Human, Animal, or Fruit. This subparagraph (C.5)(7) is effective beginning October 1, 2017.

a. The production, Transfer, and donation of Edible Medical Marijuana-Infused Products in the following shapes is prohibited:

i. The distinct shape of a human, animal, or fruit; or

ii. A shape that bears the likeness or contains characteristics of a realistic or fictional human, animal, or fruit, including artistic, caricature, or cartoon renderings.

b. The prohibition on human, animal, and fruit shapes does not apply to the logo of a licensed Medical Marijuana Business. Nothing in this subsubparagraph (C.5)(7)(b) alters or eliminates a Licensee's obligation to comply with the requirements of Rule M 1001.5 – Labeling and Packaging Requirements: General Applicability or Rule R 1000-1 Series – Labeling, Packaging, and Product Safety.

c. Edible Medical Marijuana-Infused Products that are geometric shapes and simply fruit flavored are not considered fruit and are permissible; and

d. Edible Medical Marijuana-Infused Products that are manufactured in the shape of a marijuana leaf are permissible.

D. Standard Operating Procedures

1. A Medical Marijuana-Infused Products Manufacturer must have written standard operating procedures for each category of Medical Marijuana Concentrate and type of Medical Marijuana-Infused Product that it produces.

a. All standard operating procedures for the production of a Medical Marijuana Concentrate must follow the requirements in Rule M 605.

b. A copy of all standard operating procedures must be maintained on the Licensed Premises of the Medical Marijuana-Infused Products Manufacturer.

2. If a Medical Marijuana-Infused Products Manufacturer makes a Material Change to its standard Medical Marijuana Concentrate or Medical Marijuana-Infused 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.

E. Additives. A Medical Marijuana-Infused Products Manufacturer shall not include any Additive that is toxic within a Medical Marijuana-Infused Product; nor include any Additive for the purposes of making the product more addictive, appealing to children or misleading to patients.

F. DMSO. The use of Dimethylsulfoxide ("DMSO") in the production of Medical Marijuana Concentrate or Medical Marijuana-Infused Product shall be prohibited and possession of DMSO upon the Licensed Premises is prohibited.

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 Medical Marijuana-Infused Products Manufacturer to undergo such an audit. The scope of the audit may include, but need not be limited, to whether the Medical Marijuana-Infused Products Manufacturer is in compliance with the requirements set forth in this Rule or other applicable food handling laws, rules or regulations and in compliance with the concentrate production rules in Rule M 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 Medical Marijuana-Infused Products Manufacturer. However, the Division always retains the authority to select the independent consultant regardless of whether mutual agreement can be reached.

c. The Medical Marijuana-Infused Products Manufacturer will be responsible for all direct 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 Medical Marijuana-Infused Products Manufacturer does not provide requested records related to the food handling training required for Owners and Occupational Licensees engaged in the production of Edible Medical Marijuana-Infused Products to the Division;

b. A Medical Marijuana-Infused Products Manufacturer does not provide requested records related to the production of Medical Marijuana Concentrate, including but not limited to, certification of its Licensed Premises, equipment or standard operating procedures, training of Owners or employees, or Production Batch specific records;

c. The Division has reasonable grounds to believe that the Medical Marijuana-Infused Products Manufacturer is in violation of one or more of the requirements set forth in this Rule or Rule M 605;

d. The Division has reasonable grounds to believe that the Medical Marijuana-Infused Products Manufacturer was the cause or source of contamination of Medical Marijuana, Medical Marijuana Concentrate or Medical Marijuana-Infused Product; or

e. Multiple Production Batches of Medical Marijuana Concentrate or Medical Marijuana-Infused Product produced by the Medical Marijuana-Infused Products Manufacturer failed contaminant testing.

3. Compliance Required. A Medical Marijuana-Infused Products Manufacturer 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 Medical Marijuana-Infused Products Manufacturer's license. See Rule M 1302 – Disciplinary Process: Summary Suspensions.

b. Prior to or following the issuance of such an order, the Medical Marijuana-Infused Products Manufacturer 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 M 1302 – Disciplinary Process: Summary Suspensions.

ii. If an agreement to suspend operations is reached, then the Medical Marijuana-Infused Products Manufacturer may continue to care for its inventory and conduct any necessary internal business operations but it may not, Transfer Medical Marijuana, Medical Marijuana Concentrate or Medical Marijuana-Infused Product to another Medical Marijuana Business during the period of time specified in the agreement. Depending on the condition of the Licensed Premises and required remedial measures, the Division may permit a Medical Marijuana-Infused Products Manufacturer to produce Medical Marijuana Concentrate or manufacture Medical Marijuana-Infused Product while operations have been suspended.

H. Contaminated Products. Unless otherwise permitted by these Rules:

1. A Medical Marijuana-Infused Products Manufacturer shall not accept or Transfer to another Medical Marijuana Business or any other Person any Medical Marijuana, Medical Marijuana Concentrate or Medical Marijuana-Infused Product that has failed required testing pursuant to Rule M 1501 or Rule M 1503.

2. If a Medical Marijuana-Infused Products Manufacturer possesses Medical Marijuana, Medical Marijuana Concentrate or Medical Marijuana-Infused Products that failed required testing pursuant to Rule M 1501 or Rule M 1503, the Medical Marijuana-Infused Products Manufacturer shall assure that all Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product that failed required testing is safely destroyed in accordance with Rule M 307.

I. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – M 605

The statutory authority for this rule includes but is not limited to sections 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. Nothing in this rule authorizes the unlicensed practice of engineering under Article 25 of Title 12, C.R.S.

M 605 – Medical Marijuana-Infused Products Manufacturer: Medical Marijuana Concentrate Production.

A. Permitted Categories of Medical Marijuana Concentrate Production

1. A Medical Marijuana-Infused Products Manufacturer may produce Water-Based Medical Marijuana Concentrate, Food-Based Medical Marijuana Concentrate, and Heat/Pressure-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, heptane, and pentane. 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* Rule 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 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. <u>Water-Based Medical Marijuana Concentrate, Food-Based Medical Marijuana Concentrate, and Heat/Pressure-Based Medical Marijuana Concentrate</u>. Medical Marijuana-Infused Products Manufacturer that engages in the production of a Water-Based Medical Marijuana Concentrate or

a Food-Based Medical Marijuana Concentrate or Heat/Pressure-Based Retail Marijuana Concentrate must:

1. Ensure that all equipment, counters and surfaces used in the production of a Water-Based Medical Marijuana Concentrate, a Food-Based Medical Marijuana Concentrate, or a Heath/Pressure 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 CO_2.

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, Food-Based Medical Marijuana Concentrate, or a Heat/Pressure-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, a Food-Based Medical Marijuana Concentrate, or a Heat/Pressure-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. CO_2 Solvent Determination. If CO_2 is used as solvent at the Licensed Premises, then the Industrial Hygienist or Professional Engineer must determine whether a CO_2 gas monitoring system must be installed within the room in which Medical Marijuana Concentrate are to be produced or CO_2 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 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 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. The Medical Marijuana-Infused Products Manufacturer shall comply with contaminant testing required in Rule M 1501(C)(3).

F. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

M 700 Series –Medical Marijuana Testing Facilities

Basis and Purpose – M 701.5

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(XI), 12-43.3-202(2)(a)(XVIII.6), 12-43.3-202(2)(a)(XX), 12-43.3-202(2.5)(a)(I)(A), 12-43.3-310(8)(a), 12-43.3-402(6), 12-43.3-404(10), 12-43.3-405, and 12-43.3-406, C.R.S. The purpose of this rule is to establish that it is unlawful for a Medical Marijuana Testing Facility Licensee to exercise any privileges other than those granted by the State Licensing Authority and to clarify the license privileges.

M 701.5 - Medical Marijuana Testing Facilities: License Privileges

A. Privileges Granted. A Medical Marijuana Testing Facility shall only exercise those privileges granted to it by the State Licensing Authority.

B. Licensed Premises. A separate License is required for each specific Medical Marijuana Testing Facility and only those privileges granted by the Medical Code and any rules promulgated pursuant to it may be exercised on the Licensed Premises.

C. Testing of Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana Infused-Product Authorized. A Medical Marijuana Testing Facility may accept Samples of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana Infused-Product from Medical Marijuana Businesses for testing and research purposes only, which purposes may include the provision of testing services for Samples submitted by a Medical Marijuana Business for the purpose of product development. The Division may require a Medical Marijuana Business to submit a Sample of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana Infused-Product to a Medical Marijuana Testing Facility upon demand.

C.5 Testing Medical Marijuana, Medical Marijuana Concentrate and Medical Marijuana-Infused Product for Patients in Research Project. A Medical Marijuana Testing Facility is authorized to

accept Samples of Medical Marijuana, Medical Marijuana Concentrate or Medical Marijuana Infused-Product from an individual person for testing under only the following conditions:

1. The individual person is:

   a. A currently registered patient pursuant to section 25-1.5-106, C.R.S.; and

   b. A participant in an approved clinical or observational study conducted by a Licensed Research Business.

2. The Medical Marijuana Testing Facility shall require the patient to produce a valid patient registry card and a current and valid photo identification. See Rule M 405(B) – Acceptable Forms of Identification.

3. The Medical Marijuana Testing Facility shall require the patient to produce verification on a form approved by the Division from the Licensed Research Business that the patient is a participant in an approved clinical or observational Research Project conducted by the Licensed Research Business and that the testing will be in furtherance of the approved Research Project.

4. A primary caregiver may transport Medical Marijuana, Medical Marijuana Concentrate or Medical Marijuana Infused-Product on behalf of a patient to the Medical Marijuana Testing Facility. A Medical Marijuana Testing Facility shall require the following documentation before accepting Medical Marijuana, Medical Marijuana Concentrate or Medical Marijuana Infused-Product from a primary caregiver:

   a. A copy of the patient registry card and valid photo identification for the patient;

   b. A copy of the caregiver's registration with the State Department of Health pursuant to section 25-1.5-106, C.R.S. and a current and valid photo identification, see Rule M 405(B) – Acceptable Forms of Identification; and

   c. A copy of the Licensed Research Business's verification on a form approved by the Division that the patient is participating in an approved clinical or observational Research Project being conducted by the Licensed Research Business and that the testing will be in furtherance of the approved Research Project.

5. The Medical Marijuana Testing Facility shall report all results of testing performed pursuant to this Paragraph (C.5) to the Licensed Research Business identified in the verification form submitted pursuant to Paragraph (C.5)(3) or (4)(c), or as otherwise directed by the approved Research Project being conducted by the Licensed Research Business. Testing result reporting shall conform with the requirements under these Rules.

D. Product Development Authorized. A Medical Marijuana Testing Facility may develop Medical Marijuana Infused-Product, but is not authorized to engage in the manufacturing privileges described in section 12-43.3-404, C.R.S. and Rule M 601 – Medical Marijuana Infused-Products Manufacturer: License Privileges.

E. Transferring Samples to Another Licensed and Certified Medical Marijuana Testing Facility. A Medical Marijuana Testing Facility may Transfer Samples to another Medical Marijuana Testing Facility for testing. All laboratory reports provided to or by a Medical Marijuana Business, or to a patient or primary caregiver must identify the Medical Marijuana Testing Facility that actually conducted the test.

F. Authorized Medical Marijuana Transport. A Medical Marijuana Testing Facility is authorized to utilize a licensed Medical Marijuana Transporter to transport Samples of Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product for testing, in accordance with the Medical Marijuana Code and the rules adopted pursuant thereto, between the originating Medical Marijuana Business requesting testing services and the destination Medical Marijuana Testing Facility performing testing services. Nothing in this Rule requires a Medical Marijuana Business to utilize a Medical Marijuana Transporter to transport Samples of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product for testing.

Basis and Purpose – M 702

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(XI), 12-43.3-202(2)(a)(XVIII.6), 12-43.3-202(2)(a)(XX), 12-43.3-405, 12-43.3-901 , and 35-61-105.5, C.R.S. The purpose of this rule is to clarify those acts that are limited in some fashion, or prohibited, by a Medical Marijuana Testing Facility.

M 702 – Medical Marijuana Testing Facilities: General Limitations or Prohibited Acts

A. Prohibited Financial Interest. A Person who is a Direct Beneficial Interest Owner or an Indirect Beneficial Interest Owner of an Optional Premises Cultivation, Medical Marijuana Infused-Products Manufacturing Facility, Medical Marijuana Center, Retail Marijuana Cultivation Facility, Retail Marijuana Products Manufacturing Facility, or a Retail Marijuana Store shall not be a Direct Beneficial Interest Owner or an Indirect Beneficial Interest Owner of a Medical Marijuana Testing Facility.

A.2 Conflicts of Interest. The Medical Marijuana Testing Facility shall establish policies to prevent the existence of or appearance of undue commercial, financial, or other influences that may diminish the competency, impartiality, and integrity of the Medical Marijuana Testing Facility's testing processes or results, or that may diminish public confidence in the competency, impartiality and integrity of the Medical Marijuana Testing Facility's testing processes or results. At a minimum, employees, owners or agents of a Medical Marijuana Testing Facility who participate in any aspect of the analysis and results of a Sample are prohibited from improperly influencing the testing process, improperly manipulating data, or improperly benefiting from any on-going financial, employment, personal or business relationship with the Medical Marijuana Business that provided the Sample.

B. Transfer of Medical Marijuana Prohibited. A Medical Marijuana Testing Facility shall not Transfer Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product to a Medical Marijuana Business, a consumer, or a patient or primary caregiver, except that a Medical Marijuana Testing Facility may Transfer a Sample to another Medical Marijuana Testing Facility.

C. Destruction of Received Samples. A Medical Marijuana Testing Facility shall properly dispose of all Samples it receives, that are not Transferred to another Medical Marijuana Testing Facility, after all necessary tests have been conducted and any required period of storage. *See* Rule M 307 – Waste Disposal.

D. Consumption Prohibited. A Medical Marijuana Testing Facility shall not permit the consumption of marijuana or marijuana products on its Licensed Premises.

E. Sample Rejection. A Medical Marijuana Testing Facility shall reject any Sample where the condition of the Sample at receipt indicates that that the Sample may have been tampered with.

F. Medical Marijuana Business Requirements Applicable. A Medical Marijuana Testing Facility shall be considered a Licensed Premises. A Medical Marijuana Testing Facility shall be subject to all requirements applicable to Medical Marijuana Businesses.

G. Medical Marijuana Testing Facility – Inventory Tracking System Required. A Medical Marijuana Testing Facility must use the Inventory Tracking System to ensure all Test Batches or Samples containing Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Products are identified and tracked from the point they are Transferred from a Medical Marijuana Business, a patient, or a patient's primary caregiver through the point of Transfer, destruction, or disposal. The Inventory Tracking System reporting shall include the results of any tests that are conducted on Medical Marijuana, Medical Marijuana Concentrate or Medical Marijuana-Infused Product. *See* Rule M 309 – Medical Marijuana Business: Inventory Tracking System, Rule M 711 – Reporting and Inventory Tracking System, and Rule M 701.5(C.5)(5).. The Medical Marijuana Testing Facility must have the ability to reconcile its Sample records with the Inventory Tracking System and the associated transaction history. *See* Rule M 901 – Business Records Required and Rule M 711 Reporting and Inventory Tracking

H. Industrial Hemp Testing Prohibited. A Medical Marijuana Testing Facility shall not perform testing on Industrial Hemp.

I. Transporter Restrictions. A Medical Marijuana Testing Facility shall not sell or give away Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product to a Medical Marijuana Transporter, and shall not buy, or receive complimentary Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product from a Medical Marijuana Transporter.

Basis and Purpose – M 703

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(1)(e), 12-43.3-202(2)(a)(IV), 12-43.3-202(2)(a)(X), 12-43.3-202(2)(a)(XV), 12-43.3-202(2)(a)(XX),12-43.3-202(2.5)(a)(I) and 12-43.3-405, C.R.S. The purpose of this rule is to establish a frame work for certification for Medical Marijuana Testing Facilities.

M 703 – Medical Marijuana Testing Facilities: Certification Requirements

A. Certification Types. If certification in a testing category is required by the Division, then the Medical Marijuana Testing Facility must be certified in the category in order to perform that type of testing.

1. Microbials;

1.5 Mycotoxins;

2. Residual solvents;

3. Pesticides; and

4. Repealed.

5. THC and other Cannabinoid potency.

B. Certification Procedures. The Medical Marijuana Testing Facility certification program is contingent upon successful on-site inspection, successful participation in Proficiency Testing, and ongoing compliance with the applicable requirements in this Rule.

1. Certification Inspection. A Medical Marijuana Testing Facility must be inspected prior to initial certification and annually thereafter by an inspector approved by the Division.

2. Standards for Certification. A Medical Marijuana Testing Facility must meet standards of performance, as established by these rules, in order to obtain and maintain certification. Standards of performance include but are not limited to: personnel qualifications, standard operating procedure manual, analytical processes, Proficiency Testing, quality control, quality assurance, security, chain of custody, Sample retention, space, records, and results reporting.

3. Personnel Qualifications

    a. Laboratory Director. A Medical Marijuana Testing Facility must employ, at a minimum, a laboratory director with sufficient education and experience in a regulated laboratory environment in order to obtain and maintain certification. See Rule M 704 – Medical Marijuana Testing Facilities: Personnel.

    b. Employee Competency. A Medical Marijuana Testing Facility must have a written and documented system to evaluate and document the competency in performing authorized tests for employees. Prior to independently analyzing Samples, testing personnel must demonstrate acceptable performance on precision, accuracy, specificity, reportable ranges, blanks, and unknown challenge samples (proficiency samples or internally generated quality controls).

4. Standard Operating Procedure Manual. A Medical Marijuana Testing Facility must have a written standard operating procedure manual meeting the minimum standards set forth in these rules detailing the performance of all methods employed by the facility used to test the analytes it reports and made available for testing analysts to follow at all times.

    a. The current laboratory director must approve, sign and date each procedure. If any modifications are made to those procedures, the laboratory director must approve, sign and date the revised version prior to use.

    b. A Medical Marijuana Testing Facility must maintain a copy of all standard operating procedures to include any revised copies for a minimum of three years. See Rule M 710 – Medical Marijuana Testing Facilities: Records Retention and Rule M 901 – Business Records Required.

5. Analytical Processes. A Medical Marijuana Testing Facility must maintain a listing of all analytical methods used and all analytes tested and reported. The Medical Marijuana Testing Facility must provide this listing to the Division upon request.

6. Proficiency Testing. A Medical Marijuana Testing Facility must successfully participate in a Division approved Proficiency Testing program in order to obtain and maintain certification.

7. Quality Assurance and Quality Control. A Medical Marijuana Testing Facility must establish and follow a quality assurance and quality control program to ensure sufficient monitoring of laboratory processes and quality of results reported.

8. Security. A Medical Marijuana Testing Facility must be located in a secure setting as to prevent unauthorized persons from gaining access to the testing and storage areas of the laboratory.

9. Chain of Custody. A Medical Marijuana Testing Facility must establish a system to document the complete chain of custody for Samples from receipt through disposal.

10. Space. A Medical Marijuana Testing Facility must be located in a fixed structure that provides adequate infrastructure to perform analysis in a safe and compliant manner consistent with federal, state and local requirements.

11. Records. A Medical Marijuana Testing Facility must establish a system to retain and maintain all required records. *See* Rule M 710 – Medical Marijuana Testing Facilities: Records Retention and Rule M 901 – Business Records Required.

12. Results Reporting. A Medical Marijuana Testing Facility must establish processes to ensure results are reported in a timely and accurate manner. See Rule M 711 – Reporting and Inventory Tracking System.

13. Conduct While Seeking Certification. A Medical Marijuana Testing Facility, and its agents and employees, shall provide all documents and information required or requested by the Colorado Department of Public Health and Environment and its employees, and the Division and its employees in a full, faithful, truthful, and fair manner.

C. A violation of this Rule may be considered a license violation affecting public safety.

Basis and Purpose – M 704

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(XX),12-43.3-202(2.5)(a)(I) and 12-43.3-405, C.R.S. The purpose of this rule is to establish personnel standards for the operation of a Medical Marijuana Testing Facility.

M 704 – Medical Marijuana Testing Facilities: Personnel

A. Laboratory Director. The laboratory director is responsible for the overall analytical operation and quality of the results reported by the Medical Marijuana Testing Facility, including the employment of personnel who are competent to perform test procedures, and record and report test results promptly, accurately, and proficiently and for assuring compliance with the standards set forth in this Rule.

1. The laboratory director may also serve as a supervisory analyst or testing analyst, or both, for a Medical Marijuana Testing Facility.

2. The laboratory director for a Medical Marijuana Testing Facility must meet one of the following qualification requirements:

a. The laboratory director must be a Medical Doctor (M.D.) licensed to practice medicine in Colorado and have at least three years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body; or

b. The laboratory director must hold a doctoral degree in one of the natural sciences and have at least three years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body; or

c. The laboratory director must hold a master's degree in one of the natural sciences and have at least five years of full-time laboratory experience in a

regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body.

B. What the Laboratory Director May Delegate. The laboratory director may delegate the responsibilities assigned under this Rule to a qualified supervisory analyst, provided that such delegation is made in writing and a record of the delegation is maintained. See Rule M 901 – Business Records Required. Despite the designation of a responsibility, the laboratory director remains responsible for ensuring that all duties are properly performed.

C. Responsibilities of the Laboratory Director. The laboratory director must:

1. Ensure that the Medical Marijuana Testing Facility has adequate space, equipment, materials, and controls available to perform the tests reported;

2. Establish and adhere to a written standard operating procedure used to perform the tests reported;

3. Ensure that testing systems developed and used for each of the tests performed in the laboratory provide quality laboratory services for all aspects of test performance, which includes the preanalytic, analytic, and postanalytic phases of testing;

4. Ensure that the physical location and environmental conditions of the laboratory are appropriate for the testing performed and provide a safe environment in which employees are protected from physical, chemical, and biological hazards;

5. Ensure that the test methodologies selected have the capability of providing the quality of results required for the level of testing the laboratory is certified to perform;

6. Ensure that validation and verification test methods used are adequate to determine the accuracy, precision, and other pertinent performance characteristics of the method;

7. Ensure that testing analysts perform the test methods as required for accurate and reliable results;

8. Ensure that the laboratory is enrolled in and successfully participates in a Division approved Proficiency Testing program;

9. Ensure that the quality control and quality assessment programs are established and maintained to assure the quality of laboratory services provided and to identify failures in quality as they occur;

10. Ensure the establishment and maintenance of acceptable levels of analytical performance for each test system;

11. Ensure that all necessary remedial actions are taken and documented whenever significant deviations from the laboratory's established performance specifications are identified, and that test results are reported only when the system is functioning properly;

12. Ensure that reports of test results include pertinent information required for interpretation;

13. Ensure that consultation is available to the laboratory's clients on matters relating to the quality of the test results reported and their interpretation of said results;

14. Employ a sufficient number of laboratory personnel who meet the qualification requirements and provide appropriate consultation, properly supervise, and ensure accurate performance of tests and reporting of test results;

15. Ensure that prior to testing any samples, all testing analysts receive the appropriate training for the type and complexity of tests performed, and have demonstrated and documented that they can perform all testing operations reliably to provide and report accurate results;

16. Ensure that policies and procedures are established for monitoring individuals who conduct preanalytical, analytical, and postanalytical phases of testing to assure that they are competent and maintain their competency to process Samples, perform test procedures and report test results promptly and proficiently, avoid actual and apparent conflicts of interest, and whenever necessary, identify needs for remedial training or continuing education to improve skills;

17. Ensure that an approved standard operating procedure manual is available to all personnel responsible for any aspect of the testing process; and

18. Specify, in writing, the responsibilities and duties of each person engaged in the performance of the preanalytic, analytic, and postanalytic phases of testing, that identifies which examinations and procedures each individual is authorized to perform, whether supervision is required for Sample processing, test performance or results reporting, and whether consultant or laboratory director review is required prior to reporting test results.

C.5 Change in Laboratory Director. In the event that the laboratory director leaves employment at the Medical Marijuana Testing Facility, the Medical Marijuana Testing Facility shall:

1. Provide written notice to the Colorado Department of Public Health and Environment and the Marijuana Enforcement Division within seven days of the laboratory director's departure; and

2. Designate an interim laboratory director within seven days of the laboratory director's departure. At a minimum, the interim laboratory director must meet the qualifications of a supervisory analyst.

3. The Medical Marijuana Testing Facility must hire a permanent laboratory director within 60 days from the date of the previous laboratory director's departure.

4. Notwithstanding the requirement of subparagraph (C.5)(3), the Medical Marijuana Testing Facility may submit a waiver request to the Division Director to receive an additional 60 days to hire a permanent laboratory director provided that the Medical Marijuana Testing Facility submits a detailed oversight plan along with the waiver request.

D. Supervisory Analyst. Supervisory analysts must meet one of the qualifications for a laboratory director or have at least a bachelor's degree in one of the natural sciences and three years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body. A combination of education and experience may substitute for the three years of full-time laboratory experience.

E. Laboratory Testing Analyst

1. Educational Requirements. An individual designated as a testing analyst must meet one of the qualifications for a laboratory director or supervisory analyst or have at least a

bachelor's degree in one of the natural sciences and one year of full-time experience in laboratory testing.

2. Responsibilities. In order to independently perform any test for a Medical Marijuana Testing Facility, an individual must at least meet the educational requirements for a testing analyst.

M 705 – Basis and Purpose

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(2.5)(a)(I) and 12-43.3-405, C.R.S. The purpose of this rule is to establish standard operating procedures manual standards for the operation of a Medical Marijuana Testing Facility.

M 705 – Medical Marijuana Testing Facilities: Standard Operating Procedure Manual

A. A standard operating procedure manual must include, but need not be limited to, procedures for:

1. Sample receiving;

2. Sample accessioning;

3. Sample storage;

4. Identifying and rejecting unacceptable Samples;

5. Recording and reporting discrepancies;

6. Security of Samples, aliquots and extracts and records;

7. Validating a new or revised method prior to testing Samples to include: accuracy, precision, analytical sensitivity, analytical specificity (interferences), LOD, LOQ, and verification of the reportable range;

8. Aliquoting Samples to avoid contamination and carry-over;

9. Sample retention to assure stability for 90 days;

10. Disposal of Samples;

11. The theory and principles behind each assay;

12. Preparation and identification of reagents, standards, calibrators and controls and ensure all standards are traceable to National Institute of Standards of Technology ("NIST");

13. Special requirements and safety precautions involved in performing assays;

14. Frequency and number of control and calibration materials;

15. Recording and reporting assay results;

16. Protocol and criteria for accepting or rejecting analytical procedure to verify the accuracy of the final report;

17. Pertinent literature references for each method;

18. Current step-by-step instructions with sufficient detail to perform the assay to include equipment operation and any abbreviated versions used by a testing analyst;

19. Acceptability criteria for the results of calibration standards and controls as well as between two aliquots or columns;

20. A documented system for reviewing the results of testing calibrators, controls, standards, and subject tests results, as well as reviewing for clerical errors, analytical errors and any unusual analytical results. Are corrective actions implemented and documented, and does the laboratory contact the requesting entity; and

21. Policies and procedures to follow when Samples are requested for referral and testing by another certified Medical Marijuana Testing Facility or an approved local state agency's laboratory.

M 706 – Basis and Purpose

The statutory authority for this rule includes but is not limited to 12-43.3-202(2.5)(a)(I) and section 12-43.3-405, C.R.S. The purpose of this rule is to establish analytical processes standards for the operation of a Medical Marijuana Testing Facility.

M 706 – Medical Marijuana Testing Facilities: Analytical Processes

A. Gas Chromatography ("GC"). A Medical Marijuana Testing Facility using GC must:

1. Document the conditions of the gas chromatograph, including the detector response;

2. Perform and document preventive maintenance as required by the manufacturer;

3. Ensure that records are maintained and readily available to the staff operating the equipment;

4. Document the performance of new columns before use;

5. Use an internal standard for each qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified;

6. Establish criteria of acceptability for variances between different aliquots and different columns; and

7. Document the monitoring of the response (area or peak height) of the internal standard to ensure consistency overtime of the analytical system.

B. Gas Chromatography Mass Spectrometry ("GC/MS"). A Medical Marijuana Testing Facility using GC/MS must:

1. Perform and document preventive maintenance as required by the manufacturer;

2. Document the changes of septa as specified in the standard operating procedure;

3. Document liners being cleaned or replaced as specified in the standard operating procedure;

4. Ensure that records are maintained and readily available to the staff operating the equipment;

5. Maintain records of mass spectrometric tuning;

6. Establish written criteria for an acceptable mass-spectrometric tune;

7. Document corrective actions if a mass-spectrometric tune is unacceptable;

8. Monitor analytic analyses to check for contamination and carry-over;

9. Use selected ion monitoring within each run to assure that the laboratory compare ion ratios and retention times between calibrators, controls and Samples for identification of an analyte;

10. Use an internal standard for qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified and is isotopically labeled when available or appropriate for the assay;

11. Document the monitoring of the response (area or peak height) for the internal standard to ensure consistency overtime of the analytical system;

12. Define the criteria for designating qualitative results as positive;

13. When a library is used to qualitatively match an analyte, the relative retention time and mass spectra from a known standard or control must be run on the same system before reporting the results; and

14. Evaluate the performance of the instrument after routine and preventive maintenance (*e.g.* clipping or replacing the column or cleaning the source) prior to analyzing subject Samples.

C. Immunoassays. A Medical Marijuana Testing Facility using Immunoassays must:

1. Perform and document preventive maintenance as required by the manufacturer;

2. Ensure that records are maintained and readily available to the staff operating the equipment;

3. Validate any changes or modifications to a manufacturer's approved assays or testing methods when a Sample is not included within the types of Samples approved by the manufacturer; and

4. Define acceptable separation or measurement units (absorbance intensity or counts per minute) for each assay, which must be consistent with manufacturer's instructions.

D. Thin Layer Chromatography ("TLC"). A Medical Marijuana Testing Facility using TLC must:

1. Apply unextracted standards to each thin layer chromatographic plate;

2. Include in their written procedure the preparation of mixed solvent systems, spray reagents and designation of lifetime;

3. Include in their written procedure the storage of unused thin layer chromatographic plates;

4. Evaluate, establish, and document acceptable performance for new thin layer chromatographic plates before placing them into service;

5. Verify that the spotting technique used precludes the possibility of contamination and carry-over;

6. Measure all appropriate RF values for qualitative identification purposes;

7. Use and record sequential color reactions, when applicable;

8. Maintain records of thin layer chromatographic plates; and

9. Analyze an appropriate matrix blank with each batch of Samples analyzed.

E. High Performance Liquid Chromatography ("HPLC"). A Medical Marijuana Testing Facility using HPLC must:

1. Perform and document preventive maintenance as required by the manufacturer;

2. Ensure that records are maintained and readily available to the staff operating the equipment;

3. Monitor and document the performance of the HPLC instrument each day of testing;

4. Evaluate the performance of new columns before use;

5. Create written standards for acceptability when eluting solvents are recycled;

6. Use an internal standard for each qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified when available or appropriate for the assay; and

7. Document the monitoring of the response (area or peak height) of the internal standard to ensure consistency overtime of the analytical system.

F. Liquid Chromatography Mass Spectroscopy ("LC/MS"). A Medical Marijuana Testing Facility using LC/MS must:

1. Perform and document preventive maintenance as required by the manufacturer;

2. Ensure that records are maintained and readily available to the staff operating the equipment;

3. Maintain records of mass spectrometric tuning;

4. Document corrective actions if a mass-spectrometric tune is unacceptable;

5. Use an internal standard with each qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified and is isotopically labeled when available or appropriate for the assay;

6. Document the monitoring of the response (area or peak height) of the internal standard to ensure consistency overtime of the analytical system;

7. Compare two transitions and retention times between calibrators, controls and Samples within each run;

8. Document and maintain records when changes in source, source conditions, eluent, or column are made to the instrument; and

9. Evaluate the performance of the instrument when changes in: source, source conditions, eluent, or column are made prior to reporting test results.

G. Other Analytical Methodology. A Medical Marijuana Testing Facility using other methodology or new methodology must:

1. Implement a performance based measurement system for the selected methodology and validate the method following good laboratory practices prior to reporting results. Validation of other or new methodology must include when applicable, but is not limited to:

a. Verification of Accuracy

b. Verification of Precision

c. Verification of Analytical Sensitivity

d. Verification of Analytical Specificity

e. Verification of the LOD

f. Verification of the LOQ

g. Verification of the Reportable Range

h. Identification of Interfering Substances

2. Validation of the other or new methodology must be documented.

3. Prior to use, other or new methodology must have a standard operating procedure approved and signed by the laboratory director.

4. Testing analysts must have documentation of competency assessment prior to testing Samples.

5. Any changes to the approved other or new methodology must be revalidated and documented prior to testing Samples.

M 707 – Basis and Purpose

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(2)(a)(I) and 12-43.3-405, C.R.S. The purpose of this rule is to establish a proficiency testing program for Medical Marijuana Testing Facilities.

M 707 – Medical Marijuana Testing Facilities: Proficiency Testing

This Rule shall be effective on July 1, 2016.

A. Proficiency Testing Required. A Medical Marijuana Testing Facility must participate in a Proficiency Testing Program for each approved category in which it seeks certification under Rule M 703 – Medical Marijuana Testing Facilities: Certification Requirements.

B. Participation in Designated Proficiency Testing Event. If required by the Division as part of certification, the Medical Marijuana Testing Facility must have successfully participated in a proficiency test in the category for which it seeks certification, within the preceding 12 months.

C. Continued Certification. To maintain continued certification, a Medical Marijuana Testing Facility must participate in the designated proficiency testing program with continued satisfactory performance as determined by the Division as part of certification. The Division may designate a local agency, state agency, or independent third-party to provide Proficiency Testing.

D. Analyzing Proficiency Testing Samples. A Medical Marijuana Testing Facility must analyze Proficiency Testing Samples using the same procedures with the same number of replicate analyses, standards, testing analysts and equipment as used in its standard operating procedures.

E. Proficiency Testing Attestation. The laboratory director and all testing analysts that participated in a Proficiency Testing must sign corresponding attestation statements.

F. Laboratory Director Must Review Results. The laboratory director must review and evaluate all Proficiency Testing results.

G. Remedial Action. A Medical Marijuana Testing Facility must take and document remedial action when a score of less than 100% is achieved on any test during a Proficiency Test. Remedial action documentation must include a review of Samples tested and results reported since the last successful proficiency testing event. A requirement to take remedial action does not necessarily indicate unsatisfactory participation in a Proficiency Testing event.

H. Unsatisfactory Participation in Proficiency Testing Event. Unless the Medical Marijuana Testing Facility positively identifies at least 80% of the target analytes tested, participation in the Proficiency Testing will be considered unsatisfactory. A positive identification must include accurate quantitative and qualitative results as applicable. Any false positive results reported will be considered an unsatisfactory score for the proficiency testing event.

I. Consequence of Unsatisfactory Participation in Proficiency Testing Event. Unsuccessful participation in a Proficiency Testing event may result in limitation, suspension or revocation of Rule M 703 certification.

M 708 – Basis and Purpose

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(2.5)(a)(I) and 12-43.3-405, C.R.S. The purpose of this rule is to establish quality assurance and quality assurance standards for a Medical Marijuana Testing Facility.

M 708 – Medical Marijuana Testing Facilities: Quality Assurance and Quality Control

This Rule shall be effective on July 1, 2016.

A. Quality Assurance Program Required. A Medical Marijuana Testing Facility must establish, monitor, and document the ongoing review of a quality assurance program that is sufficient to identify problems in the laboratory preanalytic, analytic and postanalytic systems when they occur and must include, but is not limited to:

1. Review of instrument preventive maintenance, repair, troubleshooting and corrective actions documentation must be performed by the laboratory director or designated supervisory analyst on an ongoing basis to ensure the effectiveness of actions taken over time;

2. Review by the laboratory director or designated supervisory analyst of all ongoing quality assurance; and

3. Review of the performance of validated methods used by the Medical Marijuana Testing Facility to include calibration standards, controls and the standard operating procedures used for analysis on an ongoing basis to ensure quality improvements are made when problems are identified or as needed.

B. Quality Control Measures Required. A Medical Marijuana Testing Facility must establish, monitor and document on an ongoing basis the quality control measures taken by the laboratory to ensure the proper functioning of equipment, validity of standard operating procedures and accuracy of results reported. Such quality control measures must include, but shall not be limited to:

1. Documentation of instrument preventive maintenance, repair, troubleshooting and corrective actions taken when performance does not meet established levels of quality;

2. Review and documentation of the accuracy of automatic and adjustable pipettes and other measuring devices when placed into service and annually thereafter;

3. Cleaning, maintaining and calibrating as needed the analytical balances and in addition, verifying the performance of the balance annually using certified weights to include three or more weights bracketing the ranges of measurement used by the laboratory;

4. Annually verifying and documenting the accuracy of thermometers using a NIST traceable reference thermometer;

5. Recording temperatures on all equipment when in use where temperature control is specified in the standard operating procedures manual, such as water baths, heating blocks, incubators, ovens, refrigerators, and freezers;

6. Properly labeling reagents as to the identity, the concentration, date of preparation, storage conditions, lot number tracking, expiration date and the identity of the preparer;

7. Avoiding mixing different lots of reagents in the same analytical run;

8. Performing and documenting a calibration curve with each analysis using at minimum three calibrators throughout the reporting range;

9. For qualitative analyses, analyzing, at minimum, a negative and a positive control with each batch of samples analyzed;

10. For quantitative analyses, analyzing, at minimum, a negative and two levels of controls that challenge the linearity of the entire curve;

11. Using a control material or materials that differ in either source or, lot number, or concentration from the calibration material used with each analytical run;

12. For multi-analyte assays, performing and documenting calibration curves and controls specific to each analyte, or at minimum, one with similar chemical properties as reported in the analytical run;

13. Analyzing an appropriate matrix blank and control with each analytical run, when available;

14. Analyzing calibrators and controls in the same manner as unknowns;

15. Documenting the performance of calibration standards and controls for each analytical run to ensure the acceptability criteria as defined in the Standard Operating Procedure is met;

16. Documenting all corrective actions taken when unacceptable calibration, control, and standard or instrument performance does not meet acceptability criteria as defined in the Standard Operating Procedure;

17. Maintaining records of validation data for any new or modified methods to include; accuracy, precision, analytical specificity (interferences), LOD, LOQ, and verification of the linear range; and

18. Performing testing analysts that follow the current standard operating procedures manual for the test or tests to be performed.

M 709 – Basis and Purpose

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(2.5)(a)(I) and 12-43.3-405, C.R.S. The purpose of this rule is to establish chain of custody standards for a Medical Marijuana Testing Facility. In addition, it establishes the requirement that a Medical Marijuana Testing Facility follow an adequate chain of custody for Samples it maintains.

M 709 – Medical Marijuana Testing Facilities: Chain of Custody

This Rule shall be effective on July 1, 2016.

General Requirements. A Medical Marijuana Testing Facility must establish an adequate chain of custody and Sample requirement instructions that must include, but not be limited to;

1. Issue instructions for the minimum Sample requirements and storage requirements;

2. Document the condition of the external package and integrity seals utilized to prevent contamination of, or tampering with, the Sample;

3. Document the condition and amount of Sample provided at the time of receipt;

4. Document all persons handling the original Samples, aliquots, and extracts;

5. Document all Transfers of Samples, aliquots, and extracts referred to another certified Medical Marijuana Testing Facility Licensee for additional testing or whenever requested by a client;

6. Maintain a current list of authorized personnel and restrict entry to the laboratory to only those authorized;

7. Secure the Laboratory during non-working hours;

8. Secure short and long-term storage areas when not in use;

9. Utilize a secured area to log-in and aliquot Samples;

10. Ensure Samples are stored appropriately; and

11. Document the disposal of Samples, aliquots, and extracts.

Basis and Purpose – M 710

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(2.5)(a)(I) and 12-43.3-405, C.R.S. The purpose of this rule is to establish records retention standards for a Medical Marijuana Testing Facility.

M 710 – Medical Marijuana Testing Facilities: Records Retention

This Rule shall be effective on July 1, 2016.

A. General Requirement. A Medical Marijuana Testing Facility must maintain all required business records. *See* Rule M901 - Business Records Required.

B. Specific Business Records Required: Records Retention. A Medical Marijuana Testing Facility must establish processes to preserve records in accordance with Rule M 901 that includes, but is not limited to;

1. Test Results, including final and amended reports, and identification of analyst and date of analysis;

2. Quality Control and Quality Assurance Records, including accession numbers, Sample type, and acceptable reference range parameters;

3. Standard Operating Procedures;

4. Personnel Records;

5. Chain of Custody Records;

6. Proficiency Testing Records; and

7. Analytical Data to include data generated by the instrumentation, raw data calibration standards, and curves. .

C. Repealed.

Basis and Purpose – M 711

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(2.5)(a)(I) and 12-43.3-405, C.R.S. The purpose of this rule is to establish reporting standards for a Medical Marijuana Testing Facility.

M 711 – Reporting and Inventory Tracking System

Required Procedures. A Medical Marijuana Testing Facility must establish procedures to ensure that results are accurate, precise and scientifically valid prior to reporting such results.

A. Reports. Every final report, whether submitted to the Division, to a Medical Marijuana Business or to any other Person authorized to receive the report, must include the following:

1. Report quantitative results that are only above the lowest concentration of calibrator or standard used in the analytical run;

2. Verify results that are below the lowest concentration of calibrator or standard and above the LOQ by using a blank and a standard that falls below the expected value of the analyte in the sample in duplicate prior to reporting a quantitative result;

3. Qualitatively report results below the lowest concentration of calibrator or standard and above the LOD as either trace or using a non-specific numerical designation;

4. Adequately document the available external chain of custody information;

5. Ensure all final reports contain the name and location of the Medical Marijuana Testing Facility that performed the test, name and unique identifier of sample, submitting client, Sample received date, date of report, type of Sample tested, test result, units of measure, and any other information or qualifiers needed for interpretation when applicable to the test method and results being reported, to include any identified and documented discrepancies; and

6. Provide the final report to the Division, as well as the Medical Marijuana Business and/or any other Person authorized to receive the report in a timely manner; and

7. Repealed.

B. Inventory Tracking System. Each Medical Marijuana Testing Facility shall:

1. Report all test results to the Division as part of daily reconciliation by the close of business and in accordance with all Inventory Tracking System Procedures under Rule M 309 – Medical Marijuana Businesses: Inventory Tracking System. The requirement to report all test results includes:

a. Both positive and negative test results;

b. Results from both mandatory and voluntary testing; and

c. For quantitative tests, a quantitative value.

2. As part of Inventory Tracking System reporting, when results of tested Samples exceed maximum levels of allowable potency or contamination, or otherwise result in failed potency, homogeneity, or contaminant testing, the Medical Marijuana Testing Facility shall, in the Inventory Tracking System, indicate failed test results for the Inventory Tracking System package associated with the failed Sample. This requirement only applies to testing of Samples that are comprised of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product.

C. Violation affecting public safety. Violation of this Rule may constitute a license violation affecting public safety

Basis and Purpose – M 712

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.4-203(2.5)(a)(I), 12-43.3-202(2)(a)(XIV), 12-43.4-202(2)(a)(XI), 12-43.3-202(2)(a)(XII), 12-43.3-202(2)(a)(IV), 12-43.3-202(2)(a)(XX), and 12-43.3-405, 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 Medical Marijuana Testing Facilities. The allowable plus or minus 15% potency variance has been included in the rule pursuant to the mandate of Senate Bill 15-260. Section 1 of the bill required the State Licensing Authority to establish

an acceptable potency variance. The acceptable potency variance has been set at plus or minus 15% to comport with the potency variance mandated by the Medical Code.

M 712 – Medical Marijuana Testing Facilities: Sampling and Testing Program

A. Division Authority. The Division may require that a Test Batch be submitted to a specific Medical Marijuana Testing Facility for testing to verify compliance, perform investigations, compile data or address a public health and safety concern.

B. Test Batches

1. Medical Marijuana and Medical Marijuana Concentrate. A Medical Marijuana Testing Facility must establish a standard minimum weight of Medical Marijuana and Medical Marijuana Concentrate that must be included in a Test Batch for every type of test that it conducts.

2. Medical Marijuana Infused-Product. A Medical Marijuana Testing Facility must establish a standard number of Samples it requires to be included in each Test Batch of Medical Marijuana Infused-Product for every type of test that it conducts. *See* Rule M 1504 – Medical Marijuana Testing Program – Sampling Procedures.

C. Rejection of Test Batches

1. A Medical Marijuana Testing Facility may not accept a Test Batch that is smaller than its standard minimum amount.

2. A Medical Marijuana Testing Facility may not accept a Test Batch that it knows was not taken in accordance with these rules, except a Medical Marijuana Testing Facility May Accept a Test Batch that was collected by Division representatives or that was collected by a Licensee pursuant to Division direction.

D. Notification of Medical Marijuana Business. If Medical Marijuana, Medical Marijuana Concentrate or Medical Marijuana Infused-Product failed a contaminant test, then the Medical Marijuana Testing Facility must immediately (1) notify the Medical Marijuana Business that submitted the Test Batch or Sample for testing and any Person as directed by an approved Research Project being conducted by a Licensed Research Business; and (2) report the failure in accordance with the Inventory Tracking System reporting requirements in Rule R 711(B).

E. Permissible Levels of Contaminants. If Medical Marijuana, Medical Marijuana Concentrate or Medical Marijuana Infused-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; Medical Marijuana Infused-Product; Water-Based, Heat/Pressure-Based, and Food-Based Medical Marijuana Concentrate
Salmonella species* – Bacteria	< 1 Colony Forming Unit (CFU)	
Total Yeast and Mold	< 10^4 Colony Forming Unit (CFU)	

*The Medical Marijuana Testing Facility shall contact the Colorado Department of Public Health and Environment when STEC and Salmonella are detected beyond the acceptable limits

2. Mycotoxins

Substance	**Acceptable Limits Per Gram**	**Product to be Tested**
Aflatoxins (B1, B2, G1, and G2)	< 20 parts per billion (PPB) (total of B1 + B2 + G1 + G2)	Solvent-Based Medical Marijuana Concentrate manufactured from Medical Marijuana flower or trim that failed microbial testing
Ochratoxin A	< 20 parts per billion (PPB)	

3. Residual Solvents

Substance	**Acceptable Limits Per Gram**	**Product to be Tested**
Acetone	< 1,000 Parts Per Million (PPM)	Solvent-Based Medical Marijuana Concentrate
Butanes	< 1,000 Parts Per Million (PPM)	
Ethanol***	< 1,000 Parts Per Million (PPM)	
Heptanes	< 1,000 Parts Per Million (PPM)	
Isopropyl Alcohol	< 1,000 Parts Per Million (PPM)	
Propane	< 1,000 Parts Per Million (PPM)	
Benzene**	< 2 Parts Per Million (PPM)	
Toluene**	< 180 Parts Per Million (PPM)	
Pentane	< 1,000 Parts Per Million (PPM)	
Hexane**	< 60 Parts Per Million (PPM)	
Total Xylenes (m,p, o-xylenes)**	< 430 Parts Per Million (PPM)	
Any other solvent not permitted for use pursuant to Rule M 605.	None Detected	

** Note: These solvents are not approved for use. Due to their possible presence in the solvents approved for use per Rule M 605, limits have been listed here accordingly.

***Note. If the Medical Marijuana Concentrate or Medical Marijuana-Infused Product intended use is oral consumption or skin and body products only this Solvent-Based Medical Marijuana Concentrate limit for ethanol does not apply. If the Medical Marijuana Concentrate or Medical Marijuana-Infused Product intended use includes inhaled product, this Solvent-Based Medical Marijuana Concentrate limit for ethanol applies.

4. Metals

Substance	**Acceptable Limits Per Gram**	**Product to be Tested**
Metals (Arsenic, Cadmium, Lead and Mercury)	Lead – Max Limit: < 1.0 ppm Arsenic – Max Limit: < 0.4 ppm Cadmium – Max Limit: < 0.4 ppm Mercury – Max Limit: < 0.2 ppm	Flower; Water-Based, Food-Based, Heat/Pressure-Based, and Solvent-Based Medical Marijuana Concentrate

5. Pesticides

Substance	**Detection Limits**	**Product to be Tested**
Abamectin (Avermectins: B1a & B1b)	< 0.07 Parts Per Million (PPM)	Medical Marijuana flower and trim
Azoxystrobin	< 0.02 Parts Per Million (PPM)	
Bifenazate	< 0.02 Parts Per Million (PPM)	
Etoxazole	< 0.01 Parts Per Million (PPM)	
Imazalil	< 0.04 Parts Per Million (PPM)	
Imidacloprid	< 0.02 Parts Per Million (PPM)	
Malathion	< 0.05 Parts Per Million (PPM)	
Myclobutanil	< 0.04 Parts Per Million (PPM)	
Permethrin (mix of isomers)	< 0.04 Parts Per Million (PPM)	
Spinosad (Mixture of A and D)	< 0.06 Parts Per Million (PPM)	
Spiromesifen	< 0.03 Parts Per Million (PPM)	
Spirotetramat	< 0.02 Parts Per Million (PPM)	
Tebuconazole	< 0.01 Parts Per Million (PPM)	

6. Other Contaminants

Pesticide	If the Test Batch is found to contain a prohibited Pesticide not listed in Paragraph (5) above,

	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 or as applied, 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 or present, then the Division may determine that the Test Batch has failed contaminant testing.

7. Division Notification. A Medical Marijuana Testing Facility must notify the Division by timely input in the Inventory Tracking System 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. *See* Rule M 711 – Reporting and Inventory Tracking System.

F. Potency Testing

1. Cannabinoids Potency Profiles. A Medical Marijuana Testing Facility may test and report results for any Cannabinoid provided the test is conducted in accordance with the Division's Medical Marijuana Testing Facility's standard operating procedures Certification Policy Statement.

2. Reporting of Results

a. For potency tests on Medical Marijuana and Medical 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. This includes reporting of Total THC in addition to each Cannabinoid required in Rule M 1503.

b. For potency tests conducted on Medical Marijuana Infused-Product, results must be reported by listing the total number of milligrams contained within a single Medical Marijuana-Infused Product unit for sale for each Cannabinoid and stating whether the THC content is homogenous.

3. Testing Medical Marijuana Ready for Transfer. All potency tests must occur at the time the Medical Marijuana, Medical Marijuana Concentrate or Medical Marijuana-Infused Product has completed all steps required prior to Transfer to another Medical Marijuana Business as outlined in the Medical Marijuana Testing Facility's standard operating procedures.

4. Failed Potency Tests for Medical Marijuana Infused-Product

a. If the THC content of a Medical Marijuana Infused-Product is determined through testing not to be homogenous, then it shall be considered to have failed potency testing. A Medical Marijuana Infused-Product shall be considered not to be homogenous if 10% of the infused portion of the Medical Marijuana Infused-Product contains more than 20% of the total THC contained within entire Medical Marijuana Infused-Product.

b. If an individually packaged Edible Medical Marijuana-Infused Product is determined to have more than the total milligrams of THC stated on the Container, or less than the total milligrams of THC stated on the Container, then the Test Batch shall be considered to have failed potency testing. Except that the potency variance provided for in subparagraph (F)(5) of this Rule M 712 shall apply to potency testing.

5. Potency Variance. A potency variance of no more than plus or minus 15% is allowed.

M 800 Series – Transport and Storage

Basis and Purpose – M 801

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(1)(h), 12-43.3-202(2)(a)(XI), 12-43.3-202(2)(a)(XVIII.6) 12-43.3-202(2)(a)(XX) and 12-43.3-406, C.R.S. The purpose of the rule is to provide clarity as to the requirements associated with the transport and delivery of Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product between Licensed Premises. It also prescribes the manner in which licensed entities will track inventory in the transport process to prevent diversionary practices.

M 801 – Transport: All Medical Marijuana Businesses

A. Persons Authorized to Transport. Except as provided in the Rule M 1600 Series, any individual who transports Medical Marijuana, Medical Marijuana Vegetative plants, Medical Marijuana Immature plants, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product on behalf of a Medical Marijuana Business must hold a valid Occupational License and must be an employee or Owner of the Medical Marijuana Business. An individual who does not possess a current and valid Occupational License from the State Licensing Authority may not transport Medical Marijuana, Medical Marijuana Vegetative plants, Medical Marijuana Immature plants, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product between Licensed Premises.

B. Transport Between Licensed Premises.

1. Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product. Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product shall only be transported by Licensees between Licensed Premises; between Licensed Premises and a permitted off-premises storage facility; between Licensed Premises and a Medical Research Facility; and between Licensed Premises and a Pesticide Manufacturer. Licensees transporting Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product are responsible for ensuring that all Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product are secured at all times during transport.

2. Medical Marijuana Vegetative Plants and Medical Marijuana Immature Plants.

a. Medical Marijuana Vegetative plants may only be transported between Licensed Premises and such transport shall be permitted only due to an approved change of location pursuant to rule M 206, or due to a one-time transfer pursuant to rule M 211.

b. Medical Marijuana Immature plants shall only be transported between Licensed Premises; between licensed Premises and a Medical Research Facility; and between Licensed Premises and a Pesticide Manufacturer.

c. Licensees transporting Medical Marijuana Vegetative plants and Medical Marijuana Immature plants are responsible for ensuring that all Medical Marijuana Vegetative plants and Medical Marijuana Immature plants are secure at all times during transport. Transportation of Medical Marijuana Vegetative plants and Medical Marijuana Immature plants to a permitted off-premises storage facility shall not be allowed. Transport of Medical Marijuana plants other than Vegetative plants and Immature plants shall not be allowed.

C. Inventory Tracking System-Generated Transport Manifest Required. A Licensee may only transport Medical Marijuana, Medical Marijuana Vegetative plants, Medical Marijuana Immature plants, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product if he or she has a hard copy of an Inventory Tracking System-generated transport manifest that contains all the information required by this rule and shall be in the format prepared by the State Licensing Authority.

1. Medical Marijuana, Medical Marijuana Immature Plants, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product. A Licensee may transport Medical Marijuana, Medical Marijuana Immature plants, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product from an originating location to multiple destination locations so long as the transport manifest correctly reflects the specific inventory destined for specific Medical Marijuana Businesses, Medical Research Facilities, and/or Pesticide Manufacturers.

2. Medical Marijuana Vegetative Plants. A Licensee shall transport Medical Marijuana Vegetative plants only from the originating Licensed Premises to the destination Licensed Premises due to a change of location that has been approved by the Division pursuant to Rule M 206, or from a Medical Marijuana Business to a Retail Marijuana Establishment due to a one-time transfer pursuant to Rule M 211.

3. Manifest for Transfers to Medical Research Facilities and Pesticide Manufacturers. A Licensee may not transport or permit the transportation of Medical Marijuana, Medical Marijuana Immature plants, Medical Marijuana Concentrate, or Medical Marijuana-Infused Products to a Medical Research Facility or Pesticide Manufacturer unless an Inventory Tracking System-generated transport manifest has been generated.

D. Motor Vehicle Required. Transport of Medical Marijuana, Medical Marijuana Vegetative plants, Medical Marijuana Immature plants, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product shall be conducted by a motor vehicle that is properly registered in the state of Colorado pursuant to motor vehicle laws, but need not be registered in the name of the Licensee. Except that when a rental truck is required for transporting Medical Marijuana Vegetative plants or Medical Marijuana Immature plants, Colorado motor vehicle registration is not required.

E. Documents Required During Transport. Transport of Medical Marijuana, Medical Marijuana Vegetative plants, Medical Marijuana Immature plants, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product shall be accompanied by a copy of the originating Medical Marijuana Business's business license, the driver's valid Owner or Occupational License, the driver's valid motor vehicle operator's license, and all required vehicle registration and insurance information.

F. Use of Colorado Roadways. State law does not prohibit the transport of Medical Marijuana, Medical Marijuana Vegetative plants, Medical Marijuana Immature plants, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product on any public road within the state of Colorado as authorized in this rule. However, nothing herein authorizes a Licensee to violate specific local ordinances or resolutions enacted by any city, town, city and county, or county related to the transport of Medical Marijuana, Medical Marijuana Vegetative plants, Medical Marijuana Immature plants, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product.

G. Preparation of Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product for Transport

1. Final Weighing and Packaging. A Medical Marijuana Business shall comply with the specific rules associated with the final weighing and packaging of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product before such items

are prepared for transport pursuant to this rule. The scale used to weigh product to be transported shall be tested and approved in accordance with measurement standards established in 35-14-127, C.R.S.

2. Preparation in Limited Access Area. Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product shall be prepared for transport in a Limited Access Area, including the packaging and labeling of Containers or Shipping Containers.

3. Shipping Containers. Licensees may Transfer multiple Containers of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product in a Shipping Container. The contents of Shipping Containers shall be easily accessible and may be inspected by the State Licensing Authority, local licensing authorities, and state and local law enforcement agency for a purpose authorized by the Medical Code or for any other state or local law enforcement purpose.

G.5 Required RFID Tags.

1. Licensees shall ensure that either the multiple Containers placed within a Shipping Container each have an RFID tag, or the Shipping Container itself must have an RFID tag. If the Licensee elects to place the RFID tag on the Shipping Container, the Shipping Container shall contain only one Harvest Batch, or Production Batch of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana Product. If a Shipping Container consists of more than one Harvest Batch or Production Batch, then each group of multiple Containers shall be affixed with an RFID tag.

2. Medical Marijuana Vegetative Plants and Medical Marijuana Immature Plants. Each Medical Marijuana Vegetative plant that is transported pursuant to this rule must have a RFID tag affixed to it prior to transport. Each receptacle containing Medical Marijuana Immature plants transported pursuant to this rule must have an RFID tag affixed prior to transport.

H. Creation of Records and Inventory Tracking

1. Use of Inventory Tracking System -Generated Transport Manifest.

a. Medical Marijuana, Medical Marijuana Immature Plants, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product. Licensees who transport or permit the transportation of Medical Marijuana, Medical Marijuana Immature plants, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product shall create an Inventory Tracking System-generated transport manifest to reflect inventory that leaves the Licensed Premises destined for other Licensed Premises, Medical Research Facilities, or Pesticide Manufacturers. The transport manifest may either reflect all deliveries for multiple locations within a single trip or separate transport manifests may reflect each single delivery. In either case, no inventory shall be transported without an Inventory Tracking System-generated transport manifest.

a.1 Use of a Medical Marijuana Transporter. In addition to subparagraph (H)(1)(a), Licensees shall also follow the requirements of this subparagraph (H)(1)(a.1) when a Licensee utilizes the services of a Medical Marijuana Transporter.

i. When a Medical Marijuana Business utilizes a Medical Marijuana Transporter for transporting its Medical Marijuana, Medical Marijuana Immature plants, Medical Marijuana Concentrate, or Medical Marijuana-Infused Products, the originating Licensee shall input the requisite

information on the Inventory Tracking System-generated transport manifest for the final destination Licensee, Medical Research Facility, or Pesticide Manufacturer who will be receiving the Medical Marijuana, Medical Marijuana Immature plants, Medical Marijuana Concentrate, or Medical Marijuana-Infused Products.

ii. A Medical Marijuana Transporter is prohibited from being listed as the final destination Licensee.

iii. A Medical Marijuana Transporter shall not alter the information of the final destination Licensee, Medical Research Facility, or Pesticide Manufacturer after the information has been entered on the Inventory Tracking System-generated transport manifest by the originating Licensee.

iv. If the Medical Marijuana Transporter is not delivering the originating Licensee's Medical Marijuana, Medical Marijuana Immature plants, Medical Marijuana Concentrate, or Medical Marijuana- Infused Product directly to the final destination Licensee, Medical Research Facility, or Pesticide Manufacturer, the Medical Marijuana Transporter shall communicate to the originating Licensee which of the Medical Marijuana Transporter's Licensed Premises or off-premises storage facilities will receive and temporarily store the Medical Marijuana, Medical Marijuana Immature plants, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product. The originating Licensee shall input the Medical Marijuana Transporter's location address and license number on the Inventory Tracking System-generated transport manifest.

b. Medical Marijuana Vegetative Plants.

i. Licensees who transport Medical Marijuana Vegetative plants shall create an Inventory Tracking System-generated transport manifest to reflect inventory that leaves the originating Licensed Premises to be transported to the destination Licensed Premises due to a change of location approved by the Division pursuant to Rule M 206, or a one-time transfer pursuant to Rule M 211.

ii. Medical Marijuana Transporters are permitted to transport Medical Marijuana Vegetative plants on behalf of other Licensees due to a change of location approved by the Division pursuant to Rule M 206, or a one-time transfer pursuant to Rule M 211. The Medical Marijuana Transporter shall transport the Medical Marijuana Vegetative plants directly from the originating Licensed Premises to the final destination Licensed Premises.

2. Copy of Transport Manifest to Recipient. A Licensee shall provide a copy of the transport manifest to each Medical Marijuana Business, Medical Research Facility, or Pesticide Manufacturer receiving the inventory described in the transport manifest. In order to maintain transaction confidentiality, the originating Licensee may prepare a separate Inventory Tracking System-generated transport manifest for each recipient Medical Marijuana Business, Medical Research Facility, or Pesticide Manufacturer.

3. The Inventory Tracking System-generated transport manifest shall include the following:

a. Departure date and approximate time of departure;

b. Name, location address, and license number of the originating Medical Marijuana Business;

c. Name, location address, and license number of the destination Medical Marijuana Business(es), or the destination Retail Marijuana Establishment in the event of a one-time transfer; name and location address of the destination Medical Research Facility; or name and location address of the destination Pesticide Manufacturer;

c.1 Name, location address, and license number of the Medical Marijuana Transporter if applicable pursuant to M 801(H)(1)(a.1)(iv).

d. Product name and quantities (by weight or unit) of each product to be delivered to each specific destination location(s);

e. Arrival date and estimated time of arrival;

f. Delivery vehicle make and model and license plate number; and

g. Name, Occupational License number, and signature of the Licensee accompanying the transport.

I. Inventory Tracking. In addition to all the other tracking requirements set forth in these rules, a Medical Marijuana Business shall be responsible for all the procedures associated with the tracking of inventory that is transported between Licensed Premises. See Rule M 901 – Business Records Required.

1. Responsibilities of Originating Licensee.

a. Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product. Prior to departure, the originating Medical Marijuana Business shall adjust its records to reflect the removal of Medical Marijuana or Medical Marijuana-Infused Product. The scale used to weigh product to be transported shall be tested and approved in accordance with measurement standards established in section 35-14-127, C.R.S. Entries to the records shall note the Inventory Tracking System-generated transport manifest and shall be easily reconciled, by product name and quantity, with the applicable transport manifest.

b. Medical Marijuana Vegetative Plants and Medical Marijuana Immature Plants. Prior to departure, the originating Optional Premises Cultivation Operation shall adjust its records to reflect the removal of Medical Marijuana Vegetative plants and Medical Marijuana Immature plants. Entries to the records shall note the Inventory Tracking System-generated transport manifest and shall be easily reconciled, by product name and quantity, with the applicable transport manifest.

2. Responsibilities of Recipient.

a. Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product. Upon receipt, the receiving Licensee shall ensure that the Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product received are as described in the transport manifest, If necessary, the receiving Licensee shall immediately adjust its records to reflect the receipt of inventory. The scale used to weigh product being received shall be tested and approved in accordance with measurement standards established in 35-14-127, C.R.S. Entries to the inventory records shall note the Inventory Tracking System-

generated transport manifest and shall be easily reconciled, by product name and quantity, with the applicable transport manifest. Medical Marijuana Transporters shall comply with all requirements of this subparagraph (l)(2)(a) except that they are not required to weigh Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Products.

i. When a Medical Marijuana Business transfers Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product to a Medical Research Facility or Pesticide Manufacturer, the originating Licensee is responsible for confirming delivery of the Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product in the Inventory Tracking System.

b. Medical Marijuana Vegetative Plants and Medical Marijuana Immature Plants. Upon receipt, the receiving Licensee shall ensure that the Medical Marijuana Vegetative plants received are as described in the transport manifest, accounting for all RFID tags and each associated plant, and shall immediately adjust its records to reflect the receipt of inventory. Upon Receipt, the recipient Licensee shall ensure that the Medical Marijuana Immature plants received are as described in the transport manifest, accounting for all RFID tags and each receptacle containing Medical Marijuana Immature plants, and shall immediately adjust its records to reflect the receipt of inventory.

i. When a Medical Marijuana Business transfers Medical Marijuana Immature plants to a Medical Research Facility or Pesticide Manufacturer, the originating Licensee is responsible for confirming delivery of the Medical Marijuana Immature plants in the Inventory Tracking System.

3. Discrepancies.

a. Licensees. A receiving Licensee shall separately document any differences between the quantity specified in the transport manifest and the quantities received. Such documentation shall be made in the Inventory Tracking System and in any relevant business records.

b. Medical Research Facilities and Pesticide Manufacturers. In the event of a discrepancy between the quantity specified in a transport manifest and the quantity received by a Medical Research Facility or Pesticide Manufacturer, the originating Licensee shall document the discrepancy in the Inventory Tracking System and in any relevant business records, and account for the discrepancy

J. Adequate Care of Perishable Medical Marijuana-Infused Product. A Medical Marijuana Business must provide adequate refrigeration for perishable Medical Marijuana-Infused Product during transport.

K. Failed Testing. In the event Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product has failed required testing, has been contaminated, or otherwise presents a risk of cross-contamination to other Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product, such Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product may only be transported if it is physically segregated and contained in a sealed package that prevents cross-contamination.

Basis and Purpose – M 802

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(1)(h), 12-43.3-202(2)(a)(XI), 12-43.3-202(2)(a)(XVIII.6) 12-43.3-202(2)(a)(XX), and 12-43.3-406(2), C.R.S. The purpose of this rule is to establish that Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product may not be stored outside of Licensed Premises unless the Licensee obtains an off-premises storage permit.

M 802 – Off-Premises Storage of Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product: All Medical Marijuana Businesses

A. Off-premises Storage Permit Authorized. A Medical Marijuana Center, Medical Marijuana-Infused Products Manufacturer, an Optional Premises Cultivation Operation, and a Medical Marijuana Testing Facility may only store Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product in their Licensed Premises or in their one permitted off-premises storage facility. Medical Marijuana Transporters are allowed to have more than one permitted off-premises storage facility.

B. Permitting. To obtain a permit for an off-premises storage facility, a Medical Marijuana Business must apply on current Division forms and pay any applicable fees. A Medical Marijuana Transporter may only apply for and hold an off-premises storage permit in a local jurisdiction that permits the operation of Medical Marijuana Centers.

C. Extension of Licensed Premises. A permitted off-premises storage facility shall constitute an extension of the Medical Marijuana Business' Licensed Premises and be subject to all to the conditions and restrictions established in Rule M 301 – Limited Access Areas.

D. Limitation on Inventory to be Stored. A Medical Marijuana Center, Medical Marijuana-Infused Products Manufacturer, and an Optional Premises Cultivation Operation may only have upon the permitted off-premises storage facility Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product that are part of the particular Medical Marijuana Business's finished goods inventory. The aforementioned Licensees may not share the premises with, nor store inventory belonging to, a Medical Marijuana Business that is not commonly-owned or a Retail Marijuana Establishment.

E. Restrictions. The permitted off-premises storage facility may be utilized for storage only. A Licensee may not Transfer, cultivate, manufacture, process, test, research, or consume any Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product within the premises of the permitted off-premises storage facility.

F. Display of Off-premises Storage Permit and License. The off-premises storage facility permit and a copy of the Medical Marijuana Business' license must be displayed in a prominent place within the permitted off-premises storage facility.

G. Local Licensing Authority Approval

1. Prior to submitting an application for an off-premises storage facility permit, the Licensee must obtain approval from the relevant local licensing authority.

2. A copy of the relevant local licensing authority's approval must be submitted by the Licensee in conjunction with its application for an off-premises storage facility.

3. No Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product may be stored within a permitted storage facility until the relevant local licensing authority has been provided a copy of the off-premises storage facility permit.

4. Any off-premises storage permit issued by the Division shall be conditioned upon the Medical Marijuana Business' receipt of all required local approvals.

H. Security in Storage Facility. A permitted off-premises storage facility must meet all video and security requirements applicable to a Licensed Premises.

I. Transport to or from a Permitted Off-premises Storage Facility. A Medical Marijuana Business must comply with Rule M 801 – Transport: All Medical Marijuana Businesses, when transporting any Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product to and from a permitted off-premises storage facility.

J. Inventory Tracking. In addition to all the other tracking requirements set forth in these rules, a Medical Marijuana Business shall utilize the Inventory Tracking System to track its inventories from the point of transfer to or from a permitted off-premises storage facility. See Rules M 901 – Business Records Required and M 309- Medical Marijuana Business: Inventory Tracking System.

K. Inventory Tracking System Access and Scale. Every permitted off-premises storage facility must have an Inventory Tracking System terminal and a scale tested and approved in accordance with measurement standards established in section 35-14-127, C.R.S.

L. Adequate Care of Perishable Medical Marijuana-Infused Product. A Medical Marijuana Business must provide adequate refrigeration for perishable Medical Marijuana-Infused Product and shall utilize adequate storage facilities and transport methods.

M. Consumption Prohibited. A Medical Marijuana Business shall not permit the consumption of marijuana or marijuana products on the premises of its permitted off-premises storage facility.

M 900 Series – Business Records

Basis and Purpose – M 901

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(XV), 12-43.3-202(2)(a)(XVII), and 12-43.3-202(2)(a)(XX), C.R.S. This rule explains what business records a Licensee must maintain. It also clarifies that such records must be made available to the Division on demand. Rule R 901(B) was added due to written commentary received from an industry representative.

M 901 – Business Records Required

A. General Requirements

1. A Medical Marijuana Business must maintain the information required in this rule in a format that is readily understood by a reasonably prudent business person.

2. Each Medical Marijuana Business shall retain all books and records necessary to fully account for the business transactions conducted under its license for the current year and three preceding calendar years.

a. On premises records: The Medical Marijuana Business' books and records for the preceding six months (or complete copies of such records) must be maintained on its Licensed Premises at all times.

b. On- or off-premises records: Books and records associated with older periods may be archived on or off of the Licensed Premises.

3. The books and records must fully account for the transactions of the business and must include, but shall not be limited to:

   a. Current Employee List – This list must provide the full name and Occupational License number of each employee and all non-employee Owners, who work at a Medical Marijuana Business.

      i. Each Licensed Premises shall enter the full name and Occupational License number of every employee that works on the premises into the Inventory Tracking System. The Licensed Premises shall update its list of employees in the Inventory Tracking System within 10 days of an employee commencing or ceasing employment on the premises.

   b. Secure Facility Information – For its Licensed Premises and any associated permitted off-premises storage facility, a Medical Marijuana Business must maintain the business contact information for vendors that maintain video surveillance systems and Security Alarm Systems.

   c. Licensed Premises – Diagram of all approved Limited Access Areas and any permitted off-premises storage facilities.

   d. Visitor Log – List of all visitors entering Limited Access Areas or Restricted Access Areas.

   e. All records normally retained for tax purposes.

   f. Advertising Records – All records related to Advertising and marketing, including but not limited to, audience composition data.

   g. Waste log – Comprehensive records regarding all waste material that accounts for, reconciles, and evidences all waste activity related to the disposal of marijuana.

   h. Surveillance logs – Surveillance logs as required by Rule M 306.

   i. Every Licensee shall maintain a record of its Identity Statement and Standardized Graphic Symbol which shall be available upon request by the State Licensing Authority or Division. A Licensee may elect to have its Identity Statement also serve as its Standardized Graphic Symbol for purposes of complying with this rule.

   j. All records normally retained for tax purposes.

   k. Testing Records – all testing records required by Rule M 710.

B. Loss of Records and Data. Any loss of electronically-maintained records shall not be considered a mitigating factor for violations of this rule. Licensees are required to exercise due diligence in preserving and maintaining all required records.

C. Violation Affecting Public Safety. Violation of this rule may constitute a license violation affecting public safety.

D. Records Related to Inventory Tracking. A Medical Marijuana Business must maintain accurate and comprehensive inventory tracking records that account for, reconcile, and evidence all inventory activity for Medical Marijuana from either seed or Immature Plant stage until the Medical

Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product is destroyed or Transferred to another Medical Marijuana Business, a patient, a Medical Research Facility, or a Pesticide Manufacturer.

E. Records Related to Transport. A Medical Marijuana Business must maintain adequate records for the transport of all activities related to Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product. *See* Rule M 801 – Transport: All Medical Marijuana Businesses.

F. Provision of Requested Records to the Division. A Licensee must provide on-demand access to on-premises records following a request from the Division during normal business hours or hours of apparent operation, and must provide access to off-premises records within three business days following a request from the Division.

M 1000 Series – Labeling, Packaging, and Product Safety

Effective Date. Compliance with this M 1000 Series is mandatory until January 1, 2018. During the period January 1, 2018, to June 30, 2018, Licensees have the option of complying with this Rule M 1000 Series or with the Rule M 1000-1 Series, but must be fully compliant with at least one of those two Labeling, Packaging, and Product Safety Series. Beginning July 1, 2018, this Rule M 1000 Series is repealed, and compliance with the M 1000-1 Series is mandatory.

Basis and Purpose – M 1001.5

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(1)(h), 12-43.3-202(2)(a)(VI), 12-43.3-202(2)(a)(XIV), 12-43.3-202(2)(a)(XIV.5), 12-43.3-202(2)(a)(XX), 12-43.3-403(3), 12-43.3-404(5), and 12-43.3-901(4)(b), C.R.S. The State Licensing Authority finds it essential to regulate and establish labeling and secure packaging requirements for Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana Infused-Product. The purpose of this rule, and the rules in this series, is to ensure that all Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana Infused-Product are sold and delivered to lawful consumers in packaging that is not easily opened by children. Further, the State Licensing Authority believes based on written and oral comments it received through the rulemaking process that prohibiting labels that appeal to or 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. One of the State Licensing Authority's primary goals is to prevent use of Medical Marijuana by children who are not registered Medical Marijuana patients. The State Licensing Authority has a compelling state interest in the reduction and prevention of accidental marijuana consumption by children. This can be achieved through avoidance of packaging designed to appeal to children and avoidance of use of the word "candy" on packaging, labeling and product. Children generally have a strong attraction to and interest in candy. "Candy" is one of the first words children learn to speak. Children rely upon packaging to deduce a product's contents. "Candy" is not medicine. This rule is in the interest of the health of the people of Colorado and is necessary for the stringent and comprehensive administration of the Medical Code. The State Licensing Authority is adopting this rule as a narrowly-tailored way to reduce or prevent accidental ingestion of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Products by children and others.

M 1001.5 – Labeling and Packaging Requirements: General Applicability

A. Ship Product Ready for Sale. An Optional Premises Cultivation Operation or Medical Marijuana-Infused Products Manufacturer may package smaller quantities of Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana Infused-Product in a Container prior to transport, provided the Containers are placed within a larger package that has an RFID tag and all required labels affixed to it. This larger package of Containers may serve as the Shipping Container. Licensees shall ensure that either each package of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product placed within a Shipping Container has an

RFID tag and all required labels affixed to each package, or the Shipping Container itself must have an RFID tag and all required labels affixed to it for the Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product contained within the Shipping Container. If the Licensee elects to place the RFID tag and all required labels on the Shipping Container, the Shipping Container shall contain only one package, Harvest Batch, or Production Batch of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product. If a Shipping Container holds multiple packages, each individual package shall be affixed with an RFID tag and all required labels. See Rule M 309 – Inventory Tracking System and Rule M 801 – Transport: All Medical Marijuana Businesses.

B. Inventory Tracking Compliance.

1. An Optional Premises Cultivation Operation or Medical Marijuana-Infused Products Manufacturer must package all Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana Infused-Product in accordance with all Inventory Tracking System rules and procedures.

C. Packaging May Not Be Designed to Appeal to Children. A Medical Marijuana Business shall not place any content on a Container holding Medical Marijuana, Medical Marijuana Concentrate, or a Medical Marijuana Infused-Product in a manner that specifically targets individuals under the age of 21, including but not limited to, cartoon characters or similar images.

D. Health and Benefit Claims. Labeling text on a Container may not make any false or misleading statements regarding health or physical benefits to the consumer.

E. Font Size. Labeling text on a Container must be no smaller than 1/16 of an inch.

F. Use of English Language. Labeling text on a Container must be clearly written or printed and in the English language.

G. Unobstructed and Conspicuous. Labeling text on a Container must be unobstructed and conspicuous. A Licensee may affix multiple labels to a Container, provided that none of the information required by these rules is completely obstructed.

H. Use of the Word(s) “Candy” and/or “Candies” Prohibited.

1. Licensees shall not use the word(s) “candy” and/or “candies” on the product, packaging or labeling for Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product.

2. Notwithstanding the requirements of subparagraph (H)(1), a licensed Medical Marijuana Business whose Identity Statement contains the word(s) “candy” and/or “candies” shall be permitted to place its Identity Statement on Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product packaging and labeling.

Basis and Purpose – M 1002.5

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(XIV), 12-43.3-202(2)(a)(XIV.5), 12-43.3-202(2)(a)(XX), 12-43.3-202(2.5)(a)(I), 12-43.3-402(7), 12-43.3-404(5), 12-43.3-404(10), and 12-43.3-901(4)(b), C.R.S. The purpose of this rule is to ensure that every Optional Premises Cultivation Operation and Medical Marijuana-Infused Products Manufacturer label each package and Container of Medical Marijuana with all of the necessary and relevant information for the receiving Medical Marijuana Business. In addition, this rule clarifies basic packaging requirements. The State Licensing Authority wants to ensure the regulated community employs proper labeling techniques for all Medical Marijuana as this is a public health and safety concern.

M 1002.5 – Packaging and Labeling of Medical Marijuana by an Optional Premises Cultivation Operation or a Medical Marijuana-Infused Products Manufacturer

A. Packaging of Medical Marijuana by an Optional Premises Cultivation Operation or a Medical Marijuana-Infused Products Manufacturer. Every Optional Premises Cultivation Operation and Medical Marijuana-Infused Products Manufacturer must ensure that all Medical Marijuana is placed within a sealed package that has no more than ten pounds of Medical Marijuana within it prior to transport or transfer of any Medical Marijuana to another Medical Marijuana Business. The package shall be affixed with an RFID tag in accordance with rule M 1001.5(A).

B. Labeling of Medical Marijuana Packages by an Optional Premises Cultivation Operation or a Medical Marijuana-Infused Products Manufacturer. Every Optional Premises Cultivation Operation and Medical Marijuana-Infused Products Manufacturer must ensure that a label(s) is affixed to every package holding Medical Marijuana that includes all of the information required by this rule prior to transport or transfer to another Medical Marijuana Business.

1. Required Information. Every Optional Premises Cultivation Operation and Medical Marijuana-Infused Products Manufacturer must ensure the following information is affixed to every package holding Medical Marijuana:

    a. The license number of the Optional Premises Cultivation Operation where the Medical Marijuana was grown;

    b. The Harvest Batch Number(s) assigned to the Medical Marijuana;

    c. The net weight, using a standard of measure compatible with the Inventory Tracking System, of the Medical Marijuana prior to its placement in the package; and

    d. A complete list of all nonorganic pesticides, fungicides, and herbicides used during the cultivation of the Medical Marijuana.

2. Required Potency Statement. For each package of Medical Marijuana, the potency of at least the Medical Marijuana's THC and CBD shall be included on a label that is affixed to the package. The potency shall be expressed as a range of percentages that extends from the lowest percentage to the highest percentage of concentration for each cannabinoid listed, from every test conducted on that strain of Medical Marijuana cultivated by the same Optional Premises Cultivation Operation within the last six months.

3. Required Contaminant Testing Statement.

    a. When All Required Contaminant Tests Are Not Performed. If a Medical Marijuana Testing Facility did not test a Harvest Batch for microbials, mold, mildew, and filth, then the package shall be labeled with the following statement: **"The marijuana contained within this package has not been tested for contaminants."** Except that when an Optional Premises Cultivation Operation has successfully validated its process regarding contaminants pursuant to rule M 1501, then the package instead shall be labeled with the following statement: **"The marijuana contained within this package complies with the mandatory contaminant testing required by rule M 1501."**

    b. When All Required Contaminant Tests Are Performed and Passed. If a Medical Marijuana Testing Facility tested a Harvest Batch for microbials, mold, mildew, and filth, and the required test(s) passed, then the package shall be labeled with

the following statement: **"The marijuana contained within this package complies with the mandatory contaminant testing required by rule M 1501."**

c. Nothing in this rule permits a Medical Marijuana Business to Transfer Medical Marijuana that has failed contaminant testing and has not subsequently passed the additional contaminant testing required by rule M 1507(B).

C. Labeling of Medical Marijuana Containers by an Optional Premises Cultivation Operation or a Medical Marijuana-Infused Products Manufacturer. If an Optional Premises Cultivation Operation or a Medical Marijuana-Infused Products Manufacturer packages Medical Marijuana within a Container that is then placed within a larger package, each Container must be affixed with a label(s) containing all of the information required by Rule M 1002.5(B), except that the net weight statement required by Rule M 1002.5(B)(1)(c) shall be based upon the weight in the Container and not the larger package or Shipping Container.

Basis and Purpose – M 1003.5

The statutory authority for this includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(XIV), 12-43.3-202(2)(a)(XIV.5), 12-43.3-202(2)(a)(XX), 12-43.3-202(2.5)(a)(I), 12-43.3-402(7), 12-43.3-404(5), 12-43.3-404(10), 12-43.3-404(11)(b-c), and 12-43.3-901(4)(b), C.R.S. The purpose of this rule is to ensure that every Optional Premises Cultivation Operation and Medical Marijuana-Infused Products Manufacturer labels each package and Container of Medical Marijuana Concentrate with all of the necessary and relevant information for the receiving Medical Marijuana Business. In addition, this rule clarifies basic packaging requirements. The State Licensing Authority wants to ensure the regulated community employs proper labeling techniques for all Medical Marijuana Concentrate because it is a public health and safety concern.

M 1003.5 – Packaging and Labeling of Medical Marijuana Concentrate by an Optional Premises Cultivation Operation or a Medical Marijuana-Infused Products Manufacturer

A. Packaging of Medical Marijuana Concentrate by an Optional Premises Cultivation Operation or a Medical Marijuana-Infused Products Manufacturer. Every Optional Premises Cultivation Operation and Medical Marijuana-Infused Products Manufacturer must ensure that all Medical Marijuana Concentrate is placed within a sealed package that has no more than one pound of Medical Marijuana Concentrate within it prior to transport or transfer to another Medical Marijuana Business. The package shall be affixed with an RFID tag in accordance with rule M 1001.5(A).

B. Labeling Medical Marijuana Concentrate Package by an Optional Premises Cultivation Operation or a Medical Marijuana-Infused Products Manufacturer. Every Optional Premises Cultivation Operation and Medical Marijuana-Infused Products Manufacturer must ensure that a label(s) is affixed to every package holding Medical Marijuana Concentrate that includes all of the information required by this rule prior to transport or transfer to another Medical Marijuana Business.

1. Required Information. Every Optional Premises Cultivation Operation and Medical Marijuana-Infused Products Manufacturer must ensure the following information is affixed to every package holding Medical Marijuana Concentrate:

a. The license number(s) of the Optional Premises Cultivation Operation(s) where the Medical Marijuana used to produce the Medical Marijuana Concentrate was grown;

b. The license number of the Optional Premises Cultivation Operation or Medical Marijuana-Infused Products Manufacturer that produced the Medical Marijuana Concentrate;

c. The Production Batch Number assigned to the Medical Marijuana Concentrate contained within the package;

d. The net weight, using a standard of measure compatible with the Inventory Tracking System, of the Medical Marijuana Concentrate prior to its placement in the package;

e. A complete list of all nonorganic pesticides, fungicides, and herbicides used during the cultivation of the Medical Marijuana used to produce the Medical Marijuana Concentrate contained within; and

f. A complete list of solvents and chemicals used to create the Medical Marijuana Concentrate.

2. Required Potency Statement. For each package of Medical Marijuana Concentrate , the potency of at least the Medical Marijuana Concentrate's THC and CBD shall be included on a label that is affixed to the package. The potency shall be expressed in milligrams for each cannabinoid.

3. Required Contaminant Testing Statement.

a. When All Required Contaminant Tests Are Not Performed.

i. Solvent-Based Medical Marijuana Concentrate. If a Medical Marijuana Testing Facility did not test a Production Batch of Solvent-Based Medical Marijuana Concentrate for residual solvents, mold, and mildew, then the package shall be labeled with the following statement: **"The Medical Marijuana Concentrate contained within this package has not been tested for contaminants."** Except that when a Medical Marijuana-Infused Products Manufacturer has successfully validated its process regarding contaminants pursuant to rule M 1501, the package instead shall be labeled with the following statement: **"The Medical Marijuana Concentrate contained within this package complies with the mandatory contaminant testing required by rule M 1501."**

ii. Food- and Water-Based Medical Marijuana Concentrate. If a Medical Marijuana Testing Facility did not test a Production Batch of Food- or Water-Based Medical Marijuana Concentrate for microbials, mold, and mildew, then the package shall be labeled with the following statement: **"The Medical Marijuana Concentrate contained within this package has not been tested for contaminants."** Except that when an Optional Premises Cultivation Operation or a Medical Marijuana-Infused Products Manufacturer has successfully validated its process regarding contaminants pursuant to rule M 1501, then the package instead shall be labeled with the following statement: **"The Medical Marijuana Concentrate contained within this package complies with the mandatory contaminant testing required by rule M 1501."**

b. When All Required Contaminant Tests Are Performed and Passed.

i. Solvent-Based Medical Marijuana Concentrate. If a Medical Marijuana Testing Facility tested a Production Batch of Solvent-Based Medical Marijuana Concentrate for residual solvents, mold, and mildew, and the required test(s) passed, then the package shall be labeled with the following statement: **"The Medical Marijuana Concentrate contained**

within this package complies with the mandatory contaminant testing required by rule M 1501."

ii. Food- and Water-Based Medical Marijuana Concentrate. If a Medical Marijuana Testing Facility tested a Production Batch for microbials, mold, and mildew, and the required test(s) passed, then the package shall be labeled with the following statement: **"The Medical Marijuana Concentrate contained within this package complies with the mandatory contaminant testing required by rule M 1501."**

c. Nothing in this rule permits a Medical Marijuana Business to Transfer Medical Marijuana Concentrate that has failed contaminant testing and has not subsequently passed the additional contaminant testing required by rule M 1507(B).

C. Labeling of Medical Marijuana Concentrate Containers by an Optional Premises Cultivation Operation or a Medical Marijuana-Infused Products Manufacturer. If an Optional Premises Cultivation Operation or a Medical Marijuana-Infused Products Manufacturer packages a Medical Marijuana Concentrate within a Container that is then placed within a larger package, each Container must be affixed with a label(s) containing all of the information required by Rule M 1003.5(B), except that the net weight statement required by Rule M 1003.5(B)(1)(d) shall be based upon the weight in the Container and not the package or Shipping Container.

Basis and Purpose – M 1004.5

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(XIV), 12-43.3-202(2)(a)(XIV.5), 12-43.3-202(2)(a)(XX), 12-43.3-202(2.5)(a)(I), 12-43.3-402(2)(a)(I-III), 12-43.3-402(7), 12-43.4-404(5), 12-43.4-404(10), 12-43.4-404(11), and 12-43.3-901(4)(b), C.R.S. The purpose of this rule is to ensure that every Medical Marijuana-Infused Products Manufacturer labels each package and Container holding a Medical Marijuana Infused-Product with all of the necessary and relevant information for the receiving Medical Marijuana Business. 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 Medical Marijuana Infused-Product because it is a public health and safety concern. The allowable plus or minus 15% potency variance has been included in the rule pursuant to the mandate of Senate Bill 15-260. Section 1 of the bill required the State Licensing Authority to establish an acceptable potency variance for correct labeling. The acceptable potency variance has been set at plus or minus 15% to comport with the potency variance mandated by the Retail Code.

Product safety requirements are being adopted to aid in making Medical Marijuana-Infused Products more readily identifiable to the general public as containing Medical Marijuana. While product safety requirements are stated in this rule, nothing in the requirements interferes with a manufacturer's ability to determine standard portions for its products or to provide a mechanism with the product for accurately measuring a standard portion.

M 1004.5 – Packaging and Labeling Requirements of a Medical Marijuana Infused-Product by a Medical Marijuana-Infused Products Manufacturer

A. Packaging of Medical Marijuana Infused-Product by a Medical Marijuana-Infused Products Manufacturer

1. General Standard. Every Medical Marijuana-Infused Products Manufacturer must ensure that each Container holding a Medical Marijuana Infused-Product is placed in a package

prior to transport or transfer to another Medical Marijuana Business. The package shall be affixed with an RFID tag in accordance with rule M 1001.5(A).

2. Edible Medical Marijuana Infused-Product.

a. Every Medical Marijuana-Infused Products Manufacturer must ensure that each Edible Medical Marijuana Infused-Product is packaged within a Child-Resistant Container prior to transport or transfer to another Medical Marijuana Business.

b. If the Edible Medical Marijuana-Infused Product contains multiple portions then it must be packaged in a Child-Resistant Container that is Resealable.

3. Medical Marijuana Infused-Product that is not Edible Medical Marijuana Infused-Product. Every Medical Marijuana-Infused Products Manufacturer must ensure that each Medical Marijuana Infused-Product that is not an Edible Medical Marijuana Infused-Product is individually packaged within a Container prior to transport or transfer to another Medical Marijuana Business.

B. Labeling of Medical Marijuana Infused-Product Containers by a Medical Marijuana-Infused Products Manufacturer. A Medical Marijuana-Infused Products Manufacturer must ensure that a label(s) is affixed to every Container holding a Medical Marijuana Infused-Product that includes all of the information required by this rule prior to transport or transfer to another Medical Marijuana Business.

1. Required Information (General). Every Medical Marijuana-Infused Products Manufacturer must ensure the following information is affixed to every Container holding a Medical Marijuana Infused-Product:

a. The license number(s) of the Optional Premises Cultivation Operation(s) where the Medical Marijuana used to produce the Medical Marijuana Infused-Product was grown;

b. The Production Batch Number(s) of Medical Marijuana Concentrate(s) used in the production of the Medical Marijuana Infused-Product.

c. The license number of the Medical Marijuana-Infused Products Manufacturer that produced the Medical Marijuana Infused-Product.

d. A net weight statement.

e. The Production Batch Number(s) assigned to the Medical Marijuana Infused-Product.

f. A statement about whether the Container is Child-Resistant.

h. The Identity Statement and Standardized Graphic Symbol of the Medical Marijuana-Infused Products Manufacturer that manufactured the Medical Marijuana Infused-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, which must be located on the front of the Container and no smaller than ½ of an inch by ½ of an inch, and the following statement which

must be labeled directly below the Universal Symbol: “Contains Marijuana. For Medical Use Only. Keep out of the reach of children.”

j. The following warning statements:

i. “There may be health risks associated with the consumption of this product.”

ii. “This product contains marijuana and its potency was tested with an allowable plus or minus 15% variance pursuant to 12-43.3-202(2.5)(a)(I)(E), C.R.S.”

iii. “This product was produced without regulatory oversight for health, safety, or efficacy.”

iv. “There may be additional health risks associated with the consumption of this product for women who are pregnant, breastfeeding, or planning on becoming pregnant.”

k. A complete list of all nonorganic pesticides, fungicides, and herbicides used during the cultivation of the Medical Marijuana used to produce the Medical Marijuana Infused-Product.

l. A complete list of solvents and chemicals used in the creation of any Medical Marijuana Concentrate that was used to produce the Medical Marijuana Infused-Product.

m. Required Potency Statement. This subsubparagraph (B)(1)(m) of rule M 1004.5 shall become effective October 1, 2017. Each Container holding a Medical Marijuana-Infused Product shall be labeled with the potency of at least the Medical Marijuana-Infused Product’s THC and CBD. The potency shall be expressed in milligrams for each cannabinoid. The potency shall be labeled either:

i. In a font size that is at least two font sizes larger than the surrounding label text and also not less than 10 point font, bold, and enclosed within an outlined shape such as a circle or square; or

ii. Highlighted with a bright color such as yellow.

2. Required Information (Edible Medical Marijuana Infused-Product). Every Medical Marijuana-Infused Products Manufacturer must ensure that the following information or statement is affixed to every Container holding an Edible Medical Marijuana Infused-Product:

a. Ingredient List. A list of all ingredients used to manufacture the Edible Medical Marijuana Infused-Product; which shall include a list of any potential allergens contained within.

b. Statement Regarding Refrigeration. If the Edible Medical Marijuana Infused-Product is perishable, a statement that the Edible Medical Marijuana Infused-Product must be refrigerated.

c. Statement of Production Date. The date on which the Edible Medical Marijuana Infused-Product was produced.

d. Statement of Expiration Date. A product expiration date, for perishable Edible Medical Marijuana Infused-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 an Edible Medical Marijuana Infused-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 Medical Marijuana Infused-Product). Every Medical Marijuana-Infused Products Manufacturer may affix a label(s) with the following information to every Container holding an Edible Medical Marijuana Infused-Product:

a. The Medical Marijuana Infused-Product's compatibility with dietary restrictions.

b. A nutritional fact panel.

4. Required Potency Statement.

a. Every Medical Marijuana-Infused Products Manufacturer must ensure that a label is affixed to the Container that includes at least the Medical Marijuana Infused-Product's THC and CBD content.

b. Nothing in this rule permits a Medical Marijuana Business to Transfer Medical Marijuana Infused-Product that has failed potency testing and has not subsequently passed the additional potency testing required by rule R 1507(C).

5. Required Contaminant Testing Statement.

a. When All Required Contaminant Tests Are Not Performed. If a Medical Marijuana Testing Facility did not test a Production Batch of Medical Marijuana Infused-Product for microbials, mold, and mildew, then the Container shall be **labeled** with the following statement: **"The Medical Marijuana Infused-Product contained within this package has not been tested for contaminants."** Except that when a Medical Marijuana-Infused Products Manufacturer has successfully validated its process regarding contaminants for the particular Medical Marijuana Infused-Product pursuant to rule M 1501, then the Container instead shall be labeled with the following statement: **"The Medical Marijuana Infused-Product contained within this package complies with the mandatory contaminant testing required by rule M 1501."**

b. When All Contaminant Tests Are Performed and Passed. If a Medical Marijuana Testing Facility tested a Production Batch of Medical Marijuana Infused-Product for microbials, mold, and mildew, and the required test(s) passed, then the Container shall be labeled with the following statement: **"The Medical Marijuana Infused-Product contained within this package complies with the mandatory contaminant testing required by rule M 1501."**

c. Nothing in this rule permits a Medical Marijuana Business to Transfer Medical Marijuana Infused-Product that has failed contaminant testing and has not subsequently passed the additional contaminant testing required by rule M 1507(B).

D. Labeling of Medical Marijuana Infused-Product Shipping Containers or Packages by Medical Marijuana-Infused Products Manufacturer. Prior to transporting or transferring any Medical Marijuana Infused-Product to another Medical Marijuana Business, a Medical Marijuana Manufacturing Products Facility must ensure that a label is affixed to a Shipping Container or

package holding Medical Marijuana Infused-Product that includes all of the information required by this rule. A Medical Marijuana-Infused Products Manufacturer must include the following information on every Shipping Container or package:

1. The number of Containers holding a Medical Marijuana Infused-Product within the Shipping Container or package; and

2. The license number of the Medical Marijuana-Infused Products Manufacturer(s) that produced the Medical Marijuana Infused-Product within the Shipping Container or package.

Basis and Purpose – M 1005

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(XIV), 12-43.3-202(2)(a)(XIV.5), 12-43.3-202(2)(a)(XX), 12-43.3-202(2.5)(a)(I), 12-43.3-402(2)(a), 12-43.3-402(6), 12-43.3-402(7), and 12-43.3-901(4)(b), C.R.S. The purpose of this rule is to ensure that the labeling on each Container of Medical Marijuana includes necessary and relevant information for patients, does not include health and physical benefit claims, is easily accessible to patients, and is clear and noticeable. The State Licensing Authority wants to ensure the regulated community employs proper labeling techniques for all Medical Marijuana because it is a public health and safety concern. The allowable plus or minus 15% potency variance has been included in the rule pursuant to the mandate of Senate Bill 15-260. Section 1 of the bill required the State Licensing Authority to establish an acceptable potency variance for correct labeling. The acceptable potency variance has been set at plus or minus 15% to comport with the potency variance mandated by the Retail Code.

M 1005 – Packaging and Labeling of Medical Marijuana by a Medical Marijuana Center

A. Packaging of Medical Marijuana by a Medical Marijuana Center.

1. A Medical Marijuana Center must ensure that all Medical Marijuana 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 Exit Package that is Child-Resistant.

2. Except that when a patient provides written documentation signed by his or her physician attesting to the fact that it would be unreasonably difficult for the patient to open packaging that is Child-Resistant:

a. A Medical Marijuana Center shall not be required to package the Medical Marijuana in a Child-Resistant Container for sale to the patient; and

b. A Medical Marijuana Center shall not be required to utilize a Child-Resistant Exit Package for the patient.

c. If the Medical Marijuana is packaged in a Child-Resistant Container, a Medical Marijuana Center may defeat the Medical Marijuana's Child-Resistant packaging on behalf of the patient, so long as the Medical Marijuana remains with the packaging after the Child-Resistant properties have been defeated.

B. Labeling of Medical Marijuana by a Medical Marijuana Center. A Medical Marijuana Center must affix all of the information required by this rule to every Container in which Medical Marijuana is placed no later than at the time of sale to a patient:

1. A Medical Marijuana Center must include the following information on every Container:

a. The license number(s) of the Optional Premises Cultivation Operation(s) where the Medical Marijuana was grown;

b. The license number of the Medical Marijuana Center that sold the Medical Marijuana to the patient;

c. The Identity Statement and Standardized Graphic Symbol of the Medical Marijuana Center that sold the Medical Marijuana 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 Harvest Batch Number(s) assigned to the Medical Marijuana within the Container;

e. The date of sale to the patient;

f. The patient registry number of the purchaser;

g. The net weight, in grams to at least the tenth of a gram, of the Medical Marijuana prior to its placement in the Container;

h. The following warning statements:

i. "There may be health risks associated with the consumption of this product."

ii. "This marijuana's potency was tested with an allowable plus or minus 15% variance pursuant to 12-43.3-202(2.5)(a)(I)(E), C.R.S."

iii. "There may be additional health risks associated with the consumption of this product for women who are pregnant, breastfeeding, or planning on becoming pregnant."

i. A complete list of all nonorganic pesticides, fungicides, and herbicides used during the cultivation of the Medical Marijuana.

j. The Universal Symbol, which must be located on the front of the Container and no smaller than ½ of an inch by ½ of an inch, and the following statement which must be labeled directly below the Universal Symbol: "Contains Marijuana. For Medical Use Only. Keep out of the reach of children."

2. Repealed.

2.1. Required Potency Statement. This subparagraph (B)(2.1) of rule M 1005 shall become effective on October 1, 2017. For each Harvest Batch of Medical Marijuana packaged within a Container, the Medical Marijuana Center shall ensure the potency of at least the Medical Marijuana's THC and CBD is included on a label that is affixed to the Container. The potency shall be expressed as a range of percentages that extends from the lowest percentage to the highest percentage of concentration for each cannabinoid listed, from every test conducted on that strain of Medical Marijuana cultivated by the same Optional Premises Cultivation Operation within the last six months. The potency shall be labeled either:

a. In a font size that is at least two font sizes larger than the surrounding label text and also not less than 10 point font, bold, and enclosed within an outlined shape such as a circle or square; or

b. Highlighted with a bright color such as yellow.

3. Required Contaminant Testing Statement.

a. When All Required Contaminant Tests Are Not Performed. If a Medical Marijuana Testing Facility did not test a Harvest Batch for microbials, mold, mildew, and filth, then a Medical Marijuana Center must ensure that a label is affixed to a Container holding any Medical Marijuana from that Harvest Batch with the following statement: **"The marijuana contained within this package has not been tested for contaminants."** Except that when an Optional Premises Cultivation Operation has successfully validated its process regarding contaminants pursuant to rule M 1501, then the Container instead shall be labeled with the following statement: **"The marijuana contained within this package complies with the mandatory contaminant testing required by rule M 1501."**

b. When All Required Contaminant Tests Are Performed and Passed. If a Medical Marijuana Testing Facility tested a Harvest Batch for microbials, mold, mildew, and filth, and all the required test(s) passed, then the Container shall be labeled with the following statement: **"The marijuana contained within this package complies with the mandatory contaminant testing required by rule M 1501."**

c. Nothing in this rule permits a Medical Marijuana Business to Transfer Medical Marijuana that has failed contaminant testing and has not subsequently passed the additional contaminant testing required by rule M 1507(B).

Basis and Purpose – M 1006

The statutory authority for this rule includes but is not limited to 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(XIV), 12-43.3-202(2)(a)(XIV.5), 12-43.3-202(2)(a)(XX), 12-43.3-402(2)(a)(I-III), 12-43.4-202(2.5)(a)(I), 12-43.3-402(2)(a), 12-43.3-402(6), 12-43.3-404(5), 12-43.3-404(10), and 12-43.3-901(4)(b), C.R.S. The purpose of this rule is to ensure that the labeling on each Container holding a Medical Marijuana Infused-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. The State Licensing Authority wants to ensure the regulated community employs proper packaging and labeling techniques for each Medical Marijuana Infused-Product because this is a public health and safety concern. The allowable plus or minus 15% potency variance has been included in the rule pursuant to the mandate of Senate Bill 15-260. Section 1 of the bill required the State Licensing Authority to establish an acceptable potency variance for correct labeling. The acceptable potency variance has been set at plus or minus 15% to comport with the potency variance mandated by the Retail Code.

M 1006 – Packaging and Labeling of Medical Marijuana Infused-Product by a Medical Marijuana Center

A. Packaging Requirements for a Medical Marijuana Center.

1. Beginning December 1, 2016, a Medical Marijuana Center shall not purchase, take possession of, or sell Medical Marijuana-Infused Product that does not comply with rules M 604 and M 1004.5.

2. A Medical Marijuana Center must ensure that each 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 Exit Package that is Child-Resistant.

3. Except that when a patient provides written documentation signed by his or her physician attesting to the fact that it would be unreasonably difficult for the patient to open packaging that is Child-Resistant:

   a. If the Medical Marijuana-Infused Product is packaged in a Child-Resistant Container, a Medical Marijuana Center may defeat the Medical Marijuana-Infused Product's Child-Resistant packaging on behalf of the patient, so long as the Medical Marijuana-Infused Product remains with the packaging after the Child-Resistant properties have been defeated; or

   b. If the Medical Marijuana-Infused Product is not packaged in a Child-Resistant Container, a Medical Marijuana Center shall not be required to package the Medical Marijuana-Infused Product in a Child-Resistant Container for sale to the patient; and

   c. A Medical Marijuana Center shall not be required to utilize a Child-Resistant Exit Package for the patient.

B. Labeling of Medical Marijuana Infused-Product by a Medical Marijuana Center. Every Medical Marijuana Center 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. If an Exit Package is not required pursuant to subparagraph (A)(2) of this rule M 1006, and the Medical Marijuana Center elects not to provide one, then the Medical Marijuana Center must ensure the labels required by this rule are affixed to each Container of Medical Marijuana Infused-Product no later than at the time of sale to a consumer.

1. Required Information.

   a. The license number of the Medical Marijuana Center that sold the Medical Marijuana Infused-Product to the consumer;

   b. The Identity Statement and Standardized Graphic Symbol of the Medical Marijuana Center that sold the Medical Marijuana Infused-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;

   c. The date of sale to the consumer;

   d. The patient registry number of the purchaser;

   e. The following warning statements;

      i. "There may be health risks associated with the consumption of this product."

ii. "This product contains marijuana and its potency was tested with an allowable plus or minus 15% variance pursuant to 12-43.3-202(2.5)(a)(I)(E), C.R.S."

iii. "This product was produced without regulatory oversight for health, safety, or efficacy."

iv. "There may be additional health risks associated with the consumption of this product for women who are pregnant, breastfeeding, or planning on becoming pregnant."

f. The Universal Symbol, which must be located on the front of the Container or Exit Package as appropriate and no smaller than ½ of an inch by ½ of an inch, and the following statement which must be labeled directly below the Universal Symbol: "Contains Marijuana. For Medical Use Only. Keep out of the reach of children.".

g. Required Potency Statement. This subsubparagraph (B)(1)(g) of rule M 1006 shall become effective October 1, 2017. Each Container holding a Medical Marijuana-Infused Product shall be labeled with the potency of at least the Medical Marijuana-Infused Product's THC and CBD. The potency shall be expressed in milligrams for each cannabinoid. The potency shall be labeled either:

i. In a font size that is at least two font sizes larger than the surrounding label text and also not less than 10 point font, bold, and enclosed within an outlined shape such as a circle or square; or

ii. Highlighted with a bright color such as yellow.

Basis and Purpose – M 1007

The statutory authority for this rule includes but is not limited to 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(XIV), 12-43.3-202(2)(a)(XIV.5), 12-43.3-202(2)(a)(XX), 12-43.3-202(2.5)(a)(I), 12-43.4-402(2)(a)(I-III), 12-43.4-402(6), 12-43.4-404(5), 12-43.3-404(10), and 12-43.3-901(4)(b), C.R.S. The purpose of this rule is to ensure that the labeling on each Container holding a Medical Marijuana Concentrate includes necessary and relevant information for patients, does not include health and physical benefit claims, is easily accessible to patients, and is clear and noticeable. In addition, this rule clarifies basic packaging requirements. The State Licensing Authority wants to ensure the regulated community employs proper labeling techniques to each Medical Marijuana Concentrate as this is a public health and safety concern. The allowable plus or minus 15% potency variance has been included in the rule pursuant to the mandate of Senate Bill 15-260. Section 1 of the bill required the State Licensing Authority to establish an acceptable potency variance for correct labeling. The acceptable potency variance has been set at plus or minus 15% to comport with the potency variance mandated by the Retail Code.

M 1007 – Packaging and Labeling of Medical Marijuana Concentrate by a Medical Marijuana Center

A. Packaging of Medical Marijuana Concentrate by a Medical Marijuana Center.

1. A Medical Marijuana Center must ensure that all Medical Marijuana Concentrate 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 Exit Package that is Child-Resistant.

2. Except that when a patient provides written documentation signed by his or her physician attesting to the fact that it would be unreasonably difficult for the patient to open packaging that is Child-Resistant:

   a. A Medical Marijuana Center shall not be required to package the Medical Marijuana Concentrate in a Child-Resistant Container for sale to the patient; and

   b. A Medical Marijuana Center shall not be required to utilize a Child-Resistant Exit Package for the patient.

   c. If the Medical Marijuana Concentrate is packaged in a Child-Resistant Container, a Medical Marijuana Center may defeat the Medical Marijuana Concentrate's Child-Resistant packaging on behalf of the patient, so long as the Medical Marijuana Concentrate remains with the packaging after the Child-Resistant properties have been defeated.

B. Labeling of Medical Marijuana Concentrate by Medical Marijuana Centers. Every Medical Marijuana Center must ensure that a label(s) is affixed to every Container holding Medical Marijuana Concentrate that includes all of the information required by this rule no later than at the time of sale to a consumer:

1. Every Medical Marijuana Center must ensure the following information is affixed to every Container holding a Medical Marijuana Concentrate:

   a. The license number(s) of the Optional Premises Cultivation Operation(s) where the Medical Marijuana used to produce the Medical Marijuana Concentrate within the Container was grown;

   b. The license number of the Optional Premises Cultivation Operation or Medical Marijuana-Infused Products Manufacturer that produced the Medical Marijuana Concentrate;

   c. The Production Batch Number assigned to the Medical Marijuana Concentrate;

   d. The license number of the Medical Marijuana Center that sold the Medical Marijuana Infused-Product to the consumer;

   e. The net weight, in grams to at least the tenth of a gram, of the Medical Marijuana Concentrate prior to its placement in the Container;

   f. The date of sale to the consumer;

   g. The patient registry number of the purchaser;

   h. The following warning statements:

      i. "There may be health risks associated with the consumption of this product."

      ii. "This product contains marijuana and its potency was tested with an allowable plus or minus 15% variance pursuant to 12-43.3-202(2.5)(a)(I)(E), C.R.S."

      iv. "This product was produced without regulatory oversight for health, safety, or efficacy."

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."**

i. The Universal Symbol, which must be located on the front of the Container and no smaller than ½ of an inch by ½ of an inch, and the following statement which must be labeled directly below the Universal Symbol: "Contains Marijuana. For Medical Use Only. Keep out of the reach of children."

j. A complete list of all nonorganic pesticides, fungicides, and herbicides used during the cultivation of the Medical Marijuana used to produce the Medical Marijuana Concentrate; and

k. A complete list of solvents and chemicals used to produce the Medical Marijuana Concentrate.

2. Repealed.

2.1. Required Potency Statement. This subparagraph (B)(2.1) of rule M 1007 shall become effective October 1, 2017. Each Container holding a Medical Marijuana Concentrate shall be labeled with the potency of at least the Medical Marijuana Concentrate's THC and CBD. The potency shall be expressed in milligrams for each cannabinoid. The potency shall be labeled either:

a. In a font size that is at least two font sizes larger than the surrounding label text and also not less than 10 point font, bold, and enclosed within an outlined shape such as a circle or square; or

b. Highlighted with a bright color such as yellow.

3. Required Contaminant Testing Statement.

a. When All Required Contaminant Tests Are Not Performed.

i. Solvent-Based Medical Marijuana Concentrate. If a Medical Marijuana Testing Facility did not test a Production Batch of Solvent-Based Medical Marijuana Concentrate for residual solvents, mold, and mildew, then the Container shall be labeled with the following statement: **"The Medical Marijuana Concentrate contained within this package has not been tested for contaminants."** Except that when a Medical Marijuana-Infused Products Manufacturer has successfully validated its process regarding contaminants pursuant to rule M 1501, then the Container instead shall be labeled with the following statement: **"The Medical Marijuana Concentrate contained within this package complies with the mandatory contaminant testing required by rule M 1501."**

ii. Food- and Water-Based Medical Marijuana Concentrate. If a Medical Marijuana Testing Facility did not test a Production Batch of Food- or Water-Based Medical Marijuana Concentrate for microbials, mold, and mildew, then the Container shall be labeled with the following statement: **"The Medical Marijuana Concentrate contained within this package has not been tested for contaminants."** Except that when an Optional Premises Cultivation Operation or a Medical Marijuana-Infused Products Manufacturer has successfully validated its process regarding contaminants pursuant to rule M 1501, then the Container instead shall

be labeled with the following statement: **"The Medical Marijuana Concentrate contained within this package complies with the mandatory contaminant testing required by rule M 1501."**

b. When All Required Contaminant Tests Are Performed and Passed.

i. Solvent-Based Medical Marijuana Concentrate. If a Medical Marijuana Testing Facility tested a Production Batch of Solvent-Based Medical Marijuana Concentrate for residual solvents, mold, and mildew, and the required test(s) passed, then the Container shall be labeled with the following statement: **"The Medical Marijuana Concentrate contained within this package complies with the mandatory contaminant testing required by rule M 1501."**

ii. Food- and Water-Based Medical Marijuana Concentrate. If a Medical Marijuana Testing Facility tested a Production Batch for microbials, mold, and mildew, and the required test(s) passed, then the Container shall be labeled with the following statement: **"The Medical Marijuana Concentrate contained within this package complies with the mandatory contaminant testing required by rule M 1501."**

c. Nothing in this rule permits a Medical Marijuana Business to Transfer Medical Marijuana Concentrate that has failed contaminant testing and has not subsequently passed the additional contaminant testing required by rule M 1507(B).

M 1000-1 Series – Labeling, Packaging, and Product Safety

Effective Date. The revised Packaging, Labeling and Product Safety rules set forth in this Rule M 1000-1 Series are effective January 1, 2018, except that during the period January 1, 2018, to June 30, 2018, Licensees have the option of complying with the Rule M 1000 Series or with this Rule M 1000-1 Series, but must be fully compliant with at least one of those two Labeling, Packaging, and Product Safety Series. Beginning July 1, 2018, the Rule M 1000 Series is repealed, and compliance with this M 1000-1 Series is mandatory.

On and after July 1, 2018, all Licensees are required to package and label all Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product according to the Packaging, Labeling, and Product Safety rules in this Rule M 1000-1 Series.

Basis and Purpose – M 1001-1

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(1)(h), 12-43.3-202(2)(a)(XIV), 12-43.3-202(2)(a)(XIV.5), 12-43.3-202(2)(a)(XX), 12-43.3-202(2.5)(a)(II)(A)-(B), 12-43.3-402(2)(a), 12-43.3-402(7), and 12-43.3-404(11), C.R.S. The purpose of this rule is to define minimum packaging and labeling requirements for Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product Transferred between Medical Marijuana Businesses. The State Licensing Authority finds it essential to regulate and establish labeling requirements for Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product, and that this is in the interest of the health and safety of the people of Colorado. This rule identifies information that is required on all labels to provide information necessary for the Division to regulate the cultivation, production, and sale of Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product. This rule also seeks to minimize, to the extent practicable, the burden of labeling compliance to Licensees. The labeling requirements in this rule apply to all Containers immediately containing Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product.

Rule M 1001-1 - Packaging and Labeling: Minimum Requirements Prior to Transfer to a Medical Marijuana Business

A. Applicability. This Rule establishes minimum requirements for packaging and labeling Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product prior to Transfer to a Medical Marijuana Business. The labeling requirements in this Rule apply to all Containers immediately containing Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product.

B. Packaging and Labeling of Medical Marijuana Flower and Trim and Medical Marijuana Concentrate Prior to Transfer to a Medical Marijuana Business. A Medical Marijuana Business shall comply with the following minimum packaging and labeling requirements prior to Transferring Medical Marijuana flower and trim or Medical Marijuana Concentrate to another Medical Marijuana Business:

1. Packaging of Medical Marijuana Flower and Trim and Medical Marijuana Concentrate.

a. Prior to Transfer to a Medical Marijuana Business, Medical Marijuana flower and trim or Medical Marijuana Concentrate shall be placed into a Container. The Container may but is not required to be Child-Resistant.

b. Each Container of Medical Marijuana flower or trim that is Transferred to a Medical Marijuana Business shall not exceed 10 pounds of Medical Marijuana flower or trim, but may include pre-weighed units that are within the sales limit in Rule M 403(D).

c. Each Container of Medical Marijuana Concentrate that is Transferred to a Medical Marijuana Business shall not exceed 10 pounds of Medical Marijuana Concentrate, but may include pre-weighed units.

2. Labeling of Medical Marijuana Flower and Trim and Medical Marijuana Concentrate. Prior to Transfer to a Medical Marijuana Business, every Container of Medical Marijuana flower and trim or Medical Marijuana Concentrate shall be affixed with a label that includes at least the following information:

a. The license number of the Optional Premises Cultivation Operation where the Medical Marijuana was grown;

b. The Harvest Batch Number(s) assigned to the Medical Marijuana or the Production Batch Number(s) assigned to the Medical Marijuana Concentrate;

c. If applicable, the license number of the Optional Premises Cultivation Operation(s) that produced the Water-Based Medical Marijuana Concentrate;

d. If applicable, the license number of the Medical Marijuana-Infused Products Manufacturer(ers) where the Medical Marijuana Concentrate was produced;

e. The net contents, using a standard of measure compatible with the Inventory Tracking System, of the Medical Marijuana or Medical Marijuana Concentrate prior to its placement in the Container;

f. Potency test results as required to permit the receiving Medical Marijuana Business to label the Medical Marijuana or Medical Marijuana Concentrate as required by these rules; and

g. A complete list of all nonorganic Pesticides, herbicides, and fertilizers that were used in the cultivation and production of the Medical Marijuana or Medical Marijuana Concentrate.

C. Packaging and Labeling of Medical Marijuana-Infused Product Prior to Transfer to a Medical Marijuana Business. A Medical Marijuana Business shall comply with the following minimum packaging and labeling requirements prior to Transferring Medical Marijuana-Infused Product to another Medical Marijuana Business:

1. Packaging of Medical Marijuana-Infused Product.

a. Transfer to a Medical Marijuana Business Other Than a Medical Marijuana Center. Prior to Transfer to a Medical Marijuana Business other than a Medical Marijuana Center, Medical Marijuana-Infused Product shall be placed into a Container. The Container may but is not required to be Child-Resistant.

b. Transfer to a Medical Marijuana Center. Prior to Transfer to a Medical Marijuana Center, all Medical Marijuana-Infused Product shall be packaged in a Child-Resistant Container that is ready for sale to the patient as required by the Rule M 1002-1(D)(1).

2. Labeling of Medical Marijuana-Infused Product.

a. Transfer to a Medical Marijuana Business other than a Medical Marijuana Center. Prior to Transfer to a Medical Marijuana Business other than a Medical Marijuana Center, every Container of Medical Marijuana-Infused Product shall be affixed with a label that includes at least the following information:

i. The license number of the Optional Premises Cultivation Operation(s) where the Medical Marijuana was grown;

ii. The license number of the Medical Marijuana-Infused Products Manufacturer that produced the Medical Marijuana-Infused Product;

iii. The Production Batch Number(s) assigned to the Medical Marijuana-Infused Product;

iv. The net contents, using a standard of measure compatible with the Inventory Tracking System, of the Medical Marijuana-Infused Product prior to its placement in the Container;

v. Potency test results, as required to permit the receiving Medical Marijuana Business to label the Medical Marijuana-Infused Product as required by these rules; and

vi. A complete list of all nonorganic Pesticides, herbicides, and fertilizers that were used in the cultivation and production of the Medical Marijuana-Infused Product.

b. Transfer to a Medical Marijuana Center. Prior to Transfer to a Medical Marijuana Center, every Container of Medical Marijuana-Infused Product shall be affixed with a label ready for sale to the patient including all information required by Rules M 1002-1(D)(2) and 1003-1(B).

D. Packaging and Labeling of Medical Marijuana Seeds and Immature Plants Prior to Transfer to a Medical Marijuana Business. A Medical Marijuana Business shall comply with the following minimum packaging and labeling requirements prior to Transferring Medical Marijuana seeds or Immature plants to another Medical Marijuana Business:

1. Packaging of Medical Marijuana Seeds.

   a. Prior to Transfer to a Medical Marijuana Business, Medical Marijuana seeds shall be placed into a Container. The Container may but is not required to be Child-Resistant.

   b. Each Container of Medical Marijuana seeds that is Transferred to a Medical Marijuana Business shall not exceed 10 pounds of Medical Marijuana seeds.

2. Packaging of Immature Plants. Prior to Transfer to a Medical Marijuana Business, Immature plants shall be placed into a receptacle. The receptacle may, but is not required to, be Child-Resistant.

3. Labeling of Medical Marijuana Seeds and Immature Plants. Prior to Transfer to a Medical Marijuana Business, every Container of Medical Marijuana seeds and all receptacles holding an Immature plant shall be affixed with a label that includes at least the license number of the Optional Premises Cultivation Operation where the Medical Marijuana that produced the seeds or the Immature plant was grown.

E. Prohibited Transfers – All Medical Marijuana Businesses. A Medical Marijuana Business shall not Transfer to a Medical Marijuana Center, and a Medical Marijuana Center shall not accept nor offer for sale, any Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product that is not packaged and labeled in conformance with the requirements of these rules, or that does not provide all information necessary to permit the Medical Marijuana Center to package and label the Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product prior to Transfer to a patient. However, a Medical Marijuana Center is not required to open any tamper evident Marketing Layer received from an Optional Premises Cultivation Operation or a Medical Marijuana-Infused Products Manufacturer to verify the Container is Child-Resistant or labeled.

F. Shipping Containers. Licensees may Transfer multiple Containers of Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product to a Medical Marijuana Business in a Shipping Container.

1. RFID Tag Required. Licensees shall ensure that either the multiple Containers placed within a Shipping Container each have an RFID tag, or the Shipping Container itself must have an RFID tag. If the Licensee elects to place the RFID tag on the Shipping Container, the Shipping Container shall contain only one Harvest Batch of Medical Marijuana, one Production Batch of Medical Marijuana Concentrate, or one Production Batch of Medical Marijuana-Infused Product. If a Shipping Container consists of more than one Harvest Batch or Production Batch, then each group of multiple Containers shall be affixed with an RFID tag. *See* Rule M 309 – Inventory Tracking System; Rule M 801 – Transport: All Medical Marijuana Businesses.

2. Labeling of Shipping Containers. Any Shipping Container that will not be displayed to the patient is not required to be labeled according to these rules.

G. Packaging and Labeling of Medical Marijuana Flower and Trim Prior to Transfer to a Medical Research Facility, a Pesticide Manufacturer or a Licensed Research Business. The packaging and labeling requirements in this M 1000-1 Series also apply to any Transfer of Medical

Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product to a Medical Research Facility, a Pesticide Manufacturer, or a Licensed Research Business.

H. Licensed Research Business Transfers to Persons as Part of an Approved Research Project. Any Licensed Research Business conducting research as part of an approved Research Project involving human subjects shall comply with all packaging and labeling requirements that are applicable to a Medical Marijuana Center prior to Transfer to a patient, unless the Licensed Research Business requests and receives in advance a waiver of specific packaging or labeling requirements in connection with the approved Research Project.

I. Research Transfers Prohibited. A Medical Marijuana Center shall not Transfer any Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product to a Medical Research Facility, a Pesticide Manufacturer, or a Licensed Research Business.

J. Violation Affecting Public Safety. A violation of any rule in this M 1000-1 Series may be considered a license violation affecting public safety.

Basis and Purpose – M 1002-1

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(1)(h), 12-43.3-202(2)(a)(XIV), 12-43.3-202(2)(a)(XIV.5), 12-43.3-202(2)(a)(XX), 12-43.3-202(2.5)(a)(II)(A)-(B), 12-43.3-402(2)(a), 12-43.3-402(7), and 12-43.3-404(11), C.R.S. The purpose of this rule is to define general packaging and labeling requirements for Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product prior to Transfer to a patient. The labeling requirements in this rule apply to all Containers immediately containing Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product. The State Licensing Authority finds it essential to regulate and establish labeling requirements for Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product and that this is in the interest of the health and safety of the people of Colorado. This rule identifies information that is required on all labels to provide necessary information to patients to make informed decisions and first responders in the event of accidental ingestion, over-ingestion, or allergic reaction. This rule also seeks to minimize, to the extent practicable, the burden of labeling compliance to Licensees.

Rule M 1002-1 - Packaging and Labeling: General Requirements Prior to Transfer to a Patient

A. Applicability. This Rule establishes general requirements for packaging and labeling Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product prior to Transfer to a patient. The labeling requirements in this Rule apply to all Containers immediately containing Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product. The labeling requirements based on intended use in Rule M 1003-1 are in addition to, not in lieu of, the requirements in this Rule.

B. Labeling Requirements – All Medical Marijuana, Medical Marijuana Concentrate and Medical Marijuana-Infused Product.

1. Font Size. Labeling text on the Container and any Marketing Layer must be no smaller than 1/16 of an inch.

2. Labels Shall Not Be Designed to Appeal to Children. A Medical Marijuana Business shall not place any content on a Container or the Marketing Layer in a manner that reasonably appears to target individuals under the age of 21, including but not limited to, cartoon characters or similar images.

3. False or Misleading Statements. Label(s) on a Container and any Marketing Layer shall not include any false or misleading statements.

4. Trademark Infringement Prohibited. No Container or Marketing Layer shall be intentionally or knowingly labeled so as to cause a reasonable patient confusion as to whether the Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product is a trademarked product or labeled in a manner that violates any federal trademark law or regulation.

5. Health and Benefit Claims. The label(s) on the Container and any Marketing Layer shall not make any claims regarding health or physical benefits to the patient.

6. Use of English Language. Labeling text on the Container and any Marketing Layer must be clearly written or printed and in the English language. In addition to the required English label, Licensees may include an additional, accurate foreign language translation on the label that otherwise complies with these rules.

7. Unobstructed and Conspicuous. Labeling text on the Container and any Marketing Layer must be unobstructed and conspicuous. A Licensee may affix multiple labels to the Container, provided that none of the information required by these rules is obstructed. For example, and not by means of limitation, labels may be accordion, expandable, extendable, or layered to permit labeling of small Containers.

8. Use of the Word “Candy” and/or “Candies” Prohibited.

    a. Licensees shall not use the word(s) “candy” and/or “candies” on the label of any Container holding Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product, or of any Marketing Layer.

    b. Notwithstanding the requirements of this subparagraph, a Medical Marijuana Business whose Identity Statement contains the word(s) “candy” and/or “candies” may place its Identity Statement on the label of the Container holding Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product, or of any Marketing Layer.

9. Child Resistant Certificate(s). A Licensee shall maintain a copy of the certificate showing that each Child-Resistant Container into which the Licensee places Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product is Child-Resistant and complies with the requirements of 16 C.F.R. 1700.15 (1995) and 16 C.F.R. 1700.20 (1995) in accordance with the requirements of Rule M 901(A).

    a. 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 16 C.F.R. 1700.15 (1995) and 16 C.F.R. 1700.20 (1995), which is available to the public for inspection and copying during the Division’s regular business hours.

10. Containers and Marketing Layers. The Container and any Marketing Layer shall have a label with all information required by this M 1000-1 Series. Any intermediary packaging between the Container and the Marketing Layer is not required to be labeled in accordance with these rules.

11. Exit Packages.

    a. Exit Packages Permitted for Child-Resistant Containers. A Medical Marijuana Center may, but is not required to, place a Child-Resistant Container into an Opaque Exit Package at the point of Transfer to the patient.

b. Exit Packages Required for Medical Marijuana Flower, Trim, and Seeds. Any Medical Marijuana flower, trim, or seeds in a Container that is not Child-Resistant shall be placed into a Child-Resistant Exit Package at the point of Transfer to a patient. The Exit Package is not required to be labeled but may include the Medical Marijuana Center's Identity Statement and/or Standardized Graphic Symbol.

C. Packaging and Labeling of Medical Marijuana Flower and Trim and Medical Marijuana Concentrate Prior to Transfer to a Patient. A Medical Marijuana Center shall comply with the following minimum packaging and labeling requirements prior to Transferring Medical Marijuana flower and trim or Medical Marijuana Concentrate to a patient:

1. Packaging of Medical Marijuana Flower and Trim. Prior to Transfer to a patient, Medical Marijuana flower and trim shall be in a Container that does not exceed the sales limit in Rule M 403(D). The Container may but is not required to be Child-Resistant. Any Medical Marijuana flower and trim in a Container that is not Child-Resistant shall be placed into a Child-Resistant Exit Package at the point of Transfer to a patient.

2. Packaging of Medical Marijuana Concentrate. Prior to Transfer to a patient, Medical Marijuana Concentrate shall be in a Child-Resistant Container. A sealed vaporizer cartridge or disposable vaporizer pen need not itself be Child-Resistant but must be placed into a Child-Resistant Container prior to Transfer to a patient.

3. Labeling of Medical Marijuana Flower and Trim and Medical Marijuana Concentrate. Prior to Transfer to a patient, every Container of Medical Marijuana flower and trim or Medical Marijuana Concentrate, and any Marketing Layer shall be affixed with a label that includes at least the following information:

a. Required License Number(s). The license number for each of the following:

i. The Optional Premises Cultivation Operation where the Medical Marijuana was grown;

ii. If applicable, the Optional Premises Cultivation Operation(s) where the Water-Based Medical Marijuana Concentrate was produced;

iii. If applicable, the Medical Marijuana-Infused Products Manufacturer where the Medical Marijuana Concentrate was produced; and

iv. The Medical Marijuana Center that sold the Medical Marijuana or Medical Marijuana Concentrate to the patient, except the Medical Marijuana Center may affix its license number to the Container or Marketing Layer.

b. Batch Numbers. The Harvest Batch Number(s) assigned to the Medical Marijuana or the Production Batch Number(s) assigned to the Medical Marijuana Concentrate.

c. Statement of Net Contents. The statement of net contents must identify the net weight of the Medical Marijuana or net weight or volume of Medical Marijuana Concentrate prior to its placement in the Container, using a standard of measure compatible with the Inventory Tracking System.

d. Universal Symbol. The Universal Symbol on the front of the Container and any Marketing Layer, no smaller than ½ of an inch by ½ of an inch, with the following

statement directly below the Universal Symbol: "**Contains Marijuana. Keep away from children."**

e. Required Potency Statement. The potency of the Medical Marijuana's or Medical Marijuana Concentrate's Total THC and CBD expressed as a percentage, which shall be displayed either:

i. In a font that is bold, and enclosed within an outlined shape such as a circle or square; or

ii. Highlighted with a bright color such as yellow.

f. Date of Sale. The Medical Marijuana Center shall affix the date of sale to the Container or Marketing layer at the point of Transfer to the patient.

g. Patient Number. The Medical Marijuana Center shall affix the patient's registration number to the Container or Marketing Layer at the time of Transfer to the patient.

h. Solvent List. A list of any solvent(s) used to produce any Solvent-Based Medical Marijuana Concentrate.

i. Nonorganic Pesticide Disclosure. A complete list of all nonorganic Pesticides, herbicides and fertilizers that were used in the cultivation and production of the Medical Marijuana or Medical Marijuana Concentrate.

j. Ingredient List Including Major Allergens. If applicable, a list of all ingredients used to manufacture the Medical Marijuana Concentrate including identification of any major allergens contained in the Medical Marijuana Concentrate in accordance with the Food Allergen Labeling and Patient Protection Act of 2004, 21 U.S.C. § 343 (2010). The Food Allergen Labeling and Patient Protection Act of 2004, 21 U.S.C. § 343 (2010) requires disclosure of the following major food allergens: milk, eggs, fish, crustacean shellfish, tree nuts, peanuts, wheat, and soybeans.

i. Note that this Rule does not include any later amendments or editions to the United States Code. The Division maintains a copy of 21 U.S.C. § 343 (2010), which is available to the public for inspection and copying during the Division's regular business hours.

k. Required Warning Statements. Either the label affixed to the Container or the Marketing Layer shall include the following information:

i. "**This product was produced without regulatory oversight for health, safety, or efficacy**."

ii. Testing statement identifying whether or not the product has been tested as follows:

a. If the product has been tested: "**This product complies with testing requirements**."; or

b. If the product has not been tested, "**This product has not been tested**."

iii. "**There may be long term physical or mental health risks from use of marijuana including additional risks for women who are or may become pregnant or are breastfeeding. Use of marijuana may impair your ability to drive a car or operate machinery**."

D. Packaging and Labeling of Medical Marijuana-Infused Product. A Medical Marijuana-Infused Products Manufacturer and a Medical Marijuana Center shall comply with the following minimum packaging and labeling requirements prior to Transferring Medical Marijuana-Infused Product:

1. Packaging of Medical Marijuana-Infused Product. Every Medical Marijuana-Infused Product shall be in a Child-Resistant Container at the time of Transfer to a Medical Marijuana Center in accordance with the following packaging limits:

a. Medical Marijuana-Infused Product Other than Edible Medical Marijuana-Infused Product. Every Medical Marijuana-Infused Product that is not Edible Medical Marijuana-Infused Product shall be placed into a Child-Resistant Container. A sealed vaporizer cartridge or disposable vaporizer pen need not itself be Child-Resistant but must be placed into a Child-Resistant Container prior to Transfer to a patient.

b. Edible Medical Marijuana-Infused Product. Every Edible Medical Marijuana-Infused Product shall be in a Child-Resistant Container. If the Edible Medical Marijuana-Infused Product contains multiple portions then it shall be placed into a Child-Resistant Container that is Resealable.

2. Labeling of Medical Marijuana-Infused Product. Prior to Transfer to a Medical Marijuana Center and a patient, every Container of Medical Marijuana-Infused Product and any Marketing Layer shall be affixed with a label that includes at least the following information:

a. Required License Number(s). The license number for each of the following:

i. The Optional Premises Cultivation Operation where the Medical Marijuana was grown;

ii. The Medical Marijuana-Infused Products Manufacturer where the Medical Marijuana-Infused Product was produced; and

iii. The Medical Marijuana Center that sold the Medical Marijuana-Infused Product to the patient, except the Medical Marijuana Center may affix its license number to the Container or Marketing Layer.

b. Batch Numbers. The Production Batch Number(s) assigned to the Medical Marijuana-Infused Product.

c. Statement of Net Contents. The statement of net contents must identify the net weight, volume, or number of Medical Marijuana-Infused Products prior to its placement in the Container, using a standard of measure compatible with the Inventory Tracking System.

d. Universal Symbol. The Universal Symbol on the front of the Container and any Marketing Layer, no smaller than ½ of an inch by ½ of an inch, with the following statement directly below the Universal Symbol: "**Contains Marijuana. Keep away from children**."

e. Ingredient List Including Major Allergens. A list of all ingredients used to manufacture the Medical Marijuana-Infused Product including identification of any major allergens contained in the Medical Marijuana-Infused Product in accordance with the Food Allergen Labeling and Patient Protection Act of 2004, 21 U.S.C. § 343 (2010). The Food Allergen Labeling and Patient Protection Act of 2004, 21 U.S.C. § 343 (2010) requires disclosure of the following major food allergens: milk, eggs, fish, crustacean shellfish, tree nuts, peanuts, wheat, and soybeans.

i. Note that this Rule does not include any later amendments or editions to the United States Code. The Division maintains a copy of 21 U.S.C. § 343 (2010), which is available to the public for inspection and copying during the Division's regular business hours.

f. Required Potency Statement. The potency of the Medical Marijuana-Infused Product's active THC and CBD expressed in milligrams, which shall be displayed either:

i. In a font that is bold, and enclosed within an outlined shape such as a circle or square; or

ii. Highlighted with a bright color such as yellow.

g. Date of Sale. The Medical Marijuana Center shall affix the date of sale to the Container or Marketing layer at the point of Transfer to the patient.

h. Patient Number. The Medical Marijuana Center shall affix the patient's registration number to the Container or Marketing Layer at the time of Transfer to the patient.

i. Solvent List. A list of any solvent(s) used to produce any Solvent-Based Medical Marijuana Concentrate that is included as a production input in the Medical Marijuana-Infused Product.

j. Nonorganic Pesticide Disclosure. A complete list of all nonorganic Pesticides, herbicides and fertilizers that were used in the cultivation and production of the Medical Marijuana-Infused Product.

k. Required Warning Statements. Either the label affixed to the Container or the Marketing Layer shall include the following information:

i. "**This product was produced without regulatory oversight for health, safety, or efficacy**."

ii. Testing statement identifying whether or not the product has been tested as follows:

a. If the product has been tested: "**This product complies with testing requirements**."; or

b. If the product has not been tested, "**This product has not been tested.**"

iii. "**There may be long term physical or mental health risks from use of marijuana including additional risks for women who are or may**

become pregnant or are breastfeeding. Use of marijuana may impair your ability to drive a car or operate machinery."

E. Packaging and Labeling of Seeds and Immature Plants Prior to Transfer to a Patient. A Medical Marijuana Center shall comply with the following minimum packaging and labeling requirements prior to Transferring seeds or Immature plants to a patient:

1. Packaging of Medical Marijuana Seeds. Prior to Transfer to a patient, Medical Marijuana seeds shall be in a Container. The Container may but is not required to be Child-Resistant. Any Medical Marijuana seeds in a Container that is not Child-Resistant shall be placed into a Child-Resistant Exit Package at the point of Transfer to a patient.

2. Packaging of Immature Plants. Prior to Transfer to a patient, Immature plants shall be placed into a receptacle. The receptacle may but is not required to be Child-Resistant.

3. Labeling of Seeds and Immature Plants. Prior to Transfer to a patient, every Container holding Medical Marijuana seeds and any receptacle containing an Immature plant must be affixed with a label that includes at least the following information:

a. Required License Number(s). The license number for each of the following:

i. The Optional Premises Cultivation Operation where the Medical Marijuana that produced the seeds or the Immature plant was grown; and

ii. The Medical Marijuana Center that sold the seeds or Immature plant to the patient.

b. Universal Symbol. The Universal Symbol on the front of the Container holding seeds and the receptacle containing each Immature plant, no smaller than ½ of an inch by ½ of an inch, with the following statement directly below the Universal Symbol: "**Contains Marijuana. Keep away from children.**"

c. Statement of Net Contents for Seeds. A statement of net contents identifying the number of seeds in the Container.

d. Date of Sale. The Medical Marijuana Center shall affix the date of sale to the Container or receptacle at the point of Transfer to the patient.

e. Patient Number. The Medical Marijuana Center shall affix the patient's registration number to the Container or receptacle at the time of Transfer to the patient.

f. Nonorganic Pesticide Disclosure. A complete list of all nonorganic Pesticides, herbicides, and fertilizers that were used in the cultivation and production of the Medical Marijuana.

g. Required Warning Statements:

i. "**This product was produced without regulatory oversight for health, safety, or efficacy**."

ii. "**There may be long term physical or mental health risks from use of marijuana including additional risks for women who are or may**

become pregnant or are breastfeeding. Use of marijuana may impair your ability to drive a car or operate machinery."

F. Permissive Information.

1. Identity Statement. A label affixed to a Container of Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product, or any Marketing Layer may include, but is not required to include, the Identity Statement and/or Standardized Graphic Symbol for:

   a. The Optional Premises Cultivation Operation(s) where the Medical Marijuana was grown;

   b. The Medical Marijuana-Infused Products Manufacturer that manufactured the Medical Marijuana-Infused Product or Medical Marijuana Concentrate; and/or

   c. The Medical Marijuana Center that sold the Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product.

2. Nutritional Fact Panel. Label(s) may include, but are not required to include, a nutritional fact panel or dietary supplement fact panel in substantial conformance with 21 CFR 101.9 (2016) or 21 C.F.R. 101.36 (2016) as follows:

   a. For Edible Medical Marijuana-Infused Products other than pills, capsules, and tinctures and Food-Based Medical Marijuana Concentrate, the nutritional fact panel shall be in substantial conformance with the requirements of 21 C.F.R. 101.9(C) (2016) which provides the FDA's nutritional labeling requirements for food;

   b. For pills, capsules, and tinctures, the dietary supplement fact panel shall be in substantial conformance with the requirements of 21 C.F.R. 101.36 (2016) which provides the FDA's nutritional labeling requirements for dietary supplements.

      i. Note that this Rule does not include any later amendments or editions to the Code of Federal Regulations. The Division maintains copies of 21 C.F.R. 101.9(C) (2016) and 21 C.F.R. 101.36 (2016), which are available to the public for inspection and copying during the Division's regular business hours.

3. Other Permissive Information. The labeling requirements in this M 1000-1 Series provide only the minimum labeling requirements. Licensees may include additional information on the label(s) so long as such information is consistent with the requirements of these rules.

Basis and Purpose – M 1003-1

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(1)(h), 12-43.3-202(2)(a)(XIV), 12-43.3-202(2)(a)(XIV.5), 12-43.3-202(2)(a)(XX), 12-43.3-202(2.5)(a)(II)(A)-(B), 12-43.3-402(2)(a), 12-43.3-402(7), and 12-43.3-404(11), C.R.S. The purpose of this rule is to define additional labeling requirements for Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product (except Medical Marijuana seeds and Immature plants) based on its intended use. These labeling requirements are in addition to, not in lieu of, the labeling requirements in Rule M 1002-1.

Rule M 1003-1 - Additional Labeling Requirements Prior to Transfer to a Patient

A. Applicability. This Rule establishes additional labeling requirements for Medical Marijuana (except seeds and Immature plants), Medical Marijuana Concentrate, and Medical Marijuana-Infused Product prior to Transfer to a patient. The labeling requirements in this Rule apply to all Containers immediately containing Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product. These labeling requirements based on intended use are in addition to, not in lieu of, the requirements in Rule M 1002-1.

B. Additional Information Required on Every Container (Except Seeds and Immature Plants) Prior to Transfer to a Patient. Prior to Transfer to a patient, every Container of Medical Marijuana (excepts seeds and Immature plants), Medical Marijuana Concentrate, or Medical Marijuana-Infused Product and any Marketing Layer must have a label that includes at least the following additional information.

1. Statement of Intended Use. The Container and any Marketing Layer shall identify one or more intended use for Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product from the following exclusive list:

a. Inhaled Product:

i. Flower or Trim (including pre-rolled joint and kief);

ii. Solvent-Based Medical Marijuana Concentrate;

iii. Water-Based Medical Marijuana Concentrate;

iv. Heat/Pressure-Based Medical Marijuana Concentrate;

v. Vaporizer cartridge/vaporizer pen.

b. For Oral Consumption (Edible Medical Marijuana-Infused Product):

i. Food or drink infused with Medical Marijuana;

ii. Medical Marijuana Concentrate;

iii. Pills and capsules;

iv. Tinctures.

c. Skin and Body Products:

i. Topical;

ii. Suppository;

iii. Transdermal.

2. Inhaled Product. The label(s) on all inhaled product intended use shall also include:

a. The potency statement required by Rule M 1002-1 for: (1) flower (including pre-rolls and kief), (2) Solvent-Based Medical Marijuana Concentrate, (3) Water-Based Medical Marijuana Concentrate, (4) Heat/Pressure-Based Medical Marijuana Concentrate shall be stated as the percentage of Total THC and CBD.

b. The potency statement required by Rule M 1002-1 for vaporizer cartridges and disposable vaporizer pens shall be stated as either the percentage of Total THC and CBD, or the number of milligrams of Total THC and CBD, per cartridge or pen.

3. For Oral Consumption (Edible Medical Marijuana-Infused Products). The label(s) on all Edible Medical Marijuana-Infused Products, including but not limited to confections, liquids, Medical Marijuana-Infused foods, pills, capsules, and tinctures, shall also include:

a. Potency Statement. The potency statement required by Rule M 1002-1 shall be stated as: (1) milligrams of active THC and CBD per serving, and (2) milligrams of active THC and CBD per Container where the Container contains more than one serving.

b. Additional Warning Statement Required. The following additional warning statement shall be included on the label on the Container or Marketing Layer for all Edible Medical Marijuana-Infused Product: **"The intoxicating effects of this product may be delayed by up to 4 hours.**"

c. Expiration/Use-By Date. A product expiration date, upon which the Edible Medical Marijuana-Infused Product will no longer be fit for consumption, or a use-by-date, upon which the Edible Medical Marijuana-Infused Product will no longer be optimally fresh. Once a label with an expiration or use-by date has been affixed to a Container containing an Edible Medical Marijuana-Infused Product and any Marketing Layer, a Licensee shall not alter that expiration or use-by date, or affix a new label with a later expiration or use-by date.

d. Production Date. The date on which the Edible Medical Marijuana-Infused Product was produced which may be included in the Batch Number required by Rule M 1002-1.

e. Statement Regarding Refrigeration. If an Edible Medical Marijuana-Infused Product is perishable, a statement that the product must be refrigerated.

4. Skin and Body Products (Topical, Suppositories and Transdermal). The label(s) on all skin and body products shall also include:

a. Topical Product Potency Statement. For topical product the potency statement required by Rule M 1002-1 shall be stated as the number of milligrams of active THC and CBD per Container.

b. Suppository and Transdermal Product Potency Statement. For suppository and transdermal product, the potency statement required by Rule M 1002-1 shall be stated as the number of milligrams of active THC and CBD per suppository or transdermal, and the total number of milligrams of active THC and CBD per Container.

c. Expiration/Use-By Date. A product expiration or use-by date, after which the skin and body product will no longer be fit for use. Once a label with an expiration or use-by date has been affixed to any Container holding a skin and body product and any Marketing Layer, a Licensee shall not alter that expiration or use-by date or affix a new label with a later expiration or use-by date.

d. Production Date. The date on which the skin and body product was produced which may be included in the Batch Number required by Rule M 1002-1.

C. No Other Intended Use Permitted. No intended use other than those identified in this Rule shall be identified on any label. Licensees shall accurately identify all intended use(s) from the exclusive list of intended uses in this Rule on the label.

D. Multiple Intended Uses. Any Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product having more than one intended use shall identify every intended use on the label and shall comply with all labeling requirements for each intended use. If there is any conflict between the labeling requirements for multiple intended uses, the most restrictive labeling requirements shall be followed. Licensees shall not counsel or advise any patient to use Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product other than in accordance with the intended use(s) identified on the label.

M 1200 Series – Enforcement

Basis and Purpose – M 1201

The statutory authority for this rule includes but is not limited to sections 12-43.3-201(4), 12-43.3-201(5), 12-43.3-202(1)(b)(I), 12-43.3-202(1)(d), 12-43.3-202(2)(a)(II), 12-43.3-202(2)(a)(XX), 16-2.5-101, 16-2.5-121, and 16-2.5-124.5, C.R.S. The purpose of this rule is to allow for officers and employees of the Division to investigate all aspects of Licensees to ensure the fair, impartial, stringent, and comprehensive administration of the Medical Code and the rules promulgated pursuant to it.

M 1201 – Duties of Employees of the State Licensing Authority

A. Duties of Director

1. The State Licensing Authority may delegate an act required to be performed by the State Licensing Authority related to the day-to-day operation of the Division to the Director.

2. The Director may authorize Division employees to perform tasks delegated from the State Licensing Authority.

B. Duties of Division Investigators. The State Licensing Authority, the Department's Senior Director of Enforcement, the Director, and Division investigators shall have all the powers of any peace officer to:

1. Investigate violations or suspected violations of the Medical Code and any rules promulgated pursuant to it. Make arrests, with or without warrant, for any violation of the Medical Code, any rules promulgated pursuant to it, Article 18 of Title 18, C.R.S., any other laws or regulations pertaining to Medical Marijuana in this state, or any criminal law of this state, if, during an officer's exercise of powers or performance of duties pursuant to the Medical Code, probable cause exists that a crime related to such laws has been or is being committed;

2. Serve all warrants, summonses, subpoenas, administrative citations, notices or other processes relating to the enforcement of laws regulating Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product;

3. Assist or aid any law enforcement officer in the performance of his or her duties upon such law enforcement officer's request or the request of other local officials having jurisdiction;

4. Inspect, examine, or investigate any premises where the Licensee’s Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product are grown, stored,

cultivated, manufactured, tested, distributed, or sold, and any books and records in any way connected with any licensed activity;

5. Require any Licensee, upon demand, to permit an inspection of Licensed Premises during business hours or at any time of apparent operation, marijuana equipment, and marijuana accessories, or books and records; and, to permit the testing of or examination of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product;

6. Require Applicants to submit complete and current applications and fees and other information the Division deems necessary to make licensing decisions and approve material changes made by the Applicant or Licensee;

7. Conduct investigations into the character, criminal history, and all other relevant factors related to suitability of all Licensees and Applicants for Medical Marijuana licenses and such other Persons with a direct or indirect interest in an Applicant or Licensee, as the State Licensing Authority may require; and

8. Exercise any other power or duty authorized by law.

C. Duties of State Licensing Authority and Division Employees.

1. Employees shall maintain the confidentiality of State Licensing Authority and Division records and information. For confidentiality requirements of State Licensing Authority and Division employees who leave the employment of the State Licensing Authority, see Rule M 1308 - Confidential Information and Former State Licensing Authority Employees.

2. Pursuant to subsection 12-43.3-201(4), C.R.S., State Licensing Authority employees with regulatory oversight responsibilities for marijuana businesses licensed by the State Licensing Authority shall not work for, represent, or provide consulting services to or otherwise derive pecuniary gain from a marijuana business licensed by the State Licensing Authority or other business entity established for the primary purpose of providing services to the marijuana industry for a period of six months following his or her last day of employment with the State Licensing Authority.

3. Pursuant to subsection 12-43.3-201(5), C.R.S., disclosure of confidential records or information in violation of the provisions of the Medical Code constitutes a class 1 misdemeanor.

Basis and Purpose – M 1202

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(IV), and 12-43.3-202(2)(a)(XX), C.R.S. This rule explains that Licensees must cooperate with Division employees when they are acting within the normal scope of their duties and that failure to do so may result in sanctions. It also explains the administrative hold process, the handling of inventory subject to administrative hold and under investigation and the process for voluntary surrender of Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product.

M 1202 – Requirement for Inspections and Investigations, Searches, Administrative Holds, Voluntary Surrenders and Such Additional Activities as May Become Necessary from Time to Time

A. Applicants and Licensees Shall Cooperate with Division Employees

1. Applicants and Licensees must cooperate with employees of the Division who are conducting inspections or investigations relevant to the enforcement of laws and regulations related to the Medical Code.

2. No Applicant or Licensee shall by any means interfere with, obstruct or impede the State Licensing Authority or any employee of the Division from exercising their duties under the provisions of the Medical Code and all rules promulgated pursuant to it. This would include, but is not limited to:

    a. Threatening force or violence against an employee or investigator of the Division, or otherwise endeavoring to intimidate, obstruct, or impede employees or investigators of the Division, their supervisors, or any peace officers from exercising their duties. The term “threatening force” includes the threat of bodily harm to such individual or to a member of his or her family;

    b. Denying investigators of the Division access to premises where the Licensee’s Medical Marijuana or Medical Marijuana-Infused Product are grown, stored, cultivated, manufactured, tested, distributed, or sold during business hours or times of apparent activity;

    c. Providing false or misleading statements;

    d. Providing false or misleading documents and records;

    e. Failing to timely produce requested books and records required to be maintained by the Licensee; or

    f. Failing to timely respond to any other request for information made by a Division employee or investigator in connection with an investigation of the qualifications, conduct or compliance of an Applicant or Licensee.

B. Administrative Hold

1. To prevent destruction of evidence, diversion or other threats to public safety, while permitting a Licensee to retain its inventory pending further investigation, a Division investigator may order an administrative hold of Medical Marijuana or Medical Marijuana-Infused Product pursuant to the following procedure:

    a. If during an investigation or inspection of a Licensee, a Division investigator develops reasonable grounds to believe certain Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product constitute evidence of acts in violation of the Medical Code or rules promulgated pursuant to it, or otherwise constitute a threat to the public safety, the Division investigator may issue a notice of administrative hold of any such Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product. The notice of administrative hold shall provide a documented description of the Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product to be subject to the administrative hold and a concise statement that is promptly issued and approved by the Director or his or her designee regarding the reasons for issuing the administrative hold.

    b. Following the issuance of a notice of administrative hold, the Division will identify the Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product subject to the administrative hold in the Inventory Tracking

System. The Licensee shall continue to comply with all tracking requirements. *See* Rule M 309 – Medical Marijuana Business: Inventory Tracking System.

c. The Licensee shall completely and physically segregate the Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product subject to the administrative hold in a Limited Access Area of the Licensed Premises under investigation, where it shall be safeguarded by the Licensee.

d. While the administrative hold is in effect, the Licensee is prohibited from selling, giving away, Transferring, transporting, or destroying the Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product subject to the administrative hold except as otherwise authorized by these Rules.

e. While the administrative hold is in effect, the Licensee must safeguard the Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product subject to the administrative hold and must fully comply with all security requirements including but not limited to surveillance, lock and alarm requirements set forth in the Medical Code and the rules of the State Licensing Authority. *See* Rule M 1309 Administrative Warrants.

f. Nothing herein shall prevent a Licensee from voluntarily surrendering Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product that is subject to an administrative hold, except that the Licensee must follow the procedures set forth in paragraph (C) for voluntary surrender of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product.

g. Nothing herein shall prevent a Licensee from the continued possession, cultivation, or harvesting of the Medical Marijuana subject to the administrative hold. All Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product subject to an administrative hold must be put into separate Harvest Batches.

h. At any time after the initiation of the administrative hold, the Division may lift the administrative hold pending the administrative process, or seek other appropriate relief.

C. <u>Voluntary surrender of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product</u>

1. A Licensee, prior to a Final Agency Order and upon mutual agreement with the Division, may elect to voluntarily surrender any Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product to the Division.

a. Such voluntary surrender may require destruction of any Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product in the presence of a Division investigator and at the Licensee's expense, and

b. The individual signing the Division's voluntary surrender form on behalf of the Licensee must certify that the individual has authority to represent and bind the Licensee.

2. The voluntary surrender form may be utilized in connection with a stipulated agency order through which the Licensee waives the right to hearing and any associated rights.

3. The voluntary surrender form may be utilized even if the Licensee does not waive the right to hearing and any associated rights, with the understanding that the outcome of the hearing does not impact the validity of the voluntary surrender.

4. A Licensee, after a Final Agency Order and upon mutual agreement with the Division, may elect to voluntarily surrender any marijuana or marijuana product to the Division.

   a. The Licensee must complete and return the Division's voluntary surrender form within 15 calendar days of the date of the Final Agency Order.

   b. Such voluntary surrender may require destruction of any Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product in the presence of a Division investigator and at the Licensee's expense.

   c. The individual signing the Division's voluntary surrender form on behalf of the Licensee must certify that the individual has authority to represent and bind the Licensee.

Basis and Purpose - M 1203

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(II), 12-43.3-202(2)(a)(IV), 12-43.3-202(1)(b)(XX), and 12-43.3-602, C.R.S. The purpose of this rule is to provide guidance following either an agency decision or under any circumstances where the licensee is ordered to surrender and/or destroy unauthorized Medical Marijuana, unauthorized Medical Marijuana Concentrate, and unauthorized Medical Marijuana-Infused Product. This rule also provides guidance as to the need to preserve evidence during agency investigations or subject to agency order.

M 1203 – Disposition of Unauthorized Medical Marijuana

A. After a Final Agency Order Mandates the Destruction of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product. If the State Licensing Authority issues a Final Agency Order pursuant to section 12-43.3-602, C.R.S., that mandates the destruction of some or all of the Licensee's unauthorized Medical Marijuana or unauthorized Medical Marijuana-Infused Product, the Licensee may:

   1. Voluntarily Surrender. The Licensee may voluntarily surrender to the Division all of its unauthorized Medical Marijuana, unauthorized Medical Marijuana Concentrate, or unauthorized Medical Marijuana-Infused Product that are described in the Final Agency Order in accordance with the provisions of Rule M 1202.

   2. Seek a Stay. The licensee may file a petition for a stay of the Final Agency Order with the Denver District Court within 15 days of the Final Agency Order.

   3. Take No Action. If the Licensee does not either (1) voluntarily surrender its unauthorized Medical Marijuana or unauthorized Medical Marijuana-Infused Product as set forth in subparagraph (A)(1) of this Rule; or (2) properly seek a stay of the Final Agency Order as set forth in subparagraph (A)(2) of this Rule, the Division will enter the Licensed Premises and seize and destroy the unauthorized Medical Marijuana or unauthorized Medical Marijuana-Infused Product that are the subject of the Final Agency Order.

B. General Requirements Applicable To All Licensees Following Final Agency Order To Destroy Unauthorized Medical Marijuana or Unauthorized Medical Marijuana-Infused Product. The following requirements apply regardless of whether the Licensee voluntarily surrenders its unauthorized Medical Marijuana or unauthorized Medical Marijuana-Infused Product, seeks a stay of agency action, or takes no action:

1. The 15 day period set forth in section 12-43.3-602, C.R.S., and this rule shall include holidays and weekends.

2. During the period of time between the issuance of the Final Agency Order and the destruction of unauthorized Medical Marijuana or unauthorized Medical Marijuana-Infused Product, the Licensee shall not Transfer, destroy, or otherwise let any unauthorized Medical Marijuana or unauthorized Medical Marijuana-Infused Product that are subject to the Final Agency Order leave the Licensed Premises unless specifically authorized by the State Licensing Authority or a court of competent jurisdiction.

3. During the period of time between the issuance of the Final Agency Order and the destruction of unauthorized Medical Marijuana or unauthorized Medical Marijuana-Infused Product, the Licensee must safeguard any unauthorized Medical Marijuana or unauthorized Medical Marijuana-Infused Product in its possession or control and must fully comply with all security requirements including but not limited to surveillance, lock and alarm requirements set forth in the Medical Code and the rules of the State Licensing Authority.

4. Unless the State Licensing Authority otherwise orders, the Licensee may cultivate, water, or otherwise care for any unauthorized Medical Marijuana or unauthorized Medical Marijuana-Infused Product that are subject to the Final Agency Order during the period of time between the issuance of the Final Agency Order and the destruction of the unauthorized Medical Marijuana or unauthorized Medical Marijuana-Infused Product.

5. If a district attorney notifies the Division that some or all of the unauthorized Medical Marijuana or Medical Marijuana-Infused Product is involved in an investigation, the Division shall not destroy the unauthorized Medical Marijuana or Medical Marijuana-Infused Product until approved by the district attorney.

M 1300 Series – Discipline

Basis and Purpose – M 1303

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(V), 12-43.3-202(a)(XIX), 12-43.3-202(2)(a)(XX), 24-4-104(4)(a), 12-43.3-601, and 24-4-105, C.R.S. The State Licensing Authority recognizes that if Licensees are not able to care for their products during a period of active suspension, then their plants could die, their edible products could deteriorate, and their on-hand inventory may not be properly maintained. Accordingly, this rule was written to clarify that Licensees whose licenses are summarily suspended may care for on-hand inventory, manufactured products, and plants during the suspension (unless the State Licensing Authority does not allow such activity), provided the Licensed Premises and all Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product are adequately secured. In addition, the rule clarifies what activity is always prohibited during such suspension.

M 1303 – Suspension Process: Regular and Summary Suspensions

A. Signs Required During Active Suspension. Every Licensee whose License has been suspended, whether summarily or after an administrative hearing, shall post two notices in conspicuous places, one on the exterior and one on the interior of its premises, for the duration of the suspension. The notices shall at least 17 inches in length and 11 inches in width containing lettering not less 1/2'' in height.

1. For suspension following issuance of a Final Agency Order, the sign shall be in the following form:

NOTICE OF SUSPENSION

MEDICAL MARIJUANA LICENSES ISSUED

FOR THESE PREMISES HAVE BEEN

SUSPENDED BY ORDER OF THE STATE LICENSING AUTHORITY

FOR VIOLATION OF THE COLORADO MEDICAL MARIJUANA CODE

2. For a summary suspension pending issuance of a Final Agency Order, the sign shall be in the following form:

NOTICE OF SUSPENSION

MEDICAL MARIJUANA LICENSES ISSUED

FOR THESE PREMISES HAVE BEEN

SUSPENDED BY ORDER OF THE STATE LICENSING AUTHORITY

FOR ALLEGED VIOLATION OF THE COLORADO MEDICAL MARIJUANA CODE

Any advertisement or posted signs that indicate that the premises have been closed or business suspended for any reason other than by the manner described in this rule shall be deemed a violation of these rules.

B. Prohibited Activity During Suspension

1. Unless otherwise ordered by the State Licensing Authority, during any period of suspension the Licensee shall not permit the acquisition, purchase, , serving, giving away, distribution, manufacture, sampling, testing, Transfer, or transport of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product on the Licensed Premises, nor allow patients to enter the Licensed Premises.

2. Unless otherwise ordered by the State Licensing Authority, during any period of suspension the Licensee may continue to possess, maintain, cultivate or harvest Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product on the Licensed Premises. The Licensee must fully account for all such Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product in the Inventory Tracking System. The Licensee must safeguard any Medical Marijuana or Medical Marijuana-Infused Product in its possession or control. The Licensee must fully comply with all security requirements including but not limited to surveillance, lock and alarm requirements set forth in the Medical Code and the rules of the State Licensing Authority.

C. Removal and Destruction of Medical Marijuana, Medical Marijuana Concentrate, and Marijuana-Infused Product. Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product shall not be removed from the Licensed Premises or destroyed unless and until:

1. The provisions described in section 12-43.3-602, C.R.S., related to the proper destruction of unauthorized marijuana are met, and the State Licensing Authority orders forfeiture and destruction. See also Rule M 1203 – Disposition of Unauthorized Medical Marijuana;

2. The Licensee has voluntarily surrendered the Medical Marijuana or Medical Marijuana-Infused Product in accordance with Rule M 1202(C) – Voluntary Surrender;

3. The State Licensing Authority has seized the Medical Marijuana or Medical Marijuana-Infused Product pursuant to an Administrative Warrant. See Rule M 1309 - Administrative Warrants.

D. Renewal. The issuance of a suspension or an Order of Summary Suspension does not relieve the Licensee of the obligation to timely comply with all license renewal requirements.

Basis and Purpose – M 1307

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(1)(c), 12-43.3-202(2)(a)(V), 12-43.3-202(a)(XIX), and 12-43.3-202(2)(a)(XX), C.R.S. The purpose of this rule is to establish guidelines for enforcement and penalties that will be imposed by the State Licensing Authority for non-compliance with Medical Code, section 18-18-406.3(7), C.R.S., or any other applicable rule. The State Licensing Authority considered the type of violation and the threat of harm to the public versus purely administrative harm when setting the penalty structure. Based upon public testimony and a written commentary, Rule M 1307(A) was amended to include additional license violations affecting public safety and Rule M 1307(C.1) was added.

M 1307 – Penalties

A. Penalty Schedule. The State Licensing Authority will make determinations regarding the type of penalty to impose based on the severity of the violation in the following categories:

1. License Violations Affecting Public Safety. This category of violation is the most severe and may include, but is not limited to, Medical Marijuana sales to non-patients, consuming marijuana on the Licensed Premises, Medical Marijuana sales in excess of the relevant transaction limit, permitting the diversion of Medical Marijuana outside the regulated distribution system, possessing medical marijuana inventory or medical marijuana-infused products inventory obtained from outside the regulated distribution system or from an unauthorized source, misstatements or omissions in the Inventory Tracking System, failure to continuously escort a visitor in a Limited Access Area, violations related to co-located Medical Marijuana Businesses and Retail Marijuana Establishments, failure to maintain books and records to fully account for all transactions of the business, or packaging or labeling violations that directly impact patient safety. Violations of this nature generally have an immediate impact on the health, safety, and welfare of the public at large. The range of penalties for this category of violation may include license suspension, a fine per individual violation, a fine in lieu of suspension of up to $100,000, and/or license revocation depending on the mitigating and aggravating circumstances. Sanctions may also include restrictions on the license.

2. License Violations. This category of violation is more severe than a license infraction but generally does not have an immediate impact on the health, safety and welfare of the public at large. License violations may include but are not limited to, advertising and/or marketing violations, packaging or labeling violations that do not directly impact patient safety, failure to maintain minimum security requirements, failure to keep and maintain adequate business books and records, minor or clerical errors in the inventory tracking procedures. The range of penalties for this category of violation may include a written warning, license suspension, a fine per individual violation, a fine in lieu of suspension of up to $50,000, and/or license revocation depending on the mitigating and aggravating circumstances. Sanctions may also include restrictions on the license.

3. License Infractions. This category of violation is the least severe and may include, but is not limited to, failure to display required badges, unauthorized modifications of the premises of a minor nature, or failure to notify the State Licensing Authority of a minor change in ownership. The range of penalties for this category of violation may include a verbal or written warning, license suspension, a fine per individual violation, and/or a fine in lieu of suspension of up to $10,000 depending on the mitigating and aggravating circumstances. Sanctions may also include restrictions on the license.

B. Other Factors

1. The State Licensing Authority may take into consideration any aggravating and mitigating factors surrounding the violation which could impact the type or severity of penalty imposed.

2. The penalty structure is a framework providing guidance as to the range of violations, suspension description, fines, and mitigating and aggravating factors. The circumstances surrounding any penalty imposed will be determined on a case-by-case basis.

3. For all administrative offenses involving a proposed suspension, a Licensee may petition the State Licensing Authority for permission to pay a monetary fine, within the provisions of section 12-43.3-601, C.R.S., in lieu of having its license suspended for all or part of the suspension.

C. Mitigating and Aggravating Factors. The State Licensing Authority may consider mitigating and aggravating factors when considering the imposition of a penalty. These factors may include, but are not limited to:

1. Any prior violations that the Licensee has admitted to or was found to have engaged in.

2. Good faith measures by the Licensee to prevent the violation, including the following:

   a. Proper supervision;

   b. Regularly-provided and documented employee training, provided the Licensee demonstrates all reasonable training measures were delivered prior to the Division's investigation;

   c. Standard operating procedures established prior to the Division's investigation, and which include procedures directly addressing the conduct for which imposition of a penalty is being considered; and

   d. Previously established and maintained responsible-vendor designation pursuant to Rule M 408.

3. Licensee's past history of success or failure with compliance checks.

4. Corrective action(s) taken by the Licensee related to the current violation or prior violations.

5. Willfulness and deliberateness of the violation.

6. Likelihood of reoccurrence of the violation.

7. Circumstances surrounding the violation, including, but not limited to, Licensee self-reported violation(s) of the Medical Code or rules promulgated pursuant to the Medical Code; and

8. Owner or manager is the violator or has directed an employee or other individual to violate the Medical Code or rules promulgated pursuant to the Medical Code.

M 1500 Series – Medical Marijuana Testing Program

Basis and Purpose – M 1501

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(IV), 12-43.3-202(2)(a)(XI), 12-43.3-202(2)(a)(XII), 12-43.3-202(2)(a)(XIV), 12-43.3-202(2)(a)(XV), 12-43.3-202(2)(a)(XX), 12-43.3-202(2.5)(a)(I), 12-43.3-402(6), 12-43.3-402(7), 12-43.3-404(4), and 12-43.3-404(10), C.R.S. The purpose of this rule is to protect the public health and safety by establishing the contaminant testing and related process validation portion of the Division's Medical Marijuana sampling and testing program.

M 1501 – Medical Marijuana Testing Program – Contaminant Testing

A. Contaminant Testing Required. Unless an Optional Premises Cultivation Operation's and Medical Marijuana-Infused Products Manufacturer's cultivation or production process has achieved process validation under this Rule, it shall not Transfer or process into a Medical Marijuana Concentrate or Medical Marijuana-Infused Product any Medical Marijuana, Medical Marijuana Concentrate or Medical Marijuana-Infused Product unless Samples from each Harvest Batch or Production Batch from which that Medical Marijuana, Medical Marijuana Concentrate or Medical Marijuana-Infused Product was derived has been tested by a Medical Marijuana Testing Facility for contaminants and passed all contaminant tests required by Paragraph (C) of this Rule.

B. Process Validation and Ongoing Testing – Contaminant Testing

1. Medical Marijuana. An Optional Premises Cultivation Operation's cultivation process shall be deemed validated for contaminant testing if every Harvest Batch that it produced during at least a six-week period but no longer than a 12-week period passed all contaminant tests required by Paragraph (C) of this Rule. This must include at least six Test Batches.

2. Medical Marijuana Concentrate or Medical Marijuana Infused-Product. An Optional Premises Cultivation Operation's or a Medical Marijuana-Infused Products Manufacturer's production process shall be deemed validated regarding contaminant if every Production Batch that it produced during at least a four-week period but no longer than an eight-week period passed all contaminant tests required by paragraph (C) of this Rule. This must include at least four Test Batches.

3. Process Validation is Effective for One Year. Once an Optional Premises Cultivation Operation or Medical Marijuana-Infused Products Manufacturer has successfully obtained process validation for contaminants, the process validation shall be effective for one year from the date of the last passing test required to satisfy the process validation requirements.

4. Medical Marijuana Ongoing Contaminant Testing. After successfully obtaining process validation, once every 30 days an Optional Premises Cultivation Operation shall subject at least one Harvest Batch to all contaminant testing required by Paragraph (C) of this Rule. If during any 30-day period an Optional Premises Cultivation Operation does not possess a Harvest Batch that is ready for testing, the Optional Premises Cultivation

Operation must subject its first Harvest Batch that is ready for testing to the required contaminant testing prior to Transfer or processing of the Medical Marijuana. If a Harvest Batch subject to ongoing contaminant testing fails contaminant testing, the Optional Premises Cultivation Operation shall follow the procedure in Paragraph (F)(2) of this Rule. Ongoing contaminant testing pursuant to this Rule M 1501 shall be subject to the requirements in Rule M 1504. See Rule M 1504(A) – Collection of Samples.

a. The Division may reduce the frequency of ongoing contaminant testing required by Optional Premises Cultivation Operations if the Division has reasonable grounds to believe Medical Marijuana Testing Facilities have reached maximum capacity to perform testing required by this Rule. The Division will provide notification of any reduction to the frequency of ongoing contaminant testing to the Licensee's last electronic mailing address provided to the Division.

5. Medical Marijuana Concentrate or Medical Marijuana-Infused Products Ongoing Contaminant Testing. After successfully obtaining process validation, once every 30 days an Optional Premises Cultivation Operation or Medical Marijuana-Infused Products Manufacturer shall subject at least one Production Batch to all contaminant testing required by Paragraph (C) of this Rule. If during any 30-day period an Optional Premises Cultivation Operation or Medical Marijuana-Infused Products Manufacturer does not possess a Production Batch that is ready for testing, the Optional Premises Cultivation Operation or Medical Marijuana-Infused Products Manufacturer must subject its first Production Batch that is ready for testing to the required contaminant testing prior to Transfer or processing of the Medical Marijuana. If a Production Batch submitted for ongoing contaminant testing fails contaminant testing, the Optional Premises Cultivation Operation or Medical Marijuana-Infused Products Manufacturer shall follow the procedure in Paragraph (F)(2) of this Rule.

a. The Division may reduce the frequency of ongoing contaminant testing required by Optional Premises Cultivation Operations or Medical Marijuana-Infused Products Manufacturers if the Division has reasonable grounds to believe Medical Marijuana Testing Facilities have reached maximum capacity to perform testing required by this Rule. The Division will provide notification of any reduction to the frequency of ongoing contaminant testing to the Licensee's last electronic mailing address provided to the Division.

C. Required Contaminant Tests.

1. Microbial Contaminant Testing. Harvest Batches of Medical Marijuana and Production Batches of Water, Heat/Pressure-, or Food-Based Medical Marijuana Concentrate and Medical Marijuana-Infused Product must be tested for microbial contamination by a Medical Marijuana Testing Facility at the frequency established by Paragraphs (A) and (B) of this Rule. The microbial contamination test must include, but need not be limited to, testing to determine the presence of Salmonella sp. and shiga-toxin producing Escherichia coli., and the amount of total yeast and mold.

2. Repealed.

3. Residual Solvent Contaminant Testing. Production Batches of Solvent-Based Medical Marijuana Concentrate produced by a Medical Marijuana-Infused Products Manufacturer must be tested for residual solvent contamination by a Medical Marijuana Testing Facility at the frequency established by Paragraphs (A) and (B) of this Rule. The residual solvent contamination test must include, but need not be limited to, testing to determine the presence of, and amounts present of acetone, butane, ethanol, heptanes, isopropyl alcohol, propane, benzene*, toluene*, pentane, hexane*, and total xylenes (m, p, o –

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 M 605.

4. Mycotoxin Contaminant Testing. As part of Remediation, each Production Batch of Solvent-Based Medical Marijuana Concentrate produced by a Medical Marijuana-Infused Products Manufacturer from Medical Marijuana that failed microbial contaminant testing produced must be tested by a Retail Marijuana Testing Facility for mycotoxin contamination. The mycotoxin contaminant test must include, but need not be limited to, testing to determine the presence of, and amounts present of, aflatoxins (B1, B2, G1, and G2) and ochratoxin A. This is in addition to all other contaminant testing required by this Paragraph (C).

5. Pesticide Contaminant Testing. Harvest Batches of Medical Marijuana must be tested for Pesticide contamination by a Medical Marijuana Testing Facility at the frequency established by this Rule 1501(A) and (B). The Pesticide contamination test must include, but need not be limited to, testing to determine the presence of, and amounts present of, the Pesticides listed in Rule M 712(E)(5).

D. Additional Required Tests. The Division may require additional tests to be conducted on a Harvest Batch or Production Batch prior to an Optional Premises Cultivation Operation or Medical Marijuana-Infused Products Manufacturer Transferring, or processing into a Medical Marijuana Concentrate or Medical Marijuana-Infused Product any Medical Marijuana, Medical Marijuana Concentrate or Medical Marijuana-Infused Product from that Harvest Batch or Production Batch. Additional tests may include, but need not be limited to, screening for Pesticide, chemical contaminants or other types of biological contaminants, microbials, molds, metals, or residual solvents.

E. Exemptions

1. Medical Marijuana Concentrate. A Production Batch of Medical Marijuana Concentrate shall be considered exempt from this Rule if the Medical Marijuana-Infused Products Manufacturer that produced it does not Transfer any portion of the Production Batch and uses the entire Production Batch to manufacture Medical Marijuana-Infused Product, except that a Solvent-Based Medical Marijuana Concentrate must still be submitted for residual solvent contaminant testing. The manufactured Medical Marijuana-Infused Product shall be subject to mandatory testing under this Rule.

F. Required Re-Validation - Contaminants.

1. Material Change Re-validation. If an Optional Premises Cultivation Operation or Medical Marijuana-Infused Products Manufacturer makes a Material Change to its cultivation or production process or its standard operating procedure manual, then it must have the first five Harvest Batches or Production Batches produced using the 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 Medical Marijuana Business's process must be re-validated.

   a. Pesticide. It shall be considered a Material Change if an Optional Premises Cultivation begins using a new or different Pesticide during its cultivation process.

   b. Solvents. It shall be considered a Material Change if a Medical Marijuana-Infused Products Manufacturer begins using a new or different solvent or combination of solvents or changes any parameters for equipment related to the solvent purging process, including but not limited to, time, temperature, or pressure.

c. Cultivation. It shall be considered a Material Change if an Optional Premises Cultivation Operation begins using a new or different method for any material part of the cultivation process, including but not limited to, changing from one growing medium to another.

d. Notification. An Optional Premises Cultivation Operation or Medical Marijuana-Infused Products Manufacturer must notify the Medical Marijuana Testing Facility of the Material Change.

e. Testing Required Prior to Transfer or Processing. When a Harvest Batch or Production Batch is required to be submitted for testing pursuant to this Rule, the Optional Premises Cultivation Operation or Medical Marijuana-Infused Products Manufacturer that produced it may not Transfer or process into a Medical Marijuana Concentrate or Medical Marijuana-Infused Product any of the Medical Marijuana, Medical Marijuana Concentrate or Medical Marijuana-Infused Product from that Harvest Batch or Production Batch.

2. Failed Contaminant Testing and Re-Validation. Failed contaminant testing may constitute a violation of these rules. Additionally, if a Sample the Division requires to be tested fails contaminant testing, the Optional Premises Cultivation Operation or Medical Marijuana-Infused Products Manufacturer shall follow the procedures in Rule M 1507(B) for any Inventory Tracking System package, Harvest Batch, or Production Batch from which the failed Sample was taken. The Optional Premises Cultivation Operation or Medical Marijuana-Infused Products Manufacturer shall also submit three additional Test Batches of the Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product for contaminant testing by a Medical Marijuana Testing Facility within no more than 30 days. If any one of the three submitted Test Batches fails contaminant testing, the Optional Premises Cultivation Operation or Medical Marijuana-Infused Products Manufacturer shall re-validate its process for contaminants.

3. Repealed.

G. Violation Affecting Public Safety. Failure to comply with this rule may constitute a license violation affecting public safety.

Basis and Purpose – M 1502

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(IV), 12-43.3-202(2)(a)(XI), 12-43.3-202(2)(a)(XII), 12-43.3-202(2)(a)(XIV), 12-43.3-202(2)(a)(XV), 12-43.3-202(2)(a)(XX), 12-43.3-202(2.5)(a)(I), 12-43.3-402(6), 12-43.3-402(7), 12-43.3-404(4), and 12-43.3-404(10), C.R.S. The purpose of this rule is to protect the public health and safety by establishing the mandatory testing portion of the Division's Medical Marijuana sampling and testing program.

M 1502 – Medical Marijuana Testing Program – Mandatory Testing

A. Required Sample Submission. A Medical Marijuana Business may be required by the Division to submit a Sample(s) of Medical Marijuana, Medical Marijuana Concentrate or Medical Marijuana-Infused Product it possesses to a Medical 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, mycotoxin, molds, metals, residual solvents, biological contaminants, and chemical contaminants.

2. When a Sample(s) is required to be submitted for testing, the Medical Marijuana Business may not Transfer or process into a Medical Marijuana Concentrate or Medical Marijuana-Infused Product any Medical Marijuana, Medical Marijuana Concentrate or Medical Marijuana-Infused Product from the Inventory Tracking System package, Harvest Batch or Production Batch from which the Sample was taken, unless or until it passes all required testing.

B. Methods for Determining Required Testing.

1. Random Testing. The Division may 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, regardless of whether a Medical Marijuana Business's process has been validated.

2. Inspection or Enforcement Tests. In addition, the Division may require a Medical Marijuana Business to submit a Sample for testing if the Division has reasonable grounds to believe that:

a. Medical Marijuana, Medical Marijuana Concentrate or Medical Marijuana-Infused Product is contaminated or mislabeled;

b. A Medical Marijuana Business is in violation of any product safety, health or sanitary statute, rule or regulation; or

c. The results of a test would further an investigation by the Division into a violation of any statute, rule or regulation.

3. Beta Testing. The Division may require a Medical Marijuana Business to submit Samples from certain randomly selected Harvest Batches or Production Batches for potency or contaminant testing prior to implementing mandatory testing.

C. Minimum Testing Standards. The testing requirements contained in the M 1500 series are the minimum required testing standards. Medical Marijuana Businesses are responsible for ensuring adequate testing on any Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana Infused-Products they produce or Transfer to ensure safety for human consumption.

D. Additional Sample Types. The Division may also require a Medical Marijuana Business to submit Samples comprised of items other than Medical Marijuana, Medical Marijuana Concentrate or Medical Marijuana-Infused Product to be tested for contaminants which may include, but may not be limited to, Pesticide, microbials, molds, metals, residual solvents, biological contaminants, and chemical contaminants. The following is a non-exhaustive list of the types of Samples that may be required to be submitted for contaminant testing:

1. Specific Medical Marijuana plant(s) or any portion of a Medical Marijuana 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 Medical Marijuana Concentrate,

4. Any ingredient or substance used in the manufacturing of a Medical Marijuana-Infused 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 – M 1503

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(IV), 12-43.3-202(2)(a)(XI), 12-43.3-202(2)(a)(XIV), 12-43.3-202(2)(a)(XV), 12-43.3-202(2)(a)(XX), 12-43.3-202(2.5)(a)(I), 12-43.3-402(6), 12-43.3-402(7), and 12-43.3-404(10), C.R.S. The purpose of this rule is to protect the public health and safety by establishing the potency testing and related process validation portion of the Division's Medical Marijuana sampling and testing program.

M 1503 – Medical Marijuana Testing Program – Potency Testing

Rule M 1503 shall be effective beginning July 1, 2016.

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 Medical Marijuana or from the same Production Batch of Medical Marijuana Concentrate or Medical Marijuana-Infused 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 Medical Marijuana.

1. Initial Potency Testing. An Optional Premises Cultivation Operation must have potency tests conducted by a Medical Marijuana Testing Facility on four Harvest Batches, created a minimum of one week apart, for each strain of Medical Marijuana that it cultivates.

a. The first potency test must be conducted on each strain prior to the Optional Premises Cultivation Operation Transferring or processing into a Medical Marijuana Concentrate any Medical Marijuana of that strain.

b. All four potency tests must be conducted on each strain no later than December 1, 2016 or six months after the Optional Premises Cultivation Operation begins cultivating that strain, whichever is later.

2. Ongoing Potency Testing. After the initial four potency tests, an Optional Premises Cultivation Operation shall have each strain of Medical Marijuana that it cultivates tested for potency at least once per quarter.

C. Potency Testing for Medical Marijuana Concentrate. An Optional Premises Cultivation Operation or Medical Marijuana-Infused Products Manufacturer must have a potency test conducted by a Medical Marijuana Testing Facility on every Production Batch of Medical Marijuana Concentrate that it produces prior to Transferring or processing into a Medical Marijuana-Infused Product any of the Medical Marijuana Concentrate from that Production Batch.

D. Potency Testing for Medical Marijuana-Infused Product

1. Potency Testing Required for Medical Marijuana-Marijuana Infused Product. A Medical Marijuana-Infused Products Manufacturer shall have potency tests conducted by a Medical Marijuana Testing Facility on every Production Batch of each type of Medical Marijuana Infused-Product that it produces prior to Transferring any of the Medical Marijuana-Infused Product from that Production Batch, unless the Medical Marijuana-

Infused Products Manufacturer has successfully completed process validation for potency and homogeneity for the particular type of Medical Marijuana-Infused Product.

2. Required Tests. Potency and homogeneity tests conducted on Medical Marijuana-Infused 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 Medical Marijuana-Infused Products. If only a portion of a Medical Marijuana-Infused Product is infused with Medical Marijuana, then the Medical Marijuana-Infused Products Manufacturer must inform the Medical Marijuana Testing Facility of exactly which portions of the Medical Marijuana-Infused Product are infused and which portions are not infused.

E. Process Validation of - Potency and Homogeneity.

1. A Medical Marijuana-Infused Products Manufacturer may process validate potency and homogeneity for each type of non-Edible Medical Marijuana-Infused Product and each type of Edible Medical Marijuana-Infused Product that it manufactures so long as the Edible Medical Marijuana-Infused Product contains 100 milligrams or less of THC.

2. A Medical Marijuana-Infused Products Manufacturer's production process for a particular type of Medical Marijuana-Infused Product shall be deemed valid regarding potency and homogeneity if every Production Batch that it produces for that particular type of Medical Marijuana-Infused Product during at least a four-week period but no longer than an eight-week period passes all potency and homogeneity tests required by Rule M 1503(D)(2). This must include at least four Test Batches.

3. Expiration of Process Validation. A Medical Marijuana-Infused Products Manufacturer shall be required to re-validate its process every 12 months from the date process validation is achieved, after which point the process validation expires. If the process validation expires, the Medical Marijuana-Infused Products Manufacturer shall comply with the requirements of Paragraph (D)(1) of this Rule.

4. Medical Marijuana-Infused Product Ongoing Potency and Homogeneity Testing. After successfully obtaining process validation, once per quarter a Medical Marijuana-Infused Products Manufacturer shall subject at least one Production Batch of each type of Medical Marijuana-Infused Product that it produces to potency and homogeneity testing required by Paragraph (D) of this Rule. If during any quarter a Medical Marijuana-Infused Products Manufacturer does not possess a Production Batch that is ready for testing, the Medical Marijuana-Infused Products Manufacturer must subject its first Production Batch that is ready for testing to the required potency and homogeneity testing prior to Transfer or processing of the Medical Marijuana. If a Test Batch submitted for ongoing potency and homogeneity testing fails potency and homogeneity testing, the Medical Marijuana-Infused Products Manufacturer shall follow the procedure in Paragraph (F)(2) of this Rule. Ongoing potency and homogeneity testing pursuant to this Rule M 1503 shall be subject to the requirements in Rule M 1504. See Rule M 1504(A) – Collection of Samples.

a. The Division may reduce the frequency of ongoing potency and homogeneity testing required by Medical Marijuana-Infused Products Manufacturer if the Division has reasonable grounds to believe Medical Marijuana Testing Facilities have reached maximum capacity to perform testing required by this Rule. The Division will provide notification of any reduction to the frequency of ongoing potency and homogeneity testing to the Licensee's last electronic mailing address provided to the Division.

F. Required Re-Validation - Potency and Homogeneity - Medical Marijuana-Infused Product.

1. Material Change Re-Validation. If a Medical Marijuana-Infused Products Manufacturer elects to process validate any Medical Marijuana-Infused Product for potency and homogeneity and it makes a Material Change to its production process for that particular type of Medical Marijuana-Infused Product, then the Medical Marijuana-Infused Products Manufacturer must re-validate the production process.

   a. New Equipment. It shall be considered a Material Change if the Medical Marijuana-Infused Products Manufacturer begins using new or different equipment for any material part of the production process.

   b. Notification. A Medical Marijuana-Infused Product Manufacturer must notify the Medical Marijuana Testing Facility of a Material Change.

   c. Testing Required Prior to Transfer. When a Production Batch is required to be submitted for testing pursuant to this Rule, the Medical Marijuana-Infused Product Manufacturer that produced it may not Transfer Medical Marijuana Product from that Production Batch unless or until it obtains a passing test.

2. Failed Potency Testing Re-Validation. If a Sample the Division requires to be tested fails potency testing, the Medical Marijuana-Infused Products Manufacturer shall follow the procedures in Rule M 1507(C) for any Inventory Tracking System package or Production Batch associated with the failed Sample. The Medical Marijuana-Infused Products Manufacturer shall also submit three additional Test Batches of the Medical Marijuana-Infused Product for potency testing by a Medical Marijuana Testing Facility within no more than 30 days. If any one of the three submitted Test Batches fails potency testing, the Medical Marijuana-Infused Products Manufacturer shall re-validate its process for potency.

F. Violation Affecting Public Safety. Failure to comply with this rule may constitute a license violation affecting public safety.

Basis and Purpose – M 1504

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(IV), 12-43.3-202(2)(a)(XI), 12-43.3-202(2)(a)(XII), 12-43.3-202(2)(a)(XIV), 12-43.3-202(2)(a)(XV), 12-43.3-202(2)(a)(XX), 12-43.3-202(2.5)(a)(I), 12-43.3-402(6), 12-43.3-402(7), 12-43.3-404(4), and 12-43.3-404(10), C.R.S. The purpose of this rule is to protect the public health and safety by establishing sampling procedures and rules for the Division's Medical Marijuana sampling and testing program.

M 1504 – Medical Marijuana Testing Program – Sampling Procedures

A. Collection of Samples

1. Sample Collection. All Samples submitted for testing pursuant to this rule must be collected by Division representatives or in accordance with the Division's sampling policy which is found in the Colorado Department of Public Health and Environment Reference Library at https://tinyurl.com/y8p86vu3. This Reference Library may be continuously updated as new materials become available in accordance with section 25-1.5-106(3.5)(d), C.R.S..

2. Sample Selection. The Division may elect, at its sole direction, to assign Division representatives to collect Samples, or may otherwise direct Sample selection, including, but not limited to, through Division designation of a Harvest Batch or Production Batch in

the Inventory Tracking System from which a Medical Marijuana Business shall select Samples for testing. A Medical Marijuana Business, its Owners and employees shall not attempt to influence the Samples selected by Division personnel. If the Division does not select the Harvest Batch or Production Batch to be tested, a Medical Marijuana Business must collect and submit Sample(s) that are representative of the Harvest Batch or Production Batch being tested.

3. Adulteration or Alteration Prohibited. A Licensee or its agent shall not adulterate or alter, or attempt to adulterate or alter, any Samples of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product for the purpose of circumventing contaminant testing detection limits or potency testing requirements. The Sample(s) collected and submitted for testing must be representative of the Harvest Batch or Production Batch being tested. A violation of this Paragraph (A)(3) shall be considered a license violation affecting public safety.

B. Minimum Number of Samples Per Test Batch Submission. These sampling rules shall apply until such time as the State Licensing Authority revises these rules to implement a statistical sampling model. Each Test Batch of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product submitted for testing must be comprised of a representative selection of Samples. Unless a greater amount is required to comply with these rules, each each Test Batch of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product must be comprised of at least the following number of separately taken Samples, which may be submitted for testing in all required testing categories:

1. Samples for Test Batches of Medical Marijuana.

   a. For Harvest Batches weighing up to 10 pounds, a minimum of eight separate 0.5 gram Samples must be submitted as one Test Batch.

   b. For Harvest Batches or Production Batches weighing more than 10 pounds but less than 20 pounds, a minimum of 12 separate 0.5 gram Samples must be submitted as one Test Batch.

   c. For Harvest Batches weighing 20 pounds or more but less than 30 pounds, a minimum of 15 separate 0.5 gram Samples must be submitted as one Test Batch.

   d. For Harvest Batches weighing 30 pound or more but less than 40 pounds, a minimum of 18 separate 0.5 gram Samples must be submitted as one Test Batch.

   e. For Harvest Batches weighing 40 pounds or more but less than 100 pounds, a minimum of 23 separate 0.5 gram Samples must be submitted as one Test Batch.

   f. For Harvest Batches weighing 100 pounds or more, a minimum of 29 separate 0.5 gram Samples must be submitted as one Test Batch.

2. Repealed.

3. Samples for Test Batches of Medical Marijuana Concentrate.

   a. For Production Batches weighing up to one pound, a minimum of eight separate 0.5 gram Samples must be submitted as one Test Batch.

b. For Production Batches weighing more than one pound and less than two pounds, a minimum of 12 separate 0.5 gram Samples must be submitted as one Test Batch.

c. For Production Batches weighing two pounds or more but less than three pounds, a minimum of 15 separate 0.5 gram Samples must be submitted as one Test Batch.

d. For Production Batches weighing three pounds or more but less than four pounds, a minimum of 18 separate 0.5 gram Samples must be submitted as one Test Batch.

e. For Production Batches weighing four pounds or more but less than 10 pounds, a minimum of 23 separate 0.5 gram Samples must be submitted as one Test Batch.

f. For Production Batches weighing 10 pounds or more, a minimum of 29 separate 0.5 gram Samples must be submitted as one Test Batch.

4. Samples for Test Batches of Medical Marijuana-Infused Product. A Sample of Medical Marijuana-Infused Product must be packaged for sale prior to Transfer to a Medical Marijuana Testing Facility. Each such package of Medical Marijuana-Infused Product shall constitute one Sample.

a. For Production Batches of up to 100 Samples, a minimum of two separate Samples must be submitted as one Test Batch.

b. For Production Batches of up to 500 Samples, a minimum of four separate Samples must be submitted as one Test Batch.

c. For Production Batches of up to 1000 Samples, a minimum of six separate Samples must be submitted as one Test Batch.

d. For Production Batches of up to 5000 Samples, a minimum of eight separate Samples must be submitted as one Test Batch.

e. For Production Batches of up to 10,000 Samples, a minimum of 10 Samples must be submitted as one Test Batch.

f. For Production Batches of more than 10,000 Samples, a minimum 12 Samples must be submitted as one Test Batch.

C. Repealed.

D. Medical Marijuana Testing Facility Selection. The Division will generally permit a Medical Marijuana Business to select which Medical Marijuana Testing Facility will test a Sample collected pursuant to this rule. However, the Division may elect, at is sole discretion, to assign a Medical Marijuana Testing Facility to test the Sample.

E. Violation Affecting Public Safety. Failure to comply with this rule may constitute a license violation affecting public safety.

M 1505 – Medical Marijuana Testing Program – Test Batches - Repealed

Basis and Purpose – M 1507

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(IV), 12-43.3-202(2)(a)(XI), 12-43.3-202(2)(a)(XII), 12-43.3-202(2)(a)(XIV), 12-43.3-202(2)(a)(XV), 12-43.3-202(2)(a)(XX), 12-43.3-202(2.5)(a)(I), 12-43.3-402(6), 12-43.3-402(7), 12-43.3-404(4), and 12-43.3-404(10), C.R.S. The purpose of this rule is to protect the public health and safety by establishing rules governing the quarantining of potentially contaminated product and the destruction of product that failed contaminant or potency testing for the Division's Medical Marijuana sampling and testing program.

M 1507 – Medical Marijuana Testing Program – Contaminated Product and Failed Test Results

A. Quarantining of Product.

1. If the Division has reasonable grounds to believe that a particular Harvest Batch, Production Batch, or Inventory Tracking System package of Medical Marijuana, Medical Marijuana Concentrate or Medical Marijuana-Infused Product is contaminated or presents a risk to public safety, then the Division may require a Medical Marijuana Business to quarantine it until the completion of the Division's investigation, which may include, but is not limited to, the receipt of any test results.

2. If a Medical Marijuana Business is notified by any local or state agency, or by a Medical Marijuana Testing Facility, that a Test Batch failed a contaminant or potency test, then the Medical Marijuana Business shall quarantine any Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product from any Inventory Tracking System package, Harvest Batch or Production Batch associated with that failed Test Batch and must follow the procedures established pursuant to paragraphs (B), (B.1), (B.2), and/or (C) of this Rule.

3. Except as provided by this Rule, Medical Marijuana, Medical Marijuana Concentrate or Medical Marijuana-Infused Product that has been quarantined pursuant to this Rule must be physically separated from all other inventory and the Licensee may not Transfer or further process the Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product.

4. In addition to any other method authorized by law, the Division may implement the quarantine through the Inventory Tracking System by (a) indicating failed test results and (b) limiting the Licensee's ability to Transfer the quarantined Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product unless otherwise permitted by these rules.

B. Failed Contaminant Testing: All Contaminant Testing Except Microbial Testing of Medical Marijuana Flower or Trim and Pesticide Testing. If a Medical Marijuana Business is notified by the Division or a Medical Marijuana Testing Facility that a Test Batch failed contaminant testing (except microbial testing of Medical Marijuana flower or trim and Pesticide testing), then for each Inventory Tracking System package, Harvest Batch or Production Batch associated with that failed Test Batch the Medical Marijuana Business must either:

1. Destroy and document the destruction of the Inventory Tracking System package, Harvest Batch or Production Batch pursuant to Rule M 307 – Waste Disposal; or

2. Decontaminate the Inventory Tracking System package, Harvest Batch or Production Batch, if possible, and create two new Test Batches, each containing the requisite number of Samples, and have those Test Batches tested for the required contaminant test that failed. Unless at least one of the two retests is conducted by the same Medical Marijuana Testing Facility that reported the original failed test result, the two retests must be performed by two different Medical Marijuana Testing Facilities. Such testing must comport with the sampling procedures under Rule M 1504.

a. If both new Test Batches pass the required contaminant testing, then the Inventory Tracking System package, Harvest Batch or Production Batch of Medical Marijuana, Medical Marijuana Concentrate or Medical Marijuana-Infused Product associated with each Test Batch may be Transferred or processed into a Medical Marijuana Concentrate or Medical Marijuana-Infused Product.

b. If one or both of the Test Batches do not pass contaminant testing, then the Medical Marijuana Business must destroy and document the destruction of the Inventory Tracking System package, Harvest Batch or Production Batch included in that Test Batch pursuant to Rule M 307 – Waste Disposal.

B.1. Failed Contaminant Testing: Microbial Testing of Medical Marijuana Flower or Trim. If a Medical Marijuana Business is notified by the Division or a Medical Marijuana Testing Facility that a Test Batch of Medical Marijuana flower or trim failed microbial testing, then for each Inventory Tracking System package or Harvest Batch associated with that failed Test Batch the Medical Marijuana Business must either:

1. Destroy and document the destruction of the Inventory Tracking System package or Harvest Batch pursuant to Rule M 307 – Waste Disposal;

2. Decontaminate the Inventory Tracking System package or Harvest Batch of Medical Marijuana flower or trim, if possible, and create two new Test Batches, each containing the requisite number of Samples, and have those Test Batches tested for the required microbial test that failed. Unless at least one of the two retests is conducted by the same Medical Marijuana Testing Facility that reported the original failed test result, the two retests must be performed by two different Medical Marijuana Testing Facilities. Such testing must comport with the sampling procedures under Rule M 1504.

   a. If both Test Batches pass the required microbial testing, then the Inventory Tracking System package or Harvest Batch of Medical Marijuana flower or trim associated with each Test Batch may be Transferred or processed into a Medical Marijuana Concentrate or Medical Marijuana-Infused Product.

   b. If one or both of the Test Batches do not pass microbial testing, then the Medical Marijuana Business must either: (i) destroy and document the destruction of the Inventory Tracking System package or Harvest Batch pursuant to Rule M 307 – Waste Disposal; or (ii) Transfer the Inventory Tracking System package or Harvest Batch for Remediation pursuant to Paragraph (B.1)(3)(b) below.

3. In lieu of decontamination pursuant Paragraph (B.1)(2) above, the Medical Marijuana Business may transfer all Inventory Tracking System packages or Harvest Batches associated with that failed Test Batch to a Medical Marijuana-Infused Products Manufacturer for decontamination and/or Remediation by the Medical Marijuana-Infused Products Manufacturer.

   a. Decontamination. Only if the Medical Marijuana Business has not already attempted to decontaminate pursuant to Paragraph (B.1)(2) above, the Medical Marijuana-Infused Products Manufacturer may decontaminate the Inventory Tracking System package or Harvest Batch of Medical Marijuana flower or trim, if possible, and create two new Test Batches, each containing the requisite number of Samples, and have those Test Batches tested for the required microbial test that failed. Unless at least one of the two retests is conducted by the same Medical Marijuana Testing Facility that reported the original failed test result, the two retests must be performed by two different Medical Marijuana Testing Facilities. Such testing must comport with the sampling procedures under Rule M 1504.

i. If both Test Batches pass the required microbial testing, then the Inventory Tracking System package or Harvest Batch of Medical Marijuana flower or trim associated with each Test Batch may be Transferred or processed into a Medical Marijuana Concentrate or Medical Marijuana-Infused Product.

ii. If one or both of the Test Batches do not pass microbial testing, then the Medical Marijuana Business must either: (i) destroy and document the destruction of the Inventory Tracking System package or Harvest Batch pursuant to Rule M 307 – Waste Disposal; or (ii) attempt Remediation of the Inventory Tracking System package or Harvest Batch for Remediation pursuant to Paragraph (B.1)(3)(b) below.

b. Remediation.

i. For Remediation, the Medical Marijuana Business shall process the Inventory Tracking System package or Harvest Batch of Medical Marijuana flower or trim associated with the failed Test Batch into a Solvent-Based Medical Marijuana Concentrate. No other Medical Marijuana shall be included in the Solvent-Based Medical Marijuana Concentrate.

ii. The Solvent-Based Medical Marijuana Concentrate that was manufactured pursuant to Paragraph (B.1)(3)(b) shall undergo all required contaminant testing pursuant to Rule M 1501(C) – Medical Marijuana Testing Program – Contaminant Testing, potency testing pursuant to Rule M 1503 – Medical Marijuana Testing Program – Potency Testing, and any other testing required or allowed by the Medical Marijuana Code or these rules, including but not limited to mycotoxins. Such testing must comport with the sampling procedures under Rule M 1504.

iii. If the Solvent-Based Medical Marijuana Concentrate that was manufactured pursuant to Paragraph (B.1)(3)(b) fails contaminant testing, the Medical Marijuana Business shall destroy and document the destruction of the Inventory Tracking System package(s) or Production Batch(es) of Solvent-Based Medical Marijuana Concentrate pursuant to Rule M 307 – Waste Disposal.

c. Repealed.

B.2. Failed Contaminant Testing: Pesticide Testing. If a Medical Marijuana Business is notified by the Division or a Medical Marijuana Testing Facility that a Test Batch failed Pesticide testing, then for each Inventory Tracking System package, Harvest Batch, or Production Batch associated with that failed Test Batch the Medical Marijuana Business must either:

1. Destroy and document the destruction of the Inventory Tracking System package, Harvest Batch or Production Batch pursuant to Rule M 307 – Waste Disposal; or

2. Request that the Medical Marijuana Testing Facility that reported the original fail conduct two additional analyses of the original Test Batch submitted in accordance with Rule M 1504.

a. If both retesting analyses pass the required Pesticide testing, then the Inventory Tracking System package, Harvest Batch, or Production Batch of Medical

Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-infused Product may be Transferred or processed into a Medical Marijuana Concentrate or Medical Marijuana-Infused Product.

b. If one or both of the retesting analyses do not pass Pesticide testing, then the Medical Marijuana Business must destroy and document the destruction of the Inventory Tracking System package, Harvest Batch, or Production Batch pursuant to Rule M 307 – Waste Disposal.

C. Failed Potency Testing. If a Medical Marijuana Business is notified by the Division or a Medical Marijuana Testing Facility that a Test Batch of Medical Marijuana-Infused Product failed potency testing, then for each Inventory Tracking System package or Production Batch associated with that failed Test Batch the Medical Marijuana Business must either:

1. Destroy and document the destruction of the Inventory Tracking System package or Production Batch pursuant to Rule M 307 – Waste Disposal; or

2. Attempt corrective measures, if possible, and create two new Test Batches each containing the requisite number of Samples, and have those Test Batches tested for the required potency test that failed. Unless at least one of the two retests is conducted by the same Medical Marijuana Testing Facility that reported the original failed test result, the two retests must be performed by two different Medical Marijuana Testing Facilities. Such testing must comport with the sampling procedures under Rule M 1504.

a. If both new Test Batches pass potency testing, then any the Inventory Tracking System package or Production Batch associated with the Test Batch may be Transferred.

b. If one or both of the Test Batches do not pass potency testing, then the Medical Marijuana-Infused Products Manufacturer must destroy and document the destruction of the Inventory Tracking System package or Production Batch pursuant to Rule M 307 – Waste Disposal.

D. Violation Affecting Public Safety. Failure to comply with this rule may constitute a license violation affecting public safety.

M 1600 Series – Medical Marijuana Transporters

Basis and Purpose – M 1602

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(XI), 12-43.3-202(2)(a)(XVIII.6), 12-43.3-202(2)(a)(XX), and 12-43.3-406, C.R.S. The purpose of this rule is to clarify those acts that are limited in some fashion or prohibited by a Medical Marijuana Transporter.

M 1602 – Medical Marijuana Transporter: General Limitations or Prohibited Acts

A. Sales, Liens, and Secured Interests Prohibited. A Medical Marijuana Transporter is prohibited from buying, selling, or giving away Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product, or from receiving complimentary Medical Marijuana. Medical Marijuana Concentrate, or Medical Marijuana-Infused Product. A Medical Marijuana Transporter shall not place or hold a lien or secured interest on Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product.

B. Licensed Premises Permitted. A Medical Marijuana Transporter shall maintain a Licensed Premises if it: (1) temporarily stores any Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product, or (2) modifies any information in the Inventory Tracking System generated transport manifest. The Licensed Premises shall be in a local jurisdiction that authorizes the operation of Medical Marijuana Centers. If a Medical Marijuana Transporter Licensed Premises is co-located with a Retail Marijuana Transporter Licensed Premises, then the combined Licensed Premises shall be in a local jurisdiction that authorizes the operation of both Medical Marijuana Centers and Retail Marijuana Stores.

C. Off-Premises Storage Permit. A Medical Marijuana Transporter may maintain one or more permitted off-premises storage facilities. See Rule M 802 – Off-Premises Storage of Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product: All Medical Marijuana Businesses.

D. Storage Duration. A Medical Marijuana Transporter shall not store Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product for longer than 7 days from receiving it at its Licensed Premises or off-premises storage facility. The total allowable 7 day storage duration begins and applies regardless of which of the Medical Marijuana Transporter's premises receives the Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product first, (ie. the Medical Marijuana Transporter's Licensed Premises, or any of its off-premises storage facilities).

E. Control of Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product. A Medical Marijuana Transporter is responsible for the Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product once it takes control of the Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product and until the Medical Marijuana Transporter delivers it to the receiving Medical Marijuana Business, Medical Research Facility, or Pesticide Manufacturer.. For purposes of this rule, taking control of the Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product means removing it from the originating Medical Marijuana Business's Licensed Premises and placing the Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product in the transport vehicle.

F. Location of Orders Taken and Delivered. A Medical Marijuana Transporter is permitted to take orders on the Licensed Premises of any Medical Marijuana Business to transport Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product. The Medical Marijuana Transporter shall deliver the Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product to the Licensed Premises of a licensed Medical Marijuana Business, a Medical Research Facility, or Pesticide Manufacturer.

G. Consumption Prohibited. A Licensee shall not permit the consumption of marijuana or marijuana product on Licensed Premises or in transport vehicles.

H. A Medical Marijuana Transporter shall receive Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product from the originating Licensee packaged in the way that it is intended to be delivered to the final destination Licensee, Medical Research Facility, or Pesticide Manufacturer. The Medical Marijuana Transporter shall deliver the Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product in the same, unaltered packaging to the final destination Licensee.

I. Opening of Sealed Packages or Containers and Re-Packaging Prohibited. A Medical Marijuana Transporter shall not open Containers of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product. Medical Marijuana Transporters are prohibited from re-packaging Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product.

J. Temperature-Controlled Transport Vehicles. A Medical Marijuana Transporter shall utilize temperature-controlled transport vehicles when necessary to prevent spoilage of the transported Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product.

K. Damaged or Refused Product. Any damaged Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product that is undeliverable to the final destination Medical Marijuana Business, or any Medical Marijuana or Medical Marijuana-Infused Product that is refused by the final destination Medical Marijuana Business shall be transported back to the originating Medical Marijuana Business.

L. Transport of Medical Marijuana Vegetative Plants Authorized. Medical Marijuana Vegetative plants may only be transported between Licensed Premises and such transport shall only be permitted due to an approved change of location pursuant to Rule M 206 or due to a one-time transfer pursuant to Rule M 211. Transportation of Vegetative plants to a permitted off-premises storage facility shall not be allowed. This restriction shall not apply to Immature plants.

Basis and Purpose – M 1603

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(1)(h), 12-43.3-202(2)(a)(XI), 12-43.3-202(2)(a)(XV), 12-43.3-202(2)(a)(XVIII.6), 12-43.3-202(2)(a)(XX), and 12-43.3-406(3) C.R.S. The purpose of this rule is to establish a Medical Marijuana Transporter's obligation to account for and track all Medical Marijuana. Medical Marijuana Concentrate, and Medical Marijuana-Infused Product on the Licensed Premises from the point they are transferred from the originating Medical Marijuana Business to the destination Medical Marijuana Business.

M 1603 – Medical Marijuana Transporter: Inventory Tracking System

A. Minimum Tracking Requirement. A Medical Marijuana Transporter must use the Inventory Tracking System to ensure its transported Medical Marijuana. Medical Marijuana Concentrate, and Medical Marijuana-Infused Product are identified and tracked from the point they are transferred from a Medical Marijuana Business when the Medical Marijuana Transporter takes control of the Medical Marijuana. Medical Marijuana Concentrate, and Medical Marijuana-Infused Product by removing it from the originating Medical Marijuana Business's Licensed Premises and placing the Medical Marijuana. Medical Marijuana Concentrate, and Medical Marijuana-Infused Product in the Medical Marijuana Transporter's transport vehicle, through delivery to the destination Medical Marijuana Business, Medical Research Facility, or Pesticide Manufacturer. See also Rule R 309 –Inventory Tracking System. A Medical Marijuana Transporter must have the ability to reconcile its transported Medical Marijuana. Medical Marijuana Concentrate, and Medical Marijuana-Infused Product with the Inventory Tracking System and the associated transaction history and transportation order receipts. See also Rule M 901 – Business Records Required.

1. A Medical Marijuana Transporter is prohibited from accepting any Medical Marijuana. Medical Marijuana Concentrate, or Medical Marijuana-Infused Product from another Medical Marijuana Business without receiving a valid transport manifest generated from the Inventory Tracking System.

2. A Medical Marijuana Transporter must immediately input all Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product received at its Licensed Premises or off-premises storage facility, accounting for all RFID tags, into the Inventory Tracking System at the time of receipt of the Medical Marijuana. Medical Marijuana Concentrate, or Medical Marijuana-Infused Product.

3. A Medical Marijuana Transporter must reconcile transactions to the Inventory Tracking System at the close of business each day.

4. All information on the Inventory Tracking System generated transport manifests must be accurate.

M 1800 Series – Medical Marijuana Transfers to Unlicensed Medical Research Facilities and Pesticide Manufacturers

Basis and Purpose - M 1801

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b) 12-43.3-202(1)(h)(I), and 25-1.5-106.5, C.R.S. The purpose of this rule is to establish requirements associated with the Transfer of Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product to Medical Research Facilities, including requirements for the possession and disposition of Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product by Medical Research Facilities.

M 1801 – Medical Research Facilities

A. Transfers to Medical Research Facilities. An Optional Premises Cultivation Operation may Transfer Medical Marijuana or Medical Marijuana Concentrate to a Medical Research Facility pursuant to Rule M 501. A Medical Marijuana-Infused Products Manufacturer may Transfer Medical Marijuana-Infused Product and Medical Marijuana Concentrate to a Medical Research Facility pursuant to Rule M 601.

B. Agreement with Medical Research Facility. An Optional Premises Cultivation Operation or Medical Marijuana-Infused Products Manufacturer that Transfers Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product to a Medical Research Facility shall enter into a written agreement with the Medical Research Facility prior to Transferring any Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product to the Medical Research Facility. The written agreement shall constitute a business record. *See* Rule M 901 – Business Records Required. The written agreement shall include the following information:

1. The identity of the Medical Research Facility;

2. The quantity of Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product that will be Transferred to the Medical Research Facility;

3. An affirmation by the Medical Research Facility that it (a) has received approval and funding from the State Board of Health for the research to be conducted on the marijuana; (b) remains authorized to receive the quantity of Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product that will be Transferred to the Medical Research Facility; and (c) will destroy all Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product that will be Transferred to the Medical Research Facility, following completion of research activities as required by subsection 25-1.5-106.5(5)(b), C.R.S.;

4. An affirmation by the Licensee that the Medical Research Facility has provided it with written proof of the State Board of Health's approval and funding of the Medical Research Facility's research; and

5. The date(s) upon which Transfer of the Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product will occur.

C. State Board of Health Approval. An Optional Premises Cultivation Operation or Medical Marijuana-Infused Products Manufacturer shall not Transfer Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product unless and until the State Board of

Health approves and funds the Medical Research Facility's research pursuant to section 25-1.5-106.5, C.R.S.

1. An Optional Premises Cultivation Operation or Medical Marijuana-Infused Products Manufacturer shall not Transfer any Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product until the Optional Premises Cultivation Operation or Medical Marijuana-Infused Products Manufacturer receives written proof of the State Board of Health's approval and funding of the Medical Research Facility's research. The written proof of the State Board of Health's approval and funding of the Medical Research Facility's research shall constitute a business record. *See* Rule M 901 – Business Records Required.

2. Transferring Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product to a Medical Research Facility before the Medical Research Facility receives approval and funding from the State Board of Health shall be considered a violation affecting public safety.

D. Inventory Tracking Requirements. An Optional Premises Cultivation Operation or Medical Marijuana-Infused Products Manufacturer shall track all Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product in the Inventory Tracking System until it is delivered to a Medical Research Facility.

1. Transport Manifest. A Licensee shall not deliver or permit the delivery of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product unless a manifest is generated from the Inventory Tracking System. *See* Rule M 801(C) Transport: All Medical Marijuana Businesses.

2. Complete Manifest. A Licensee shall not relinquish possession or control of Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product to a Medical Research Facility until a natural person authorized by the Medical Research Facility acknowledges receipt of the Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Products by signing the transport manifest. *See* Rule M 801(I).

3. No Inventory Tracking Following Delivery. Once Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product has been Transferred by a Licensee to a Medical Research Facility, no further inventory tracking is required.

4. Licensee Delivery Responsibility. The originating Licensee is responsible for confirming delivery of the Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product in the Inventory Tracking System. *See* Rule M 801(I).

E. Packaging, Labeling, and Testing. An Optional Premises Cultivation Operation or Medical Marijuana-Infused Products Manufacturer that Transfers Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product to a Medical Research Facility shall package, label, and test all Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Products in conformance with these rules, prior to Transferring the Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product. *See* M 1000-1 Series – Labeling, Packaging, and Product Safety; M 1500 Series – Medical Marijuana Testing Program.

F. Business Records. An Optional Premises Cultivation Operation or Medical Marijuana-Infused Products Manufacturer that Transfers Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product to a Medical Research Facility shall keep all documents concerning the relationship and Transfer of any Medical Marijuana, Medical Marijuana

Concentrate, and/or Medical Marijuana-Infused Product in accordance with Rules M 801 and M 901.

G. Quantity Limitations for Medical Research Facilities. A Medical Research Facility shall only use Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product for the medical research approved pursuant to section 25-1.5-106.5, C.R.S. A Medical Research Facility shall not possess at any time a quantity of Transferred Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product greater than the quantity approved by the research grant awarded to the Medical Research Facility by the State Board of Health. In no event shall the Medical Research Facility possess at any given time more than (i) 12 Medical Marijuana plants and (ii) four pounds of Medical Marijuana or its equivalency in Medical Marijuana Concentrate (512 grams) or Medical Marijuana-Infused Product (5,120 Medical Marijuana-Infused Products).

H. Colorado Department of Public Health and Environment and State Board of Health Administration. The Colorado Department of Public Health and Environment is responsible for the administration of grants to Medical Research Facilities pursuant to section 25-1.5-106.5(2), C.R.S. The Colorado Department of Public Health and Environment, through the Scientific Advisory council, has the authority to review and make recommendations regarding research grant proposals. The State Board of Health has the authority to approve or deny research grant proposals pursuant to section 25-1.5-106.5, C.R.S.

I. Disposal of Medical Marijuana. A Medical Research Facility shall destroy all Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product following completion of research activities as required by subsection 25-1.5-106.5(5)(b), C.R.S.

J. No Transfer to Licensees. Under no circumstance may a Licensee receive or obtain for any purposes Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product from a Medical Research Facility.

Basis and Purpose - M 1802

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b) and 12-43.3-202(1)(h)(II), C.R.S. The purpose of this rule is to establish requirements associated with the Transfer of Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product to Pesticide Manufacturers, including requirements for the possession and disposition of Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product by Pesticide Manufacturers.

M 1802 – Pesticide Manufacturers

A. Transfers to Pesticide Manufacturers. An Optional Premises Cultivation Operation may Transfer Medical Marijuana and Medical Marijuana Concentrate to a Pesticide Manufacturer solely for the purpose of conducting research to establish safe and effective protocols, including but not limited to establishing efficacy and toxicity, for the use of Pesticides on Medical Marijuana. *See also* Rule M 501. A Medical Marijuana-Infused Products Manufacturer may Transfer Medical Marijuana-Infused Product and Medical Marijuana Concentrate to a Pesticide Manufacturer solely for the purpose of research to establish safe and effective protocols, including but not limited to establishing efficacy and toxicity, for the use of Pesticides on Medical Marijuana. *See also* Rule M 601.

B. Written Documentation Required. A Licensee shall require, and shall not Transfer Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product prior to receiving, written proof under oath, as evidenced by an affidavit entered into by an authorized person on behalf of the Pesticide Manufacturer, affirming that the Pesticide Manufacturer meets

the requirements set forth in subparagraph (C)(4) of this Rule. This documentation shall constitute a business record under Rule M 901- Business Records Required.

C. Agreement with Pesticide Manufacturer. An Optional Premises Cultivation Operation or Medical Marijuana-Infused Products Manufacturer that Transfers Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product to a Pesticide Manufacturer shall enter into a written agreement with the Pesticide Manufacturer prior to Transferring any Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product to the Pesticide Manufacturer. The written agreement, which shall constitute a business record under Rule M 901, shall include:

1. The identity of the Pesticide Manufacturer;

2. The quantity of Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product that will be Transferred to the Pesticide Manufacturer;

3. The date(s) upon which Transfer of the Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product will occur;

4. An affirmation by the Pesticide Manufacturer that it:

   i. Has an establishment number with the U.S. Environmental Protection Agency pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 *et seq*.;

   ii. Is authorized to do business in Colorado;

   iii. Is in possession of a physical location in the State of Colorado where its research activities will occur;

   iv. Has applied for and received any necessary license, registration, certification, or permit from the Colorado Department of Agriculture pursuant to the Pesticide Act, sections 35-9-101 *et seq.,* C.R.S. and/or the Pesticide Applicators' Act, sections 35-10-101 *et seq.*, C.R.S.;

   v. Remains authorized to receive the quantity of Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product that will be Transferred to the Pesticide Manufacturer; and

   vi. Will only use the Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product for the purpose of conducting research to establish safe and effective protocols, including but not limited to establishing efficacy and toxicity, for the use of Pesticides on Medical Marijuana; and,

5. An affirmation by the Licensee that it has received written proof the Pesticide Manufacturer meets the requirements set forth in subparagraph (C)(4) of this rule.

D. Inventory Tracking Requirements. An Optional Premises Cultivation Operation or Medical Marijuana-Infused Products Manufacturer shall track all Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product in the Inventory Tracking System until it is delivered to a Pesticide Manufacturer.

1. Transport Manifest. A Licensee shall not deliver or permit the delivery of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product unless a manifest is generated from the Inventory Tracking System.

2. Complete Manifest. A Licensee shall not relinquish possession or control of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product to a Pesticide Manufacturer until a natural person authorized by the Pesticide Manufacturer acknowledges receipt of the Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product by signing the transport manifest.

3. No Inventory Tracking Following Delivery. Once Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product has been Transferred by a Licensee to a Pesticide Manufacturer, no further inventory tracking is required.

4. Licensee Delivery Responsibility. The originating Licensee is responsible for confirming delivery of all Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product in the Inventory Tracking System.

E. Packaging, Labeling, and Testing. An Optional Premises Cultivation Operation or Medical Marijuana-Infused Products Manufacturer that Transfers Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product to a Pesticide Manufacturer shall package, label, and test all Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Products in conformance with these rules, prior to Transferring the Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product. *See* M 1000-1 Series – Labeling, Packaging, and Product Safety; M 1500 Series – Medical Marijuana Testing Program.

F. Business Records. An Optional Premises Cultivation Operation or Medical Marijuana-Infused Products Manufacturer that Transfers Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product to a Pesticide Manufacturer shall keep all documents concerning the relationship and Transfer of any Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product in accordance with Rules M 801 and 901.

G. Pesticide Manufacturer Authorized Activities. A Pesticide Manufacturer is only authorized to possess Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product in order to conduct research to establish safe and effective protocols, including but not limited to establishing efficacy and toxicity, for the use of Pesticides on Medical Marijuana.

H. Quantity Limitations for Pesticide Manufacturer. In no event shall the Pesticide Manufacturer possess at any given time more than (i) 12 Medical Marijuana plants and (ii) four pounds of Medical Marijuana or its equivalency in Medical Marijuana Concentrate (512 grams) or Medical Marijuana-Infused Product (5,120 Medical Marijuana-Infused Products).

I. Disposition of Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product. A Pesticide Manufacturer shall destroy all Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product following completion of research activities.

1. A Pesticide Manufacturer shall destroy Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product in conformance with Rule M 307 – Waste Disposal.

2. A Pesticide Manufacturer shall document the destruction of Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product, which documentation shall include:

i. Whether the destroyed material was Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product;

ii. The date of destruction;

iii. The location of the destruction;

iv. The manner in which the Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product was rendered unusable and Unrecognizable;

v. The method of final disposition pursuant to Rule M 307(F); and

vi. The identity(ies) and contact information of all Person(s) involved in the destruction.

3. A Pesticide Manufacturer shall keep all documentation regarding destruction of Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Products for the current year and three preceding calendar years.

J. No Pesticide on Licensed Premises. Under no circumstance may a Pesticide Manufacturer apply Pesticide(s) for research purposes on the Licensed Premises of a Medical Marijuana Business.

1. Licensees Shall Not Permit Pesticide on Licensed Premises. Under no circumstance may a Licensee allow or permit the application of Pesticide(s) by a Pesticide Manufacturer for research purposes on the Licensed Premises of a Medical Marijuana Business.

2. Violation Affecting Public Safety. A violation of this prohibition shall be considered a violation affecting public safety.

K. No Human or Animal Subjects. Under no circumstance shall a Pesticide Manufacturer receiving Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product from a Licensee engage in research involving human subjects. Additionally, under no circumstance shall a Pesticide Manufacturer receiving Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product from a Licensee engage in research involving animal subjects, as defined in the Animal Welfare Act, 7 U.S.C. § 2132(g).

1. Licensees Shall Not Permit Human or Animal Subject Research. If a Licensee knows or reasonably should know that a Pesticide Manufacturer intends to engage in or has engaged in marijuana-related research involving human and/or animal subjects, the Licensee shall not Transfer any Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product to the Pesticide Manufacturer.

2. Violation Affecting Public Safety. A violation of this prohibition shall be considered a violation affecting public safety.

L. No Transfer to Licensees. Under no circumstance may a Licensee receive or obtain for any purposes Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product from a Pesticide Manufacturer.

M 1900 Series –Licensed Research Businesses

Basis and Purpose - M 1901

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(XX), 12-43.3-202(2)(a)(XXII), 12-43.3-405(1), and 12-43.3-408, C.R.S. The purpose of this rule is to establish that it is unlawful for Licensed Research Businesses to exercise any privilege other than those granted by the State Licensing Authority. The purpose of this rule also is to clarify the distinct privileges granted to Marijuana Research and Development Facilities and Marijuana Research and Development Cultivations.

M 1901 – Licensed Research Businesses: License Privileges

A. Privileges Applicable to any Licensed Research Business.

1. Privileges Granted. A Licensed Research Business shall only exercise those privileges granted to it by the State Licensing Authority.

2. Licensed Premises. A Licensed Research Business may share a Licensed Premises only with a commonly-owned Medical Marijuana Testing Facility.

i. If a Licensed Research Business shares its Licensed Premises with a commonly-owned Medical Marijuana Testing Facility, the Licensees shall physically segregate all Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product used for research purposes in order to prevent contamination or any other effect on Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product submitted to the Medical Marijuana Testing Facility for testing.

3. Authorized Sources of Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product. A Licensed Research Business may receive or obtain Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product from only the following sources:

i. An Optional Premises Cultivation Operation and Medical Marijuana-Infused Products Manufacturer may Transfer Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product to a Licensed Research Business.

ii. Marijuana Research and Development Cultivations. A Marijuana Research and Development Cultivation may Transfer Medical Marijuana to other Licensed Research Businesses.

B. Privileges Applicable to Marijuana Research and Development Cultivations.

1. Cultivation of Marijuana Authorized. A Marijuana Research and Development Cultivation may grow, cultivate, possess, and Transfer Medical Marijuana for use in research only.

2. Production of Marijuana Concentrate. A Marijuana Research and Development Cultivation and an Optional Premises Cultivation Operation are subject to the same restrictions concerning Medical Marijuana Concentrate production. Therefore, a Licensed Research Business may produce Medical Marijuana Concentrate only as allowed by, and in conformance with, Rule M 506(A)-(B).

3. Authorized Marijuana Transport. A Marijuana Research and Development Cultivation is authorized to utilize a licensed Medical Marijuana Transporter for transportation of Medical Marijuana to other Licensed Research Businesses so long as the place where transportation orders are taken and delivered is a Licensed Research Business. Nothing in this rule prevents a Marijuana Research and Development Cultivation from transporting its own Medical Marijuana to other Licensed Research Businesses.

Basis and Purpose - M 1902

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(XX), 12-43.3-202(2)(a)(XXII), 12-43.3-310(7), 12-43.3-405(1), and 12-43.3-408, C.R.S. The

purpose of this rule is to clarify those acts that are prohibited, or limited in some fashion, by a Licensed Research Business.

M 1902 – Licensed Research Businesses: General Limitations or Prohibited Acts

A. Restrictions Applicable to Any Licensed Research Business.

1. Packaging and Labeling Standards Required. A Licensed Research Business is prohibited from Transferring to a Licensee or any other Person Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product that is not packaged and labeled in accordance with these rules. *See* Rule M 1000-1 Series – Labeling, Packaging, and Product Safety.

    i. Unless the Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product was subject to contaminant testing required by the Medical Marijuana Code and these rules, a Licensed Research Business shall disclose to any individual Person receiving Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product as part of an approved Research Project that the Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product has not been subject to mandatory contaminant testing.

2. Transfers to Individuals. A Licensed Research Business is prohibited from Transferring Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product to any individual, unless as part of an approved Research Project.

3. Consumption Prohibited. A Licensed Research Business shall not permit the consumption of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product on its Licensed Premises, unless as part of an approved Research Project and the Licensed Research Business does not share a Licensed Premises with a Medical Marijuana Testing Facility.

4. Transporter Restrictions. A Licensed Research Business shall not sell or give away Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product to a Medical Marijuana Transporter, and shall not buy or receive complimentary Medical Marijuana, Medical Marijuana Concentrate, or Medical-Marijuana Infused Product from a Medical Marijuana Transporter.

5. Worker Health and Safety. A Licensed Research Business shall comply with all applicable federal, state, and local laws regarding worker health and safety.

6. Performance Incentives. A Licensed Research Business may not use performance incentives to compensate its employees, agents, or contractors who will conduct research, development, or testing.

7. Licensure and Research Projects. A Licensed Research Business shall not engage in any research activities until the State Licensing Authority or its delegate approves both (1) its business license application, pursuant to Rule M 201, and (2) one or more Research Project(s), pursuant to Rule M 1904.

    i. A Licensed Research Business may submit its business license application prior to or in conjunction with its Research Project application. Except that the Licensed Research Business may not engage in any research activities except in conjunction with an approved Research Project.

ii. If a Licensed Research Business's license expires or is suspended or revoked, the Licensee shall immediately cease all activities associated with the privileges of licensure, including but not limited to research.

B. Restrictions Applicable to Marijuana Research and Development Cultivations.

1. Transfer Restriction. A Marijuana Research and Development Cultivation may only Transfer Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product to a Licensed Research Business, a Medical Marijuana Testing Facility for testing, or to any individual person as part of an approved Research Project.

C. Restrictions Applicable to Marijuana Research and Development Facilities.

1. Transfer Restriction. A Marijuana Research and Development Facility may only Transfer Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product to an individual person as part of an approved Research Project or to a Medical Marijuana Testing Facility for testing.

Basis and Purpose - M 1903

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(XX), and 12-43.3-202(2)(a)(XXII), and 12-43.3-408, C.R.S. The purpose of this rule is to require all Licensed Research Businesses to track all inventory from the point it is Propagated or received to the point when it is destroyed, used in a Research Project, or, if permitted, Transferred to another Licensed Research Business or a Medical Marijuana Testing Facility. The purpose of this rule is also to eliminate diversion of Medical Marijuana.

M 1903 – Licensed Research Businesses: Inventory Tracking

A. Minimum Tracking Requirement. A Licensed Research Business must use the Inventory Tracking System to ensure its inventories are identified and tracked from the point Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product is propagated or received to the point when it is destroyed, used in a Research Project, or, if permitted, Transferred to another Licensed Research Business or a Medical Marijuana Testing Facility. *See also* Rule M 309 - Medical Marijuana Business: Inventory Tracking System. A Licensed Research Business must have the ability to reconcile its inventory records generated from the Inventory Tracking System with the associated transaction history and sale receipts or other Transfer documentation. *See also* Rule M 901 – Business Records Required.

1. A Licensed Research Business is prohibited from accepting any Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product without receiving a valid transport manifest generated from the Inventory Tracking System.

2. A Licensed Research Business must immediately input all Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product delivered to its Licensed Premises and account for all RFID tags into the Inventory Tracking System at the time of delivery.

3. A Licensed Research Business must reconcile its transaction history and on-hand Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product to the Inventory Tracking System at the close of business each day.

Basis and Purpose - M 1904

The statutory authority for this rule includes but is not limited to sections 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), 12-43.3-202(2)(a)(XXII), and 12-43.3-408(3)(a), C.R.S. The purpose of this rule is to ensure that any research or development conducted by a Licensed Research Business shall be in furtherance of a Research Project approved by the Division. The purpose of this rule is also to establish the applicable requirements necessary for Licensed Research Businesses to seek and receive Division approval for all proposed Research Projects.

M 1904 – Licensed Research Businesses: Project Approval

A. Project Approval. Prior to engaging in any research activities, a Licensed Research Business shall obtain approval from the Division for a Research Project by submitting a Research Project proposal. Any research or development conducted by a Licensed Research Business shall be in furtherance of an approved Research Project.

1. General. A Licensed Research Business Applicant or Licensee shall seek approval of the Division by submitting its Research Project proposal on the current form supplied by the Division.

a. A Research Project proposal shall include a description of the Research Project's defined protocol, clearly articulated goal(s), defined methods and outputs, and a defined start and end date.

i. The description of the proposed Research Project proposal shall include the quantity of Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product reasonably required to conduct the proposed Research Project, the total quantity of which is subject to approval by the Division as part an approved Research Project.

b. A Licensed Research Business Applicant or Licensee shall disclose all Persons who have, are, or will provide funding for the proposed Research Project. If any Person funding or intending to fund the proposed Research Project does not hold a license issued by the State Licensing Authority, and is neither a Direct Beneficial Interest Owner nor an Indirect Beneficial Interest Owner of the Licensed Research Business, then such Person must be reported as an Affiliated Interest. An Affiliated Interest may not exercise control and may not be positioned so as to enable the exercise of control over the Licensed Research Business.

c. A Licensed Research Business may enter into contracts or agreements with a public higher education research institution or another Licensed Research Business to conduct the proposed Research Project. A Licensed Research Business Applicant or Licensee shall disclose all contracts or agreements with a public higher education research institution or a Licensed Research Business.

i. If a Licensed Research Business enters into a contract or agreement to conduct a Research Project with a public higher education research institution, all research activities involving possession of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product shall occur at the Licensed Research Business's Licensed Premises. Employees, agents, or contractors of the public higher education research institution may not work at or conduct research activities at the Licensed Research Business's Licensed Premises unless they hold an Occupational License issued by the State Licensing Authority.

d. A Licensed Research Business may submit additional Research Project proposals at any time during which its license is current and valid.

2. Private Research. Unless the proposed Research Project is being conducted in whole or in part by a Public Institution or with Public Money, the Licensed Research Business Applicant or Licensee shall obtain a review of its proposed Research Project by one or more independent reviewers. The Division, in its discretion, may require a Licensed Research Business Applicant or Licensee to nominate multiple independent reviewers. The Division must approve each nominated independent reviewer.

a. Fees and Costs. The Applicant or Licensee shall be solely responsible for any fees or costs associated with all aspects and all stages of the independent reviewer's services.

b. Qualifications of an Independent Reviewer. Each independent reviewer nominated by a Licensed Research Business Applicant or Licensee must be a qualified researcher within the field of study that relates to proposed Research Project.

i. The Division may consult with the Colorado Department of Public Health and Environment and/or the Colorado Department of Agriculture in reviewing whether a nominated independent reviewer is qualified to review the Licensed Research Business's Research Project.

ii. The Division, in its discretion, may require a nominated independent reviewer or the Licensed Research Business to provide additional information or analysis that the Division deems pertinent to its review of whether to approve the Licensee's nomination of the independent reviewer.

c. Conflicts of Interest. A Licensed Research Business Applicant or Licensee must disclose all pre-existing financial, employment, business, or personal relationships between the Licensed Research Business or any of its Associated Key Licensees and each independent reviewer. In determining whether to approve an independent reviewer, the Division may consider whether a pre-existing relationship exists that could affect the independent reviewer's independence or appearance of independence.

d. Independent Reviewer Approval Required. If a Licensed Research Business Applicant or Licensee nominates an independent reviewer who is not approved by the Division, the State Licensing Authority may deny a Research Project on that ground unless and until the Licensed Research Business Applicant or Licensee nominates another independent reviewer who is approved by the Division.

e. Independent Reviewer Report. After an independent reviewer has been approved by the Division, the Licensed Research Business Applicant or Licensee shall submit a report by the independent reviewer to the Division as part of its Research Project proposal. The independent reviewer's report shall address the following criteria as described in the Research Project's description:

i. The identity of the independent reviewer and his/her employer;

ii. Any compensation paid by the Licensed Research Business Applicant or Licensee for the review and report;

iii. A description of the review conducted by the independent reviewer, including but not limited to an identification of all documents that were reviewed;

iv. An analysis by the independent reviewer as to whether the proposed Research Project constitutes a type of approved research pursuant to Rule M 1905(A) and the reason(s) supporting the reviewer's analysis;

v. An assessment of the total quantity of Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product reasonably required to conduct the proposed Research Project;

vi. An assessment of whether the proposed Research Project presents any type of danger to the public health and/or safety, and/or whether the proposed Research Project presents any health or safety risks;

vii. An assessment of whether the proposed Research Project has a strong scientific basis, appropriate study design, and technically sound scientific methodology;

viii. An assessment of whether the Licensed Research Business Applicant or Licensee is qualified to perform the proposed Research Project, including whether the Licensed Research Business Applicant or Licensee's employees are qualified to perform the proposed Research Project;

ix. An assessment of whether the Licensed Research Business Applicant or Licensee has the appropriate resources and protocols to conduct the proposed Research Project;

x. An assessment of whether the Licensed Research Business Applicant or Licensee has the appropriate personnel, expertise, facilities, infrastructure, funding, and other human, animal, or other approvals in place to successfully conduct the Research Project, including but not limited to the requirements in Rule M 1905(C) and (D);

xi. The following certification by the independent reviewer: "I hereby certify and affirm that I do not have any financial, employment, business, or personal relationship with [INSERT LICENSED RESEARCH BUSINESS NAME] ("Licensee") that would influence or affect my review of the Licensee's proposed Research Project activity. Other than the fees disclosed herein, neither the Licensee nor any other person has given me anything of value or made any promises to me that would influence or affect my review of the Licensee's proposed research activity. I further certify and affirm that this report was drafted by me, and that the information, analysis, and conclusions herein represent solely my work and conclusions."; and

xii. The signature of the independent reviewer.

f. The Licensed Research Business shall maintain copies of all documents and correspondence sent to or from the independent reviewer. *See* Rule M 901 – Business Records Required.

g. The Division, in its discretion, may require the independent reviewer and/or the Licensed Research Business Applicant or Licensee to provide additional

information or analysis that the Division deems pertinent to its review of the Applicant or Licensee's Research Project proposal.

h. The State Licensing Authority may decline to approve a Research Project proposal if an independent reviewer or the Division through further investigation concludes that:

i. The description of the Research Project does not meet the requirements of section 12-43.3-408, C.R.S., and these rules;

ii. The proposed Research Project presents a danger to the public health and/or safety, and/or the research to be conducted pursuant to the Research Project presents any health or safety risks;

iii. The proposed Research Project lacks scientific value or validity;

iv. The Licensed Research Business Applicant or Licensee is not qualified to perform the proposed research;

v. The Licensed Research Business Applicant or Licensee does not have the appropriate resources and/or protocols to conduct the proposed research;

vi. The Licensed Research Business Applicant or Licensee lacks the appropriate personnel, expertise, facilities, infrastructure, funding, or human, animal, or other approvals in place to successfully conduct the Research Project, including but not limited to the requirements in Rule M 1905(C) and (D);

vii. The independent reviewer(s) cannot meet the certification requirements in this rule; or

viii The Licensed Research Business Applicant or Licensee or the proposed Research Project is otherwise not in compliance with the Medical Code or these rules.

3. Projects with Public Institutions or Money. If a Licensed Research Business Applicant or Licensee's proposed Research Project will be conducted in whole or in part with a Public Institution or Public Money, the Division shall refer the Licensee's Research Project proposal to the Scientific Advisory Council established by section 25-1.5-106.5(3), C.R.S., for review.

a. The Licensed Research Business Applicant or Licensee shall supply the Scientific Advisory Council with any information and/or documents requested by the Scientific Advisory Council within the deadline imposed by the Scientific Advisory Council. A Licensed Research Business Applicant or Licensee's failure to supply information and/or documents requested by the Scientific Advisory Council within the deadline set by the Scientific Advisory Council shall be grounds for denial of the Research Project proposal.

b. The Scientific Advisory Council shall review the proposed Research Project to ensure that the proposed Research Project meets the requirements of Rule M 1905(A).

c. The Scientific Advisory Council shall also assess the adequacy of the following:

i. The proposed Research Project's quality, study design, value, or impact;

ii. Whether the Licensed Research Business Applicant or Licensee has the appropriate personnel, expertise, facilities, infrastructure, funding, and human, animal, or other approvals in place to successfully conduct the Research Project, including but not limited to the requirements in Rule M 1905(C) and (D); and

iii. Whether the amount of Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product the Licensed Research Business Applicant or Licensee proposes to grow or possess is consistent with the proposed Research Project's scope and goals.

d. The Scientific Advisory Council shall communicate the results of its review of the proposed Research Project to the Division. If the Scientific Advisory Council determines that the requirements of either Paragraph (b) or (c) of this Rule are not satisfied, then the proposed Research Project shall be denied.

e. The Licensed Research Business shall maintain copies of all documents and correspondence sent to or from the Scientific Advisory Council. *See* Rule M 901 – Business Records Required.

Basis and Purpose - M 1905

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(XX), 12-43.3-202(2)(a)(XXII), 12-43.3-405(1), and 12-43.3-408(2), C.R.S. The purpose of this rule to establish the limited research purposes authorized for Licensed Researched Businesses. The purpose of this rule is also to establish additional requirements for Research Projects involving human subjects and animal subjects, as well as restrictions on the use of Pesticides. The rule also establishes reporting requirements and explains when the State Licensing Authority may require a Licensed Research Business to undergo an audit of its research activities.

M 1905 – Licensed Research Businesses: Authorized Research Activities

A. Authorized Research. A Licensed Research Business is authorized to engage in the following research at its Licensed Premises:

1. Chemical Potency and Composition Levels.

2. Clinical Investigations of Marijuana-Derived Products.

3. Efficacy and Safety of Administering Marijuana as Part of Medical Treatment.

4. Genomic Research.

5. Horticultural Research.

6. Agricultural Research.

7. Marijuana-Affiliated Products or Systems. A marijuana-affiliated product or system includes products or systems such as marijuana delivery systems and cultivation or processing equipment.

B. Pesticide Research. A Licensed Research Business shall not engage in any research activities involving Pesticides unless the Licensed Research Business has applied for and received any

necessary license, registration, certification, or permit from the Colorado Department of Agriculture pursuant to the Pesticide Act, sections 35-9-101 *et seq.,* C.R.S., and/or the Pesticide Applicators' Act, sections 35-10-101 *et seq.*, C.R.S.

1. A Licensed Research Business engaged in research activities involving Pesticide shall at all times comply with the Pesticide Act, sections 35-9-101 *et seq.*, C.R.S., Pesticide Applicators' Act, sections 35-10-101 *et seq.*, C.R.S., and all rules promulgated pursuant thereto.

C. Research Involving Human Subjects. A Licensed Research Business shall not conduct any research involving human subjects unless all aspects of its proposed Research Project have been reviewed and approved by an Institutional Review Board that is registered and in good standing with Office for Human Research Protections, U.S. Department of Health and Human Services.

1. A Licensed Research Business shall include proof of approval and ongoing oversight and review by an Institutional Review Board as part of its Research Project proposal. A Research Project may be approved conditioned upon subsequent Institutional Review Board approval. A Licensee shall not engage in any Research Project involving human subjects until it receives approval by the Institutional Review Board and its Research Project is approved. A Licensed Research Business conducting research involving human subjects shall also comply with any ongoing monitoring required by the Institutional Review Board.

2. A Licensed Research Business conducting research involving human subjects shall at all times comply with the U.S. Department of Health and Human Services' requirements for protection of human research subjects, including additional safeguards necessary for vulnerable populations, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons, 45 C.F.R. part 46, and all other relevant federal and/or state laws and regulations regarding research on human subjects, as well as all prevailing ethical standards and requirements for research involving human subjects.

3. A Licensed Research Business conducting research involving human subjects shall obtain informed consent from any individual participating in such research prior to the individual's participation in the research. A Licensed Research Business shall comply with U.S. Food and Drug Administration requirements for informed consent and additional safeguards for children in clinical investigations, 21 C.F.R. part 50, as part of approval and ongoing oversight and review by an Institutional Review Board.

D. Research Involving Animal Subjects. A Licensed Research Business shall not conduct any research involving animal subjects as defined in the Animal Welfare Act, 7 U.S.C. § 2132(g) unless the Licensed Research Business is registered with the U.S. Department of Agricultural pursuant to the Animal Welfare Act, 7 U.S.C. §§ 2131 *et seq.*

1. A Licensed Research Business shall include proof of its current registration with the U.S. Department of Agriculture as part of its Research Project proposal. Failure to be registered with the U.S. Department of Agriculture shall be grounds for denial of Research Project proposal involving animal subjects.

2. A Licensed Research Business shall at all times treat animal subjects as defined in the Animal Welfare Act, 7 U.S.C. § 2132(g) involved in research humanely and consistent with all relevant federal and/or state laws and regulations, as well as all prevailing ethical standards and requirements for research on such animals.

E. Research Involving Testing of Marijuana. A Licensed Research Business may only engage in research regarding the testing of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product if the following criteria are met:

1. Testing Qualifications. A Licensed Research Business must meet one of the following standards:

   a. The Licensed Research Business also holds a Medical Marijuana Testing Facility license and has been certified pursuant to Rule M 703;

   b. The Licensed Research Business is accredited to the International Organization for Standardization/International Electrotechnical Commission 17025:2005 Standard, or any subsequent superseding ISO 17025 standard; or

   c. The Licensed Research Business is part of an institution of higher education whose protocols have been approved by the Colorado Department of Public Health and Environment.

2. A Licensed Research Business proposing to engage in research regarding the testing Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product shall include in its Research Project proposal documentation establishing its testing qualification pursuant to Paragraph (E)(1) of this Rule. *See* Rule M 1904 – Licensed Research Businesses: Project Approval.

F. No Transfers of Marijuana Used in Research. A Licensed Research Business shall not Transfer to any Person any Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product that has been used by the Licensee for research. Unless otherwise provided by the State Licensing Authority, a Licensed Research Business shall at the conclusion of its research destroy all remaining Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product subject to the Licensed Research Business's approved Research Project. Unless otherwise provided, a Research Project will be deemed concluded on its defined end date as provided in the Licensed Research Business's Research Project proposal that was submitted to and approved by the Division. The Licensed Research Business shall ensure destruction of such remaining Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product is destroyed in conformance with Rule M 307.

G. Periodic Reporting. A Licensed Research Business shall submit to the Division a report regarding the status of approved Research Projects every 6 months following the Division's approval of its Research Project.

1. The periodic reports shall address the Licensed Research Business's compliance and progress with its approved Research Project.

2. The periodic reports shall include any protocol changes or reported protocol deviations, as well as enrollment numbers and adverse events for studies involving human subjects.

3. If the Licensed Research Business is conducting its Research Project in whole or in part with a Public Institution or Public Money, the Division shall submit the Licensed Research Business's periodic reports to the Scientific Advisory Council for review.

4. If an adverse event occurs, the Licensed Research Business shall immediately notify the Division of the adverse event on the form prepared by the Division.

H. Suspension or Revocation of Project Approval. Research Project approval is subject to revocation or suspension if the Licensed Research Business's research has materially diverged from the

Licensed Research Business's approved Research Project, violates the Medical Marijuana Code or the rules promulgated thereto, or presents a risk to public health and safety. *See* Rule M 1300 Series – Discipline.

I. Reporting of Research Results. A Licensed Research Business shall supply the Division with copies of all final reports, findings, or documentation regarding the outcomes of approved Research Projects.

J. Independent Research Audit. The State Licensing Authority in its discretion may at any time require that a Licensed Research Business undergo an audit of its research activities.

1. Circumstances Justifying Independent Research Audit. The following is a non-exhaustive list of examples that may justify an independent research audit:

a. The Division has reasonable grounds to believe that the Licensed Research Business is in violation of one or more of the requirements set forth in these rules or other applicable statutes or regulations;

b. The Division has reasonable grounds to believe that the Licensed Research Business's research activities present a danger to the public health and/or safety; or

c. The Division has reasonable grounds to believe that the Licensed Research Business has been or is engaged in research activities that have not received prior Division approval.

2. Selection of An Independent Consultant. The Division and the Licensed Research Business may attempt to mutually agree upon the selection of an independent consultant to perform a research audit. However, the Division always retains the authority to select the independent consultant regardless of whether mutual agreement can be reached.

3. Costs. The Licensed Research Business subject to an independent research audit will be responsible for all costs associated with the independent research audit, including but not limited to the auditor's fees.

4. Compliance Required. A Licensed Research Business must pay for and timely cooperate with the State Licensing Authority's requirement that it undergo an independent research audit in conformance with this Rule.

K. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose - M 1906

The statutory authority for this rule includes but is not limited to sections 12-43.3-202 and 12-43.3-408, C.R.S. The purpose of this rule is to establish minimum health and safety regulation for Licensed Research Businesses. It sets forth general standards and basic sanitary requirements for Licensed Research Businesses. It covers the Licensed Premises as well as the individuals handling Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product. The rule prohibits Licensed Research Business from treating or otherwise adulterating Medical Marijuana with any chemical or other compound whatsoever to alter its color, appearance, weight or smell. This rule also authorizes the State Licensing Authority to require an independent consultant to conduct an independent health and sanitary audit of an Licensed Research Businesses. This rule explains when an independent health and sanitary audit may be deemed necessary and sets forth possible consequences of a Licensed Research

Business's refusal to cooperate or pay for the audit. The State Licensing Authority intends this rule to help maintain the integrity of Colorado's Licensed Research Businesses.

M 1906 – Licensed Research Businesses: Health and Safety Regulations

A. Local Safety Inspections. A Licensed Research Business may be subject to inspection of its Licensed Premises 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 Medical Marijuana Businesses or other local businesses. An annual fire safety inspection may result in the required installation of fire suppression devices, or other means necessary for adequate fire safety.

B. General Sanitary Requirements. A Licensed Research Business 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 Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product shall be excluded from any operations which may be expected to result in 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 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 Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused 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 and at any other time when the hands may have become soiled or contaminated; and

    c. Refraining from having direct contact with Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused 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 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 Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product are exposed;

5. 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;

6. That there is adequate lighting in all areas where Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product are stored, where research and development activities are conducted, and where equipment or utensils are cleaned;

7. That the Licensed Research Business 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;

8. That any buildings, fixtures, and other facilities are maintained in a sanitary condition;

9. That toxic cleaning compounds, sanitizing agents, and solvents shall be identified, held, stored and disposed of in a manner that protects against contamination of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product, unless as part of an approved Research Project, and in a manner that is in accordance with any applicable local, state, or federal law, rule, regulation or ordinance. All Pesticide must be stored and disposed of in accordance with the information provided on the product's label;

10. That all contact surfaces, including utensils and equipment used for the preparation and research of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused 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 by a Licensed Research Business and used in accordance with labeled instructions;

11. 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. Reclaimed water may also be used only for the cultivation of Medical Marijuana, and subject to approval of the Water Quality Control Division of the Colorado Department of Public Health and Environment and the local water provider;

12. 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 Licensed Premises and that plumbing shall properly convey sewage and liquid disposable waste from the Licensed Premises. There shall be no cross-connections between the potable, reclaimed water, and waste water lines;

13. That all operations in the receiving, inspecting, transporting, segregating, preparing, packaging, researching, and storing of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product shall be conducted in accordance with adequate sanitation principles;

14. That each Licensed Research Business shall provide its employees with adequate and readily accessible toilet facilities that are maintained in a sanitary condition and good repair; and

15. That Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product that can support the rapid growth of undesirable microorganisms shall be held in a manner that prevents the growth of these microorganisms, unless as part of an approved Research Project.

C. Pesticide Application. Unless as part of an approved Research Project, a Licensed Research Business may only use Pesticide in accordance with the Pesticide Act, sections 35-9-101 *et seq.*, C.R.S., the Pesticide Applicators' Act," sections 35-10-101 *et seq.*, C.R.S., and all other applicable federal, state, and local laws, statutes, rules and regulations. *See also* Rule M

1905(B). This includes, but shall not be limited to, the prohibition on detaching, altering, defacing, or destroying, in whole or in part, any label on any Pesticide.

D. Application of Other Agricultural Chemicals. Unless as part of an approved Research Project, a Licensed Research Business may only use agricultural chemicals, other than Pesticide, in accordance with all applicable federal, state, and local laws, statutes, rules and regulations.

E. Required Documentation.

1. Marijuana Research and Development Cultivation.

i. Standard Operating Procedures. A Marijuana Research and Development Cultivation must establish written standard operating procedures for the cultivation of Medical Marijuana. The standard operating procedures must at least include when, and the manner in which, all Pesticide and other agricultural chemicals are to be applied during its cultivation process. A copy of all standard operating procedures must be maintained on the Licensed Premises of the Marijuana Research and Development Cultivation.

ii. Material Change. If a Marijuana Research and Development Cultivation makes a Material Change to its cultivation procedures, 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.

2. Safety Data Sheet. A Licensed Research Business must obtain a safety data sheet for any Pesticide or other agricultural chemical used or stored on its Licensed Premises. A Licensed Research Business must maintain a current copy of the safety data sheet for any Pesticide or other agricultural chemical on the Licensed Premises where the product is used or stored.

3. Labels of Pesticide and Other Agricultural Chemicals. A Licensed Research Business must have the original label or a copy thereof at its Licensed Premises for all Pesticide and other agricultural chemicals used on its Licensed Premises.

4. Pesticide Application Documentation. A Licensed Research Business that applies any Pesticide or other agricultural chemical to any portion of a Medical Marijuana plant, water, or feed used during cultivation or generally within the Licensed Premises must document, and maintain a record on its Licensed Premises of, the following information:

a. The name, signature, and Occupational License number of the individual who applied the Pesticide or other agricultural chemical;

b. Applicator license, certification number or permit number, if the applicator is licensed, certified or permitted through the Department of Agriculture in accordance with the Colorado Pesticides Applicators' Act, sections 35-10-101 *et seq.*, C.R.S.;

c. The date and time of the application;

d. The EPA registration number of the Pesticide or CAS number of any other agricultural chemical(s) applied;

e. Each of the active ingredients of the Pesticide or other agricultural chemical(s) applied;

f. Brand name and product name of the Pesticide or other agricultural chemical(s) applied;

g. The restricted entry interval from the product label of any Pesticide or other agricultural chemical(s) applied;

h. The RFID tag number of the Medical Marijuana plant(s) that the Pesticide or other agricultural chemical(s) was applied to or if applied to all plants throughout the Licensed Premises, a statement to that effect; and

i. The total amount of each Pesticide or other agricultural chemical applied.

F. Prohibited Chemicals. The following chemicals shall not be used on a Licensed Research Business's Licensed Premises, unless as part of an approved Research Project. Possession of chemicals and/or containers from these chemicals upon the Licensed Premises shall be a violation of this rule, unless as part of an approved Research Project. Prohibited chemicals are:

ALDRIN

309-00-2

ARSENIC OXIDE (3)

1327-53-3

ASBESTOS (FRIABLE)

1332-21-4

AZODRIN

6923-22-4

1,4-BENZOQUINONE, 2,3,5,6-TETRACHLORO-

118-75-2

BINAPACRYL

485-31-4

2,3,4,5-BIS (2-BUTENYLENE) TETRAHYDROFURFURAL

126-15-8

BROMOXYNIL BUTYRATE

EDF-186

CADMIUM COMPOUNDS

CAE750

CALCIUM ARSENATE [2ASH3O4.2CA]

7778-44-1

CAMPHECHLOR

8001-35-2

CAPTAFOL

2425-06-1

CARBOFURAN

1563-66-2

CARBON TETRACHLORIDE

56-23-5

CHLORDANE

57-74-9

CHLORDECONE (KEPONE)

143-50-0

CHLORDIMEFORM

6164-98-3

CHLOROBENZILATE

510-15-6

CHLOROMETHOXYPROPYLMERCURIC ACETATE [CPMA] EDF-

183

COPPER ARSENATE

10103-61-4

2,4-D, ISOOCTYL ESTER

25168-26-7

DAMINOZIDE

1596-84-5

DDD

72-54-8

DDT

50-29-3

DIMETHYLSULFOXIDE (DMSO)

67-68-5

DI(PHENYLMERCURY)DODECENYLSUCCINATE [PMDS] EDF-

187

1,2-DIBROMO-3-CHLOROPROPANE (DBCP)

96-12-8

1,2-DIBROMOETHANE

106-93-4

1,2-DICHLOROETHANE

107-06-2

DIELDRIN

60-57-1

4,6-DINITRO-O-CRESOL

534-52-1

DINITROBUTYL PHENOL

88-85-7

ENDRIN

72-20-8

EPN

2104-64-5

ETHYLENE OXIDE

75-21-8

FLUOROACETAMIDE

640-19-7

GAMMA-LINDANE

58-89-9

HEPTACHLOR

76-44-8

HEXACHLOROBENZENE

118-74-1

1,2,3,4,5,6-HEXACHLOROCYCLOHEXANE (MIXTURE OF ISOMERS)

608-73-1

1,3-HEXANEDIOL, 2-ETHYL-

94-96-2

LEAD ARSENATE

7784-40-9

LEPTOPHOS

21609-90-5

MERCURY

7439-97-6

METHAMIDOPHOS

10265-92-6

METHYL PARATHION

298-00-0

MEVINPHOS

7786-34-7

MIREX

2385-85-5

NITROFEN

1836-75-5

OCTAMETHYLDIPHOSPHORAMIDE

152-16-9

PARATHION

56-38-2

PENTACHLOROPHENOL

87-86-5

PHENYLMERCURIC OLEATE [PMO]

EDF-185

PHOSPHAMIDON

13171-21-6

PYRIMINIL

53558-25-1

SAFROLE

94-59-7

SODIUM ARSENATE

13464-38-5

SODIUM ARSENITE

7784-46-5

2,4,5-T

93-76-5

TERPENE POLYCHLORINATES (STROBANE6)

8001-50-1

THALLIUM(I) SULFATE

7446-18-6

2,4,5-TP ACID (SILVEX)

93-72-1

TRIBUTYLTIN COMPOUNDS

EDF-184

2,4,5-TRICHLOROPHENOL

95-95-4

VINYL CHLORIDE

75-01-4

G. Adulterants. Unless as part of an approved Research Project, a Licensed Research Business may not treat or otherwise adulterate Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product with any chemical or other compound whatsoever to alter its color, appearance, weight or smell.

H. Independent Health and Sanitary Audit.

1. State Licensing Authority May Require a 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 Licensed Research Business to undergo such an audit. The scope of the audit may include, but need not be limited, to whether the Licensed Research Business is in compliance with the requirements set forth in this rule and other applicable public health or sanitary laws and regulations.

b. In such instances, the Division may attempt to mutually agree upon the selection of the independent consultant with a Licensed Research Business. However, the Division always retains the authority to select the independent consultant regardless of whether mutual agreement can be reached.

c. The Licensed Research Business 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 Licensed Research Business does not provide requested records related to the use of Pesticide or other agricultural chemicals during in the cultivation process;

b. The Division has reasonable grounds to believe that the Licensed Research Business is in violation of one or more of the requirements set forth in this Rule or other applicable public health or sanitary laws, rules, or regulations;

c. The Division has reasonable grounds to believe that the Licensed Research Business was the cause or source of contamination of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product; or

d. Multiple Harvest Batches or Production Batches produced by the Licensed Research Business failed contaminant testing.

3. Compliance Required. A Licensed Research Business 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.

I. Suspension of Operations.

1. 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 Licensed Research Business's license. *See* Rule M 1302 – Disciplinary Process: Summary Suspensions.

2. Prior to or following the issuance of such an order, the Licensed Research Business 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 M 1302 – Disciplinary Process: Summary Suspensions.

    ii. If an agreement to suspend operations is reached, then the Licensed Research Business may continue to care for its inventory and conduct any necessary internal business operations but it may not Transfer Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product to other Medical Marijuana Business's during the period of time specified in the agreement.

J. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose - M 1907

The statutory authority for this rule includes but is not limited to sections 12-43.3-202, 12-43.3-405, and 12-43.3-408, C.R.S. The purpose of this rule is to permit laboratory testing of Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Products used by Licensed Research Businesses. The State Licensing Authority intends this rule to help maintain the integrity of Colorado's Licensed Research Businesses.

M 1907 – Licensed Research Businesses: Testing

A. Samples on Demand. Upon request of the Division, a Licensed Research Business shall submit a sufficient quantity of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product to a Medical Marijuana Testing Facility for testing. The Division will notify the Licensed Research Business of the results of the analysis. *See* Rule M 309 – Medical Marijuana Business: Inventory Tracking System; Rule M 901 – Business Records Required.

B. Samples Provided for Testing. A Licensed Research Business may provide Samples of its Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product to a Medical Marijuana Testing Facility for testing purposes. The Licensed Research Business shall maintain the testing results as part of its business books and records. See Rule M 901 – Business Records Required.

Basis and Purpose - M 1908

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(XX), 12-43.3-202(2)(a)(XXII), and 12-43.3-408, C.R.S. The purpose of this rule is to establish a Licensed Research Business may only possess an amount of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product Medical Marijuana approved in conjunction with the Licensee's approved Research Projects. The purpose of this rule is also to establish additional Inventory Tracking and separation requirements for Medical Marijuana cultivated for Transfer by a Marijuana Research and Development Cultivation.

M 1908 – Licensed Research Businesses: Production Management and Possession Limits

A. Marijuana Authorized for Transfer. A Marijuana Research and Development Cultivation that is authorized to cultivate Medical Marijuana for Transfer to Licensed Research Businesses may not have more than 500 Medical Marijuana plants and 20 pounds of Medical Marijuana on its Licensed Premises at any given time, unless expressly approved by the Division as part of an approved Research Project.

1. A Marijuana Research and Development Cultivation Licensee shall indicate in the Inventory Tracking System whether Medical Marijuana is going to be used by the Licensee in an approved Research Project or Transferred to another Licensed Research Business. A Marijuana Research and Development Cultivation may cultivate Medical Marijuana prior to approval of a Research Project, except the Marijuana Research and Development Cultivation may only designate such Medical Marijuana as Medical Marijuana to be Transferred to other Licensed Research Businesses unless or until the Marijuana Research Development Cultivation has an approved Research Project. Upon approval of a Research Project, a Marijuana Research and Development Cultivation shall indicate in the Inventory Tracking System whether any such Medical Marijuana authorized for Transfer will be subject to the Marijuana Research and Development Cultivation's research pursuant to the approved Research Project.

B. Marijuana for Research. A Licensed Research Business shall only possess for research the amount of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product approved by the Division pursuant to each of the Licensee's approved Research Projects.

C. Separation of Marijuana Used in Research. A Marijuana Research and Development Cultivation shall physically separate all Medical Marijuana used in the Licensee's own approved Research Project(s) from Medical Marijuana to be Transferred to other Licensed Research Businesses for approved Research Projects.

STATEMENT OF ADOPTION

To: Jim Burack, Director, Marijuana Enforcement Division

From: Michael S. Hartman,
Executive Director of the Colorado Department of Revenue, State Licensing Authority

Re: Statement of Adoption

Revised Medical Marijuana Rules, 1 CCR 212-1
Revised Retail Marijuana Rules, 1 CCR 212-2

Pursuant to the Administrative Procedure Act, Title 24, Article 4, of the Colorado Revised Statutes, I, Michael S. Hartman, Executive Director of the Colorado Department of Revenue, State Licensing Authority, promulgate the following rules to become effective on January 1, 2018:

Permanent Rules, Medical Marijuana, 1 CCR 212-1

Secretary of State Filing Tracking Number 2017-00440

M 100 Series – General Applicability

M 101 (Revised) – Engaging in Business

M 103 (New and Revised) – Definitions

M 200 Series – Licensing and Interests

M 201(Revised) – Application Process

M 202.1 (Revised) – Applications, Agreements, Contracts and Certifications Required for Indirect Beneficial Interest Owners: Medical Marijuana Businesses

M 204 (Revised) – Ownership Interests of a License: Medical Marijuana Businesses

M 204.5 (Revised) – Disclosure, Approval and Review of Business Interests

M 206 (Revised) – Changing Location of the Licensed Premises: Medical Marijuana Businesses

M 207 (Revised) – Schedule of Application Fees: Medical Marijuana Businesses

M 210 (Revised) – Schedule of Other Application Fees: All Licensees

M 231 (Revised) – Qualifications for Licensure and Residency

M 231.1 (Revised) – Finding of Suitability, Residency and Reporting Requirements for Direct Beneficial Interest Owners

M 231.2 (Revised) – Qualifications for Indirect Beneficial Interest Owners and Qualified Limited Passive Investors

M 300 Series – The Licensed Premises

M 301 (Revised) – Limited Access Areas

M 302 (Revised) – Possession of Licensed Premises

M 304 (Repealed) – Medical Marijuana Business and Retail Marijuana Establishment – Shared Licensed Premises and Operational Separation

M 304.1 (New) – Medical Marijuana Business and Retail Marijuana Establishment – Shared Licensed Premises and Operational Separation

M 305 (Revised) – Security Alarm Systems and Lock Standards

M 306 (Revised) – Video Surveillance

M 307 (Revised) – Waste Disposal

M 309 (Revised) – Medical Marijuana Business: Inventory Tracking System

M 400 Series – Medical Marijuana Centers

M 401 (Revised) – Medical Marijuana Center: License Privileges

M 402 (Revised) – Registration of a Primary Medical Marijuana Center

M 403 (Revised) – Medical Marijuana Sales: General Limitations or Prohibited Acts

M 405 (Revised) – Acceptable Forms of Identification for Medical Marijuana Sales

M 406 (Revised) – Medical Marijuana Center: Inventory Tracking System

M 407 (Revised) – Health and Safety Regulations: Medical Marijuana Center

M 408 (Revised) – Medical Marijuana Center: Responsible Vendor Program

M 500 Series – Medical Marijuana Optional Premises Cultivation Operation: License Privileges

M 501 (Revised) – Medical Marijuana Optional Premises Cultivation Operation: License Privileges

M 502 (Revised) – Medical Marijuana Optional Premises Cultivation Operation: General Limitations or Prohibited Acts

M 503 (Revised) – Medical Marijuana Optional Premises Cultivation Operation: Inventory Tracking System

M 504 (Revised) – Optional Premises Cultivation Operation: Health and Safety Regulations

M 505 (Revised) – Optional Premises Cultivation Operation: Testing

M 506 (Revised) – Optional Premises Cultivation Operation: Medical Marijuana Concentrate Production

M 600 Series – Medical Marijuana-Infused Products Manufacturers

M 601 (Revised) – Medical Marijuana-Infused Products Manufacturer: License Privileges

M 602 (Revised) – Medical Marijuana-Infused Products Manufacturer: General Limitations or Prohibited Acts

M 603 (Revised) – Medical Marijuana-Infused Products Manufacturer: Inventory Tracking System

M 604 (Revised) – Medical Marijuana-Infused Products Manufacturer: Health and Safety Regulations

M 605 (Revised) – Medical Marijuana-Infused Products Manufacturer: Medical Marijuana Concentrate Production

M 700 Series – Medical Marijuana Testing Facilities

M 701.5 (Revised) – Medical Marijuana Testing Facilities: License Privileges

M 702 (Revised) – Medical Marijuana Testing Facilities: General Limitations or Prohibited Acts

M 703 (Revised) – Medical Marijuana Testing Facilities: Certification Requirements

M 704 (Revised) – Medical Marijuana Testing Facilities: Personnel

M 705 (Revised) – Medical Marijuana Testing Facilities: Standard Operating Procedure Manual

M 706 (Revised) – Medical Marijuana Testing Facilities: Analytical Processes

M 707 (Revised) – Medical Marijuana Testing Facilities: Proficiency Testing

M 708 (Revised) – Medical Marijuana Testing Facilities: Quality Assurance and Quality Control

M 709 (Revised) – Medical Marijuana Testing Facilities: Chain of Custody

M 710 (Revised) – Medical Marijuana Testing Facilities: Records Retention

M 711 (Revised & Renamed) – Reporting and Inventory Tracking System

M 712 (Revised) – Medical Marijuana Testing Facilities: Sampling and Testing Program

M 800 Series – Transport and Storage

M 801 (Renamed & Revised) – Transport: All Medical Marijuana Businesses

M 802 (Renamed & Revised) – Off-Premises Storage of Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product: All Medical Marijuana Businesses

M 900 Series – Business Records

M 901 (Revised) – Business Records Required

M 1000 Series – Labeling, Packaging, and Product Safety

M 1000 Series (Revised Effective and Compliance Dates) – Labeling, Packaging, and Product Safety

M 1001.5 (Revised) – Labeling and Packaging Requirements: General Applicability

M 1002.5 (Revised) – Packaging and Labeling of Medical Marijuana by an Optional Premises Cultivation Operation or a Medical Marijuana-Infused Products Manufacturer

M 1003.5 (Revised) – Packaging and Labeling of Medical Marijuana Concentrate by an Optional Premises Cultivation Operation or Medical Marijuana-Infused Products Manufacturer

M 1004.5 (Revised) – Packaging and Labeling Requirements of Medical Marijuana-Infused Products Manufacturer

M 1005 (Revised) – Packaging and Labeling of Medical Marijuana by a Medical Marijuana Center

M 1006 (Revised) – Packaging and Labeling of Medical Marijuana-Infused Product by a Medical Marijuana Center

M 1007 (Revised) – Packaging and Labeling of Medical Marijuana Concentrate by a Medical Marijuana Center

M 1000-1 Series – Labeling, Packaging, and Product Safety (New Series)

M 1000-1 Series (New Effective and Compliance Dates) – Labeling, Packaging, and Product Safety

M 1001-1 (New) – Packaging and Labeling: Minimum Requirements Prior to Transfer to a Medical Marijuana Business

M 1002-1 (New) – Packaging and Labeling: General Requirements Prior to Transfer to a Patient

M 1003-1 (New) – Additional Labeling Requirements Prior to Transfer to a Patient

M 1200 Series – Enforcement

M 1201 (Revised) – Duties of Employees of the State Licensing Authority

M 1202 (Revised) – Requirement for Inspections and Investigation, Searches, Administrative Holds, Voluntary Surrenders and Such Additional Activities as May Become Necessary from Time to Time

M 1203 (Revised) – Disposition of Unauthorized Medical Marijuana

M 1300 Series – Discipline

M 1303 (Revised) – Suspension Process: Regular and Summary Suspensions

M 1307 (Revised) – Penalties

M 1500 Series – Medical Marijuana Testing Program

M 1501 (Revised) – Medical Marijuana Testing Program – Contaminant Testing

M 1502 (Revised) – Medical Marijuana Testing Program – Mandatory Testing

M 1503 (Revised) – Medical Marijuana Testing Program – Potency Testing

M 1504 (Revised) – Medical Marijuana Testing Program – Sampling Procedures

M 1505 (Repealed) – Medical Marijuana Testing Program – Test Batches

M 1507 (Revised) – Medical Marijuana Testing Program – Contaminated Product and Failed Test Results

M 1600 Series – Medical Marijuana Transporters

M 1602 (Revised) – Medical Marijuana Transporter: General Limitations or Prohibited Acts

M 1603 (Revised) – Medical Marijuana Transporter: Inventory Tracking System

M 1800 Series – Medical Marijuana Transfers to Unlicensed Medical Research Facilities and Pesticide Manufacturers (New Series)

M 1801 (New) – Medical Research Facilities

M 1802 (New) – Pesticide Manufacturers

M 1900 Series – Licensed Research Businesses (New Series)

M 1901 (New) – Licensed Research Businesses: License Privileges

M 1902 (New) – Licensed Research Businesses: General Limitations or Prohibited Acts

M 1903 (New) – Licensed Research Businesses: Inventory Tracking

M 1904 (New) – Licensed Research Businesses: Project Approval

M 1905 (New) – Licensed Research Businesses: Authorized Research Activities

M 1906 (New) – Licensed Research Businesses: Health and Safety Regulations

M 1907 (New) – Licensed Research Businesses: Testing

M 1908 (New) – Licensed Research Businesses: Production Management and Possession Limits

Permanent Rules, Retail Marijuana, 1 CCR 212-2

Secretary of State Filing Tracking Number 2017-00441

R 100 Series – General Applicability

R 101 (New) – Engaging in Business

R 103 (Revised) – Definitions

R 200 Series – Licensing and Interests

R 201 (Revised) – Application Process

R 202.1 (Revised) – Applications, Agreements, Contracts and Certifications Required for Indirect Beneficial Interest Owners: Retail Marijuana Establishments

R 204 (Revised) – Ownership Interests of a License: Retail Marijuana Establishments

R 204.5 (Revised) – Disclosure, Approval and Review of Business Interests

R 206 (Revised) – Changing Location of Licensed Premises: Retail Marijuana Establishments

R 207 (Revised) – Schedule of Applications Fees: Retail Marijuana Establishments

R 210 (Revised) – Schedule of Other Application Fees: All Licensees

R 211 (Revised) – Conversion - Medical Marijuana Business to Retail Marijuana Establishment Pursuant to 12-43.4-104(1)(a)(I), C.R.S.

R 212 (Revised) – New Applicant Retail Marijuana Cultivation Facilities Licensed Pursuant To 12-43.4-104(1)(b)(II), C.R.S.

R 231 (Revised) – Qualifications for Licensure and Residency

R 231.1 (Revised) – Finding of Suitability, Residency and Reporting Requirements for Direct Beneficial Interest Owners

R 231.2 (Revised) – Qualifications for Indirect Beneficial Interest Owners and Qualified Limited Passive Investors

R 233 (Revised) – Retail Code or Medical Code Occupational Licenses Required

R 251 (Revised) – Application Denial and Voluntary Withdrawal: All Licensees

R 300 Series – The Licensed Premises

R 301 (Revised) – Limited Access Areas

R 304 (Repealed) – Medical Marijuana Business and Retail Marijuana Establishment – Shared Licensed Premises and Operational Separation

R 304.1 (New) – Medical Marijuana Business and Retail Marijuana Establishment – Shared Licensed Premises and Operational Separation

R 305 (Revised) – Security Alarm Systems and Lock Standards

R 307 (Revised) – Waste Disposal

R 309 (Renamed & Revised) – Retail Marijuana Establishments: Inventory Tracking System

R 400 Series – Retail Marijuana Stores

R 401 (Revised) – Retail Marijuana Store: License Privileges

R 402 (Revised) – Retail Marijuana Sales: General Limitations or Prohibited Acts

R 404 (Revised) – Acceptable Forms of Identification for Retail Sales

R 405 (Revised) – Retail Marijuana Store: Inventory Tracking System

R 406 (Revised) – Retail Marijuana Store: Health and Safety Regulations

R 407 (Revised) – Retail Marijuana Store: Responsible Vendor Program

R 500 Series – Retail Marijuana Cultivation Facilities

R 501 (Revised) – Retail Marijuana Cultivation Facility: License Privileges

R 502 (Revised) – Retail Marijuana Cultivation Facility: General Limitations or Prohibited Acts

R 503 (Revised) – Retail Marijuana Cultivation Facility: Inventory Tracking System

R 504 (Revised) – Retail Marijuana Cultivation Facility: Health and Safety Regulations

R 505 (Revised) – Retail Marijuana Cultivation Facilities: Retail Marijuana Concentrate Production

R 506 (Revised) – Retail Marijuana Cultivation Facility: Production Management

R 600 Series – Retail Marijuana Products Manufacturing Facilities

R 601 (Revised) – Retail Marijuana Products Manufacturing Facilities: License Privileges

R 602 (Revised) – Retail Marijuana Products Manufacturing Facility: General Limitations or Prohibited Acts

R 603 (Revised) – Retail Marijuana Products Manufacturing Facility: Inventory Tracking System

R 604 (Revised) – Retail Marijuana Products Manufacturing Facility: Health and Safety Regulations

R 605 (Revised) – Retail Marijuana Products Manufacturing Facility: Retail Marijuana Concentrate Production

R 700 Series – Retail Marijuana Testing Facilities

R 701 (Revised) – Retail Marijuana Testing Facilities: License Privileges

R 702 (Revised) – Retail Marijuana Testing Facilities: General Limitations or Prohibited Acts

R 703 (Revised) – Retail Marijuana Testing Facilities: Certification Requirements

R 704 (Revised) – Retail Marijuana Testing Facilities: Personnel

R 705 (Revised) – Retail Marijuana Testing Facilities: Standard Operating Procedure Manual

R 706 (Revised) – Retail Marijuana Testing Facilities: Analytical Processes

R 707 (Revised) – Retail Marijuana Testing Facilities: Proficiency Testing

R 708 (Revised) – Retail Marijuana Testing Facilities: Quality Assurance and Quality Control

R 709 (Revised) – Retail Marijuana Testing Facilities: Chain of Custody

R 710 (Revised) – Retail Marijuana Testing Facilities: Records Retention

R 711 (Renamed & Revised) – Reporting and Inventory Tracking System

R 712 (Revised) – Retail Marijuana Testing Facilities: Sampling and Testing Program

R 800 Series – Transport and Storage

R 801 (Renamed & Revised) – Transport: All Retail Marijuana Establishments

R 802 (Renamed & Revised) – Off-Premises Storage of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product: All Retail Marijuana Establishments

R 900 Series – Business Records

R 901 (Revised) – Business Records Required

R 1000 Series – Labeling, Packaging, and Product Safety

R 1000 Series (Revised Effective and Compliance Dates) – Labeling, Packaging, and Product Safety

R 1001 (Revised) – Labeling and Packaging Requirements: General Applicability

R 1002.5 (Revised) – Packaging and Labeling of Retail Marijuana by a Retail Marijuana Cultivation Facility and Retail Marijuana Manufacturing Facility

R 1003.5 (Revised) - Packaging and Labeling of Retail Marijuana Concentrate by a Retail Marijuana Cultivation Facility or a Retail Marijuana Products Manufacturing Facility

R 1004 (Revised) – Packaging and Labeling Requirements of a Retail Marijuana Product by a Retail Marijuana Products Manufacturing Facility

R 1005.5 (Revised) – Packaging and Labeling of Retail Marijuana by a Retail Marijuana Store

R 1006 (Revised) – Packaging and Labeling of Retail Marijuana Product by a Retail Marijuana Store

R 1007.5 (Revised) – Packaging and Labeling of Retail Marijuana Concentrate by a Retail Marijuana Store

R 1000-1 Series – Labeling, Packaging, and Product Safety (New Series)

R 1000-1 Series (New) – Effective and Compliance Dates

R 1001-1 (New) – Packaging and Labeling: Minimum Requirements Prior to Transfer to a Retail Marijuana Establishment

R 1002-1 (New) – Packing and Labeling: General Requirements Prior to Transfer to a Consumer

R 1003-1 (New) – Additional Labeling Requirements Prior to Transfer to a Consumer

R 1200 Series – Enforcement

R 1201 (Revised) – Duties of Employees of the State Licensing Authority

R 1202 (Revised) – Requirements for Inspections and Investigations, Searches, and Administrative Holds, Voluntary Surrenders and Such Additional Activities as May Become Necessary from Time to Time

R 1203 (Revised) – Disposition of Unauthorized Retail Marijuana

R 1300 Series – Discipline

R 1303 (Revised) – Suspension Process: Regular and Summary Suspensions

R 1307 (Revised) – Penalties

R 1500 Series – Retail Marijuana Testing Program

R 1501 (Revised) – Retail Marijuana Testing Program – Contaminant Testing

R 1502 (Revised) – Retail Marijuana Testing Program – Mandatory Testing

R 1503 (Revised) – Retail Marijuana Testing Program – Potency Testing

R 1504 (Revised) – Retail Marijuana Testing Program – Sampling Procedures

R 1505 (Repealed) – Retail Marijuana Testing Program – Test Batches

R 1507 (Revised) – Retail Marijuana Testing Program – Contaminated Product and Failed Test Results

R 1600 Series – Retail Marijuana Transporters

R 1602 (Revised) – Retail Marijuana Transporter: General Limitations or Prohibited Acts

R 1603 (Revised) – Retail Marijuana Transporter: Inventory Tracking System

R 1800 Series – Retail Marijuana Transfers to Unlicensed Medical Research Facilities and Pesticide Manufacturers (New Series)

R 1801 (New) – Medical Research Facilities

R 1802 (New) – Pesticide Manufacturers

Signed this 17th **day of November, 2017.**

Michael S. Hartman
State Licensing Authority

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Office of the Attorney General

Tracking number: 2017-00440

Opinion of the Attorney General rendered in connection with the rules adopted by the

Marijuana Enforcement Division

on 11/17/2017

1 CCR 212-1

MEDICAL MARIJUANA RULES

The above-referenced rules were submitted to this office on 11/17/2017 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.

November 28, 2017 16:38:47

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

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 RULES 1 - eff 01/01/2018

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R 100 Series – General Applicability

Basis and Purpose – R 101

The statutory authority for this rule includes but is not limited to sections 12-43.4-102(2), 12-43.4-202(2)(b), and 12-43.4-901(2)(a), C.R.S. Unless such activity is authorized by the Colorado Constitution, article XVIII, Section 14 or Section 16, the Retail Marijuana Code, section 25-1.5-106.5, C.R.S., or these rules, any Person who buys, Transfers or acquires Retail Marijuana outside the requirements of the Retail Code is engaging in illegal activity pursuant to Colorado law. This rule clarifies that those engaged in the business of possessing, cultivating, dispending, Transferring, transporting, or testing Retail Marijuana must be properly licensed to be in compliance with Colorado law.

R 101 – Engaging in Business

Except as authorized by the Colorado Constitution, article XVIII, sections 14 or 16, the Retail Marijuana Code, or section 25-1.5-106.5, C.R.S., no person shall possess, cultivate, dispense, Transfer, transport, offer to sell, manufacture, or test Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product unless said person is duly licensed by the State Licensing Authority and approved by the relevant local jurisdiction(s) and/or licensed by the relevant local licensing authority(-ies).

Basis and Purpose – R 103

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(2)(b) and 12-43.4-202(3)(b)(IX), C.R.S., section 12-43.4-103, and all of the Retail Code. 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 is not intended to be a defined term, it is not capitalized.

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, of visual, oral, or written communication, to induce directly or indirectly any Person to patronize a particular Retail Marijuana Establishment, or to purchase particular Retail Marijuana, Retail Marijuana Concentrate, 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.
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> "Additive" means any substance added to Retail Marijuana Product that is not a common baking or cooking item.
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> "Affiliated Interest" means any Business Interest related to a Retail Marijuana Establishment that does not rise to the level of a Financial Interest in a Retail Marijuana Establishment license. An Affiliated Interest may include, but shall not be limited to, an Indirect Beneficial Interest Owner that is not a Financial Interest, an indirect financial interest, a lease agreement, secured or unsecured loan, or security interest in fixtures or equipment with a direct nexus to the cultivation, manufacture, Transfer, transportation, or testing of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Products. Except as otherwise provided by these rules, an Affiliated Interest holder shall neither exercise control of nor be positioned so as to enable the exercise of control over the Retail Marijuana Establishment or its operations. A Retail Marijuana

Establishment shall report each of its Affiliated Interests to the Division with each application for initial licensure, renewal, change of ownership or change of corporate structure.

“Agreement” means any unsecured convertible debt option, option agreement, warrant, or at the Division’s discretion, other document that establishes a right for a person to obtain a Permitted Economic Interest that might convert to an ownership interest in a Retail Marijuana Establishment or Medical Marijuana Business.

“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 for licensure or registration, or for renewal of licensure or registration, 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 a Direct Beneficial Interest Owner of the Retail Marijuana Establishment, other than a Qualified Limited Passive Investor, and any Person who controls or is positioned so as to enable the exercise of control over a Retail Marijuana Establishment. Each shareholder, officer, director, member, or partner of a Closely Held Business Entity that is a Direct Beneficial Interest Owner and any Person who controls or is positioned so as to enable the exercise of control over a Retail Marijuana Establishment must hold an Associated Key License.

“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.

“Business Interest” means any Person that holds a Financial Interest or an Affiliated Interest in a Retail Marijuana Establishment.

“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 1 C.F.R. 1700.15 (1995) and 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 regulations, 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; and

c. Resealable for any product intended for more than a single use or containing multiple servings.

“Closely Held Business Entity” means an “entity” as defined in section 7-90-102, C.R.S., that has no more than fifteen shareholders, officers, directors, members, partners or owners, each of whom are natural persons, each of whom holds an Associated Key License, and each of whom is a United States citizen prior to the date of application. There must be no publicly traded market for interests in the entity. A Closely Held Business Entity and each of the natural persons who are its shareholders, officers, directors, members, partners or owners, are Direct Beneficial Interest

Owners. A Closely Held Business Entity is an associated business of the Retail Marijuana Establishment for which it is a Direct Beneficial Interest Owner.

“Commercially Reasonable Royalty” means a right to compensation in the form of a royalty payment for the use of intellectual property with a direct nexus to the cultivation, manufacture, Transfer or testing of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product. A Commercially Reasonable Royalty must be limited to specific intellectual property the Commercially Reasonable Royalty Interest Holder owns or is otherwise authorized to license or to a product or line of products. A Commercially Reasonable Royalty that could cause reasonable consumer confusion or violate any federal copyright, trademark or patent law or regulation will not be approved. The Commercially Reasonable Royalty shall provide for compensation to the Commercially Reasonable Royalty Holder as a percentage of gross revenue or gross profit. The royalty payment must be at a reasonable percentage rate. To determine whether the percentage rate is reasonable, the Division will consider the totality of the circumstances, including but not limited to the following factors:

a. The percentage of royalties received by the recipient for the licensing of the intellectual property.

b. The rates paid by the Licensee for the use of other intellectual property.

c. The nature and scope of the license, as exclusive or non-exclusive; or as restricted or non-restricted in terms of territory or with respect to whom the product may be sold.

d. The licensor’s established policy and marketing program to maintain his intellectual property monopoly by not licensing others or by granting licenses under special conditions designed to preserve that monopoly.

e. The commercial relationship between the recipient and Licensee, such as, whether they are competitors in the same territory in the same line of business.

f. The effect of selling the intellectual property in promoting sales of other products of the Licensee; the existing value of the intellectual property to the recipient as a generator of sales of his non-intellectual property items; and the extent of such derivative sales.

g. The duration of the term of the license for use of the intellectual property.

h. The established or projected profitability of the product made using the intellectual property; its commercial success; and its current popularity.

i. The utility and advantages of the intellectual property over products or businesses without the intellectual property.

j. The nature of the intellectual property; the character of the commercial embodiment of it as owned and produced by the licensor; and the benefits to those who have used the intellectual property.

k. The portion of the profit or of the selling price that may be customary in the particular business or in comparable businesses to allow for the use of the intellectual property.

l. The portion of the realizable profit that should be credited to the intellectual property as distinguished from non-intellectual property elements, the

manufacturing process, business risks, or significant features or improvements added by the Licensee.

"Commercially Reasonable Royalty Interest Holder" means a Person that receives a Commercially Reasonable Royalty in exchange for a Licensee's use of the Commercially Reasonable Royalty Interest Holder's intellectual property. A Commercially Reasonable Royalty Interest Holder is an Indirect Beneficial Interest Owner.

"Container" means the receptacle directly containing Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product that is labeled according to the requirements in Rules R 1001 *et seq*. or Rules R 1001-1 *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.

"Direct Beneficial Interest Owner" means a natural person or a Closely Held Business entity that owns a share or shares of stock in a licensed Retail Marijuana Establishment, including the officers, directors, members, or partners of the licensed Retail Marijuana Establishment or Closely Held Business Entity, or a Qualified Limited Passive Investor. Each natural person that is a Direct Beneficial Interest Owner must hold an Associated Key License. Except that a Qualified Limited Passive Investor need not hold an Associated Key License and shall not engage in activities for which an Occupational License is required.

"Director" means the Director of the Marijuana Enforcement Division.

"Division" means the Marijuana Enforcement Division.

"Edible Retail Marijuana Product" means any Retail Marijuana Product for which the intended use is oral consumption, 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 an Opaque bag or other similar Opaque covering provided at the retail point of sale, in which Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product already in a Container is placed. If Retail Marijuana flower, trim or seeds are placed into a Container that is not Child-Resistant, then the Exit Package must be Child-Resistant. The Exit Package is not required to be labeled in accordance with Rules R 1001 *et seq*. or Rules R 1001-1 *et seq*.

"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.

"Financial Interest" means any Direct Beneficial Interest Owner, a Commercially Reasonable Royalty Interest Holder who receives more than 30 percent of the gross revenue or gross profit, a Permitted Economic Interest holder, and any other Person who controls or is positioned so as to enable the exercise of control over the Retail Marijuana Establishment.

"Flammable Solvent" means a liquid that has a flash point below 100 degrees Fahrenheit.

“Flowering” means the reproductive state of the cannabis plant in which there are physical signs of flower budding out of the nodes of the stem.

“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 having a personal history that demonstrates 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.

“Heat/Pressure-Based Retail Marijuana Concentrate” means Retail Marijuana Concentrate that was produced by extracting Cannabinoids from Retail Marijuana through the use of heat and/or pressure. This method of extraction may be used by only a Retail Marijuana Products Manufacturing Facility and can be used alone or on a Production Batch that also includes Water-Based Retail Marijuana Concentrate or Solvent-Based Retail Marijuana Concentrate.

“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 plant that is no taller than eight inches and no wider than eight inches produced from a cutting, clipping or seedling and is in a cultivating container. 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.

“Indirect Beneficial Interest Owner” means a holder of a Permitted Economic Interest, a recipient of a Commercially Reasonable Royalty associated with the use of intellectual property by a Licensee, a Profit-Sharing Plan Employee, a Qualified Institutional Investor, or another similarly situated Person as determined by the State Licensing Authority. An Indirect Beneficial Interest Owner is not a Licensee. The Licensee must obtain Division approval for an Indirect Beneficial Interest Owner that constitutes a Financial Interest before such Indirect Beneficial Interest Owner may exercise any of the privileges of the ownership or interest with respect to the Licensee.

“Industrial Hemp” means a plant of the genus Cannabis and any part of the plant, whether growing or not, containing a delta-9 tetrahydrocannabinol (THC) concentration of no more than three-tenths of one percent (0.3%) on a dry weight basis.

“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 and 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, Retail Marijuana Concentrate, or Retail Marijuana Product is sold to a customer at a Retail Marijuana Store, Transferred to a Medical Research Facility, Transferred to a Pesticide Manufacturer, or destroyed.

“Inventory Tracking System Trained Administrator” means an Associated Key Licensee of a Retail Marijuana Establishment or an occupationally licensed employee of a Retail Marijuana Establishment, each of whom has attended and successfully completed Inventory Tracking System training and has completed any additional training required by the Division.

“Inventory Tracking System User” means an Associated Key Licensee of a Retail Marijuana Establishment or an occupationally licensed Retail Marijuana Establishment employee, who is granted Inventory Tracking System User account access for the purposes of performing inventory tracking functions in the Inventory Tracking System. Each Inventory Tracking System User must have been successfully trained by an Inventory Tracking System Trained Administrator in the proper and lawful use of Inventory Tracking System.

“Key License” means an Occupational License for an individual who performs duties that are central to the Retail Marijuana Establishment’s operation. An individual holding a Key License has the highest level of responsibility but is not an Owner. An example of a Key Licensee includes, but is not limited to, managers.

“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, store, transport, or test Retail Marijuana in accordance with the provisions of the Retail Code and these rules.

“Licensed Research Business” means a Marijuana Research and Development Facility or a Marijuana Research and Development Cultivation.

“Licensee” means any Person licensed or registered 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, Transferred, or processed for Transfer, 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 liquid food-based product for which the intended use is oral consumption, such as a soft drink or cooking sauce.

“Marijuana-Based Workforce Development Training Program” means a program designed to train individuals to work in the legal Medical or Retail Marijuana industry operated by an entity licensed under the Medical Code and/or Retail Code or by a school that is authorized by the Division of Private Occupational Schools.

“Marketing Layer” means packaging in addition to the Container that is the outermost layer visible to the consumer at the point of sale. The Marketing Layer is optional, but if used by a Licensee in addition to the required Container, it must be labeled according to the requirements of Rules R 1001 *et seq*. or Rules R 1001-1 *et seq*.

“Marijuana Research and Development Cultivation” means a Person that is licensed pursuant to the Medical Code to grow, cultivate, and possess Medical Marijuana, and to Transfer Medical Marijuana to a Marijuana Research and Development Facility or another Medical Research and Development Cultivation, all for limited research purposes authorized pursuant to section 12-43.3-408, C.R.S. A Marijuana Research and Development Cultivation is a Licensed Research Business.

“Marijuana Research and Development Facility” means a Person that is licensed pursuant to the Medical Code to possess Medical Marijuana for limited research purposes authorized pursuant to section 12-43.3-408, C.R.S. A Marijuana Research and Development Facility is a Licensed Research Business.

“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. Unless the context otherwise requires, Medical Marijuana Concentrate is considered Medical Marijuana and is included in the term “Medical Marijuana” as used in these rules.

“Medical Marijuana Business” means a Medical Marijuana Center, a Medical Marijuana-Infused Product Manufacturer, an Optional Premises Cultivation Operation, a Medical Marijuana Testing Facility, a Medical Marijuana Business Operator, or a Medical Marijuana Transporter, a Marijuana Research and Development Facility, or a Marijuana Research and Development Cultivation.

“Medical Marijuana Business Operator” means an entity that holds a registration or license from the State Licensing Authority to provide professional operational services to one or more Medical Marijuana Businesses, other than Licensed Research Businesses, for direct remuneration from the Medical Marijuana Business(es), which may include compensation based upon a percentage of the profits of the Medical Marijuana Business(es) being operated. A Medical Marijuana Business Operator may contract with Medical Marijuana Business(es) to provide operational services. A Medical Marijuana Business Operator’s contract with a Medical Marijuana Business does not in and of itself constitute ownership. The Medical Code and rules apply to all Medical Marijuana Business Operators regardless of whether such operator holds a registration or license. Any reference to “license” or “licensee” shall mean “registration” or “registrant” when applied to a Medical Marijuana Business Operator that holds a registration issued by the State Licensing Authority.

“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, Solvent-Based Medical Marijuana Concentrate, and Heat/Pressure-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.

“Medical Marijuana Testing Facility” means a public or private laboratory licensed and certified, or approved by the Division, to perform testing and research on Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Products.

“Medical Marijuana Transporter” means a Person that is licensed to transport Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Products from one Medical

Marijuana Business to another Medical Marijuana Business or to a Medical Research Facility or Pesticide Manufacturer, and to temporarily store the transported Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Products at its licensed premises, but is not authorized to sell, give away, buy, or receive complimentary Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Products under any circumstances. A Medical Marijuana Transporter does not include a Licensee that transports its own Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Products.

"Medical Research Facility" means a Person approved and grant-funded by the State Board of Health pursuant to section 25-1.5-106.5, C.R.S., to conduct Medical Marijuana research. A Medical Research Facility is neither a Medical Marijuana Business, a Retail Marijuana Establishment, nor a Licensee.

"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. 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, except where the context otherwise requires, a Direct Beneficial Interest Owner.

"Permitted Economic Interest" means an Agreement to obtain an ownership interest in a Retail Marijuana Establishment or Medical Marijuana Business when the holder of such interest is a natural person who is a lawful United States resident and whose right to convert into an ownership interest is contingent on the holder qualifying and obtaining a license as a Direct Beneficial Interest Owner under the Retail Code or Medical Code. A Permitted Economic Interest holder is an Indirect Beneficial Interest Owner.

“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.

“Pesticide Manufacturer” means a Person who (1) manufactures, prepares, compounds, propagates, or processes any Pesticide or device or active ingredient used in producing a Pesticide; (2) who possesses an establishment registration number with the U.S. Environmental Protection Agency pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 *et seq*.; (3) who conducts research to establish safe and effective protocols, including but not limited to establishing efficacy and toxicity, for the use of Pesticides on Medical Marijuana; (4) who has applied for and received any necessary license, registration, certifications, or permits from the Colorado Department of Agriculture, pursuant to the Pesticide Act, sections 35-9-101 *et seq*., C.R.S. and/or the Pesticide Applicators’ Act, sections 35-10-101 *et seq*., C.R.S.; (5) who is authorized to conduct business in the State of Colorado; and (6) who has physical possession of the location in the State of Colorado where its research activities occur. A Pesticide Manufacturer is neither a Medical Marijuana Business, a Retail Marijuana Establishment, nor a Licensee.

“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” means an assessment of the performance of a Retail Marijuana Testing Facility’s methodology and processes. Proficiency Testing is also known as inter-laboratory comparison. The goal of Proficiency Testing is to ensure results are accurate, reproducible, and consistent..

“Profit-Sharing Plan” means a profit-sharing plan that is qualified pursuant to 26 U.S.C. § 401 of the Internal Revenue Code and subject to the Employee Retirement Income Security Act, and which provides for employer contributions in the form of cash, but not in the form of stock or other equity interests in a Retail Marijuana Establishment.

“Profit-Sharing Plan Employee” means an employee holding an Occupational License who receives a share of a Retail Marijuana Establishment’s profits through a Profit-Sharing Plan. A Profit-Sharing Plan Employee is an Indirect Beneficial Interest Owner.

“Propagation” means the reproduction of Retail Marijuana plants by seeds, cuttings or grafting.

“Public Institution” means any entity established or controlled by the federal government, a state government, or a local government or municipality, including but not limited to an institution of higher education or a public higher education research institution.

“Public Money” means any funds or money obtained by the holder from any governmental entity, including but not limited to research grants.

“Qualified Institutional Investor” means:

a. A bank as defined in Section 3(a) (6) of the Federal Securities Exchange Act of 1934, as amended;

b. An insurance company as defined in Section 2(a) (17) of the Investment Company Act of 1940, as amended;

c. An investment company registered under Section 8 of the Investment Company Act of 1940, as amended;

d. An investment adviser registered under Section 203 of the Investment Advisers Act of 1940, as amended;

e. Collective trust funds as defined in Section 3(c) (11) of the Investment Company Act of 1940, as amended;

f. An employee benefit plan or pension fund that is subject to the Employee Retirement Income Security Act of 1974, as amended, excluding an employee benefit plan or pension fund sponsored by a licensed or an intermediary or holding company licensee which directly or indirectly owns five percent or more of a licensee;

g. A state or federal government pension plan; or

h. A group comprised entirely of persons specified in (a) through (g) of this definition.

A Qualified Institutional Investor is an Indirect Beneficial Interest Owner.

"Qualified Limited Passive Investor" means a natural person who is a United States citizen and is a passive investor who owns less than a five percent share or shares of stock in a licensed Retail Marijuana Establishment. A Qualified Limited Passive Investor is a Direct Beneficial Interest Owner.

"RFID" means Radio Frequency Identification.

"Remediation" means the process by which Retail Marijuana flower and trim, which has failed microbial testing, is processed into a Solvent-Based Retail Marijuana Concentrate and retested as required by these rules.

"Resealable" means that the Container maintains its Child-Resistant effectiveness for multiple openings.

"Research Project" means a discrete scientific endeavor to answer a research question or a set of research questions. A Research Project must include a description of a defined protocol, clearly articulated goal(s), defined methods and outputs, and a defined start and end date. The description must demonstrate that the Research Project will comply with all requirements in the M 1900 Series – Licensed Research Businesses. All research and development conducted by a Licensed Research Business must be conducted in furtherance of an approved Research Project.

"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, Retail Marijuana Concentrate, 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 but not limited to Retail 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. Unless the context otherwise requires, Retail Marijuana Concentrate is considered Retail Marijuana and is included in the term “Retail Marijuana” as used in these rules.

“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 Solvent-Based Retail Marijuana Concentrate, and Heat/Pressure-Based Retail Marijuana Concentrate.

“Retail Marijuana Cultivation Facility” means an entity licensed to cultivate, prepare, and package Retail Marijuana and Transfer Retail Marijuana to Retail Marijuana Establishments, Medical Research Facilities, and Pesticide Manufacturers, but not to consumers.

“Retail Marijuana Establishment” means a Retail Marijuana Store, a Retail Marijuana Cultivation Facility, a Retail Marijuana Products Manufacturing Facility, a Retail Marijuana Testing Facility, a Retail Marijuana Establishment Operator or a Retail Marijuana Transporter.

“Retail Marijuana Establishment Operator” means an entity that holds a license from the State Licensing Authority to provide professional operational services to one or more Retail Marijuana Establishments for direct remuneration from the Retail Marijuana Establishment(s), which may include compensation based upon a percentage of the profits of the Retail Marijuana Establishment(s) being operated. A Retail Marijuana Establishment Operator contracts with Retail Marijuana Establishment(s) to provide operational services. A Retail Marijuana Establishment Operator’s contract with a Retail Marijuana Establishment does not in and of itself constitute ownership.

“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 Transfer Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product only to other Retail Marijuana Products Manufacturing Facilities, Retail Marijuana Stores, Medical Research Facilities, and Pesticide Manufacturers.

“Retail Marijuana Store” means an entity licensed to purchase Retail Marijuana and Retail Marijuana Concentrate from a Retail Marijuana Cultivation Facility and to purchase Retail Marijuana Product and Retail Marijuana Concentrate from a Retail Marijuana Products Manufacturing Facility and to Transfer Retail Marijuana, Retail Marijuana Concentrate 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 perform testing and research on Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Products.

“Retail Marijuana Transporter” means a Person that is licensed to transport Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Products from one Retail Marijuana Establishment to another Retail Marijuana Establishment or to a Medical Research Facility or Pesticide Manufacturer, and to temporarily store the transported Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Products at its Licensed Premises, but is not authorized to sell, give away, buy, or receive complimentary Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Products under any circumstances. A Retail Marijuana Transporter does not include a Licensee that transports and distributes its own Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Products.

“Sample” means any item collected from a Retail Marijuana Establishment 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 Concentrate, Retail Marijuana Product, 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 a hard-sided container with a lid or other enclosure that can be secured in place. A Shipping Container is used solely for the transport of Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product between Retail Marijuana Establishments, a Medical Research Facility, or a Pesticide Manufacturer.

“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.

“Support License” means a license for an individual who performs duties that support the Retail Marijuana Establishment’s operations. A Support Licensee is a person with less decision-making authority than a Key Licensee and who is reasonably supervised by a Key Licensee or 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 derived from a single Harvest Batch, Production Batch, or Inventory TrackingSystem package, and that are collectively submitted to a Retail Marijuana Testing Facility for testing purposes.

"Total THC" means the sum of the percentage by weight of THCA multiplied by 0.877 plus the percentage by weight of THC i.e., Total THC = (%THCA x 0.877) + % THC.

"Transfer(s)(ed)(ing)" means to grant, convey, hand over, assign, sell, exchange, donate, or barter, in any manner or by any means, with or without consideration, any Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product from one Licensee to another Licensee or to a consumer. A Transfer includes the movement of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product from one licensed premises to another, even if both premises are contiguous, and even if both premises are owned by a single entity or individual or group of individuals and also includes a virtual transfer that is reflected in the Inventory Tracking System, even if no physical movement of the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product occurs.

"Universal Symbol" means the image established by the Division and made available to Licensees through the Division's website indicating the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product contains marijuana.

"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.

R 200 Series – Licensing and Interests

Basis and Purpose – R 201

The statutory authority for this rule includes but is not limited to sections 12-43.4-104(2)(a), 12-43.4-202(2)(b), 12-43.4-202(3)(a)(I), 12-43.4-202(3)(a)(III), 12-43.4-202(3)(a)(XX), 12-43.4-202(3)(b)(IX), 12-43.4-304(1), and sections 12-43.4-103, 12-43.4-306.5, 12-43.4-309, 12-43.4-312, 12-43.4-401, and 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 establish that only materially complete applications for licenses, accompanied by all required fees, will be accepted and processed by the Division. The purpose of the rule is also to clarify that when an initial application is materially complete and accepted, but the Division determines further information is required before the application can be fully processed, the Applicant must provide the additional requested information within the time frame provided by the Division. Otherwise, the Division cannot act on the application in a timely manner, and the application may be denied.

R 201 – Application Process

A. <u>General Requirements</u>

1. All applications for licenses authorized pursuant to subsections 12-43.4-401(1)(a)-(g), C.R.S., shall be made upon current forms prescribed by the Division.

2. A license issued to a Retail Marijuana Establishment or an individual constitutes a revocable privilege. The burden of proving an Applicant's qualifications for licensure rests at all times with the Applicant.

3. Each application shall identify the relevant local jurisdiction.

4. Applicants must submit a complete application to the Division before it will be accepted or considered.

    a. All applications must be complete and accurate in every material detail.

    b. All applications must include all attachments or supplemental information required by the current forms supplied by the Division.

    c. All applications must be accompanied by a full remittance of the application and relevant license fees for each applicant and each premise. *See* Rules R 207 - Schedule of Application Fees: Retail Marijuana Establishments, R 208 - Schedule of Business License Fees: Retail Marijuana Establishments, R 209 – Schedule of Business License Renewal Fees: Retail Marijuana Establishments, R 234 – Schedule of License Fees: Individuals, and R 235 – Schedule of Renewal Fees: Individuals.

    d. All applications must include all information required by the Division related to the Applicant's proposed Direct Beneficial Interest Owners, Indirect Beneficial Interest Owners and Qualified Limited Passive Investors, and all other direct and indirect financial interests in the Applicant.

    e. At a minimum, each Applicant for a new license shall provide, at the time of application, the following information:

        i. For each Associated Key License Applicant, evidence of proof of lawful presence, citizenship, if applicable, residence, if applicable, and Good Moral Character as required by the current forms prescribed by the Division;

        ii. For each Retail Marijuana Establishment Applicant and each Associated Key License Applicant, all requested information concerning financial and management associations and interests of other Persons in the business;

        iii. If the Applicant for any license pursuant to the Retail Code is a Closely Held Business Entity it shall submit with the application:

            A. The Associated Key License applications for all of its shareholders, members, partners, officers and directors who do not already hold an Associated Key License;

            B. If the Closely Held Business Entity is a corporation, a copy of its articles of incorporation or articles of organization; evidence of authorization from the Colorado Secretary of State to do business within this State, and for each shareholder: his or her name, mailing address, state of residence and certification of

Colorado residency for at least one officer and all officers with day-to-day operational control over the business;

C. If the Closely Held Business Entity is a limited liability company, a copy of its articles of organization and its operating agreement; evidence of authorization from the Colorado Secretary of State to do business within this State, and for each member: his or her name, mailing address, state of residence and certification of Colorado residency for at least one officer and all officers with day-to-day operational control over the business; and

D. If the Closely Held Business Entity is a general partnership, limited partnership, limited liability partnership, or limited liability limited partnership, a copy of the partnership agreement and, for each partner, his or her name, mailing address, state of residency and certification of Colorado residency for at least one officer and all officers with day-to-day operational control over the business.

iv. For each Retail Marijuana Establishment Applicant and each Associated Key License Applicant, documentation establishing compliant return filing and payment of taxes related to any Medical Marijuana Business or Retail Marijuana Establishment in which such Applicant is, or was, required to file and pay taxes;

v. For each Retail Marijuana Establishment Applicant and each Associated Key License Applicant, documentation verifying and confirming the funds used to start and/or sustain the operation of the Medical Marijuana Business or Retail Marijuana Establishment were lawfully earned or obtained;

vi. Accurate floor plans for the premises to be licensed; and

viii. The deed, lease, sublease, contract, or other document(s) governing the terms and conditions of occupancy of the premises to be licensed.

5. All applications to reinstate a license will be deemed applications for new licenses. This includes, but is not limited to, Associated Key licenses that have expired, Retail Marijuana Establishment licenses that have been expired for more than 90 days, licenses that have been voluntarily surrendered, licenses for which local licensing approval was not obtained within 12 months, and licenses that have been revoked.

6. The Division may refuse to accept or consider an incomplete application.

B. Additional Information May Be Required

1. Upon request by the Division, an Applicant shall provide any additional information required to process and fully investigate the application. The additional information must be provided to the Division no later than seven days after the request is made unless otherwise specified by the Division.

2. An Applicant's failure to provide the requested information by the Division deadline may be grounds for denial of the application.

C. Information Must Be Provided Truthfully. All Applicants shall submit information to the Division in a full, faithful, truthful, and fair manner. The Division may recommend denial of an application where the Applicant made misstatements, omissions, misrepresentations or untruths in the application or in connection with the Applicant's background investigation. This type of conduct may be considered as the basis for additional administrative action against the Applicant and it may also be the basis for criminal charges against the Applicant.

D. Application Forms Accessible. All application forms supplied by the Division and filed by an Applicant for a license, including attachments and any other documents associated with the investigation, may be used for a purpose authorized by the Medical Code, the Retail Code or for any other state or local law enforcement purpose or as otherwise required by law.

E. Division Application Management and Local Licensure.

1. The Division will either approve or deny a complete application between 45 days and 90 days of its receipt.

2. For each application for a new Retail Marijuana Establishment, the Applicant shall submit the original application and one identical copy. The Division will retain the original application for a new Retail Marijuana Establishment and will send the copy and half the application fee to the relevant local jurisdiction within seven days of receiving the application.

3. If the Division grants a license before the relevant local jurisdiction approves the application or grants a local license, the license will be conditioned upon local approval. Such a condition will not be viewed as a denial pursuant to the Administrative Procedure Act. If the local jurisdiction denies the application, the state license will be revoked.

4. The Applicant has one year from the date of licensing by the State Licensing Authority to obtain approval or licensing through the relevant local jurisdiction. Should the Applicant fail to obtain local jurisdiction approval or licensing within the specified period, the state license shall expire and may not be renewed.

5. An Applicant is prohibited from operating a Retail Marijuana Establishment prior to obtaining all necessary licenses or approvals from both the State Licensing Authority and the relevant local jurisdiction.

6. Each Financial Interest is void and of no effect unless and until approved by the Division. A Financial Interest shall not exercise any privilege associated with the proposed interest until approved by the Division. Any violation of this requirement may be considered a license violation affecting public safety.

Basis and Purpose – R 202.1

The statutory authority for this rule includes but is not limited to sections, 12-43.4-104(2)(a), 12-43.4-202(2)(a), 12-43.4-202(2)(b), 12-43.4-202(3)(a)(I), 12-43.4-202(3)(a)(III), 12-43.4-202(3)(a)(XX), 12-43.4-202(3)(b)(IX), 12-43.4-306.5, 12-43.4-309(2), 12-43.4-103 and 12-43.4-312, 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 process to be followed when a Retail Marijuana Establishment applies to obtain financing or otherwise have a relationship with an Indirect Beneficial Interest Owner. The rule establishes that only materially complete Retail Marijuana Establishment applications for Indirect Beneficial Interest Owners, accompanied by all required fees, will be accepted and processed by the Division. The rule also clarifies that when an initial application is materially complete and accepted, but the Division determines further information is required before the application can be fully processed, the Retail Marijuana Establishment Applicant must provide the additional requested information within the time frame provided by the

Division. Otherwise, the Division cannot act on the application in a timely manner, and the Retail Marijuana Establishment's application may be denied. The rule sets forth requirements for the contents of the contract or Agreement between Retail Marijuana Establishments and Indirect Beneficial Interest Owners, which reflect basic legal requirements surrounding the relationship between the parties.

R 202.1 – Applications, Agreements, Contracts and Certifications Required for Indirect Beneficial Interest Owners: Retail Marijuana Establishments

A. Retail Marijuana Establishment Initiates Process. The Retail Marijuana Establishment seeking to obtain financing or otherwise establish any type of relationship with an Indirect Beneficial Interest Owner, including a Permitted Economic Interest, a Commercially Reasonable Royalty Interest Holder, a Profit-Sharing Plan Employee, or a Qualified Institutional Investor, must file all required documents with the Division, including any supplemental documents requested by the Division in the course of its review of the application.

B. General Requirements. The Retail Marijuana Establishment seeking approval of an Indirect Beneficial Interest Owner must meet the following requirements:

1. All applications for approval of an Indirect Beneficial Interest Owner shall be made upon current forms prescribed by the Division.

2. The burden of proving that a proposed Indirect Beneficial Interest Owner is qualified to hold such an interest rests at all times with the Retail Marijuana Establishment submitting the application.

3. The Retail Marijuana Establishment applying for approval of any type of Indirect Beneficial Interest Owner must submit a complete application to the Division before it will be accepted or considered.

4. All applications must be complete and accurate in every material detail.

5. All applications must include all attachments or supplemental information required by the current forms supplied by the Division.

6. All applications must be accompanied by a full remittance of the required fees.

7. The Division may refuse to accept an incomplete application.

8. The proposed holder of the Indirect Beneficial Interest is not a publicly traded company.

9. Additional Information May Be Required

   a. Upon request by the Division, a Retail Marijuana Establishment applying to have any type of Indirect Beneficial Interest Owner shall provide any additional information required to process and fully investigate the application. The additional information must be provided to the Division no later than seven days after the request is made unless otherwise specified by the Division.

   b. Failure to provide the requested information by the Division's deadline may be grounds for denial of the application.

C. Information Must Be Provided Truthfully. A Retail Marijuana Establishment applying for approval of any type of Indirect Beneficial Interest Owner shall submit information to the Division in a full, faithful, truthful, and fair manner. The Division may recommend denial of an application where any party made misstatements, omissions, misrepresentations or untruths in the application or in

connection with the background investigation of the proposed Indirect Beneficial Interest Owner. This type of conduct may be considered as the basis for additional administrative action against the Retail Marijuana Establishment and it may also be the basis for criminal charges against either the Retail Marijuana Establishment Applicant or the Indirect Beneficial Interest Owner.

D. Application Forms Accessible. All application forms supplied by the Division and filed by an Applicant for a license, including attachments and any other documents associated with the investigation, may be used for a purpose authorized by the Medical Code, the Retail Code or for any other state or local law enforcement purpose or as otherwise required by law.

E. Approval of Financial Interest. Each Financial Interest in a Retail Marijuana Establishment is void and of no effect unless and until approved by the Division. Any amendment of a Financial Interest is also void and of no effect unless and until approved by the Division.

F. Ongoing Qualification and Violation Affecting Public Safety. If at any time the Division finds any Indirect Beneficial Interest Owner is not qualified, or is no longer qualified, the Division may require the Retail Marijuana Establishment to terminate its relationship with and financial ties to the Indirect Beneficial Interest Owner within a specified time period. Failure to terminate such relationship and financial ties within the specified time period may constitute a violation affecting public safety and be a basis for administrative action against the Retail Marijuana Establishment.

G. Permitted Economic Interest Holder Requirements. At the time of application, a Retail Marijuana Establishment seeking to obtain approval of a Permitted Economic Interest shall provide evidence to establish that the natural person seeking to become a Permitted Economic Interest holder is a lawful resident of the United States and shall provide documentation verifying and confirming the funds used for the Permitted Economic Interest were lawfully earned or obtained.

H. Permitted Economic Interest Agreement Requirements. The Retail Marijuana Establishment Applicant seeking to obtain financing from a Permitted Economic Interest must submit a copy of the Agreement between the Retail Marijuana Establishment and the person seeking to hold a Permitted Economic Interest. The following requirements apply to all Agreements:

1. The Agreement must be complete, and must fully incorporate all terms and conditions.

2. The following provisions must be included in the Agreement:

    a. Any interest in a Retail Marijuana Establishment, whether held by a Permitted Economic Interest or any other person, must be acquired in accordance with the provisions of the Medical Code and/or Retail Code, as applicable, and the rules promulgated thereunder. The issuance of any Agreement or other interest in violation thereof shall be void. The Permitted Economic Interest holder shall not provide funding to the Retail Marijuana Establishment until the Permitted Economic Interest is approved by the Division.

    b. No Agreement or other interest issued by the Retail Marijuana Establishment and no claim or charge therein or thereto shall be transferred except in accordance with the provisions of the Medical Code and/or Retail Code as applicable, and the rules promulgated thereunder. Any transfer in violation thereof shall be void.

    c. The Retail Marijuana Establishment and the Permitted Economic Interest holder must sign an affirmation of passive investment on a form approved by the Division.

    d. The Retail Marijuana Establishment must initiate any process to convert a Permitted Economic Interest to a Direct Beneficial Interest Owner and the

process to convert the Permitted Economic Interest into a Direct Beneficial Interest Owner must be completed prior to the expiration or termination of the Agreement. The holder of the Permitted Economic Interest must meet all qualifications for licensure and ownership pursuant to the Medical Code and/or Retail Code and any rules promulgated thereunder prior to conversion of the Permitted Economic Interest to a Direct Beneficial Interest Owner.

e. At the election of the Retail Marijuana Establishment, if the holder of the Permitted Economic Interest is not qualified for licensure as a Direct Beneficial Interest Owner but is qualified as a holder of the Permitted Economic Interest, and the Permitted Economic Interest is also approved by the Division then the Permitted Economic Interest may remain in force and effect for as long as it remains approved by the Division under the Medical Code and/or Retail Code as applicable, and any rules promulgated thereunder.

f. The Permitted Economic Interest holder shall disclose in writing to the Division and to the Retail Marijuana Establishment any and all disqualifying events, within ten days after occurrence of the event, that could lead to a finding that the holder no longer qualifies to hold the Permitted Economic Interest and/or that could lead to a denial of licensure pursuant to the Medical Code and/or Retail Code and any rules promulgated thereunder.

g. The Retail Marijuana Establishment shall disclose in writing to the Division any and all disqualifying events, within ten days after receiving notice of the event, which could lead to a finding that the holder is no longer qualified to hold the Permitted Economic Interest and/or that could lead to a denial of licensure pursuant to the Medical Code and/or Retail Code as applicable, and any rules promulgated thereunder.

h. A Permitted Economic Interest holder's or a Retail Marijuana Establishment's failure to make required disclosures may be grounds for administrative action including but not limited to denial of a subsequent request to convert the Permitted Economic Interest into an ownership interest in the Retail Marijuana Establishment. Failure to make required disclosures may lead to a finding that the Permitted Economic Interest is no longer approved, and a requirement that the Retail Marijuana Establishment terminate its relationship with the Permitted Economic Interest holder.

    i. The Permitted Economic Interest holder agrees and acknowledges that it has no entitlement or expectation of being able to invest in, or have a relationship with, the Retail Marijuana Establishment unless and until the Division determines the Permitted Economic Interest is approved. The Permitted Economic Interest holder agrees and acknowledges that its relationship with the Retail Marijuana Establishment is contingent upon Division approval. The Permitted Economic Interest holder understands and acknowledges that approval by the Division is wholly discretionary and the Division may, at any time, deny approval of the Permitted Economic Interest or find that the Permitted Economic Interest is no longer qualified. The Permitted Economic Interest Holder agrees and acknowledges it has no entitlement to or expectation of the Division approving the Permitted Economic Interest. The Permitted Economic Interest holder further agrees that any administrative or judicial review of a determination by the Division regarding the qualification or approval of the Permitted Economic Interest will only occur through licensing or enforcement proceedings involving the Retail Marijuana Establishment. The Permitted Economic Interest holder further agrees and

acknowledges that the Permitted Economic Interest holder shall only be entitled to notice of a denial or administrative action concerning the Retail Marijuana Establishment if the denial or administrative action is based upon, or directly related to, the qualifications or actions of the Permitted Economic Interest holder. The Permitted Economic Interest holder also agrees and acknowledges that the Permitted Economic Interest holder may only request leave to intervene in an administrative proceeding against the Retail Marijuana Establishment, pursuant to subsection 24-4-105(2)(c), C.R.S., if the administrative proceeding is based upon, or directly related to, the qualifications or actions of the Permitted Economic Interest holder. Furthermore, the Permitted Economic Interest holder agrees and acknowledges that the Permitted Economic Interest holder may only seek judicial review of an action against the Retail Marijuana Establishment, pursuant to subsection 24-4-106(4), C.R.S., if the administrative action is based upon, or directly related to, the qualifications or actions of the Permitted Economic Interest Holder. THE PERMITTED ECONOMIC INTEREST HOLDER KNOWINGLY, FREELY, AND VOLUNTARILY WAIVES ANY RIGHT OR CLAIM TO SEEK ANY INDEPENDENT REVIEW OF APPROVAL OR DENIAL OF THE PERMITTED ECONOMIC INTEREST BY THE DIVISION, OR OF AN ADMINISTRATIVE ACTION AGAINST THE RETAIL MARIJUANA ESTABLISHMENT, THAT IS BASED UPON, OR DIRECTLY RELATED TO, THE QUALIFICATIONS OR ACTIONS OF THE PERMITTED ECONOMIC INTEREST, AND EXPRESSLY AGREES THAT THE ONLY ADMINISTRATIVE OR JUDICIAL REVIEW OF SUCH A DETERMINATION OR ACTION WILL OCCUR THROUGH A LICENSING OR ENFORCEMENT PROCEEDING FOR THE RETAIL MARIJUANA ESTABLISHMENT.

I. Commercially Reasonable Royalty Interest Contract Requirements. A Retail Marijuana Establishment seeking to utilize the intellectual property of a Commercially Reasonable Royalty Interest Holder must submit a copy of the contract between the Retail Marijuana Establishment and the Person seeking to hold a Commercially Reasonable Royalty Interest. The following requirements apply to all such contracts:

1. The contract must be complete, and must fully incorporate all terms and conditions.

2. The following provisions must be included in the contract:

   a. Any interest in a Retail Marijuana Establishment, whether held by a Commercially Reasonable Royalty Interest Holder or any other person, must be acquired in accordance with the provisions of the Medical Code and/or Retail Code, as applicable, and the rules promulgated thereunder. The issuance of any contract or other interest in violation thereof shall be void.

   b. No contract, royalty or other interest issued by the Retail Marijuana Establishment and no claim or charge therein or thereto shall be transferred except in accordance with the provisions of the Medical Code and/or Retail Code as applicable, and the rules promulgated thereunder. Any transfer in violation thereof shall be void.

   c. The Retail Marijuana Establishment and the Commercially Reasonable Royalty Interest Holder must sign an affirmation of passive investment on a form approved by the Division.

d. The Commercially Reasonable Royalty Interest Holder shall disclose in writing to the Division and to the Retail Marijuana Establishment any and all disqualifying events, within ten days after occurrence of the event, that could lead to a finding that the Commercially Reasonable Royalty Interest Holder is not qualified to hold the Commercially Reasonable Royalty Interest.

e. The Retail Marijuana Establishment shall disclose in writing to the Division any and all disqualifying events, within ten days after receiving notice of the event, which would lead to a finding that the Commercially Reasonable Royalty Interest Holder is not qualified to hold the Commercially Reasonable Royalty Interest.

f. A Commercially Reasonable Royalty Interest Holder's or a Retail Marijuana Establishment's failure to make required disclosures may lead to a finding that the Commercially Reasonable Royalty Interest is not approved, or is no longer approved, and may lead to a requirement that the Retail Marijuana Establishment terminate its relationship with the Commercially Reasonable Royalty Interest Holder.

g. The Commercially Reasonable Royalty Interest Holder agrees and acknowledges that its relationship with the Retail Marijuana Establishment is contingent upon Division approval throughout the entire term of its relationship with the Retail Marijuana Establishment. The Commercially Reasonable Royalty Interest Holder understands and acknowledges that approval by the Division is wholly discretionary and the Division may, at any time, find that the Commercially Reasonable Royalty Interest Holder does not qualify or no longer qualifies. The Commercially Reasonable Royalty Interest Holder agrees and acknowledges it has no entitlement to or expectation to approval of the Commercially Reasonable Royalty Interest.

h. The Commercially Reasonable Royalty Interest Holder further agrees that any administrative or judicial review of a determination by the Division approving or denying the Commercially Reasonable Royalty will only occur through licensing or enforcement proceedings involving the Retail Marijuana Establishment. The Commercially Reasonable Royalty Interest Holder further agrees and acknowledges that the Commercially Reasonable Royalty Interest Holder shall only be entitled to notice of a denial or administrative action concerning the Retail Marijuana Establishment if the denial or administrative action is based upon, or directly related to, the qualifications or actions of the Commercially Reasonable Royalty Interest Holder. The Commercially Reasonable Royalty Interest Holder also agrees and acknowledges that the Commercially Reasonable Royalty Interest Holder may only request leave to intervene in an administrative proceeding against the Retail Marijuana Establishment, pursuant to subsection 24-4-105(2)(c), C.R.S., if the administrative proceeding is based upon, or directly related to, the qualifications or actions of the Commercially Reasonable Royalty Interest Holder. Furthermore, the Commercially Reasonable Royalty Interest Holder agrees and acknowledges that the Commercially Reasonable Royalty Interest Holder may only seek judicial review of an action against the Retail Marijuana Establishment, pursuant to subsection 24-4-106(4), C.R.S., if the administrative action is based upon, or directly related to, the qualifications or actions of the Commercially Reasonable Royalty Interest Holder. THE COMMERCIALLY REASONABLE ROYALTY INTEREST HOLDER KNOWINGLY, FREELY, AND VOLUNTARILY WAIVES ANY RIGHT OR CLAIM TO SEEK ANY INDEPENDENT REVIEW OF APPROVAL OR DENIAL OF THE COMMERCIALLY REASONABLE ROYALTY INTEREST BY THE DIVISION, OR OF AN ADMINISTRATIVE ACTION AGAINST THE RETAIL MARIJUANA ESTABLISHMENT, THAT IS BASED UPON, OR DIRECTLY RELATED TO, THE

QUALIFICATIONS OR ACTIONS OF THE COMMERCIALLY REASONABLE ROYALTY INTEREST HOLDER, AND EXPRESSLY AGREES THAT THE ONLY ADMINISTRATIVE OR JUDICIAL REVIEW OF SUCH A DETERMINATION OR ACTION WILL OCCUR THROUGH A LICENSING OR ENFORCEMENT PROCEEDING FOR THE RETAIL MARIJUANA ESTABLISHMENT.

i. If the Division determines the Commercially Reasonable Royalty Interest Holder is not in compliance with the Retail Code, the Medical Code or these rules, then the recipient shall discontinue use of such Commercially Reasonable Royalty Interest Holder's intellectual property within thirty (30) days of the Division finding. The recipient shall not pay any remuneration to a Commercially Reasonable Royalty Interest Holder that does not qualify under the Retail Code and these rules, including but not limited to Rule R 231.2(B).

j. The Commercially Reasonable Royalty Interest Holder shall neither exercise control over nor be positioned so as to enable the exercise of control over the Retail Marijuana Establishment. Notwithstanding the foregoing, a Commercially Reasonable Royalty Interest Holder may influence the marketing, advertising, labeling and display of any product or line of products for which the Commercially Reasonably Royalty Interest exists so long as such influence is not inconsistent with the Retail Code, the Medical Code or these rules.

J. Profit-Sharing Plan Documents. A Retail Marijuana Establishment offering licensed employees a share of the profits through a Profit-Sharing Plan must submit a list of all proposed participants in the Profit-Sharing Plan along with their names, addresses and occupational license numbers and submit a copy of all documentation regarding the Profit-Sharing Plan in connection with the Retail Marijuana Establishment's application:

1. The documents establishing the Profit-Sharing Plan must be complete and must fully incorporate all terms and conditions.

2. The following provisions must be included in the documents establishing the Profit-Sharing Plan:

a. Any interest in a Retail Marijuana Establishment, whether held by a Profit-Sharing Plan Employee or any other person, must be acquired in accordance with the provisions of the Medical Code and/or Retail Code, as applicable, and the rules promulgated thereunder. The issuance of any contract or other interest in violation thereof shall be void.

b. No contract or other interest issued by the Retail Marijuana Establishment and no claim or charge therein or thereto shall be transferred except in accordance with the provisions of the Medical Code and/or Retail Code as applicable, and the rules promulgated thereunder. Any transfer in violation thereof shall be void. Any distributions from a Profit-Sharing Plan must be made in cash, not in the form of stock or other equity interests in the Retail Marijuana Establishment.

c. The Retail Marijuana Establishment shall disclose in writing to the Division any and all disqualifying events, within ten days after receiving notice of the event, which would lead to a finding that any Profit-Sharing Plan Employee does not qualify under the Retail Code and these rules, including but not limited to Rule R 231.6(B), to participate in the Profit-Sharing Plan.

d. A Profit-Sharing Plan Employee shall disclose in writing to the Division and to the Retail Marijuana Establishment any and all disqualifying events, within ten days

after occurrence of the event that could lead to a finding that the Profit-Sharing Plan Employee does not qualify or no longer qualifies under the Retail Code and these rules, including but not limited to Rule R 231.2(B), to participate in the Profit-Sharing Plan.

e. A Retail Marijuana Establishment's or a Profit-Sharing Plan Employee's failure to make required disclosures may lead to a finding that the Profit-Sharing Plan is not approved, and may lead to a requirement that the Retail Marijuana Establishment terminate or modify the Profit-Sharing Plan.

f. The Profit-Sharing Plan Employee agrees and acknowledges that its relationship with the Retail Marijuana Establishment is contingent upon Division approval throughout the entire term of its relationship with the Retail Marijuana Establishment. The Profit-Sharing Plan Employee understands and acknowledges that approval by the Division is wholly discretionary and the Division may, at any time, deny approval of the Profit-Sharing Plan. The Profit-Sharing Plan Employee agrees and acknowledges he or she has no entitlement to or expectation to Division approval of the Profit-Sharing Plan or the Profit-Sharing Plan Employee's participation in the plan. The Profit-Sharing Plan Employee further agrees that any administrative or judicial review of a determination by the Division approving or denying the Profit-Sharing Plan or the Profit-Sharing Plan Employee will only occur through licensing or enforcement proceedings involving the Retail Marijuana Establishment. Each Profit-Sharing Plan Employee further agrees and acknowledges that the Profit-Sharing Plan Employee shall only be entitled to notice of a denial or administrative action concerning the Retail Marijuana Establishment if the denial or administrative action is based upon, or directly related to, the qualifications or actions of the Profit-Sharing Plan Employee. The Profit-Sharing Plan Employee also agrees and acknowledges that the Profit-Sharing Plan Employee may only request leave to intervene in an administrative proceeding against the Retail Marijuana Establishment, pursuant to subsection 24-4-105(2)(c), C.R.S., if the administrative proceeding is based upon, or directly related to, the qualifications or actions of the Profit-Sharing Plan Employee. Furthermore, the Profit Sharing Plan Employee agrees and acknowledges that the Profit-Sharing Plan Employee may only seek judicial review of an action against the Retail Marijuana Establishment, pursuant to subsection 24-4-106(4), C.R.S., if the administrative action is based upon, or directly related to, the qualifications or actions of the Profit-Sharing Plan Employee. THE PROFIT-SHARING PLAN EMPLOYEE KNOWINGLY, FREELY, AND VOLUNTARILY WAIVES ANY RIGHT OR CLAIM TO SEEK ANY INDEPENDENT REVIEW OF APPROVAL OR DENIAL OF THE PROFIT-SHARING PLAN OR THE PROFIT-SHARING PLAN EMPLOYEE BY THE DIVISION, OR OF AN ADMINISTRATIVE ACTION AGAINST THE RETAIL MARIJUANA ESTABLISHMENT, THAT IS BASED UPON, OR DIRECTLY RELATED TO, THE PROFIT-SHARING PLAN OR THE PROFIT-SHARING PLAN EMPLOYEE'S QUALIFICATIONS OR ACTIONS OF THE PROFIT-SHARING PLAN EMPLOYEE, AND EXPRESSLY AGREES THAT THE ONLY ADMINISTRATIVE OR JUDICIAL REVIEW OF SUCH A DETERMINATION OR ACTION WILL OCCUR THROUGH A LICENSING OR ENFORCEMENT PROCEEDING FOR THE RETAIL MARIJUANA ESTABLISHMENT.

K. Qualified Institutional Investor Requirements. Before a Retail Marijuana Establishment may permit a Qualified Institutional Investor to own any portion of the Retail Marijuana Establishment, the Retail Marijuana Establishment must submit the following documentation to the Division in connection with the Retail Marijuana Establishment's application:

1. A description of the Qualified Institutional Investor's business and a statement as to why the Qualified Institutional Investor meets the definition of Qualified Institutional Investor in Rule R 103 and subsection 12-43.4-306.5(7), C.R.S.

2. A certification made under oath and the penalty of perjury by the Qualified Institutional Investor:

    a. That the ownership interests were acquired and are held for investment purposes only and were acquired and are held in the ordinary course of business as a Qualified Institutional Investor and not for the purposes of causing, directly or indirectly, the election of a majority of the board of directors, any change in the corporate charter, bylaws, management, policies, or operations of a Retail Marijuana Establishment.

    b. That the Qualified Institutional Investor is bound by and shall comply with the Retail Code and the rules adopted pursuant thereto, is subject to the jurisdiction of the courts of Colorado, and consents to Colorado as the choice of forum in the event any dispute, question, or controversy arises regarding the Qualified Institutional Investor's relationship with the Retail Marijuana Establishment or activities pursuant to the Retail Code and rules adopted pursuant thereto.

        c. The Qualified Institutional Investor agrees and acknowledges that its relationship with the Retail Marijuana Establishment is contingent upon Division approval throughout the entire term of its relationship with the Retail Marijuana Establishment. The Qualified Institutional Investor understands and acknowledges that approval by the Division is wholly discretionary and the Division may, at any time, deny approval of the Qualified Institutional Investor. The Qualified Institutional Investor agrees and acknowledges it has no entitlement to or expectation to Division approval of the Qualified Institutional Investor. The Qualified Institutional Investor further agrees that any administrative or judicial review of a determination by the Division approving or denying the Qualified Institutional Investor will only occur through licensing or enforcement proceedings involving the Retail Marijuana Establishment. The Qualified Institutional Investor further agrees and acknowledges that the Qualified Institutional Investor shall only be entitled to notice of a denial or administrative action concerning the Retail Marijuana Establishment if the denial or administrative action is based upon, or directly related to, the qualifications or actions of the Qualified Institutional Investor. The Qualified Institutional Investor also agrees and acknowledges that the Qualified Institutional Investor may only request leave to intervene in an administrative proceeding against the Retail Marijuana Establishment, pursuant to subsection 24-4-105(2)(c), C.R.S., if the administrative proceeding is based upon, or directly related to, the qualifications or actions of the Qualified Institutional Investor. Furthermore, the Qualified Institutional Investor agrees and acknowledges that the Qualified Institutional Investor may only seek judicial review of an action against the Retail Marijuana Establishment, pursuant to subsection 24-4-106(4), C.R.S., if the administrative action is based upon, or directly related to, the qualifications or actions of the Qualified Institutional Investor. THE QUALIFIED INSTITUTIONAL INVESTOR KNOWINGLY, FREELY, AND VOLUNTARILY WAIVES ANY RIGHT OR CLAIM TO SEEK ANY INDEPENDENT REVIEW OF APPROVAL OR DENIAL OF THE QUALIFIED INSTITUTIONAL INVESTOR BY THE DIVISION, OR OF AN ADMINISTRATIVE ACTION AGAINST THE RETAIL MARIJUANA ESTABLISHMENT, THAT IS BASED UPON, OR DIRECTLY RELATED

TO, THE QUALIFICATIONS OR ACTIONS OF THE QUALIFIED INSTITUTIONAL INVESTOR, AND EXPRESSLY AGREES THAT THE ONLY ADMINISTRATIVE OR JUDICIAL REVIEW OF SUCH A DETERMINATION OR ACTION WILL OCCUR THROUGH A LICENSING OR ENFORCEMENT PROCEEDING FOR THE RETAIL MARIJUANA ESTABLISHMENT.

d. An explanation of the basis of the signatory's authority to sign the certification and to bind the Qualified Institutional Investor to its terms.

3. The name, address, telephone number and any other information requested by the Division as required on its approved forms for the officers and directors, or their equivalent, of the Qualified Institutional Investor as well as those Persons that have direct control over the Qualified Institutional Investor's ownership interest in the Retail Marijuana Establishment.

4. The name, address, telephone number and any other information requested by the Division as required on its approved forms for each Person who has the power to direct or control the Qualified Institutional Investor's voting of its shares in the Retail Marijuana Establishment.

5. The name of each Person that beneficially owns 5 percent or more of the Qualified Institutional Investor's voting securities or other equivalent.

6. A list of the Qualified Institutional Investor's affiliates.

7. A list of all regulatory agencies with which the Qualified Institutional Investor files periodic reports, and the name, address, and telephone number of the individual, if known, to contact at each agency regarding the Qualified Institutional Investor.

8. A disclosure of all criminal or regulatory sanctions imposed during the preceding 10 years and of any administrative or court proceedings filed by any regulatory agency during the preceding 5 years against the Qualified Institutional Investor, its affiliates, any current officer or director, or any former officer or director whose tenure ended within the preceding 12 months. As to a former officer or director, such information need be provided only to the extent that it relates to actions arising out of or during such person's tenure with the Qualified Institutional Investor or its affiliates.

9. A copy of any filing made under 16 U.S.C § 18a with respect to the acquisition or proposed acquisition of an ownership interest in the Retail Marijuana Establishment.

10. Any additional information requested by the Division.

Basis and Purpose – R 204

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(I), 12-43.4-202(3)(a)(IX) 12-43.4-202(3)(a)(XV), 12-43.4-202(3)(a)(XX), 12-43.4-202(3)(b)(IX), 12-43.4-601(1), and sections 12-43.4-103, 12-43.4-306.5, 12-43.4-309,12-43.4-312, 12-43.4-901, and 24-76.5-101 et seq., C.R.S. The purpose of this rule is to provide clarity regarding the nature of a Direct Beneficial Interest Owner and an Indirect Beneficial Interest Owner, and to clarify what factors the State Licensing Authority generally considers regarding the same. The Division will review all relevant information to determine ownership of a Retail Marijuana Establishment.

R 204 – Ownership Interests of a License: Retail Marijuana Establishments

A. Licenses Held By Direct Beneficial Interest Owners. Each Retail Marijuana Establishment License must be held by its Direct Beneficial Interest Owner(s). Each natural person other than a Qualified Limited Passive Investor must hold an Associated Key license. A Direct Beneficial Interest Owner shall not be a publicly traded company.

B. 100% Ownership.

1. The sum of the percentages of ownership of all Direct Beneficial Interest Owners of a Retail Marijuana Establishment and Qualified Institutional Investors must equal 100%.

a. Qualified Institutional Investors may hold ownership interests, in the aggregate, of 30% or less in the Retail Marijuana Establishment.

b. A Qualified Limited Passive Investor must be a natural person who is a United States citizen and may hold an ownership interest of less than five percent in the Retail Marijuana Establishment.

c. Each Direct Beneficial Interest Owner, including but not limited to each officer, director, managing member, or partner of a Retail Marijuana Establishment, must hold a current and valid Associated Key License. *See* Rule R 233 – Retail Code or Medical Code Occupational Licenses Required. Except that this requirement shall not apply to Qualified Limited Passive Investors.

d. With the exception of Qualified Institutional Investors, only Direct Beneficial Interest Owners may hold a partnership interest, limited or general, a joint venture interest, or ownership of a share or shares in a corporation or a limited liability company which is licensed.

e. In the event of the death, disability, disqualification, divestment, termination, or revocation of the license of a Direct Beneficial Interest Owner or of approval of a Qualified Institutional Investor, a Retail Marijuana Establishment shall have 45 days to submit a change of ownership application to the Division detailing the Licensee's plan for redistribution of ownership among the remaining Direct Beneficial Interest Owners and Qualified Institutional Investors. Such plan is subject to approval by the Division. If a change of ownership application is not timely submitted, the Retail Marijuana Establishment and its Associated Key Licensee(s) may be subject to administrative action.

C. At Least One Associated Key License Required. No Retail Marijuana Establishment may operate or be licensed unless it has at least one Associated Key Licensee that is a Direct Beneficial Interest Owner who has been a Colorado resident for at least one year prior to application. Any violation of this requirement may be considered a license violation affecting public safety.

D. Loss Of Occupational License As An Owner Of Multiple Businesses. If an Associated Key License is suspended or revoked as to one Retail Marijuana Establishment or Medical Marijuana Business, that Associated Key License, shall be suspended or revoked as to any other Retail Marijuana Establishment or Medical Marijuana Business in which that Person possesses an ownership interest. *See* Rule R 233 – Retail Code or Medical Code Occupational Licenses Required.

E. Management Companies. Any Person contracted to manage the overall operation of a Licensed Premises must hold a Retail Marijuana Operator license.

F. Role of Managers. Associated Key Licensees may hire managers, and managers may be compensated on the basis of profits made, gross or net. A Retail Marijuana Establishment license

may not be held in the name of a manager who is not a Direct Beneficial Interest Owner. A manager who does not hold an Associated Key License as a Direct Beneficial Interest Owner of the Retail Marijuana Establishment, must hold a Key License as an employee of the Retail Marijuana Establishment. Any change in manager must be reported to the Division within seven (7) days of the change. Additionally, a Retail Marijuana Operator may include management services as part of the operational services provided to a Retail Marijuana Establishment. A Retail Marijuana Establishment and its Direct Beneficial Interest Owners may be subject to license denial or administrative action including, but not limited to, fine, suspension or revocation of their license(s) based on the acts or omissions of any manager, Retail Marijuana Establishment Operator, or agents and employees thereof engaged in the operations of the Retail Marijuana Establishment.

G. Prohibited Third-Party Acts. No Licensee may employ, contract with, hire, or otherwise retain any Person, including but not limited to an employee, agent, or independent contractor, to perform any act or conduct on the Licensee's behalf or for the Licensee's benefit if the Licensee is prohibited by law or these rules from engaging in such conduct itself.

1. A Licensee may be held responsible for all actions and omissions of any Person the Licensee employs, contracts with, hires, or otherwise retains, including but not limited to an employee, agent, or independent contractor, to perform any act or conduct on the Licensee's behalf or for the Licensee's benefit.

2. A Licensee may be subject to a license denial or administrative action, including but not limited to fine, suspension or revocation of its license(s), based on the acts and/or omissions of any Person the Licensee employs, contracts with, hires, or otherwise retain, including but not limited to an employee, agent, or independent contractor, to perform any act or conduct on the Licensee's behalf or for the Licensee's benefit.

Basis and Purpose – R 204.5

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(I), 12-43.3-202(3)(a)(III), 12-43.4-202(3)(a)(XIV.5), 12-43.4-202(3)(a)(XX), 12-43.4-202(3)(b)(V), 12-43.4-202(3)(b)(VI), 12-43.4-202(3)(b)(VIII), 12-43.4-202(3)(b)(IX), and sections 12-43.4-103, 12-43.4-304, 12-43.4-306, 12-43.4-306.5, 12-43.4-308, 12-43.4-309, and 12-43.4-312, C.R.S. The purpose of this rule is to clarify the application, review and approval process for various types of Business Interests. The Division will review all relevant information to determine ownership of, interests in, and control of a Retail Marijuana Establishment.

R 204.5 – Disclosure, Approval and Review of Business Interests

A. Business Interests. A Retail Marijuana Establishment shall disclose all Business Interests at the time of initial application and at the time of each renewal application. Business Interests include Financial Interests and Affiliated Interests. Any Financial Interest must be pre-approved by the Division. It shall be unlawful to fail to completely report all Business Interests in each license issued. It shall be unlawful for a person other than a Financial Interest holding an Associated Key License to exercise control over a Retail Marijuana Establishment or to be positioned so as to enable the exercise of control over a Retail Marijuana Establishment. Except that a Qualified Institutional Investor and a Qualified Limited Passive Investor may vote his, her or its shares in the Retail Marijuana Establishment.

B. Financial Interests. A Retail Marijuana Establishment shall not permit any Person to hold or exercise a Financial Interest in the Retail Marijuana Establishment unless and until such Person's Financial Interest has been approved by the Division. If a Retail Marijuana Establishment wishes to permit a Person to hold or exercise a Financial Interest, and that Person has not been previously approved in connection with an application for the Retail Marijuana Establishment, the

Retail Marijuana Establishment shall submit a change of ownership or financial interest form approved by the Division. A Financial Interest shall include:

1. Any Direct Beneficial Interest Owner;

2. The following types of Indirect Beneficial Interest Owners:

    a. A Commercially Reasonable Royalty Interest Holder who receives, in the aggregate, a royalty of more than 30 percent; and

    b. A Permitted Economic Interest holder.

3. Control. Any other Person who exercises control or is positioned so as to enable the exercise of control over the Retail Marijuana Establishment must hold an Associated Key License. A natural person who exercises control or is positioned so as to enable the exercise of control over a Retail Marijuana Establishment shall include but shall not be limited to a natural person who:

    a. Bears the risk of loss and opportunity for profit;

    b. Has final decision making authority over any material aspect of the operation of the Retail Marijuana Establishment;

    c. Manages the overall operations of a Retail Marijuana Establishment or its Licensed Premises, or who manages a material portion of the Retail Marijuana Establishment or its Licensed Premises*;*

    d. Guarantees the Retail Marijuana Establishment's debts or production levels;

    e. Is a beneficiary of the Retail Marijuana Establishment's insurance policies;

    f. Receives the majority of the Retail Marijuana Establishment's profits as compared to other recipients of the Retail Marijuana Establishment's profits; or

    g. Acknowledges liability for the Retail Marijuana Establishment's federal, state or local taxes.

C. Affiliated Interests. A Retail Marijuana Establishment shall disclose all Affiliated Interests in connection with each application for licensure, renewal or reinstatement of the Retail Marijuana Establishment. The Division may conduct such background investigation as it deems appropriate regarding Affiliated Interests. An Affiliated Interest shall include any Person who does not hold a Financial Interest in the Retail Marijuana Establishment and who has any of the following relationships with the Retail Marijuana Establishment:

1. The following Indirect Beneficial Interest Owners:

    a. A Commercially Reasonable Royalty Interest Holder who receives, in the aggregate, a royalty of 30 percent or less;

    b. A Profit-Sharing Plan Employee; and

    c. A Qualified Institutional Investor.

2. Any other Person who holds any other disclosable interest in the Retail Marijuana Establishment other than a Financial Interest. Such disclosable interests shall include but

shall not be limited to an indirect financial interest, a lease agreement, a secured or unsecured loan, or security interest in fixtures or equipment with a direct nexus to the cultivation, manufacture, Transfer, transportation, or testing of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Products.

3. If the Division determines any Person disclosed as an Affiliated Interest should have been pre-approved as a Financial Interest, approval and further background investigation may be required. Additionally, the failure to seek pre-approval of a Financial Interest holder may form the basis for license denial or administrative action against the Retail Marijuana Establishment.

D. Secured Interest In Marijuana Prohibited. No Person shall at any time hold a secured interest in Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Products.

Basis and Purpose – R 206

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(2)(b), 12-43.4-202(2)(e), 12-43.4-202(3)(a)(I), 12-43.4-309(6), 12-43.4-309(12) and 12-43.4-304, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I). The purpose of this rule is to clarify the application process for changing location of a Licensed Premises.

R 206 – Changing Location of Licensed Premises: Retail Marijuana Establishments

A. Application Required to Change Location of Licensed Premises

1. A Direct Beneficial Interest Owner of a Retail Marijuana Establishment seeking to change the physical location or address of its Licensed Premises must make application to the Division for permission to change location of its Licensed Premise.

2. Such application shall:

a. Be made upon current forms prescribed by the Division;

b. Be complete in every material detail and include remittance of all applicable fees;

c. Be submitted at least 30 days prior to the proposed change;

d. Explain the reason for requesting such change;

e. Be supported by evidence that the application complies with the relevant local jurisdiction requirements; and

f. Contain a report of the relevant local jurisdiction(s) in which the Retail Marijuana Establishment is to be situated, which report shall demonstrate the approval of the local jurisdiction(s) with respect to the new location. If the relevant local jurisdiction elects not to approve or deny a change of location of Licensed Premises application, the local jurisdiction must provide written notification acknowledging receipt of the application.

B. Permit Required Before Changing Location

1. No change of location shall be permitted until after the Division considers the application, and such additional information as it may require, and issues to the Applicant a permit for such change.

2. The permit shall be effective on the date of issuance, and the Licensee shall, within 120 days, change the location of its business to the place specified therein and at the same time cease to operate a Retail Marijuana Establishment at the former location. At no time may a Retail Marijuana Establishment operate or exercise any of the privileges granted pursuant to the license in both locations. For good cause shown, the 120 day deadline may be extended for an additional 120 days. If the Licensee does not change the location of its business within the time period granted by the Division, including any extension, the Licensee shall submit a new application, pay the requisite fees and receive a new permit prior to completing any change of the location of the business.

3. The permit shall be conspicuously displayed at the new location, immediately adjacent to the license to which it pertains.

C. General Requirements

1. Repealed.

2. An Applicant for change of location shall file a change of location application with the Division and pay the requisite change of location fee. *See* Rule R 210 - Schedule of Other Application Fees: All Licensees.

Basis and Purpose – R 207

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(2)(a), 12-43.4-202(2)(b), 12-43.4-104(1)(a)(I), 12-43.4-202(3)(a)(II), 12-43.4-202(3)(a)(XIV.5), 12-43.4-306.5(5)(a)-(b), 12-43.4-401(1)(a)-(g), 12-43.4-103, 12-43.4-401, 12-43.3-501, 12-43.3-502 and 12-43.4-501, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(II). The purpose of this rule is to clarify the schedules of application fees for new retail business Licensees.

R 207 – Schedule of Application Fees: Retail Marijuana Establishments

A. Base Retail Marijuana Application Fees

1. Application Fee for Existing Medical Marijuana Licensees in Good Standing and Qualified Applications.

a. A Person licensed pursuant to the Medical Code, section 12-43.3-401, and that meets the requirements of 12-43.4-104, C.R.S., shall pay a $500 application fee, for each application submitted, to operate a Retail Marijuana Establishment if the following are met:

i. The Licensee is operating; and

ii. The Licensee's license is in good standing. A license in good standing has complied consistently with the provisions of the Medical Code and the regulations adopted pursuant thereto and is not subject to a disciplinary action at the time of the application.

2. Application Fee for New Applicants - Retail Marijuana Store, Cultivation Facility, or Product Manufacturer. Applicants that do not meet the criteria in Part A. of this rule are required to pay a $5000 application fee that must be submitted with each application before it will be considered.

3. Retail Marijuana Testing Facility Application Fee - $1,000.00

4. Retail Marijuana Transporter Application Fee - $1,000.00

5. Retail Marijuana Establishment Operator License Application Fee - $1,000.00

B. Retail Marijuana Establishment Application Fees for Indirect Beneficial Interest Owners, Qualified Limited Passive Investors and Other Affiliated Interests

1. Affiliated Interest that is not an Indirect Beneficial Interest Owner - $200.00

2. Commercially Reasonable Royalty Interest Holder receiving, in the aggregate, a royalty of more than 30 percent - $400.00

3. Commercially Reasonable Royalty Interest Holder receiving, in the aggregate, a royalty of 30 percent of less - $200.00

4. Permitted Economic Interest - $400.00

5. Employee Profit Sharing Plan - $200.00

6. Qualified Limited Passive Investor

a. Standard limited initial background check - $75.00

b. Full background check for reasonable cause - $125.00

7. Qualified Institutional Investor - $200.00

C. When Application Fees Are Due. All application fees are due at the time a Retail Marijuana Establishment submits an application and/or at the time a Retail Marijuana Establishment submits an application for a new Financial Interest. An Applicant must follow Division policies regarding payment to local jurisdictions.

Basis and Purpose – R 210

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(2)(a), 12-43.3-1101, 12-43.3-1102, 12-43.4-202(2)(b), 12-43.4-202(3)(a)(II), 12-43.4-304(1), 12-43.4-103, 12-43.4-401,12-43.3-501, 12-43.3-502 and 12-43.4-501, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(II). The purpose of this rule is to establish basic requirements for all Division applications and help the regulated community understand procedural licensing requirements.

R 210 – Schedule of Other Application Fees: All Licensees

A. Other Application Fees. The following application fees apply:

1. Transfer of Ownership - New Owners - $1,600.00

2. Transfer of Ownership - Reallocation of Ownership - $1,000.00

3. Change of Corporation or LLC Structure - $800.00

4. Change of Trade Name - $50.00

5. Change of Location Application Fee - $500.00

6. Modification of Licensed Premises - $100.00

7. Duplicate Business License - $20.00

8. Duplicate Occupational License - $20.00

9. Off Premises Storage Permit - $1,500.00

10. Retail Marijuana Transporter Off Premises Storage Permit - $2,200.00

11. Responsible Vendor Program Provider Application Fee: $850.00

12. Responsible Vendor Program Provider Renewal Fee: $350.00

13. Responsible Vendor Program Provider Duplicate Certificate Fee: $50.00

B. When Other Application Fees Are Due. All other application fees are due at the time the application and/or request is submitted.

C. Subpoena Fee – See Rule R 106 – Subpoena Fees

Basis and Purpose - R 211

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(I) - (II), 12-43.4-202(3)(b)(IX), 12-43.4-202(4)(a) - (b), 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, with the exception of Medical Marijuana Testing Facilities, Medical Marijuana Business Operators and Medical Marijuana Business Transporters, an existing Medical Marijuana Business 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, Retail Marijuana Concentrate, 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, Medical Marijuana Concentrate, and Medical Marijuana Infused-Product that are converted for Transfer as Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product prior to initiating or allowing any Transfers. 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, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product to Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product. Beginning July 1, 2016, the only allowed Transfer of marijuana between a Medical Marijuana Business and Retail Marijuana Establishment is the Transfer of Medical Marijuana and Medical Marijuana Concentrate that was produced at the Optional Premises Cultivation Operation, from the Optional Premises Cultivation Operation to a Retail Marijuana Cultivation Facility. The marijuana subject to the one-time Transfer is subject to the excise tax upon the first Transfer from the Retail Marijuana Cultivation Facility to another Retail Marijuana Establishment.

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.

This rule also informs existing and prospective licensees of production management conditions. The State Licensing Authority intends to replace or revise this rule's production management provisions as early as January 2017 by transitioning to an output-based production management model. Existing and prospective licensees should be on notice that the new or revised regulations may impact the production limits provided for in this rule. Additionally, throughout the rulemaking process stakeholders expressed concern over ensuring an adequate amount of licensed Retail Marijuana Stores exist to Transfer the amount of Retail Marijuana being produced at licensed Retail Marijuana Cultivation Facilities. Scaling the number of interests a person may hold in Retail Marijuana Cultivation Facility licenses relative to the number of controlling interests the person has in Retail Marijuana Store(s) has been incorporated in the production management rules as a means to address this production management concern.

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. Except for a Medical Marijuana Testing Facility, a Medical Marijuana Business Operator or a Medical Marijuana Business Transporter, 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, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product it intends to Transfer from the

requisite Medical Marijuana Business for sale as Retail Marijuana, Retail Marijuana Concentrate, 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, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product are fully Transferred and declared in the Inventory Tracking System as Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product. See Rule R 309 –Inventory Tracking System. Beginning July 1, 2016, the only allowed Transfer of marijuana between a Medical Marijuana Business and Retail Marijuana Establishment is the Transfer of Medical Marijuana and Medical Marijuana Concentrate that was produced at the Optional Premises Cultivation Operation, from the Optional Premises Cultivation Operation to a Retail Marijuana Cultivation Facility.

D. One-Time Transfer

1. Repealed.

1.5. Beginning July 1, 2016, the only allowed Transfer of marijuana between a Medical Marijuana Business and a Retail Marijuana Establishment is the Transfer of Medical Marijuana and Medical Marijuana Concentrate that was produced at the Optional Premises Cultivation Operation, from the Optional Premises Cultivation Operation to a Retail Marijuana Cultivation Facility. All other Transfers are prohibited, including but not limited to Transfers from a Medical Marijuana Center or Medical Marijuana-Infused Products Manufacturer to any Retail Marijuana Establishment. Once a Retail Marijuana Establishment has declared Medical Marijuana and Medical Marijuana Concentrate as Retail Marijuana or Retail Marijuana Concentrate in the Inventory Tracking System and begun exercising the rights and privileges of the license, no additional Medical Marijuana or Medical Marijuana Concentrate can be Transferred from the Medical Marijuana Business to the relevant Retail Marijuana Establishment at any time.

E. Additional Application Disclosures.

1. 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.

2. 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. At the time of application for a Retail Marijuana Cultivation Facility license an Applicant must designate the Optional Premises Cultivation Operation license intended to be used to obtain the Retail Marijuana Cultivation Facility license, whether or not that license will be converted, by providing its business license number.

F. One Retail Cultivation License per Licensed Premises.

1. Only one Retail Marijuana Cultivation Facility License shall be permitted at each Licensed Premises. Each Licensed Premises must be located at a distinct address recognized by the local jurisdiction. Each Licensed Premises must have its own public entrance and be securely and physically separated from any other address located within the same structure.

2. Existing Retail Marijuana Cultivation Facilities that have Multiple Cultivation Licenses at the Licensed Premises. Upon the first renewal at the Retail Marijuana Cultivation Facility, all of the Retail Marijuana Cultivation Facility's licenses will be collapsed into one surviving license, and fees shall be prorated for the non-expiring licenses. The maximum authorized plant count shall also collapse into the surviving license. See rule R 506 – Retail Marijuana Cultivation Facility: Production Management.

G. Authorized Plant Count and Associated Fees.

1. All Retail Marijuana Cultivation Facility licenses granted on or after November 30, 2015 shall be authorized to cultivate no more than 1,800 plants at any given time and are subject to the production management requirements of Rule R 506 – Retail Marijuana Cultivation Facility: Production Management.

2. All Retail Marijuana Cultivation Facility licenses granted before November 30, 2015 are subject to the production management requirements of Rule R 506 – Retail Marijuana Cultivation Facility: Production Management.

3. As of November 30, 2015, a Retail Marijuana Cultivation Facility license that was associated with a Retail Marijuana Products Manufacturing Facility shall be authorized to cultivate no more than 1,800 plants at any given time. If such a Retail Marijuana Cultivation Facility licensee submitted a plant count waiver application prior to August 31, 2015 and it was subsequently approved, the license shall be authorized to cultivate the maximum number of plants at any given time in the corresponding production management tier pursuant to Rule R 506 – Retail Marijuana Cultivation Facility: Production Management.

4. Upon demonstrating certain conditions, the Direct Beneficial Interest Owner/s of an existing Retail Marijuana Cultivation Facility license may apply to the Division for a production management tier increase to be authorized to cultivate the number of plants in the next highest production management tier. See Rule R 506 – Retail Marijuana Cultivation Facility: Production Management. If the application is approved, the Licensee shall pay the applicable expanded production management tier fee prior to cultivating the additional authorized plants. See Rule R 208 – Schedule of Business License Fees: Retail Marijuana Establishments.

5. At renewal, a Licensee that is authorized to cultivate more than 1,800 plants shall pay the requisite Retail Marijuana Cultivation Facility licensee fee and the applicable expanded production management tier fee. See Rule R 209 – Schedule of Business License Renewal Fees: Retail Marijuana Establishments.

6. At renewal, the Division will review a Licensee's maximum authorized plant count and may reduce it pursuant to the requirements of Rule R 506.

7. The State Licensing Authority, in 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.

H. Maximum Allowed Retail Marijuana Cultivation Facility Licenses.

1. A Person with an Interest in Three or More Retail Marijuana Cultivation Facility Licenses. For every multiple of three Retail Marijuana Cultivation Facility licenses a person has an interest in, the person must have a controlling interest in at least one Retail Marijuana Store. For example: (1) a Person with an interest in three, four, or five Retail Marijuana Cultivation Facility licenses also must have a controlling interest in at least one Retail

Marijuana Store; (2) a Person with an interest in six, seven, or eight Retail Marijuana Cultivation Facility licenses also must have a controlling interest in at least two Retail Marijuana Stores; (3) a Person with an interest in nine, ten, or eleven Retail Marijuana Cultivation Facility licenses also must have a controlling interest in at least three Retail Marijuana Stores; etc.

2. A Person with an Interest in Less than Three Retail Marijuana Cultivation Facility Licenses. The person shall not be required to have an interest in a Retail Marijuana Store.

Basis and Purpose – R 212

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(I-II), 12-43.4-202(3)(b)(IX), 12-43.4-202(4)(a) - (b); 12-43.4-103, 12-43.4-104, and 12-43.4-501, C.R.S. This rule also informs existing and prospective licensees licensed pursuant to 12-43.4-104(1)(b)(II), C.R.S. of licensing and production management conditions. The State Licensing Authority intends to replace or revise this rule's production management provisions as early as January 2017 by transitioning to an output-based production management model. Existing and prospective licensees should be on notice that the new or revised regulations may impact the production limits provided for in this rule. Additionally, throughout the rulemaking process stakeholders expressed concern over ensuring an adequate amount of licensed Retail Marijuana Stores exist to Transfer the amount of Retail Marijuana being produced at licensed Retail Marijuana Cultivation Facilities. Scaling the number of interests a Person may hold in Retail Marijuana Cultivation Facility licenses relative to the number of controlling interests the Person has in Retail Marijuana Store(s) has been incorporated in the production management rules as a means to address this production management concern.

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 R 212 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. One Retail Cultivation License per Licensed Premises.

1. Only one Retail Marijuana Cultivation Facility License shall be permitted at each Licensed Premises. Each Licensed Premises must be located at a distinct address recognized by the local jurisdiction. Each Licensed Premises must have its own public entrance and be securely and physically separated from any other address located within the same structure.

2. Existing Retail Marijuana Cultivation Facilities that have Multiple Cultivation Licenses at the Licensed Premises. Upon the first renewal at the Retail Marijuana Cultivation Facility, all of the Retail Marijuana Cultivation Facility's licenses will be collapsed into one surviving license, and fees shall be prorated for the non-expiring licenses. The maximum authorized plant count shall also collapse into the surviving license. See Rule R 506 – Retail Marijuana Cultivation Facility: Production Management.

C. Authorized Plant Count and Associated Fees.

1. All Retail Marijuana Cultivation Facility licenses granted on or after November 30, 2015 shall be authorized to cultivate no more than 1,800 plants at any given time and are subject to the production management requirements of Rule R 506 – Retail Marijuana Cultivation Facility: Production Management.

2. All Retail Marijuana Cultivation Facility licenses granted before November 30, 2015 are subject to the production management requirements of Rule R 506 – Retail Marijuana Cultivation Facility: Production Management.

3. As of November 30, 2015, a Retail Marijuana Cultivation Facility license that was associated with a Retail Marijuana Products Manufacturing Facility shall be authorized to cultivate no more than 1,800 plants at any given time. If such a Retail Marijuana Cultivation Facility licensee submitted a plant count waiver application prior to August 31, 2015 and it was subsequently approved, the license shall be authorized to cultivate the maximum number of plants at any given time in the corresponding production management tier pursuant to Rule R 506 – Retail Marijuana Cultivation Facility: Production Management.

4. Upon demonstrating certain conditions, the Direct Beneficial Interest Owner/s of an existing Retail Marijuana Cultivation Facility license may apply to the Division for a production management tier increase to be authorized to cultivate the number of plants in the next highest production management tier. See rule R 506 – Retail Marijuana Cultivation Facility: Production Management. If the application is approved, the Licensee shall pay the applicable expanded production management tier fee prior to cultivating the additional authorized plants. See Rule R 208 – Schedule of Business License Fees: Retail Marijuana Establishments.

5. At renewal, a Licensee that is authorized to cultivate more than 1,800 plants shall pay the requisite Retail Marijuana Cultivation Facility licensee fee and the applicable expanded production management tier fee. See Rule R 209 – Schedule of Business License Renewal Fees: Retail Marijuana Establishments.

6. At renewal, the Division will review a Licensee's maximum authorized plant count and may reduce it pursuant to the requirements of Rule R 506.

7. 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.

D. Maximum Allowed Retail Marijuana Cultivation Facility Licenses.

1. A Person with an Interest in Three or More Retail Marijuana Cultivation Facility Licenses. For every multiple of three Retail Marijuana Cultivation Facility licenses a Person has an interest in, the Person must have a controlling interest in at least one Retail Marijuana Store. For example: (1) a Person with an interest in three, four, or five Retail Marijuana Cultivation Facility licenses also must have a controlling interest in at least one Retail Marijuana Store; (2) a Person with an interest in six, seven, or eight Retail Marijuana Cultivation Facility licenses also must have a controlling interest in at least two Retail Marijuana Stores; (3) a Person with an interest in nine, ten, or eleven Retail Marijuana Cultivation Facility licenses also must have a controlling interest in at least three Retail Marijuana Stores; etc.

2. A Person with an Interest in Less than Three Retail Marijuana Cultivation Facility Licenses. The Person shall not be required to have an interest in a Retail Marijuana Store.

Basis and Purpose – R 231

The statutory authority for this rule includes but is not limited to sections 12-43.3-201(4), 12-43.4-202(2)(b), 12-43.4-202(3)(a)(III), 24-18-105(3), 12-43.4-103, 12-43.4-305, 12-43.4-306, 12-43.3-306.5, and 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, background investigations forDirect Beneficial Interest Owners, Indirect Beneficial Interest Owners, contractors, employees, and other support staff of licensed entities.

R 231 – Qualifications for Licensure and Residency

A. Any Applicant may be required to establish his or her identity and age by any document required for a determination of Colorado residency, United States citizenship or lawful presence.

B. Maintaining Ongoing Licensing Qualification: 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. Applicants and Licensees shall notify the Division within ten days of any other event that renders the Applicant or Licensee no longer qualified under these rules. 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.

C. Application Forms Accessible to Law Enforcement and Licensing Authorities. All application forms supplied by the Division and filed by an Applicant for licensure shall be accessible by the State Licensing Authority, local jurisdictions, and any state or local law enforcement agent.

D. Associated Key Licenses. Each Direct Beneficial Interest Owner who is a natural person, including but not limited to each officer, director, member or partner of a Closely Held Business Entity, must apply for and hold at all times a valid Associated Key License. Except that these criteria shall not apply to Qualified Limited Passive Investors, who are not required to hold Associated Key Licenses. Each such Direct Beneficial Interest Owner must establish that he or she meets the following criteria before receiving an Associated Key License:

1. The Applicant has paid the annual application and licensing fees;

2. The Applicant's criminal history indicates 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 or Medical Marijuana Business, if applicable;

6. The Applicant is not currently subject to and 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 meets qualifications for licensure that directly and demonstrably relate to the operation of a Retail Marijuana Establishment;

8. The Applicant is not currently subject to or 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 28, 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;

9. The Applicant does not employ another person who does not have a valid Occupational License issued pursuant to either the Retail Code or the Medical Code.

10. The Applicant is not a sheriff, deputy sheriff, police officer, or prosecuting officer, or an officer or employee of the State Licensing Authority or a local licensing authority;

11. The Applicant has not been a State Licensing Authority employee with regulatory oversight responsibilities for individuals, Retail Marijuana Establishments and/or Medical Marijuana Businesses licensed by the State Licensing Authority in the six months immediately preceding the date of the Applicant's application;

12. The premises that the Applicant proposes to be licensed is not currently licensed as a retail food establishment or wholesale food registrant;

13. The Applicant either:

    a. Has been a resident of Colorado for at least one year prior to the date of the application, or

    b. Has been a United States citizen since a date prior to the date of the application and has received a Finding of Suitability from the Division prior to filing the application. *See* Rule R 231.1 – Finding of Suitability, Residency and Requirements for Direct Beneficial Interest Owners; Rule R 232 – Factors Considered When Determining Residency and Citizenship: Individuals.

14. For Associated Key Licensees who are owners of a Closely Held Business Entity, the Applicant is a United States citizen.

E. Occupational Licenses. An Occupational License Applicant who is not applying for an Associated Key License must establish that he or she meets the following criteria before receiving an Occupational License:

1. The Applicant has paid the annual application and licensing fees;

2. The Applicant's criminal history indicates that he or she is of Good Moral Character;

3. The Applicant is at least 21 years of age;

4. The Applicant is currently a resident of Colorado. See Rule R 232 – Factors Considered When Determining Residency and Citizenship: Individuals;

5. The Applicant has paid all taxes, interest, or penalties due the Department of Revenue relating to a Medical Marijuana Business or Retail Marijuana Establishment;

6. The Applicant is not currently subject to and 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 is not currently subject to and 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 28, 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 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; and

9. The Applicant has not been a State Licensing Authority employee with regulatory oversight responsibilities for occupational licensees, Retail Marijuana Establishments and/or Medical Marijuana Businesses licensed by the State Licensing Authority in the six months immediately preceding the date of the Applicant's application.

F. 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. Repealed.

G. Associated Key License Privileges. A person who holds an Associated Key License must associate that license separately with each Retail Marijuana Establishment or Medical Marijuana Business with which the person is associated by submitting a form approved by the Division. A person who holds an Associated Key License may exercise the privileges of a licensed employee in any licensed Retail Marijuana Establishment or Medical Marijuana Business in which they are not an owner so long as the person does not exercise privileges of ownership.

H. Qualified Limited Passive Investor. An Applicant who wishes to be a Qualified Limited Passive Investor and hold an interest in a Retail Marijuana Establishment as a Direct Beneficial Interest Owner must establish that he or she meets the following criteria before the ownership interest will be approved:

1. He or she is a natural person;

2. The Applicant qualifies under Rule R 231.2(B);

3. He or she has been a United States citizen since a date prior to the date of the application, and

4. He or she has signed an affirmation of passive investment.

I. Workforce Training or Development Residency Exempt License. An Applicant who wishes to obtain a workforce development or training exemption to the license residency requirement may only apply for a Support License or a Key License and must:

1. Submit a complete application on the Division's approved forms;

2. Establish he or she meets the licensing criteria of Rule R 231(E)(1)-(3) and 231(E)(5)-(9) for Occupational Licensees;

3. Provide evidence of proof of lawful presence; and

4. Provide a complete Workforce Training or Development Affirmation form executed under penalty of perjury.

Basis and Purpose – R 231.1

The statutory authority for this rule includes but is not limited to sections 12-43.3-201(4), 12-43.4-202(2)(b), 12-43.4-202(3)(a)(III)), 24-18-105(3), 12-43.4-202(3)(a)(XX), 12-43.4-103, 12-43.4-304, 12-43.4-305, 12-43.4-306.5 and 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 Direct Beneficial Interest Owners.

R 231.1 – Finding of Suitability, Residency and Reporting Requirements for Direct Beneficial Interest Owners

A. Finding of Suitability – Non-Resident Direct Beneficial Interest Owners. A natural person, owner, shareholder, director, officer, member or partner of an entity that intends to apply to become a Direct Beneficial Interest Owner who has not been a resident of Colorado for at least one year prior to the application shall first submit a request to the State Licensing Authority for a finding of suitability to become a Direct Beneficial Interest Owner as follows:

1. A request for a finding of suitability for a non-resident natural person shall be submitted on the forms prescribed by the Division.

2. A natural person or all owners, shareholders, directors, officers, members or partners of an entity who have not been a resident of Colorado for at least one year shall obtain a finding of suitability prior to submitting an application to become a Direct Beneficial Interest Owner to the State Licensing Authority.

3. A finding of suitability is valid for one year from the date it is issued by the Division. If more than one year has passed since the Division first issued a finding of suitability to a natural person, owner, shareholder, director, officer, member or partner of an entity that intends to apply to become a Direct Beneficial Interest Owner who has not been a resident of Colorado for at least one year prior to the application, then such applicant shall submit a new request for finding of suitability to the State Licensing Authority and obtain a new finding of suitability before submitting any application to become a Direct Beneficial Interest Owner to the State Licensing Authority. All recipients of a finding of suitability shall disclose in writing to the Division any and all disqualifying events within ten days after occurrence of the event that could lead to a finding that the recipient no longer qualifies to become a Direct Beneficial Interest Owner.

4. The failure of a non-Colorado resident, who is not already a Direct Beneficial Interest Owner, to obtain a finding of suitability within the year prior to submission of an application to become a Direct Beneficial Interest Owner to the State Licensing Authority shall be grounds for denial of the application.

B. Number of Permitted Direct Beneficial Interest Owners.

1. A Retail Marijuana Establishment may be comprised of an unlimited number of Direct Beneficial Interest Owners that have been residents of Colorado for at least one year prior to the date of the application.

2. On and after January 1, 2017, a Retail Marijuana Establishment that is comprised of one or more Direct Beneficial Interest Owners who have not been Colorado residents for at least one year is limited to no more than fifteen Direct Beneficial Interest Owners, each of whom is a natural person. Further, a Retail Marijuana Establishment that is comprised of one or more Direct Beneficial Interest Owners who have not been Colorado residents for at least one year shall have at least one officer who is a Colorado resident. All officers with day-to-day operational control over a Retail Marijuana Establishment must be Colorado residents for at least one year, must maintain their Colorado residency during the period while they have day-to-day operational control over the Retail Marijuana Establishment and shall be licensed as required by the Retail Code. Rule 231 – Qualifications for Licensure and Residency: Individuals.

C. Notification of Change of Residency. A Retail Marijuana Establishment with more than fifteen Direct Beneficial Interest Owners shall provide thirty days prior notice to the Division of any Direct Beneficial Interest Owners' intent to change their residency to a residency outside Colorado. A Retail Marijuana Establishment with no more than fifteen Direct Beneficial Interest Owners shall notify the Division of the change of residency of any Direct Beneficial Interest Owner at the time of its license renewal. Failure to provide timely notice pursuant to this rule may lead to administrative action against the Retail Marijuana Establishment and its Direct Beneficial Interest Owners.

D. A Direct Beneficial Interest Owner shall not be a publicly traded company.

Basis and Purpose – R 231.2

The statutory authority for this rule includes but is not limited to sections 12-43.3-201(4), 12-43.4-202(2)(b), 12-43.4-202(3)(a)(III), 24-18-105(3), 12-43.4-202(3)(a)(XX), 12-43.4-103, 12-43.4-304, 12-43.4-305, 12-43.4-306.5 and 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 an Indirect Beneficial Interest Owner other than a Permitted Economic Interest.

R 231.2 – Qualifications for Indirect Beneficial Interest Owners and Qualified Limited Passive Investors

A. General Requirements

1. An Applicant applying to become a Commercially Reasonable Royalty Interest holder who receives a royalty of more than 30 percent or the holder of a Permitted Economic Interest must be pre-approved by the Division.

2. An Applicant applying to become an Indirect Beneficial Interest Owner or Qualified Limited Passive Investor shall submit information to the Division in a full, faithful, truthful, and fair manner. The Division may recommend denial of an application where the Applicant made misstatements, omissions, misrepresentations, or untruths in the application. This type of conduct may be considered as the basis of additional administrative action against the Applicant and the Retail Marijuana Establishment.

3. The Division may deny the application when the Applicant fails to provide any requested information by the Division's deadline.

4. The Division's determination that an Indirect Beneficial Interest Owner or Qualified Limited Passive Investor is qualified constitutes a revocable privilege held by the Retail Marijuana Establishment. The burden of proving the Indirect Beneficial Interest Owner or Qualified Limited Passive Investor is qualified rests at all times with the Retail Marijuana Establishment Applicant. Indirect Beneficial Interest Owners and Qualified Limited

Passive Investors are not separately licensed by the Division. Any administrative action regarding an Indirect Beneficial Interest Owner or Qualified Limited Passive Investor may be taken directly against the Retail Marijuana Establishment.

5. Permitted Economic Interest Fingerprints Required. Any individual applying to hold his or her first Permitted Economic Interest shall be fingerprinted for a criminal history record check. In the Division's discretion, an individual may be required to be fingerprinted again for additional criminal history record checks.

6. No publicly traded company can be an Indirect Beneficial Interest Owner or Qualified Limited Passive Investor.

B. Qualification. The Division may consider the following non-exhaustive list of factors to determine whether an Indirect Beneficial Interest Owner or Qualified Limited Passive Investor is qualified:

1. The Applicant's criminal history indicates that he or she is of Good Moral Character;

2. The Applicant is at least 21 years of age;

3. The Applicant has paid all taxes, interest, or penalties due the Department of Revenue relating to a Retail Marijuana Establishment or Medical Marijuana Business, if applicable;

4. The Applicant is not currently subject to and has not discharged a sentence for a conviction of a felony in the five years immediately preceding his or her application date;

5. The Applicant is not currently subject to and 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 28, 2013, whichever is longer, except, in the Division's discretion, 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 may not disqualify an Indirect Beneficial Interest Owner or Qualified Limited Passive Investor;

6. The Applicant 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;

7. The Applicant has not been a State Licensing Authority employee with regulatory oversight responsibilities for individuals, Retail Marijuana Establishments and/or Medical Marijuana Businesses licensed by the State Licensing Authority in the six months immediately preceding the date of the Applicant's application.

8. The Applicant has provided all documentation requested by the Division to establish qualification to be an Indirect Beneficial Interest Owner.

C. Maintaining Qualification:

1. An Indirect Beneficial Interest Owner or Qualified Limited Passive Investor 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. This duty to report includes, but is not limited to, deferred sentences, prosecutions, or judgments that are not sealed. If the Division lawfully finds a disqualifying event and the individual asserts that the record was sealed,

the Division may require the individual to provide proof from a court evidencing the sealing of the case.

2. An Indirect Beneficial Interest Owner, Qualified Limited Passive Investor and Retail Marijuana Establishment shall cooperate in any investigation into whether an Indirect Beneficial Interest Owner or Qualified Limited Passive Investor continues to be qualified that may be conducted by the Division.

D. Divestiture of Indirect Beneficial Interest Owner or Qualified Limited Passive Investor. If the Division determines an Indirect Beneficial Interest Owner or Qualified Limited Passive Investor is not permitted to hold their interest, the Retail Marijuana Establishment shall have 60 days from such determination to divest the Indirect Beneficial Interest Owner or Qualified Limited Passive Investor. The Division may extend the 60-day deadline for good cause shown. Failure to timely divest any Indirect Beneficial Interest Owner or Qualified Limited Passive Investor the Division determines is not qualified, or is no longer qualified, may constitute grounds for denial of license or administrative action against the Retail Marijuana Establishment and/or its Associated Key Licensee(s).

Basis and Purpose – R 233

The statutory authority for this rule includes but is no limited to sections 12-43.4-202(2)(b), 12-43.4-309(5) and 12-43.4-401(1)(e), C.R.S. The purpose of this rule is to clarify when an individual must be licensed or registered with the Division before commencing any work activity at a licensed Retail Marijuana Establishment. The rule also sets forth the process for obtaining a license or registration and explains what information may be required before obtaining such license or registration.

R 233 – Retail Code or Medical Code Occupational Licenses Required

A. Retail Code or Medical Code Occupational Licenses and Identification Badges

1. Any Person who possesses, cultivates, manufactures, tests, dispenses, Transfers, serves, transports or delivers Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product as permitted by privileges granted under a Retail Marijuana Establishment license must have a valid Occupational License.

2. Any Person who has the authority to access or input data into the Inventory Tracking System or a Retail Marijuana Establishment point of sale system must have a valid Occupational License.

3. Any Person within a Restricted Access Area or Limited Access Area that does not have a valid Occupational License shall be considered a visitor and must be escorted at all times by a person who holds a valid Associated Key License or other Occupational License. Failure by a Retail Marijuana Establishment to continuously escort a person who does not have a valid Occupational License within a Limited Access Area may be considered a license violation affecting the public safety. *See* Rule R 1307 – Penalties; *see also* Rule R 301 – Limited Access Areas. Nothing in this provision alters or eliminates a Retail Marijuana Establishment's obligation to comply with the Occupational License requirements of paragraph (A) of this Rule R 233. Trade craftspeople not normally engaged in the business of cultivating, processing, or Transferring Retail Marijuana do not need to be accompanied at all times, and instead only reasonably monitored.

B. Occupational License Required to Commence or Continue Employment. Any Person required to be licensed pursuant to these rules shall obtain all required approvals and obtain a Division-issued identification badge before commencing activities permitted by his or her Retail Code or Medical Code Occupational License. *See* Rule R 231 – Qualifications for Licensure and

Residency; Rule R 204 – Ownership Interests of a License: Retail Marijuana Establishments; and R 301 – Limited Access Areas.

C. Identification Badges Are Property of State Licensing Authority. All identification badges shall remain the property of the State Licensing Authority, and all identification badges shall be returned to the Division upon demand of the State Licensing Authority or the Division. The Licensee shall not alter, obscure, damage, or deface the badge in any manner.

Basis and Purpose – R 251

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(XV), 12-43.4-202(3)(a)(XVI), 12-43.4-305, 24-4-104 and 24-4-105, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(5)(a)(I). The purpose of this rule is to establish what factors the State Licensing Authority will consider when denying an application for licensure.

R 251 – Application Denial and Voluntary Withdrawal: All Licensees

A. Applicant Bears Burden of Proving It Meets Licensing Requirements

1. At all times during the application process, an Applicant must be capable of establishing that it is qualified to hold a license.

2. An Applicant that does not cooperate with the Division during the application phase may be denied as a result. For example, if the Division requests additional evidence of qualification and the Applicant does not furnish such evidence by the date requested, the Applicant's application may be denied.

B. Applicants Must Provide Accurate Information

1. An Applicant must provide accurate information to the Division during the entire Application process.

2. If an Applicant provides inaccurate information to the Division, the Applicant's application may be denied.

C. Grounds for Denial

1. The State Licensing Authority will deny an application from an Applicant that forms a business including but not limited to a sole proprietorship, corporation, or other business enterprise, with the purpose or intent, in whole or in part, of transporting, cultivating, processing, Transferring, or distributing Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product without receiving prior approval from all relevant local jurisdictions.

2. The State Licensing Authority will deny an application for Good Cause, as defined in subsection 12-43.4-305(1), C.R.S., of the Retail Code.

3. The State Licensing Authority will deny an Applicant's application that is statutorily disqualified from holding a license.

D. Voluntary Withdrawal of Application

1. The Division and Applicant may mutually agree to allow the voluntary withdrawal of an application in lieu of a denial proceeding.

2. Applicants must first submit a notice to the Division requesting the voluntary withdrawal of the application. In such instances, an Applicant waives his or her right to a hearing in the matter once the voluntary withdrawal is approved.

3. The Division will consider the request along with any circumstances at issue with the application in making a decision to accept the voluntary withdrawal. The Division may at its discretion grant the request with or without prejudice or deny the request.

4. The Division will notify the Applicant and relevant local jurisdiction of its acceptance of the voluntary withdrawal and the terms thereof.

5. If the Applicant agrees to a voluntary withdrawal granted with prejudice, then the Applicant is not eligible to apply again for licensing or approval until after expiration of one year from the date of such voluntary withdrawal.

E. An Applicant May Appeal a Denial

1. An Applicant may appeal an application denial pursuant to the Administrative Procedure Act.

2. *See* Rule R 1304 – Administrative Hearings, Rule R 1305 – Administrative Subpoenas, and Rule R 1306 – Administrative Hearing Appeals.

R 300 Series – The Licensed Premises

Basis and Purpose – R 301

The statutory authority for this rule includes but is not limited to sections 12-43.4-103(1), 12-43.4-103(1.3), 12-43.4-202(2)(b), 12-43.4-202(3)(a)(V), 12-43.4-202(3)(a)(X), 12-43.4-202(3)(b)(IX) and 12-43.4-105, C.R.S. The purpose of this rule is to establish Limited Access Areas for Licensed Premises under the control of the Licensee to only individuals licensed by the State Licensing Authority. In addition, this rule clarifies that businesses and individuals cannot use the visitor system as a means to employ an individual who does not possess a valid and current Occupational License.

R 301 – Limited Access Areas

A. Proper Display of License Badge. All Persons in a Limited Access Area as provided for in section 12-43.4-105, C.R.S., shall be required to hold and properly display a current license badge issued by the Division at all times. Proper display of the license badge shall consist of wearing the badge in a plainly visible manner, at or above the waist, and with the photo of the Licensee visible.

B. Visitors in Limited Access Areas

1. Prior to entering a Limited Access Area, all visitors, including outside vendors, contractors or others, must obtain a visitor identification badge from management personnel of the Licensee that shall remain visible while in the Limited Access Area.

2. Visitors shall be escorted by the Retail Marijuana Establishment's licensed personnel at all times. No more than five visitors may be escorted by a single employee. Except that trade craftspeople not normally engaged in the business of cultivating, processing or selling Retail Marijuana need not be accompanied on a full-time basis, but only reasonably monitored.

2.1 A Retail Marijuana Establishment and a Licensee employed by the Retail Marijuana Establishment shall report any discovered plan of or other act or omission by any visitor

or other Person: (1) to commit theft, burglary, underage sales, diversion of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product, or other crime related to the operation of the subject Retail Marijuana Establishment; (2) to compromise the integrity of the Inventory Tracking System; or (3) that results in serious bodily injury to any Person on the Licensed Premises of the Retail Marijuana Establishment or otherwise creates a material risk to public health and safety. Such discovered plan or other act or omission shall be reported to the Division in accordance with Rule R 904 – Retail Marijuana Establishment Reporting Requirements.

3. The Licensee shall maintain a log of all visitor activity, for any purpose, within the Limited Access Area and shall make such logs available for inspection by the Division or relevant local jurisdiction.

4. All visitors must provide proof of age and must be at least 21 years of age. See Rule R 404 – Acceptable Forms of Identification.

5. The Licensee shall check the identification for all visitors to verify that the name on the identification matches the name in the visitor log. See Rule R 404 – Acceptable Forms of Identification.

6. A Licensee may not receive consideration or compensation for permitting a visitor to enter a Limited Access Area.

7. Use of a visitor badge to circumvent the Occupational License requirements of Rule R 233 is prohibited and may constitute a license violation affecting public safety.

C. Required Signage. All areas of ingress and egress to Limited Access Areas on the Licensed Premises shall be clearly identified by the posting of a sign which shall be not less than 12 inches wide and 12 inches long, composed of letters not less than a half inch in height, which shall state, "Do Not Enter - Limited Access Area – Access Limited to Licensed Personnel and Escorted Visitors."

D. Diagram for Licensed Premises. All Limited Access Areas shall be clearly identified to the Division or relevant local jurisdiction and described in a diagram of the Licensed Premises reflecting walls, partitions, counters and all areas of ingress and egress. The diagram shall also reflect all Propagation, cultivation, manufacturing, and retail sales areas. See Rule R 901 – Business Records Required.

E. Modification of Limited Access Area. A Licensee's proposed modification of designated Limited Access Areas must be approved by the Division and, if required, the relevant local jurisdiction prior to any modifications being made. See Rule R 303 – Changing, Altering, or Modifying Licensed Premises.

F. Law Enforcement Personnel Authorized. Notwithstanding the requirements of subsection A of this rule, nothing shall prohibit investigators and employees of the Division, authorities from relevant local jurisdiction or state or local law enforcement, for a purpose authorized by the Retail Code or for any other state or local law enforcement purpose, from entering a Limited Access Area upon presentation of official credentials identifying them as such.

R 304 – Medical Marijuana Business and Retail Marijuana Establishment – Shared Licensed Premises and Operational Separation – Repealed.

Basis and Purpose – R 304.1

The statutory authority for this rule includes but is not limited to sections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(XX), 12-43.3-202(2.5)(a)(I)(A)-(F), 12-43.4-104(1)(a)(V), 12-43.4-202(2)(b), 12-43.4-401(2), and 12-43.4-404(2), 12-43.3-406, 12-43.4-405 and 12-43.4-406, C.R.S. The purpose of this rule is to establish guidelines for the manner in which a Medical Marijuana Business may share its existing Licensed Premises with a Licensed Retail Marijuana Establishment, and to ensure the proper separation of a Medical Marijuana Business operation from Retail Marijuana Establishment operation.

R 304.1 – Medical Marijuana Business and Retail Marijuana Establishment – Shared Licensed Premises and Operational Separation

A. Co-Located Medical Marijuana Centers and Retail Marijuana Stores.

1. Medical Marijuana Center that authorizes only patients that are over the age of 21. A Medical Marijuana Center that authorizes only Medical Marijuana patients who are over the age of 21 years to be on the Licensed Premises may also hold a Retail Marijuana Store license and operate at the same location under the following circumstances:

    a. The relevant local licensing authority and local jurisdiction permit a dual operation at the same location;

    b. The Medical Marijuana Center and Retail Marijuana Store are commonly owned;

    c. The Medical Marijuana Center and Retail Marijuana Store shall maintain physical or virtual separation between (i) Medical Marijuana, Medical Marijuana Concentrate, Medical Marijuana-Infused Products, and other Medical Marijuana-related inventory and (ii) Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Products, and other Retail Marijuana-related inventory;

    d. The Medical Marijuana Center and Retail Marijuana Store shall maintain separate displays between (i) Medical Marijuana, Medical Marijuana Concentrate, Medical Marijuana-Infused Products, and other Medical Marijuana-related inventory and (ii) Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Products, and other Retail Marijuana-related inventory, but the displays may be on the same sale floor;

    e. Record-keeping, inventory tracking, packaging and labeling for the Medical Marijuana Center and Retail Marijuana Store shall enable the Division and local licensing authority to clearly distinguish the inventories and business transactions of the Medical Marijuana Center from the inventories and business transactions of the Retail Marijuana Store; and

    f. The Medical Marijuana Center shall post and maintain signage that clearly conveys that persons under the age of 21 years may not enter.

2. Medical Marijuana Center that authorizes patients under the age of 21. A Medical Marijuana Center that authorizes Medical Marijuana patients under the age of 21 years to be on the Licensed Premises may operate in the same location with a Retail Marijuana Store under the following conditions:

    a. The relevant local licensing authority and local jurisdiction permit a dual operation at the same location;

    b. The Medical Marijuana Center and Retail Marijuana Store are commonly owned;

c. The Medical Marijuana Center and Retail Marijuana Store maintain physical separation, including separate entrances and exits, between their respective Restricted Access Areas;

d. No point of sale operations occur at any time outside the physically separated Restricted Access Areas;

e. All Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product in a Restricted Access Area must be physically separated from all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product in a Restricted Access Area, and such physical separation must include separate entrances and exits;

f. Any display areas shall be located in the physically separated Restricted Access Areas;

g. In addition to the physically separated sales and display areas, the Medical Marijuana Center and Retail Marijuana Store shall maintain physical or virtual separation for storage of Medical Marijuana, Medical Marijuana Concentrate, Medical Marijuana-Infused Products, and other Medical Marijuana-related inventory from storage of Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Products, and other Retail Marijuana-related inventory; and

h. Record-keeping, inventory tracking, packaging and labeling for the Medical Marijuana Center and Retail Marijuana Store shall enable the Division and local licensing authority to clearly distinguish the inventories and business transactions of the Medical Marijuana Center from the inventories and business transactions of the Retail Marijuana Store.

B. Co-Located Optional Premises Cultivation Operation and Retail Marijuana Cultivation Facility. An Optional Premises Cultivation Operation and a Retail Marijuana Cultivation Facility may share a single Licensed Premises and operate at the same location under the following circumstances:

1. The relevant local licensing authority and local jurisdiction permit a dual operation at the same location;

2. The Optional Premises Cultivation Operation and the Retail Marijuana Cultivation Facility are commonly owned;

3. The co-located Optional Premises Cultivation Operation and Retail Marijuana Cultivation Facility shall maintain either physical or virtual separation between (i) Medical Marijuana and Medical Marijuana Concentrate and (ii) Retail Marijuana and Retail Marijuana Concentrate; and

4. Record-keeping, inventory tracking, packaging and labeling for the Optional Premises Cultivation Operation and Retail Marijuana Cultivation Facility must enable the Division and relevant local licensing authority to clearly distinguish the inventories and business transactions of the Optional Premises Cultivation Operation from the Retail Marijuana Cultivation Facility.

C. Co-located Medical Marijuana-Infused Products Manufacturer and Retail Marijuana Products Manufacturing Facility. A Medical Marijuana-Infused Products Manufacturer and a Retail Marijuana Products Manufacturing Facility may share a single Licensed Premises and operate at the same location under the following circumstances:

1. The relevant local licensing authority and local jurisdiction permit a dual operation at the same location;

2. The Medical Marijuana-Infused Products Manufacturer and the Retail Marijuana Products Manufacturing Facility are commonly owned;

3. The Medical Marijuana-Infused Products Manufacturer and Retail Marijuana Products Manufacturing Facility shall maintain either physical or virtual separation between (i) Medical Marijuana, Medical Marijuana Concentrate, Medical Marijuana-Infused Products, and other Medical Marijuana-related inventory and (ii) Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Products, and other Retail Marijuana-related inventory. Nothing in this Rule prohibits a co-located Retail Marijuana Products Manufacturing Facility and Medical Marijuana-Infused Products Manufacturer from sharing raw ingredients in bulk, for example flour or sugar, except Retail Marijuana and Medical Marijuana may not be shared under any circumstances; and

4. Record-keeping, inventory tracking, packaging and labeling for the Medical Marijuana-Infused Products Manufacturer and Retail Marijuana Products Manufacturing Facility must enable the Division and local licensing authority to clearly distinguish the inventories and business transactions of the Medical Marijuana-Infused Products Manufacturer from the Retail Marijuana Products Manufacturing Facility.

D. Co-located Medical Marijuana Testing Facility and Retail Marijuana Testing Facility. A Medical Marijuana Testing Facility and a Retail Marijuana Testing Facility may share a single Licensed Premises and operate at the same location under the following circumstances:

1. The relevant local licensing authority and local jurisdiction permit dual operation at the same location;

2. The Medical Marijuana Testing Facility and Retail Marijuana Testing Facility are identically owned;

3. The Medical Marijuana Testing Facility and Retail Marijuana Testing Facility shall maintain either physical or virtual separation between (i) Medical Marijuana, Medical Marijuana Concentrate, Medical Marijuana-Infused Products, and other Medical Marijuana-related inventory and (ii) Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Products, and other Retail Marijuana-related inventory; and

4. Record-keeping, inventory tracking, packaging and labeling for the Medical Marijuana Testing Facility and Retail Marijuana Testing Facility must enable the Division and local licensing authority to clearly distinguish the inventories and business transactions of the Medical Marijuana Testing Facility from the Retail Marijuana Testing Facility.

E. Co-located Medical Marijuana Transporter and Retail Marijuana Transporter. A Medical Marijuana Transporter and a Retail Marijuana Transporter may share a single Licensed Premises and operate dual transporting, logistics, and temporary storage business operation at the same location under the following circumstances:

1. The relevant local licensing authority and local jurisdiction permit dual operation at the same location;

2. The Medical Marijuana Transporter and Retail Marijuana Transporter are identically owned;

3. The Medical Marijuana Transporter and Retail Marijuana Transporter shall maintain either physical or virtual separation between (i) Medical Marijuana, Medical Marijuana Concentrate, Medical Marijuana-Infused Products, and other Medical Marijuana-related inventory and (ii) Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Products, and other Retail Marijuana-related inventory; and

4. Record-keeping, inventory tracking, packaging and labeling for the Medical Marijuana Transporter and Retail Marijuana Transporter must enable the Division and local licensing authority to clearly distinguish the inventories and business transactions of the Medical Marijuana Transporter from the Retail Marijuana Transporter.

F. Violation of this Rule may be considered a license violation affecting public safety.

Basis and Purpose – R 305

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(2)(b) and 12-43.4-202(3)(a)(V), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(IV). The purpose of this rule is to ensure adequate control of the Licensed Premises and Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product contained therein. This rule also establishes the minimum guidelines for security requirements for alarm systems and commercial locking mechanisms for maintaining adequate security.

R 305 – Security Alarm Systems and Lock Standards

A. Security Alarm Systems – Minimum Requirements. The following Security Alarm Systems and lock standards apply to all Retail Marijuana Establishments.

1. Each Licensed Premises shall have a Security Alarm System, installed by an Alarm Installation Company, on all perimeter entry points and perimeter windows.

2. Each Licensee must ensure that all of its Licensed Premises are continuously monitored. Licensees may engage the services of a Monitoring Company to fulfill this requirement.

3. A Licensee shall maintain up-to-date and current records and existing contracts on the Licensed Premises that describe the location and operation of each Security Alarm System, a schematic of security zones, the name of the Alarm Installation Company, and the name of any Monitoring Company. *See* Rule R 901 – Business Records Required.

4. Upon request, Licensees shall make available to agents of the Division or relevant local jurisdiction or state or local law enforcement agency, for a purpose authorized by the Retail Code or for any other state or local law enforcement purpose, all information related to Security Alarm Systems, Monitoring, and alarm activity.

5. Any outdoor or greenhouse Retail Marijuana Cultivation Facility is a Limited Access Area and must meet all of the requirements for Security Alarm Systems described in this rule. An outdoor or greenhouse Retail Marijuana Cultivation Facility must provide sufficient security measures to demonstrate that outdoor areas are not readily accessible by unauthorized individuals. It shall be the responsibility of the Licensee to maintain physical security in a manner similar to a Retail Marijuana Cultivation Facility located in an indoor Licensed Premises so it can be fully secured and alarmed. The fencing requirements shall include, at a minimum, perimeter fencing designed to prevent the general public from entering the Limited Access Areas and shall meet at least the following minimum requirements:

a. The entire Limited Access Area shall be surrounded by a fence that measures at least eight feet from the ground to the top of the fence and is constructed of at least six gauge or higher metal chain link fence or another similarly secure material but may not be wood. All support posts shall be steel and securely anchored.

b. All entry gates shall measure at least eight feet from the ground to the top of the entry gate and shall be constructed of six gauge or higher metal chain link fence or a similarly secure material but may not be wood.

c. The fence shall obscure the Limited Access Area so that it is not easily viewed from outside the fence.

d. The perimeter of the fence shall be surrounded with lights illuminating all sides of the fence for at least 20 feet from the fence. The required lights may be, but are not required to be, motion sensing.

e. A Licensee may, in writing, request that the Division waive one or more of the security requirements described in this subparagraphs (a) through (d) of this Rule, by submitting on a form prescribed by the Division a security waiver request for Division approval. The Division may, in its discretion and on a case by case basis, approve the security waiver if it finds that the alternative safeguard proposed by the Licensee meets the goals of the above security requirements. Approved security waivers expire at the same time as the underlying License. The Licensee's request for a waiver shall include:

   i. The specific rules and subsections of a rule that is requested to be waived;

   ii. The reason for the waiver;

   iii. A description of an alternative safeguard the Licensee will implement in lieu of the requirement that is the subject of the waiver; and

   iv. An explanation of how and why the alternative safeguard accomplishes the goals of the security rules, specifically public safety, prevention of diversion, accountability, and prohibiting access to minors.

f. During the period January 1, 2018, to January 1, 2019, a Licensee that is currently in compliance with the Security Alarm Systems requirements will not be required to comply with this revised Rule R 305. Compliance with this revised Rule R 305 shall be required effective January 1, 2019.

B. Lock Standards – Minimum Requirement

1. At all points of ingress and egress, the Licensee shall ensure the use of a commercial-grade, non-residential door locks.

2. Any outdoor or greenhouse Retail Marijuana Cultivation Facility must meet all of the requirements for the lock standards described in this rule.

Basis and Purpose – R 307

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(X), 12-43.4-202(3)(a)(XI), 12-43.4-202(3)(a)(XII), and 12-43.4-202(3)(b)(IX), 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 waste disposal requirements for Retail Marijuana Establishments. The State Licensing Authority modeled this rule after its Medical Marijuana rules.

R 307 – Waste Disposal

A. All Applicable Laws Apply. Retail Marijuana, Retail Marijuana Concentrate and Retail Marijuana Product waste must be stored, secured, locked, and managed in accordance with all applicable federal, state, and local statutes, regulations, ordinances, or other requirements.

B. Liquid Waste. Liquid waste from Retail Marijuana Establishments shall be disposed of in compliance with all applicable federal, state and local laws, regulations, rules and other requirements.

C. Chemical, Dangerous and Hazardous Waste. Disposal of chemical, dangerous or hazardous waste must be conducted in a manner consistent with federal, state and local laws, regulations, rules and other requirements. This may include, but is not limited to, the disposal of all Pesticide or other agricultural chemicals, certain solvents or other chemicals used in the production of Retail Marijuana Concentrate or any Retail Marijuana soaked in a Flammable Solvent for purposes of producing a Retail Marijuana Concentrate.

D. Waste Must Be Made Unusable and Unrecognizable. Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product waste must be made unusable and Unrecognizable prior to leaving the Licensed Premises.

E. Methods to Make Waste Unusable and Unrecognizable. Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product waste shall be rendered unusable and Unrecognizable through one of the following methods:

1. Grinding or compacting and incorporating the marijuana waste with non-consumable, solid wastes listed below such that the resulting mixture is at least 50 percent non-marijuana waste, and such that the resulting mixture cannot easily be separated and sorted:

    a. Paper waste;

    b. Plastic waste;

    c. Cardboard waste;

    d. Food waste;

    e. Grease or other compostable oil waste;

    f. Bokashi or other compost activators;

    g. Soil;

    h. Sawdust; and

    i. Other wastes approved by the Division that will render the Retail Marijuana, Retail Marijuana Concentrate and Retail Marijuana Product waste unusable and Unrecognizable.

F. After Waste is Made Unusable and Unrecognizable. Licensees shall not dispose of Retail Marijuana, Retail Marijuana Concentrate and Retail Marijuana Product waste in an unsecured waste receptacle not in possession and control of the Licensee. After the Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product waste is made unusable and Unrecognizable, then the rendered waste shall be:

1. Disposed of at a solid waste site and disposal facility that has a Certificate of Designation from the local governing body;

2. Deposited at a compost facility that has a Certificate of Designation from the Colorado Department of Public Health and Environment, if required; or

3. Composted on-site at a facility owned by the generator of the waste and operated in compliance with the Regulations Pertaining to Solid Waste Sites and Facilities (6 CCR 1007-2, Part 1) in the Colorado Department of Public Health and Environment.

G. Proper Disposal of Waste. A Licensee shall not dispose of Retail Marijuana, Retail Marijuana Concentrate and Retail Marijuana Product waste in an unsecured waste receptacle not in possession and control of the Licensee.

H. Inventory Tracking Requirements

1. In addition to all other tracking requirements set forth in these rules, a Licensee shall utilize the Inventory Tracking System to ensure its post-harvest waste materials are identified, weighed and tracked while on the Licensed Premises until disposed of.

2. All Retail Marijuana, Retail Marijuana Concentrate and Retail Marijuana Product waste must be weighed before leaving any Retail Marijuana Establishment. A scale used to weigh Retail Marijuana, Retail Marijuana Concentrate and Retail Marijuana Product waste prior to entry into the Inventory Tracking System shall be tested and approved in accordance with section 35-14-127, C.R.S. *See* Rule R 309 – Retail Marijuana Establishments: Inventory Tracking System.

3. A Licensee is required to maintain accurate and comprehensive records regarding waste material that accounts for, reconciles, and evidences all waste activity related to the disposal of Marijuana. *See* Rule R 901 – Business Records Required.

4. A Licensee is required to maintain accurate and comprehensive records regarding any waste material produced through the trimming or pruning of a Retail Marijuana plant prior to harvest, which must include weighing and documenting all waste. Unless required by an Inventory Tracking System procedure, records of waste produced prior to harvest must be maintained on the Licensed Premises. All waste, whether produced prior or subsequent to harvest, must be disposed of in accordance with this rule and be made unusable and Unrecognizable.

Basis and Purpose – R 309

The statutory authority for this rule includes but is not limited to sections 12-43.4-104(1)(a)(III)12-43.4-201(1), 12-43.4-202(2)(b), 12-43.4-402(1)(e), 12-43.4-402(4), 12-43.4-403(2)(d), and 12-43.4-404(1)(b), C.R.S. The purpose of this rule is to establish a system that will allow the State Licensing Authority and the industry to jointly track Retail Marijuana and Retail Marijuana Product from either seed or immature plant stage until the Retail Marijuana or Retail Marijuana Product is sold to the customer or destroyed.

The Inventory Tracking System is a web-based tool coupled with RFID technology that allows both the Inventory Tracking System user and the State Licensing Authority the ability to identify and account for all

Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product. Through the use of RFID technology, a Retail Marijuana Cultivation Facility will tag either the seed or immature plant with an individualized number, which will follow the Retail Marijuana through all phases of production and final sale to a consumer. This will allow the State Licensing Authority and the Inventory Tracking System user the ability to monitor and track Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product inventory. The Inventory Tracking System will also provide a platform for the State Licensing Authority to exchange information and provide compliance notifications to the industry.

The State Licensing Authority finds it essential to regulate, monitor, and track all Retail Marijuana to eliminate diversion, inside and outside of the state, and to ensure that all marijuana grown, processed, sold and disposed of in the Retail Marijuana market is transparently accounted for.

The State Licensing Authority will engage the industry and provide training opportunities and continue to evaluate the Inventory Tracking System to promote an effective means for this industry to account for and monitor its Retail Marijuana inventory.

R 309 – Retail Marijuana Establishments: Inventory Tracking System

A. Inventory Tracking System Required. A Retail Marijuana Establishment is required to use the Inventory Tracking System as the primary inventory tracking system of record. A Retail Marijuana Establishment must have an Inventory Tracking System account activated and functional prior to operating or exercising any privileges of a license. Medical Marijuana Businesses converting to or adding a Retail Marijuana Establishment must follow the inventory transfer guidelines detailed in Rule R 309(C) below.

B. Inventory Tracking System Access - Inventory Tracking System Administrator

1. Inventory Tracking System Administrator Required. A Retail Marijuana Establishment must have at least one individual Owner who is an Inventory Tracking System Administrator. A Retail Marijuana Establishment may also designate additional Owners and occupationally licensed employees to obtain Inventory Tracking System Administrator accounts.

2. Training for Inventory Tracking System Administrator Account. In order to obtain a Inventory Tracking System Administrator account, a Person must attend and successfully complete all required Inventory Tracking System training. The Division may also require additional ongoing, continuing education for an individual to retain his or her Inventory Tracking System Administrator account.

3. Inventory Tracking System Access - Inventory Tracking System User Accounts. A Retail Marijuana Establishment may designate licensed Owners and employees who hold valid Occupational Licenses as Inventory Tracking System Users. A Retail Marijuana Establishment shall ensure that all Owners and Occupational License Licensees who are granted Inventory Tracking System User account access for the purposes of conducting inventory tracking functions in the system are trained by Inventory Tracking System Administrators in the proper and lawful use of Inventory Tracking System.

C. Medical Marijuana Business License Conversions - Declaring Inventory Prior to Exercising Licensed Privileges as a Retail Marijuana Establishment

1. Medical Marijuana Inventory Transfer to Retail Marijuana Establishments.

a. Repealed.

b. Beginning July 1, 2016:

i. The only allowed Transfer of marijuana between a Medical Marijuana Business and Retail Marijuana Establishment is Medical Marijuana and Medical Marijuana Concentrate that was produced at the Optional Premises Cultivation Operation, from the Optional Premises Cultivation Operation to a Retail Marijuana Cultivation Facility.

ii. Each Optional Premises Cultivation Operation that is either converting to or adding a Retail Marijuana Cultivation Facility license must create a Retail Marijuana Inventory Tracking System account for each license it is converting or adding.

iii. An Optional Premises Cultivation Operation must Transfer all relevant Medical Marijuana and Medical Marijuana Concentrate into the Retail Marijuana Cultivation Facility's Inventory Tracking System account and affirmatively declare those items as Retail Marijuana or Retail Marijuana Concentrate as appropriate.

iv. The marijuana subject to the one-time Transfer is subject to the excise tax upon the first Transfer from the Retail Marijuana Cultivation Facility to another Retail Marijuana Establishment.

v. All other Transfers are prohibited, including but not limited to Transfers from a Medical Marijuana Center or Medical Marijuana-Infused Products Manufacturer to any Retail Marijuana Establishment.

2. No Further Transfer Allowed. Once a Licensee has declared any portion of its Medical Marijuana inventory as Retail Marijuana, no further Transfers of inventory from Medical Marijuana to Retail Marijuana shall be allowed.

D. RFID Tags Required

1. Authorized Tags Required and Costs. Licensees are required to use RFID tags issued by a Division-approved vendor that is authorized to provision RFID tags for the Inventory Tracking System. Each licensee is responsible for the cost of all RFID tags and any associated vendor fees.

2. Use of RFID Tags Required. A Licensee is responsible to ensure its inventories are properly tagged where the Inventory Tracking System requires RFID tag use. A Retail Marijuana Establishment must ensure it has an adequate supply of RFID tags to properly tag Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product as required by the Inventory Tracking System. An RFID tag must be physically attached to every Retail Marijuana plant being cultivated that is greater than eight inches tall or eight inches wide. An RFID tag must be assigned to all Harvested Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product. See Rule R 801(G.5) – Required RFID Tags; Rule R 1001-1(F) – Shipping Containers.

3. Reuse of RFID Tags Prohibited. A Licensee shall not reuse any RFID tag that has already been affixed or assigned to any Harvested Marijuana, Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product.

E. General Inventory Tracking System Use

1. Reconciliation with Inventory. All inventory tracking activities at a Retail Marijuana Establishment must be tracked through use of the Inventory Tracking System. A Licensee must reconcile all on-premises and in-transit Retail Marijuana, Retail Marijuana

Concentrate, and Retail Marijuana Product inventories each day in the Inventory Tracking System at the close of business.

2. Common Weights and Measures.

   a. A Retail Marijuana Establishment must utilize a standard of measurement that is supported by the Inventory Tracking System to track all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product.

   b. A scale used to weigh product prior to entry into the Inventory Tracking System system shall be tested and approved in accordance with section 35-14-127, C.R.S.

3. Inventory Tracking System Administrator and User Accounts – Security and Record

   a. A Retail Marijuana Establishment shall maintain an accurate and complete list of all Inventory Tracking System Administrators and Inventory Tracking System Users for each Licensed Premises. A Retail Marijuana Establishment shall update this list when a new Inventory Tracking System User is trained. A Retail Marijuana Establishment must train and authorize any new Inventory Tracking System Users before those Owners or employees may access Inventory Tracking System or input, modify, or delete any information in the Inventory Tracking System.

   b. A Retail Marijuana Establishment must cancel any Inventory Tracking System Administrators and Inventory Tracking System Users from their associated Inventory Tracking System accounts once any such individuals are no longer employed by the Licensee or at the Licensed Premises.

   c. A Retail Marijuana Establishment is accountable for all actions employees take while logged into the Inventory Tracking System or otherwise conducting Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product inventory tracking activities.

   d. Each individual user is also accountable for all of his or her actions while logged into the Inventory Tracking System or otherwise conducting Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product inventory tracking activities, and shall maintain compliance with all relevant laws.

4. Secondary Software Systems Allowed

   a. Nothing in this Rule prohibits a Retail Marijuana Establishment from using separate software applications to collect information to be used by the business including secondary inventory tracking or point of sale systems.

   b. A Licensee must ensure that all relevant Inventory Tracking System data is accurately transferred to and from the Inventory Tracking System for the purposes of reconciliations with any secondary systems.

   c. A Retail Marijuana establishment must preserve original Inventory Tracking System data when transferred to and from a secondary application(s). Secondary software applications must use the Inventory Tracking System data as the primary source of data and must be compatible with updating to the Inventory Tracking System.

F. Conduct While Using Inventory Tracking System

1. Misstatements or Omissions Prohibited. A Retail Marijuana Establishment and its designated Inventory Tracking System Administrator(s) and Inventory Tracking System User(s) shall enter data into the Inventory Tracking System that fully and transparently accounts for all inventory tracking activities. Both the Retail Marijuana Establishment and the individuals using the Inventory Tracking system are responsible for the accuracy of all information entered into the Inventory Tracking System. Any misstatements or omissions may be considered a license violation affecting public safety.

2. Use of Another User's Login Prohibited. Individuals entering data into the Inventory Tracking System shall only use that individual's Inventory Tracking System account.

3. Loss of System Access. If at any point a Retail Marijuana Establishment loses access to the Inventory Tracking System for any reason, the Retail Marijuana Establishment must keep and maintain comprehensive records detailing all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product tracking inventory activities that were conducted during the loss of access. *See* Rule R 901 – Business Records Required. Once access is restored, all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product inventory tracking activities that occurred during the loss of access must be entered into the Inventory Tracking System. A Retail Marijuana Establishment must document when access to the system was lost and when it was restored. A Retail Marijuana Establishment shall not transport any Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to another Retail Marijuana Establishment until such time as access is restored and all information is recorded into the Inventory Tracking System.

G. System Notifications

1. Compliance Notifications. A Retail Marijuana Establishment must monitor all compliance notifications from the Inventory Tracking System. The Licensee must resolve the issues detailed in the compliance notification in a timely fashion. Compliance notifications shall not be dismissed in the Inventory Tracking System until the Retail Marijuana Establishment resolves the compliance issues detailed in the notification.

2. Informational Notifications. A Retail Marijuana Establishment must take appropriate action in response to informational notifications received through the Inventory Tracking System, including but not limited to notifications related to RFID billing, enforcement alerts, and other pertinent information.

H. Lawful Activity Required. Proper use of the Inventory Tracking System does not relieve a Licensee of its responsibility to maintain compliance with all laws, rules, and other requirements at all times.

I. Inventory Tracking System Procedures Must Be Followed. A Retail Marijuana Establishment must utilize Inventory Tracking System in conformance with these rules and Inventory Tracking System procedures, including but not limited to:

1. Properly indicating the creation of a Harvest Batch and/or Production Batch including the assigned Harvest Batch and/or Production Batch Number;

2. Accurately identifying the cultivation rooms and location of each plant within those rooms on the Licensed Premises;

3. Accurately identifying when inventory is no longer on the Licensed Premises;

4. Properly indicating that a Test Batch is being used as part of achieving process validation;

5. Accurately indicating the Inventory Tracking System category for all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Products; and

6. Accurately including a note explaining the reason for any destruction of Retail Marijuana, Retail Marijuana Concentrate and/or Retail Marijuana Products, and reason for any adjustment of weights to Inventory Tracking System packages.

R 400 Series – Retail Marijuana Stores

Basis and Purpose – R 401

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(2)(b),, 12-43.4-202(3)(b)(IX), 12-43.4-309(7)(a), 12-43.4-901(4)(f), 12-43.4-402 and 12-43.4-406, C.R.S. The purpose of this rule is to establish that it is unlawful for a Retail Marijuana Store to exercise any privileges other than those granted by the State Licensing Authority, and to clarify the license privileges.

R 401 – Retail Marijuana Store: License Privileges

A. Privileges Granted. A Retail Marijuana Store shall only exercise those privileges granted to it by the State Licensing Authority.

B. Licensed Premises. To the extent authorized by Rule R 304 – Medical Marijuana Business and Retail Marijuana Establishment – Shared Licensed Premises and Operational Separation, a Retail Marijuana Store may share a location with a commonly-owned Medical Marijuana Center. However, a separate license is required for each specific business or business entity, regardless of geographical location.

C. Authorized Sources of Retail Marijuana. A Retail Marijuana Store may only Transfer Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product that was obtained from another Retail Marijuana Establishment.

D. Repealed.

E. Samples Provided for Testing. A Retail Marijuana Store may provide samples of its products for testing and research purposes to a Retail Marijuana Testing Facility. The Retail Marijuana Store shall maintain the testing results as part of its business books and records. See Rule R 901 – Business Records Required.

F. Authorized On-Premises Storage. A Retail Marijuana Store is authorized to store inventory on the Licensed Premises. All inventory stored on the Licensed Premises must be secured in a Limited Access Area or Restricted Access Area, and tracked consistently with the inventory tracking rules.

G. Authorized Marijuana Transport. A Retail Marijuana Store is authorized to utilize a licensed Retail Marijuana Transporter for transportation of its Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product so long as the place where transportation orders are taken and delivered is a licensed Retail Marijuana Establishment. Nothing in this Rule prevents a Retail Marijuana Store from transporting its own Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product.

Basis and Purpose – R 402

The statutory authority for this rule includes but is no limited to sections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(VIII), 12-43.4-202(3)(a)(IX), 12-43.4-202(3)(a)(X), 12-43.4-202(3)(a.5)(I), 12-43.4-202(3)(b)(IX), 12-43.4-401(4), 12-43.4-901(1), 12-43.4-901(4)(c) and (g), 12-43.4-105 and 12-43.4-402, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(3)(a), 16(5)(a)(V) and 16(5)(a)(VIII). The purpose of this rule is to clarify those acts that are limited in some fashion, or prohibited, by a licensed Retail Marijuana Store.

Regarding quantity limitations on sales, equivalencies for Retail Marijuana Concentrate and Retail Marijuana Product to Retail Marijuana flower have been included in this rule pursuant to the mandate of House Bill 14-1361. The equivalencies have been determined through utilizing findings of a study that the House Bill authorized. The study, "Marijuana Equivalency in Portion and Dosage," was authored by the Marijuana Policy Group and is available on the Division's website. The study was presented to a group of stakeholders during a public meeting as part of the rulemaking process. Although there was disagreement among stakeholders regarding what the equivalencies should be, the general consensus was that the equivalencies must be simple and straightforward, which would facilitate regulatory compliance and serve public safety.

The establishment of equivalencies also provides information to stakeholders including Licensees, the general public, and law enforcement to aid in the enforcement of and compliance with the lawful personal possession limit of one ounce or less of marijuana. Setting these equivalencies provides Retail Marijuana Stores and their employees with necessary information to avoid being complicit in a patron acquiring more marijuana than is lawful to possess under the Colorado Constitution pursuant to Article XVIII, Subsection 16(3)(a).

R 402 – Retail Marijuana Sales: General Limitations or Prohibited Acts

A. Sales to Persons Under 21 Years. Licensees are prohibited from Transferring, giving, or distributing Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to persons under 21 years of age.

B. Age Verification. Prior to initiating the Transfer of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product, a Licensee must verify that the purchaser has a valid government-issued photo identification showing that the purchaser is 21 years of age or older.

C. Quantity Limitations On Sales.

1. Repealed.

1.5. Repealed.

2. Repealed.

3. A Retail Marijuana Store and its employees are prohibited from Transferring more than one ounce of Retail Marijuana flower or its equivalent in Retail Marijuana Concentrate or Retail Marijuana Product in a single transaction to a consumer. A single transaction includes multiple Transfers to the same consumer during the same business day where the Retail Marijuana Store employee knows or reasonably should know that such Transfer would result in that consumer possessing more than one ounce of marijuana. In determining the imposition of any penalty for violation of this Rule 402(C), the State Licensing Authority will consider any mitigating and aggravating factors set forth in Rule R 1307(C).

4. Equivalency. Non-edible, non-psychoactive Retail Marijuana Products including ointments, lotions, balms, and other non-transdermal topical products are exempt from the one-ounce quantity limit on Transfers. For all other Retail Marijuana Products or

Retail Marijuana Concentrate, the following equivalency applies for the one ounce quantity Transfer limit:

a. One ounce of Retail Marijuana flower shall be equivalent to eight grams of Retail Marijuana Concentrate.

b. One ounce of Retail Marijuana flower shall be equivalent to 80 ten-milligram servings of THC in Retail Marijuana Product.

D. Licensees May Refuse Sales. Nothing in these rules prohibits a Licensee from refusing to Transfer Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a customer.

E. Sales over the Internet. A Licensee is prohibited from selling Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product over the internet. Any Transfer of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product must occur within the Retail Marijuana Store's Licensed Premises.

F. Purchases Only Within Restricted Access Area. A customer must be physically present within the Restricted Access Area of the Retail Marijuana Store's Licensed Premises to purchase Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product.

G. Evidence of Excise Tax Paid. A Retail Marijuana Store is prohibited from accepting Retail Marijuana from a Retail Marijuana Cultivation Facility or Retail Marijuana Manufacturing Facility unless the Retail Marijuana Store Licensee has received evidence that any applicable excise tax due pursuant to Article 28.8 of Title 39, C.R.S., was paid.

H. Prohibited Items. A Retail Marijuana Store is prohibited from selling or giving away any consumable product that is not a Retail Marijuana Product including, but not limited to, cigarettes or tobacco products, alcohol beverages, and food products or non-alcohol beverages that are not Retail Marijuana Product.

I. Free Product Prohibited. A Retail Marijuana Store may not give away Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a consumer for any reason.

J. Nicotine or Alcohol Prohibited. A Retail Marijuana Store is prohibited from Transferring Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product that contain nicotine or alcohol, if the sale of the alcohol would require a license pursuant to Articles 46 or 47 of Title 12, C.R.S.

K. Consumption Prohibited. A Licensee shall not permit the consumption of marijuana or marijuana product on the Licensed Premises.

L. Storage and Display Limitations.

1. A Retail Marijuana Store shall not display Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product outside of a designated Restricted Access Area or in a manner in which Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product can be seen from outside the Licensed Premises. Storage of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product shall otherwise be maintained in Limited Access Areas or Restricted Access Area.

2. Any Retail Marijuana Concentrate displayed in a Retail Marijuana Store must include the potency of the concentrate on a sign next to the name of the product.

a. The font on the sign must be large enough for a consumer to reasonably see from the location where a consumer would usually view the concentrate.

b. The potency displayed on the sign must be within plus or minus fifteen percent of the concentrate's actual potency.

M. Transfer of Expired Product Prohibited. A Retail Marijuana Store shall not Transfer any expired Retail Marijuana Product.

N. A Retail Marijuana Store shall not Transfer Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a Retail Marijuana Transporter, and shall not buy or receive complimentary Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product from a Retail Marijuana Transporter.

O. A Retail Marijuana Store shall not compensate its employees using performance-based sales incentives. Performance-based incentives that are not sales-based are acceptable. Examples of performance-based incentives that are not sales-based include recognition for providing quality information to consumers, or the duration of the employee's employment with the Retail Marijuana Store.

P. Edibles Prohibited that are Shaped like a Human, Animal, or Fruit. This paragraph (P) is effective beginning October 1, 2017.

1. The sale of Edible Retail Marijuana Products in the following shapes is prohibited:

a. The distinct shape of a human, animal, or fruit; or

b. A shape that bears the likeness or contains characteristics of a realistic or fictional human, animal, or fruit, including artistic, caricature, or cartoon renderings.

2. The prohibition on human, animal, and fruit shapes does not apply to the logo of a licensed Retail Marijuana Establishment. Nothing in this subparagraph (P)(2) alters or eliminates a Licensee's obligation to comply with the requirements of Rule R 1001 – Labeling and Packaging Requirements: General Applicability or Rule R 1000-1 Series – Labeling, Packaging, and Product Safety.

3. Edible Retail Marijuana Products that are geometric shapes and simply fruit flavored are not considered fruit and are permissible; and

4. Edible Retail Marijuana Products that are manufactured in the shape of a marijuana leaf are permissible.

Q. Research Transfers Prohibited. A Retail Marijuana Store shall not Transfer any Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product to a Medical Research Facility, a Pesticide Manufacturer or a Licensed Research Business.

Basis and Purpose – R 404

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(2)(b), 12-43.4-202(2)(e), 12-43.4-202(3)(b)(VII), 12-43.4-202(3)(b)(IX), and 12-43.4-402(3)(a), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(5)(a)(V). The purpose of this rule is to establish guidelines for the acceptable forms of identification for verifying the lawful sale of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product.

R 404 – Acceptable Forms of Identification for Retail Sales

A. Valid Identification to Verify Age Only. A Licensee shall refuse the Transfer of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to anyone, unless such person can produce a form of valid identification showing that the purchaser is 21 years of age or older. If the identification contains a picture and date of birth, the kind and type of identification deemed adequate shall be limited to the following, so long as such identification is valid and not expired:

1. An operator's, chauffeur's or similar type driver's license, issued by any state within the United States, any U.S. Territory;

2. An identification card, issued by any state for the purpose of proof of age using requirements similar to those in sections 42-2-302 and 42-2- 303, C.R.S.;

3. A United States military identification card;

4. A passport; or

5. Enrollment card issued by the governing authority of a federally recognized Indian tribe, if the enrollment card incorporates proof of age requirements similar to sections 42-2-302 and 42-2- 303, C.R.S.

6. Repealed.

B. Affirmative Defense and Licensee's Burden. It shall be an affirmative defense to any administrative action brought against a Licensee for alleged Transfer to a minor if the minor presented fraudulent identification of the type established in paragraph A above and the Licensee possessed an identification book issued within the past three years, which contained a sample of the specific kind of identification presented for compliance purposes. As an affirmative defense, the burden of proof is on the Licensee to establish by a preponderance of the evidence that the minor presented fraudulent identification.

C. Repealed.

Basis and Purpose – R 405

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(1), 12-43.4-202(2)(b), and 12-43.4-402(1)(e), C.R.S. The purpose of this rule is to establish a Retail Marijuana Store's obligation to account for and track all inventories on the Licensed Premises from the point of Transfer from a Retail Marijuana Cultivation Facility, Retail Marijuana Products Manufacturing Facility, or Retail Marijuana Transporter to the point of sale.

R 405 – Retail Marijuana Store: Inventory Tracking System

A. Minimum Tracking Requirement. A Retail Marijuana Store must use Inventory Tracking System to ensure its inventories are identified and tracked from the point of Transfer to or from another Retail Marijuana Establishment through the point-of-sale , or otherwise disposed of. *See* Rule R 309 – Retail Marijuana Establishment: Inventory Tracking System. The Retail Marijuana Store must have the ability to reconcile its inventory records with the Inventory Tracking System and the associated transaction history and sale receipts. *See* Rule R 901 – Business Records Required.

1. A Retail Marijuana Store is prohibited from accepting any Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product without receiving a valid transport manifest generated from the Inventory Tracking System.

2. A Retail Marijuana Store must immediately input all Retail Marijuana, Retail Marijuana Concentrate and Retail Marijuana Product delivered to its Licensed Premises, accounting for all RFID tags, into the Inventory Tracking System at the time of delivery to the Retail Store. All delivered Retail Marijuana must be weighed and the scale used shall be tested and approved in accordance with measurement standards established in 35-14-127, C.R.S. A Retail Marijuana Store must account for all variances.

3. A Retail Marijuana Store must reconcile transactions from their point of sale processes and on-hand inventory to the Inventory Tracking System at the close of business each day.

Basis and Purpose – R 406

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(X), 12-43.4-202(3)(a)(XI), 12-43.4-202(3)(a)(XII), and 12-43.4-202(3)(b)(IX), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). It sets forth general standards and basic sanitary requirements for Retail Marijuana Stores. It covers the physical premises where the products are made as well as the individuals handling the products. This rule also authorizes the State Licensing Authority to require an independent consultant to conduct a health and sanitary audit of a Retail Marijuana Store. This rule explains when an independent 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. 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 Revenue for Medical Marijuana and those adopted by the Colorado Department of Public Health and Environment. 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 406 – Retail Marijuana Store: Health and Safety Regulations

A. Local Safety Inspections. A Retail Marijuana Store 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.

B. Sanitary Conditions. A Retail Marijuana Store 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 Retail Marijuana, Retail Marijuana Concentrate, and 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 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 Retail Marijuana, Retail Marijuana Concentrate, 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 and at any other time when the hands may have become soiled or contaminated; and

   c. Refraining from having direct contact with Retail Marijuana, Retail Marijuana Concentrate, 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 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, Retail Marijuana Concentrate, or Retail Marijuana Product are exposed;

5. 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;

6. That there is adequate lighting in all areas where Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product are stored or sold, and where equipment or utensils are cleaned;

7. That the Licensee 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;

8. That any buildings, fixtures, and other facilities are maintained in a sanitary condition;

9. That toxic cleaning compounds, sanitizing agents, 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;

10. That all operations in the receiving, inspecting, transporting, segregating, preparing, manufacturing, packaging, and storing of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product shall be conducted in accordance with adequate sanitation principles;

11. That each employee is provided with adequate and readily accessible toilet facilities that are maintained in a sanitary condition and good repair; and

12. That Retail Marijuana, Retail Marijuana Concentrate, 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.

C. Independent Health and Sanitary Audit

   1. State Licensing Authority May Require a 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 Store to undergo such an audit. The scope of the audit may include, but need not be limited to, whether the Retail Marijuana Store is in compliance with the requirements set forth in this Rule and other applicable health, sanitary or food handling 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 Store. However, the Division always retains the authority to select the independent consultant regardless of whether mutual agreement can be reached.

c. The Retail Marijuana Store 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. The Division has reasonable grounds to believe that the Retail Marijuana Store is in violation of one or more of the requirements set forth in this Rule or other applicable public health or sanitary laws, rules or regulations; or

b. The Division has reasonable grounds to believe that the Retail Marijuana Store was the cause or source of contamination of Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product.

3. Compliance Required. A Retail Marijuana Store 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 Store's license. See Rule R 1302 – Disciplinary Process: Summary Suspensions.

b. Prior to or following the issuance of such an order, the Retail Marijuana Store 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 Store may continue to care for its inventory and conduct any

necessary internal business operations but it may not Transfer any Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product to a consumer or to any other Retail Marijuana Establishment during the period of time specified in the agreement.

D. Contaminated Product. A Retail Marijuana Store shall not accept or Transfer to any Person any Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product that has failed required testing pursuant to Rule R 1501 or Rule R 1503, unless otherwise permitted in these rules. If, despite the prohibitions in these rules, another Retail Marijuana Establishment Transfers to the Retail Marijuana Store any Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product that has failed or subsequently fails required testing pursuant to Rule R 1501 or Rule R 1503, the Retail Marijuana Store shall assure that all Retail Marijuana, Retail Marijuana Concentrate and Retail Marijuana Products that failed required testing are safely disposed of in accordance with Rule R 307.

E. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose - R 407

The statutory authority for this rule includes but is not limited to sections 12-43.3-1101, 12-43.3-1102, 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 Transfer 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 Transfer 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. Transfers to minors. Training shall cover all pertinent Colorado statutes, rules and regulations.

3. Quantity limitations on Transfers to consumers. Training shall cover all pertinent Colorado statutes, rules and regulations.

4. Acceptable forms of Identification. Training shall include:

    a. How to check identification;

b. Spotting false identification;

c. Patient Registry Cards issued by the Colorado Department of Public Health and Environment and equivalent patient verification documents;

d. Provisions for confiscating fraudulent identifications; and

e. Common mistakes made in verification.

5. 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 500 Series – Retail Marijuana Cultivation Facilities

Basis and Purpose – R 501

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(2)(b), 12-43.4-202(3)(b)(IX), 12-43.4-401(4) , 12-43.4-403 and 12-43.4-406, C.R.S. The purpose of this rule is to establish that it is unlawful for a Retail Marijuana Cultivation Facility to exercise any privileges other than those granted by the State Licensing Authority and to clarify the license privileges.

R 501 – Retail Marijuana Cultivation Facility: License Privileges

A. Privileges Granted. A Retail Marijuana Cultivation Facility shall only exercise those privileges granted to it by the State Licensing Authority.

B. Licensed Premises. To the extent authorized by Rule R 304 – Medical Marijuana Business and Retail Marijuana Establishment – Shared Licensed Premises and Operational Separation, a Retail Marijuana Cultivation Facility may share a location with a commonly-owned Optional Premises Cultivation Operation. However, a separate license is required for each specific business or business entity, regardless of geographical location.

C. Cultivation of Retail Marijuana Authorized. A Retail Marijuana Cultivation Facility may Propagate, cultivate, harvest, prepare, cure, package, store, and label Retail Marijuana, whether in concentrated form or otherwise.

D. Authorized Transfers. A Retail Marijuana Cultivation Facility may only Transfer Retail Marijuana and Water-Based Retail Marijuana Concentrate to another Retail Marijuana Establishment.

1. A Retail Marijuana Cultivation Facility is also authorized to Transfer Retail Marijuana and Water-Based Retail Marijuana Concentrate to a Medical Research Facility pursuant to section 25-1.5-106.5, C.R.S., or Pesticide Manufacturer pursuant to section 12-43.3-202(1)(h)(II), C.R.S. and these Rules.

2. A Retail Marijuana Cultivation Facility shall not Transfer Flowering plants or Vegetative plants to any Person except as authorized pursuant to Rule R 801.

E. Authorized On-Premises Storage. A Retail Marijuana Cultivation Facility is authorized to store inventory on the Licensed Premises. All inventory stored on the Licensed Premise must be secured in a Limited Access Area and tracked consistently with the inventory tracking rules.

F. Samples Provided for Testing. A Retail Marijuana Cultivation Facility may provide Samples of its Retail Marijuana to a Retail Marijuana Testing Facility for testing and research purposes. The Retail Marijuana Cultivation Facility shall maintain the testing results as part of its business books and records. See Rule R 901 – Business Records Required.

G. Authorized Marijuana Transport. A Retail Marijuana Cultivation Facility is authorized to utilize a licensed Retail Marijuana Transporter for transportation of its Retail Marijuana so long as the place where transportation orders are taken and delivered is a licensed Retail Marijuana Establishment. Nothing in this Rule prevents a Retail Marijuana Cultivation Facility from transporting its own Retail Marijuana.

H. Performance Based Incentives. A Retail Marijuana Cultivation Facility may compensate its employees using performance-based incentives.

I. Authorized Sources of Retail Marijuana Seeds and Immature Plants. A Retail Marijuana Cultivation Facility shall only obtain Retail Marijuana seeds or Immature Plants from its own Retail Marijuana or properly transferred from another Retail Marijuana Establishment pursuant to the inventory tracking requirements in this Rule.

Basis and Purpose – R 502

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(2)(b), 12-43.4-202(2)(e), 12-43.4-202(3)(a)(VI), 12-43.4-202(3)(a)(VIII), 12-43.4-202(3)(a)(X), 12-43.4-202(3)(b)(IX), 12-43.4-901(2)(a), 12-43.4-901(4)(c), 12-43.4-901(4)(g), 12-43.4-403 and 12-43.4-406, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(V). The purpose of this rule is to clarify those acts that are limited in some fashion, or prohibited, by a Retail Marijuana Cultivation Facility.

R 502 – Retail Marijuana Cultivation Facility: General Limitations or Prohibited Acts

A. Temporary Limitations

1. Repealed.

2. Repealed

B. Packaging and Labeling Standards Required. A Retail Marijuana Cultivation Facility is prohibited from Transferring Retail Marijuana and Retail Marijuana Concentrate that is not packaged and labeled in accordance with these rules. *See* Rules R 1001 – Packaging Requirements: General Requirements and Rule R 1002 – Labeling Requirements: General Requirements or Rule R 1000-1 Series – Labeling, Packaging, and Product Safety.

C. Transfer to Consumer Prohibited. A Retail Marijuana Cultivation Facility is prohibited from Transferring Retail Marijuana to a consumer.

D. Consumption Prohibited. A Retail Marijuana Cultivation Facility shall not permit the consumption of marijuana or marijuana products on its Licensed Premises.

E. Excise Tax Paid. A Retail Marijuana Cultivation Facility shall remit any applicable excise tax due pursuant to Article 28.8 of Title 39, C.R.S., and shall provide verification to purchasers of the Retail Marijuana that any required excise tax was, or will be, paid.

F. Sales and Gifts to Transporters Prohibited. A Retail Marijuana Cultivation Facility shall not sell or give away Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a Retail Marijuana Transporter, and shall not buy or receive complimentary Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product from a Retail Marijuana Transporter.

Basis and Purpose – R 503

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(1), 12-43.4-202(2)(b), 12-43.4-202(3)(b)(IX) and 12-43.4-403(4), C.R.S. The purpose of this rule is to establish a Retail Marijuana Cultivation Facility's obligation to account for and track all inventories on the Licensed Premises from seed or cutting to Transfer to other Retail Marijuana Establishments.

R 503 – Retail Marijuana Cultivation Facility: Inventory Tracking System

A. Minimum Tracking Requirement. A Retail Marijuana Cultivation Facility must use the Inventory Tracking System to ensure its inventories are identified and tracked from the point Retail Marijuana is Propagated from seed or cutting to the point when it is delivered to a Retail Marijuana Establishment. *See* Rule R 309 –Inventory Tracking System. A Retail Marijuana Cultivation Facility must have the ability to reconcile its Retail Marijuana inventory with the Inventory Tracking System and the associated transaction history and sale receipts. *See* Rule R 901 – Business Records Required.

B. Transport of Retail Marijuana Without Transport Manifest Prohibited. A Retail Marijuana Cultivation Facility is prohibited from transporting any Retail Marijuana without a valid transport manifest generated by the Inventory Tracking System.

C. Accepting Retail Marijuana Without Transport Manifest Prohibited. A Retail Marijuana Cultivation Facility is prohibited from accepting any Retail Marijuana from another Retail Marijuana Establishment without receiving a valid transport manifest generated from the Inventory Tracking System.

D. Input Into Inventory Tracking System Required. A Retail Marijuana Cultivation Facility must immediately input all Retail Marijuana delivered to its Licensed Premises, accounting for all RFID tags, into the Inventory Tracking System at the time of delivery to the Retail Marijuana Cultivation Facility.

E. Inventory Must Be Reconciled Daily. A Retail Marijuana Cultivation Facility must reconcile its transaction history and on-hand inventory to the Inventory Tracking System at the close of business each day.

Basis and Purpose – R 504

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(X), 12-43.4-202(3)(a)(XI), 12-43.4-202(3)(a)(XII), and 12-43.4-202(3)(b)(IX), C.R.S. The purpose of this rule is to establish minimum health and safety regulation for Retail Marijuana Cultivation Facilities. The rule prohibits a Retail Marijuana Cultivation Facility from treating or otherwise adulterating Retail Marijuana with any chemical or other compound whatsoever to alter its color, appearance, weight or smell. This rule also authorizes the State Licensing Authority to require an independent consultant to conduct a health and sanitary audit of a Retail Marijuana Cultivation Facility. This rule explains when an independent 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.

R 504 – Retail Marijuana Cultivation Facility: Health and Safety Regulations

A. Local Safety Inspections. A Retail Marijuana Cultivation Facility may be subject to inspection of its Licensed Premises 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.

B. General Sanitary Requirements. A Retail Marijuana Cultivation Facility 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 Retail Marijuana shall be excluded from any operations which may be expected to result in such contamination until the condition is corrected;

2. That all persons working in direct contact with Retail Marijuana 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, and at any other time when the hands may have become soiled or contaminated;

    c. 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 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; and

    d. Refraining from having direct contact with Retail Marijuana 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.

3. 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 is exposed;

4. 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;

5. That there is adequate lighting in all areas where Retail Marijuana are stored or sold, and where equipment or utensils are cleaned;

6. That the Licensee 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;

7. That any buildings, fixtures, and other facilities are maintained in a sanitary condition;

8. That toxic cleaning compounds, sanitizing agents, solvents and other chemicals shall be identified, held, stored and disposed of in a manner that protects against contamination of Retail Marijuana or Retail Marijuana Concentrate, and in a manner that is in accordance with any applicable local, state, or federal law, rule, regulation or ordinance. All Pesticide must be stored and disposed of in accordance with the information provided on the product's label;

9. That all contact surfaces, including utensils and equipment used for the preparation of Retail Marijuana or Retail Marijuana Concentrate 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 Cultivation Facility and used in accordance with labeled instructions;

10. 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. Reclaimed water may also be used only for the cultivation of Retail Marijuana to the extent authorized under the Reclaimed Water Control Regulations (5 CCR 1002-84), and subject to approval of the Water Quality Control Division of the Colorado Department of Public Health and Environment and the local water provider;

11. 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 water, reclaimed water and waste water lines;

12. That all operations in the receiving, inspecting, transporting, segregating, preparing, manufacturing, packaging, and storing of Retail Marijuana or Retail Marijuana Concentrate shall be conducted in accordance with adequate sanitation principles;

13. That each Retail Marijuana Cultivation Facility shall provide its employees with adequate and readily accessible toilet facilities that are maintained in a sanitary condition and good repair; and

14. That Retail Marijuana that can support the rapid growth of undesirable microorganisms shall be held in a manner that prevents the growth of these microorganisms.

C. Pesticide Application. A Retail Marijuana Cultivation Facility may only use Pesticide in accordance with the "Pesticide Act," section 35-9-101 et seq., C.R.S., Pesticides Applicators' Act, section 35-10-101 et seq., C.R.S., and all other applicable federal, state, and local laws, statutes, rules and regulations. This includes, but shall not be limited to, the prohibition on detaching, altering, defacing or destroying, in whole or in part, any label on any Pesticide. The Colorado Department of Agriculture's determination that the Licensee used any quantity of a Pesticide that would constitute a violation of the Pesticide Act or the Pesticide Applicators' Act shall constitute *prima facie* evidence of a violation of this Rule.

D. Application of Other Agricultural Chemicals. A Retail Marijuana Cultivation Facility may only use agricultural chemicals, other than Pesticide, in accordance with all applicable federal, state, and local laws, statutes, rules and regulations.

E. Required Documentation

1. Standard Operating Procedures. A Retail Marijuana Cultivation Facility must establish written standard operating procedures for the cultivation, harvest, drying, curing, packaging, storing, and sampling of Retail Marijuana, and the processing, packaging, storing, and sampling of Retail Marijuana Concentrate. The standard operating procedures must also include when, and the manner in which, all Pesticide and other agricultural chemicals are to be applied during its cultivation process. A copy of all standard operating procedures must be maintained on the Licensed Premises of the Retail Marijuana Cultivation Facility.

2. Material Change. If a Retail Marijuana Cultivation Facility makes a Material Change to its standard operating procedures, it must document the change and revise its standard operating procedures accordingly. Records detailing the Material Change must be maintained on the Licensed Premises of the Retail Marijuana Cultivation Facility.

3. Safety Data Sheet. A Retail Marijuana Cultivation Facility must obtain a safety data sheet for any Pesticide or other agricultural chemical used or stored on its Licensed Premises. A Retail Marijuana Cultivation Facility must maintain a current copy of the safety data sheet for any Pesticide or other agricultural chemical on the Licensed Premises where the product is used or stored.

4. Labels of Pesticide and Other Agricultural Chemicals. A Retail Marijuana Cultivation Facility must have the original label or a copy thereof at its Licensed Premises for all Pesticide and other agricultural chemicals used during its cultivation process.

5. Pesticide Application Documentation. A Retail Marijuana Cultivation Facility that applies any Pesticide or other agricultural chemical to any portion of a Retail Marijuana plant, water or feed used during cultivation or generally within the Licensed Premises must document, and maintain a record on its Licensed Premises of, the following information:

a. The name, signature and Occupational License number of the individual who applied the Pesticide or other agricultural chemical;

b. Applicator certification number if the applicator is licensed through the Department of Agriculture in accordance with the "Pesticides Applicators' Act," section 35-10-101 et seq., C.R.S.;

c. The date and time of the application;

d. The EPA registration number of the Pesticide or CAS number of any other agricultural chemical(s) applied;

e. Any of the active ingredients of the Pesticide or other agricultural chemical(s) applied;

f. Brand name and product name of the Pesticide or other agricultural chemical(s) applied;

g. The restricted entry interval from the product label of any Pesticide or other agricultural chemical(s) applied;

h. The RFID tag number of the Retail Marijuana plant(s) to which the Pesticide or other agricultural chemical(s) were applied, or, if the Pesticide or other agricultural chemical(s) were applied to all plants throughout the Licensed Premises, a statement to that effect; and

i. The total amount of each Pesticide or other agricultural chemical applied.

F. Prohibited Chemicals. The following chemicals are prohibited and shall not be used in Retail Marijuana cultivation. Possession of chemicals and/or containers from these chemicals upon the Licensed Premises shall be a violation of this Rule. Additionally, possession of Retail Marijuana or Retail Marijuana Concentrate on which any of the following chemicals is detected shall constitute a violation of this Rule.

1. Any Pesticide the use of which would constitute a violation of the Pesticide Act, section 35-9-101 *et seq*., C.R.S., the "Pesticides Applicators' Act," section 35-10-101 *et seq*., C.R.S., or the rule and regulations pursuant thereto.

2. Other chemicals (listed by chemical name and CAS Registry Number (or EDF Substance ID)):

ALDRIN

309-00-2

ARSENIC OXIDE (3)

1327-53-3

ASBESTOS (FRIABLE)

1332-21-4

AZODRIN

6923-22-4

1,4-BENZOQUINONE, 2,3,5,6-TETRACHLORO-

118-75-2

BINAPACRYL

485-31-4

2,3,4,5-BIS (2-BUTENYLENE) TETRAHYDROFURFURAL

126-15-8

BROMOXYNIL BUTYRATE

EDF-186

CADMIUM COMPOUNDS

CAE750

CALCIUM ARSENATE [2ASH3O4.2CA]

7778-44-1

CAMPHECHLOR

8001-35-2

CAPTAFOL

2425-06-1

CARBOFURAN

1563-66-2

CARBON TETRACHLORIDE

56-23-5

CHLORDANE

57-74-9

CHLORDECONE (KEPONE)

143-50-0

CHLORDIMEFORM

6164-98-3

CHLOROBENZILATE

510-15-6

CHLOROMETHOXYPROPYLMERCURIC ACETATE [CPMA] EDF-

183

COPPER ARSENATE

10103-61-4

2,4-D, ISOOCTYL ESTER

25168-26-7

DAMINOZIDE

1596-84-5

DDD

72-54-8

DDT

50-29-3

DI(PHENYLMERCURY)DODECENYLSUCCINATE [PMDS] EDF-

187

1,2-DIBROMO-3-CHLOROPROPANE (DBCP)

96-12-8

1,2-DIBROMOETHANE

106-93-4

1,2-DICHLOROETHANE

107-06-2

DIELDRIN

60-57-1

4,6-DINITRO-O-CRESOL

534-52-1

DINITROBUTYL PHENOL

88-85-7

ENDRIN

72-20-8

EPN

2104-64-5

ETHYLENE OXIDE

75-21-8

FLUOROACETAMIDE

640-19-7

GAMMA-LINDANE

58-89-9

HEPTACHLOR

76-44-8

HEXACHLOROBENZENE

118-74-1

1,2,3,4,5,6-HEXACHLOROCYCLOHEXANE (MIXTURE OF ISOMERS)

608-73-1

1,3-HEXANEDIOL, 2-ETHYL

94-96-2

LEAD ARSENATE

7784-40-9

LEPTOPHOS

21609-90-5

MERCURY

7439-97-6

METHAMIDOPHOS

10265-92-6

METHYL PARATHION

298-00-0

MEVINPHOS

7786-34-7

MIREX

2385-85-5

NITROFEN

1836-75-5

OCTAMETHYLDIPHOSPHORAMIDE

152-16-9

PARATHION

56-38-2

PENTACHLOROPHENOL

87-86-5

PHENYLMERCURIC OLEATE [PMO]

EDF-185

PHOSPHAMIDON

13171-21-6

PYRIMINIL

53558-25-1

SAFROLE

94-59-7

SODIUM ARSENATE

13464-38-5

SODIUM ARSENITE

7784-46-5

2,4,5-T

93-76-5

TERPENE POLYCHLORINATES (STROBANE6)

8001-50-1

THALLIUM(I) SULFATE

7446-18-6

2,4,5-TP ACID (SILVEX)

93-72-1

TRIBUTYLTIN COMPOUNDS

EDF-184

2,4,5-TRICHLOROPHENOL

95-95-4

VINYL CHLORIDE

75-01-4

G. DMSO. The use of Dimethylsulfoxide ("DMSO") in the production of Retail Marijuana shall be prohibited and possession of DMSO upon the Licensed Premises is prohibited.

H. Adulterants. A Retail Marijuana Cultivation Facility may not treat or otherwise adulterate Retail Marijuana with any chemical or other compound whatsoever to alter its color, appearance, weight or smell.

I. Independent Health and Sanitary Audit

1. State Licensing Authority May Require A 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 Cultivation Facility to undergo such an audit. The scope of the audit may include, but need not be limited to, whether the Retail Marijuana Cultivation Facility is in compliance with the requirements set forth in this rule and other applicable public health or sanitary laws and regulations.

b. In such instances, the Division may attempt to mutually agree upon the selection of the independent consultant with a Retail Marijuana Cultivation 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 Cultivation 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 Cultivation Facility does not provide requested records related to the use of Pesticide or other agricultural chemicals during in the cultivation process;

b. The Division has reasonable grounds to believe that the Retail Marijuana Cultivation Facility is in violation of one or more of the requirements set forth in this rule or other applicable public health or sanitary laws, rules or regulations;

c. The Division has reasonable grounds to believe that the Retail Marijuana Cultivation Facility was the cause or source of contamination of Retail Marijuana or Retail Marijuana Concentrate; or

d. Multiple Harvest Batches or Production Batches produced by the Retail Marijuana Cultivation Facility failed contaminant testing.

3. Compliance Required. A Retail Marijuana Cultivation 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 Cultivation 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 Cultivation 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 Cultivation Facility may continue to care for its inventory and conduct any necessary internal business operations but it may not Transfer or wholesale Retail Marijuana or Retail Marijuana Concentrate to any other Retail Marijuana Establishment during the period of time specified in the agreement.

J. Contaminated Product. Unless otherwise permitted by these rules:

1. A Retail Marijuana Cultivation Facility shall not accept or Transfer to another Retail Marijuana Establishment or any other Person any Retail Marijuana or Retail Marijuana Concentrate that has failed required testing pursuant to Rule R 1501 or Rule R 1503.

2. If a Retail Marijuana Cultivation Facility possesses any Retail Marijuana or Retail Marijuana Concentrate that failed required testing pursuant to Rule R 1501 or Rule R 1503, the Retail Marijuana Cultivation Facility shall assure that all Retail Marijuana and Retail Marijuana Concentrate that failed required testing is destroyed safely in accordance with Rule R 307.

K. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – R 505

The statutory authority for this rule includes but is not limited to sections 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), and sections 12-43.4-403 and 12-43.4-405, 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 Cultivation Facility and standards for the production of Retail Marijuana Concentrate.

R 505 – Retail Marijuana Cultivation Facilities: Retail Marijuana Concentrate Production

A. Permitted Production of Certain Categories of Retail Marijuana Concentrate. A Retail Marijuana Cultivation Facility may only produce Water-Based Retail Marijuana Concentrate on its Licensed Premises and only in an area clearly designated for concentrate production on the current diagram of the Licensed Premises. See Rule R 901- Business Records Required. No other method of production or extraction for Retail Marijuana Concentrate may be conducted within the Licensed Premises of a Retail Marijuana Cultivation Facility unless the Owner(s) of the Retail Marijuana Cultivation Facility also has a valid Retail Marijuana Products Manufacturing Facility license and the room in which Retail Marijuana Concentrate is to be produced is physically separated from all cultivation areas and has clear signage identifying the room.

B. Safety and Sanitary Requirements for Concentrate Production. If a Retail Marijuana Cultivation Facility produces Retail Marijuana Concentrate, then all areas in which the Retail Marijuana Concentrate are produced and all Owners and Occupational Licensees engaged in the production of the Retail Marijuana Concentrate shall be subject to all of the requirements imposed upon a Retail Marijuana Products Manufacturing Facility that produces Retail Marijuana Concentrate, including all general requirements. *See* Rule R 604– Health and Safety Regulations: Retail Marijuana Products Manufacturing Facility and Rule R 605 – Retail Marijuana Products Manufacturing Facility: Retail Marijuana Concentrate Production.

C. Possession of Other Categories of Retail Marijuana Concentrate.

1. It shall be considered a violation of this Rule if a Retail Marijuana Cultivation Facility possesses a Retail Marijuana Concentrate other than a Water-Based Retail Marijuana Concentrate on its Licensed Premises unless the Owner(s) of the Retail Marijuana Cultivation Facility also has a valid Retail Marijuana Products Manufacturing Facility license.

2. Notwithstanding subparagraph (C)(1) of this Rule R 505, a Retail Marijuana Cultivation Facility shall be permitted to possess Solvent-Based Retail Marijuana Concentrate only when the possession is due to the Transfer of Retail Marijuana flower or trim that failed microbial testing to a Retail Marijuana Products Manufacturing Facility for processing into a Solvent-Based Retail Marijuana Concentrate, and the Retail Marijuana Products Manufacturing Facility Transfers the resultant Solvent-Based Retail Marijuana Concentrate back to the originating Retail Marijuana Cultivation Facility.

a. The Retail Marijuana Cultivation Facility shall comply with all requirements in Rule R 1507(B.1) when having Solvent-Based Retail Marijuana Concentrate manufactured out of Retail Marijuana flower or trim that failed microbial testing.

b. The Retail Marijuana Cultivation Facility is responsible for submitting the Solvent-Based Retail Marijuana Concentrate for all required testing for contaminants pursuant to Rule R 1501 – Retail Marijuana Testing Program – Contaminant Testing, for potency pursuant to rule R 1503 – Retail Marijuana Testing Program – Potency Testing, and any other testing required or allowed by the Retail Marijuana Rules or Retail Marijuana Code.

c. Nothing in this Rule removes or alters the responsibility of the Retail Marijuana Cultivation Facility that Transfers the Retail Marijuana that failed microbial testing from complying with the requirement to pay excise tax pursuant to rule R 502(E).

Basis and Purpose – R 506

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(I-II), 12-43.4-202(3)(b)(IX), 12-43.4-202(4)(a) - (b), 12-43.4-103, 12-43.4-104, and 12-43.4-501, C.R.S.

The rule establishes a means by which to manage the overall production of Retail Marijuana. The intent of this rule is to encourage responsible production to meet demand for retail marijuana, while also avoiding overproduction or underproduction. 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's production management provisions as early as January 2017 by transitioning to an output-based production management model. Existing and prospective licensees should be on notice that the new or revised regulations may impact the production limits provided for in this rule. Additionally, throughout the rulemaking process stakeholders expressed concern over ensuring an adequate amount of licensed Retail Marijuana Stores exist to sell the amount of Retail Marijuana being produced at licensed Retail Marijuana Cultivation Facilities. Scaling the number of interests a Person may hold in Retail Marijuana Cultivation Facility licenses relative to the number of controlling interests the Person has in Retail Marijuana Store(s) has been incorporated in the production management rules as a means to address this production management concern.

R 506 – Retail Marijuana Cultivation Facility: Production Management

A. Applicability. This Rule is effective beginning November 30, 2015 and shall apply to all Retail Marijuana Cultivation Facility Licensees.

B. One Retail Cultivation License per Licensed Premises.

1. Only one Retail Marijuana Cultivation Facility License shall be permitted at each Licensed Premises. Each Licensed Premises must be located at a distinct address recognized by the local jurisdiction.

2. Existing Retail Marijuana Cultivation Facilities that have Multiple Cultivation Licenses at the Licensed Premises. Upon the first renewal at the Retail Marijuana Cultivation Facility, all of the Retail Marijuana Cultivation Facility's licenses will be collapsed into one surviving license, and fees shall be prorated for the non-expiring licenses. The maximum authorized plant count shall also collapse into the surviving license.

C. Production Management.

1. Production Management Tiers.

a. Tier 1: 1 - 1,800 plants

b. Tier 2: 1,801 – 3,600 plants

c. Tier 3: 3,601 – 6,000 plants

d. Tier 4: 6,001 – 10,200 plants

e. Tier 5: 10,201 – 13,800+ plants

i. Tier 5 shall not have a cap on the maximum authorized plant count.

ii. The maximum authorized plant count above 10,200 plants shall increase in one or two increments of 3,600 plants. A Retail Marijuana Cultivation

Facility Licensee shall be allowed to increase its maximum authorized plant count one or two increments of 3,600 plants at a time upon application and approval by the Division pursuant to the requirements of paragraph (E) of this Rule R 506.

2. All Retail Marijuana Cultivation Facility licenses granted on or after November 30, 2015 shall be authorized to cultivate no more than 1,800 plants at any given time.

3. As of November 30, 2015, a Retail Marijuana Cultivation Facility license that was associated with a Retail Marijuana Products Manufacturing Facility shall be authorized to cultivate no more than 1,800 plants at any given time. If such a Retail Marijuana Cultivation Facility Licensee submitted a plant count waiver application prior to August 31, 2015 and it was subsequently approved, the license shall be authorized to cultivate the maximum number of plants at any given time in the corresponding production management tier pursuant to subparagraph (C)(1) of this Rule R 506.

4. Each Retail Marijuana Cultivation Facility with a license(s) granted before November 30, 2015 shall be authorized to cultivate the same number of plants that it was authorized to cultivate prior to November 30, 2015. Pursuant to subparagraph (B)(2) of this Rule R 506, for any Retail Marijuana Cultivation Facility that has multiple licenses, the total plant count authorized in sum across those licenses shall apply to the entire Retail Marijuana Cultivation Facility and shall be collapsed into one license upon renewal.

5. In connection with the license renewal process for Retail Marijuana Cultivation Facilities that are authorized to cultivate more than 1,800 plants, the Division will review the purchases, Transfers, 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 a lower production management tier pursuant to subparagraph (C)(1) of this Rule. When determining whether to reduce the maximum authorized plant count, the Division may consider the following factors including but not limited to:

   a. Cultivation and production history including whether the plants/inventory suffered a catastrophic event during the licensing period;

   b. Transfer, sales, and excise tax payment history;

   c. Existing inventory and inventory history;

   d. Sales contracts;

   e. Any other factors relevant to ensuring responsible cultivation, production, and inventory management; and

   f. The Licensee sold less than 70% of what it produced during the six months prior to the application for renewal.

D. Inventory Management.

1. Inventory Management for Retail Cultivation Facilities that Have One or Two Harvest Seasons a Year. Beginning the 25th month from the commencement of its first cultivation activities, a Retail Marijuana Cultivation Facility that has one or two harvest seasons 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 24 months.

2. Inventory Management for Retail Cultivation Facilities That Have More Than Two Harvest Seasons a Year. Beginning the seventh month from the commencement of its first cultivation activities, a Retail Marijuana Cultivation Facility that has more than two harvest seasons 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 six months.

E. Application for Additional Plants.

1. Retail Marijuana Cultivation Facilities That Have One or Two Harvest Seasons Per Year.

a. After accruing at least one harvest season of sales, a Retail Marijuana Cultivation Facility Licensee may apply to the Division for a production management tier increase to be authorized to cultivate the number of plants in the next highest production management tier. The Licensee shall provide documentation demonstrating that during the previous harvest season prior to the tier increase application, it has consistently cultivated an amount of plants that is at or near its maximum authorized plant count. The Licensee shall also provide documentation demonstrating that for the previous 12 months it 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 tier increase application.

b. If the Division approves the production management tier increase application, the Licensee shall pay the applicable expanded production management tier fee prior to cultivating the additional authorized plants. See See Rule R 208 – Schedule of Business License Fees: Retail Marijuana Establishments.

c. For a Licensee with an authorized plant count in tiers 2-5 to continue producing at its expanded authorized plant count, the Licensee shall pay the requisite Retail Marijuana Cultivation Facility license fee and the applicable expanded production management tier fee at license renewal. See Rule R 209 – Schedule of Business License Renewal Fees: Retail Marijuana Establishments.

d. After accruing at least one harvest season of Transfers, a Retail Marijuana Cultivation Facility may apply to increase its authorized plant count by: (a) two production management tiers or (b) two increments of 3,600 plants (7,200 plants total) if already authorized to cultivate at a production management tier 5, every 12 months. It is within the Division's discretion to determine whether or not to grant the requested two tiers or 3,600 plant increase. In making its determination, the Division will consider the following non-exclusive factors:

i. That the Retail Marijuana Cultivation has consistently cultivated an amount of plants that is at or near its maximum authorized plant count, and has Transferred at least 90% of the inventory produced during that time period to another Retail Marijuana Establishment;

ii. That the Retail Marijuana Cultivation currently has possession of sufficient space to grow the requested two tiers or two 3,600 plant increments;

iii. That the Retail Marijuana Cultivation is commonly owned with one or more Retail Marijuana Stores and in the preceding 12 months, notwithstanding that the Retail Marijuana Cultivation cultivated all, or nearly all, of its authorized plant count, the Retail Marijuana Cultivation

and/or the Retail Marijuana Store obtained Retail Marijuana from one or more unrelated Retail Marijuana Cultivations;

iv. That the Retail Marijuana Cultivation has contracts for the sale of Retail Marijuana in the next 12 months supporting the requested two tiers or two 3,600 plant increments;

v. The length of time the Retail Marijuana Cultivation has been licensed; or

vi. The Retail Marijuana Cultivation's history of compliance, any noncompliance with the Retail Code and Rules and/or any ongoing Division investigation regarding the Retail Marijuana Cultivation or any commonly owned Retail Marijuana Establishment.

2. Retail Marijuana Cultivation Facilities that have more than two harvest seasons per year.

a. After accruing at least two quarters of sales, a Retail Marijuana Cultivation Facility Licensee may apply to the Division for a production management tier increase to be authorized to cultivate the number of plants in the next highest production management tier. The Licensee shall provide documentation demonstrating that for at least six consecutive months prior to the tier increase application, it has consistently cultivated an amount of plants that is at or near its maximum authorized 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 tier increase application.

b. If the Division approves the production management tier increase application, the Licensee shall pay the applicable expanded production management tier fee prior to cultivating the additional authorized plants. See Rule R 208 – Schedule of Business License Fees: Retail Marijuana Establishments.

c. For a Licensee with an authorized plant count in tier 2-5 to continue producing at its expanded authorized plant count, the Licensee shall pay the requisite Retail Marijuana Cultivation Facility license fee and the applicable expanded production management tier fee at license renewal. See Rule R 209 – Schedule of Business License Renewal Fees: Retail Marijuana Establishments.

d. After accruing at least six month of Transfers, a Retail Marijuana Cultivation Facility may apply to increase its authorized plant count by: (a) two production management tiers or (b) two increments of 3,600 plants (7,200 plants total) if already authorized to cultivate at a production management tier 5, every six months. It is within the Division's discretion to determine whether or not to grant the requested two tier or two 3,600 plant increase. In making its determination, the Division will consider the following non-exhaustive factors:

i. The Retail Marijuana Cultivation has consistently cultivated an amount of plants that is at or near its maximum authorized plant count, and has Transferred at least 90% of the inventory produced during that time period to another Retail Marijuana Establishment;

ii. The Retail Marijuana Cultivation currently has possession of, or has entered into a written agreement or contract to possess, sufficient space to grow the requested two tiers or two 3,600 plant increments;

iii. The Retail Marijuana Cultivation is commonly owned with one or more Retail Marijuana Stores and in the preceding six months, notwithstanding that the Retail Marijuana Cultivation cultivated all, or nearly all, of its authorized plant count, the Retail Marijuana Cultivation and/or the Retail Marijuana Store obtained Retail Marijuana from one or more unrelated Retail Marijuana Cultivations;

iv. The Retail Marijuana Cultivation has entered into a written agreement(s) or contract(s) for the sale of Retail Marijuana in the next six months supporting the requested two tiers or two 3,600 plant increments;

v. The length of time the Retail Marijuana Cultivation has been licensed; or

vi. The Retail Marijuana Cultivation's history of compliance, any noncompliance with the Retail Code and Rules and/or any ongoing Division investigation regarding the Retail Marijuana Cultivation or any commonly owned Retail Marijuana Establishment.

F. Maximum Allowed Retail Marijuana Cultivation Facility Licenses.

1. A Person with an Interest in Three or More Retail Marijuana Cultivation Facility Licenses. For every multiple of three Retail Marijuana Cultivation Facility licenses a Person has an interest in, the Person must have a controlling interest in at least one Retail Marijuana Store. For example: (1) a Person with an interest in three, four, or five Retail Marijuana Cultivation Facility licenses also must have a controlling interest in at least one Retail Marijuana Store; (2) a Person with an interest in six, seven, or eight Retail Marijuana Cultivation Facility licenses also must have a controlling interest in at least two Retail Marijuana Stores; (3) a Person with an interest in nine, ten, or eleven Retail Marijuana Cultivation Facility licenses also must have a controlling interest in at least three Retail Marijuana Stores; etc.

2. A Person with an Interest in Less than Three Retail Marijuana Cultivation Facility Licenses. The Person shall not be required to have an interest in a Retail Marijuana Store.

G. 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.

R 600 Series – Retail Marijuana Products Manufacturing Facilities

Basis and Purpose – R 601

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(2)(b), 12-43.4-306(1)(j), 12-43.4-309(7)(a), 12-43.4-404(1)(a), 12-43.4-404(1)(b), 12-43.4-404(6), 12-43.4-406(1)(c), and 12-43.4-406(4)(b), C.R.S. The purpose of this rule is to establish that it is unlawful for a Retail Marijuana Products Manufacturing Facility to exercise any privileges other than those granted by the State Licensing Authority and to clarify the license privileges.

R 601 – Retail Marijuana Products Manufacturing Facilities: License Privileges

A. Privileges Granted. A Retail Marijuana Products Manufacturing Facility shall only exercise those privileges granted to it by the State Licensing Authority.

B. Licensed Premises. A separate license is required for each specific business or business entity and geographical location. A Retail Marijuana Products Manufacturing Facility may share a location with a commonly owned Medical Marijuana-Infused Products Manufacturer. However, a separate license is required for each specific business or business entity, regardless of geographical location.

C. Authorized Transfers. A Retail Marijuana Products Manufacturing Facility may only Transfer Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product to Retail Marijuana Stores, other Retail Marijuana Products Manufacturing Facilities, Retail Marijuana Testing Facilities, Medical Research Facilities, and Pesticide Manufacturers.

D. Manufacture of Retail Marijuana Product Authorized. A Retail Marijuana Products Manufacturing Facility may manufacture, prepare, package, store, and label Retail Marijuana Product, whether in concentrated form or that are comprised of marijuana and other ingredients intended for use or consumption, such as Edible Retail Marijuana Products, ointments, or tinctures.

E. Location Prohibited. A Retail Marijuana Products Manufacturing Facility may not manufacture, prepare, package, store, or label Retail Marijuana Product in a location that is operating as a retail food establishment or a wholesale food registrant.

F. Samples Provided for Testing. A Retail Marijuana Products Manufacturing Facility may provide samples of its Retail Marijuana Product to a Retail Marijuana Testing Facility for testing and research purposes. The Retail Marijuana Products Manufacturing Facility shall maintain the testing results as part of its business books and records.

G. Authorized Marijuana Transport. A Retail Marijuana Products Manufacturing Facility is authorized to utilize a Retail Marijuana Transporter for transportation of its Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product so long as the place where transportation orders are taken is a Retail Marijuana Establishment and the transportation order is delivered to a Retail Marijuana Establishment, Medical Research Facility, or Pesticide Manufacturer. Nothing in this Rule prevents a Retail Marijuana Products Manufacturing Facility from transporting its own Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product.

H. Compensation. A Retail Marijuana Products Manufacturing Facility may compensate its employees using performance-based incentives.

Basis and Purpose – R 602

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(VI), 12-43.4-202(3)(a)(VII)(K), 12-43.4-202(3)(a)(VIII), 12-43.4-202(3)(a)(X), 12-43.4-202(3)(a)(XVII), 12-43.4-202(3)(c)(V), 12-43.4-309(7)(a), 12-43.4-404(1)(d), 12-43.4-404(1)(e)(I), 12-43.4-404(4), 12-43.4-404(5), 12-43.4-404(9), 12-43.4-406(1)(a) and 12-43.4-901(2)(a), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(V). The purpose of this rule is to clarify those acts that are limited in some fashion or prohibited by a Retail Marijuana Products Manufacturing Facility.

R 602 – Retail Marijuana Products Manufacturing Facility: General Limitations or Prohibited Acts

A. Temporary Sales Limitation. From January 1, 2014 to September 30, 2014, a Retail Marijuana Products Manufacturing Facility shall not Transfer any of the Retail Marijuana that was cultivated in its commonly-owned Retail Marijuana Cultivation Facility to any other Retail Marijuana Establishment. Such Retail Marijuana shall be used solely in Retail Marijuana Product produced by the Retail Marijuana Products Manufacturing Facility.

B. Packaging and Labeling Standards Required. A Retail Marijuana Products Manufacturing Facility is prohibited from Transferring Retail Marijuana Product that are not properly packaged and labeled. *See* R 1000 Series – Labeling, Packaging, and Product Safety and Rule R 1000-1 Series – Labeling, Packaging, and Product Safety.

C. THC Content Container Restriction. Each individually packaged Edible Retail Marijuana Product, even if comprised of multiple servings, may include no more than a total of 100 milligrams of active THC. *See* Rule R 1004 – Labeling Requirements: Specific Requirements, Edible Retail Marijuana Product and Rule R 1002-1 – Packaging and Labeling – General Requirements Prior to Transfer to a Consumer.

D. Transfer to Consumer Prohibited. A Retail Marijuana Products Manufacturing Facility is prohibited from Transferring Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a consumer.

E. Consumption Prohibited. A Retail Marijuana Products Manufacturing Facility shall not permit the consumption of marijuana or marijuana products on its Licensed Premises.

F. Evidence of Excise Tax Paid. A Retail Marijuana Products Manufacturing Facility is prohibited from accepting Retail Marijuana from a Retail Marijuana Cultivation Facility or Retail Marijuana Manufacturing Facility Licensee unless the manufacturer has received evidence that any applicable excise tax due pursuant to Article 28.8 of Title 39, C.R.S., was paid.

G. Adequate Care of Perishable Product. A Retail Marijuana Products Manufacturing Facility must provide adequate refrigeration for perishable Retail Marijuana Product that will be consumed and shall utilize adequate storage facilities and transport methods.

H. Homogeneity of Edible Retail Marijuana Product. A Retail Marijuana Products Manufacturing Facility must ensure that its manufacturing processes are designed so that the Cannabinoid content of any Edible Retail Marijuana Product is homogenous.

I. Sales or Gifts to Transporters Prohibited. A Retail Marijuana Products Manufacturing Facility shall not sell or give away Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a Retail Marijuana Transporter, and shall not buy or receive complimentary Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product from a Retail Marijuana Transporter.

Basis and Purpose – R 603

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(1), 12-43.4-202(2)(b), 12-43.4-202(3)(a)(XVII), 12-43.4-404 (1)(b), and 12-43.4-406(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 require all Retail Marijuana Products Manufacturing Facilities to track all inventory from the point it is received from a Retail Marijuana Cultivation Facility, Retail Marijuana Products Manufacturing Facility, or Retail Marijuana Transporter through any manufacturing processes, to the point of sale or Transfer to another Retail Marijuana Establishment.

R 603 – Retail Marijuana Products Manufacturing Facility: Inventory Tracking System

A. Minimum Tracking Requirement. A Retail Marijuana Products Manufacturing Facility must use the Inventory Tracking System to ensure its inventories are identified and tracked from the point they are Transferred from a Retail Marijuana Cultivation Facility, Retail Marijuana Products Manufacturing Facility, Retail Marijuana Transporter, or another Retail Marijuana Products Manufacturing Facility through Transfer. *See* Rule R 309 –Inventory Tracking System. A Retail Marijuana Products Manufacturing Facility must have the ability to reconcile its inventory records

with the Inventory Tracking System and the associated transaction history and sale receipts. *See* Rule R 901 – Business Records Required.

1. A Retail Marijuana Products Manufacturing Facility is prohibited from accepting any Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product without receiving a valid transport manifest generated from the Inventory Tracking System.

2. A Retail Marijuana Products Manufacturing Facility must immediately input all Retail Marijuana, Retail Marijuana Concentrate and Retail Marijuana Product delivered to its Licensed Premises, accounting for all RFID tags, into the Inventory Tracking System at the time of delivery to the Retail Marijuana Products Manufacturing Facility.

3. A Retail Marijuana Products Manufacturing Facility must reconcile transactions to the Inventory Tracking System at the close of business each day.

Basis and Purpose – R 604

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(IV)(A), 12-43.4-202(3)(a)(VI), 12-43.4-202(3)(a)(VII), 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), 12-43.4-202(3)(c)(VII), 12-43.4-202(3)(c)(IX)(A)-(B), 12-43.4-202(3)(c.5)(I), and 12-43.4-404, 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 heath 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. Product safety requirements were adopted to aid in making Edible Retail Marijuana Products more readily identifiable to the general public outside of their packaging as containing marijuana. 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 manufacturers 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. Repealed.

C.5. Product Safety.

Paragraph (C.5) is effective beginning October 1, 2016.

1. 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 Division, the Colorado Department of Public Health & Environment, and local licensing authorities.

2. 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.

3. 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.

4. Each single Standardized Serving Of Marijuana shall be marked, stamped, or otherwise imprinted with the Universal Symbol directly on at least one side of the Edible Retail Marijuana Product in a manner to cause the Universal Symbol to be distinguishable and easily recognizable. The Universal Symbol marking shall:

    a. Be centered either horizontally or vertically on each Standardized Serving Of Marijuana; and

    b. If centered horizontally on a serving, the height and width of the Universal Symbol shall be of a size that is at least 25% of the serving's width, but not less than ¼ inch by ¼ inch; or

    c. If centered vertically on a serving, the height and width of the Universal Symbol shall be of a size that is at least 25% of the serving's height, but not less than ¼ inch by ¼ inch.

5. Notwithstanding the requirement of subparagraph (C.5)(4), an Edible Retail Marijuana Product shall contain no more than 10 mg of active THC per Container and the Retail Marijuana Products Manufacturing Facility must ensure that the product is packaged in accordance with Rule R 1004(A)(2) or the Rules R 1001-1(C)(1) and R 1002-1(D)(1), when:

    a. The Edible Retail Marijuana Product is of the type that is impracticable to mark, stamp, or otherwise imprint with the Universal Symbol directly on the product in a manner to cause the Universal Symbol to be distinguishable and easily recognizable; or

    b. The 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.

6. The following categories of Edible Retail Marijuana Product are considered to be per se practicable to mark with the Universal Symbol:

    a. Chocolate

    b. Soft confections

    c. Hard confections or lozenges

    d. Consolidated baked goods (e.g. cookie, brownie, cupcake, granola bar)

    e. Pressed pills and capsules

7. The following categories of Edible Retail Marijuana Product are considered to be per se impracticable to mark with the Universal Symbol:

a. Repealed.

b. Loose bulk goods (e.g. granola, cereals, popcorn)

c. Powders

8. Repealed.

8.1. Liquid Edible Retail Marijuana Product.

a. Pursuant to 12-43.4-404(4)(b), C.R.S., Liquid Edible Retail Marijuana Products are impracticable to mark with the Universal Symbol and are exempt from the provision in subparagraph (C.5)(5) of this Rule R 604 that requires Edible Retail Marijuana Products that are impracticable to mark with the Universal Symbol to contain 10mg or less active THC per Container.

b. This exemption permits the manufacture and Transfer of Multi-Serving Liquid Edible Retail Marijuana Products so long as the product is packaged in accordance with Rule R 1004(A)(4.5) or Rules R 1001-1(C)(1) and R 1002-1(D)(1)(c)(ii).

i. Repealed.

ii. Repealed.

9. Multiple-Serving Edible Retail Marijuana Product.

a. 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.

b. 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.

c. Each single Standardized Serving Of Marijuana contained in a Multiple-Serving Edible Retail Marijuana Product shall be marked, stamped, or otherwise imprinted with the Universal Symbol directly on the product in a manner to cause the Universal Symbol to be distinguishable and easily recognizable. The Universal Symbol marking shall comply with the requirements of subparagraph (C.5)(4) of this Rule R 604.

d. A Multiple-Serving Edible Retail Marijuana Product that is a Liquid Edible Retail Marijuana Product shall comply with the requirements in subparagraph (C.5)(8.1)(b) of this Rule R 604 and is exempt from subparagraphs (a)-(c) of this subparagraph (C.5)(9).

10. Remanufactured Products Prohibited. A Retail Marijuana Product Manufacturing Facility shall not utilize a commercially manufactured food product as its Edible Retail Marijuana Product. The following exceptions to this prohibition apply:

a. A food product that was commercially manufactured specifically for use by the Retail Marijuana Product Manufacturing Facility Licensee to infuse with

marijuana shall be allowed. The Licensee shall have a written agreement with the commercial food product manufacturer that declares the food product's exclusive use by the Retail Marijuana Product Manufacturing Facility.

b. Commercially manufactured food products may be used as ingredients in a Retail Marijuana Product Manufacturing Facility's Edible Retail Marijuana product so long as: (1) they are used in a way that renders them unrecognizable as the commercial food product in the final Edible Retail Marijuana Product, and (2) the Retail Marijuana Product Manufacturing Facility does not state or advertise to the consumer that the final Edible Retail Marijuana Product contains the commercially manufactured food product.

11. Trademarked Food Products. Nothing in this Rule alters or eliminates a Retail Marijuana Product Manufacturing Facility's responsibility to comply with the trademarked food product provisions required by the Retail Code per 12-43.4-404(1)(e)(I-III), C.R.S.

12. Edibles Prohibited that are Shaped like a Human, Animal, or Fruit. This subparagraph (C.5)(12) is effective beginning October 1, 2017.

a. The production and Transfer of Edible Retail Marijuana Products in the following shapes is prohibited:

i. The distinct shape of a human, animal, or fruit; or

ii. A shape that bears the likeness or contains characteristics of a realistic or fictional human, animal, or fruit, including artistic, caricature, or cartoon renderings.

b. The prohibition on human, animal, and fruit shapes does not apply to the logo of a licensed Retail Marijuana Establishment. Nothing in this subsubparagraph (C.5)(12)(b) alters or eliminates a Licensee's obligation to comply with the requirements of Rule R 1001 – Labeling and Packaging Requirements: General Applicability or Rule R 1000-1 Series – Labeling, Packaging, and Product Safety.

c. Edible Retail Marijuana Products that are geometric shapes and simply fruit flavored are not considered fruit and are permissible; and

d. Edible Retail Marijuana Products that are manufactured in the shape of a marijuana leaf are permissible.

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, Retail Marijuana Concentrate, 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, Retail Marijuana Concentrate, 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, Retail Marijuana Concentrate, 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, Retail Marijuana Concentrate, 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, Retail Marijuana Concentrate, 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, Retail Marijuana Concentrate, 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, Retail Marijuana Concentrate, or Retail Marijuana Product shall be conducted in accordance with adequate sanitation principles;

16. That Retail Marijuana, Retail Marijuana Concentrate, 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 to consumers.

G. DMSO. The use of Dimethylsulfoxide ("DMSO") in the production of Retail Marijuana Concentrate or Retail Marijuana Product shall be prohibited and possession of DMSO upon the Licensed Premises is prohibited.

H. 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 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.

I. Contaminated Product. Unless otherwise permitted by these rules:

1. A Retail Marijuana Products Manufacturing Facility shall not accept or Transfer to another Retail Marijuana Establishment or any other Person any Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product that has failed required testing pursuant to Rule R 1501 or Rule R 1503.

2. If a Retail Marijuana Manufacturing Facility possesses Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Products that failed required testing pursuant to Rule R 1501 or Rule R 1503, the Retail Marijuana Products Manufacturing Facility shall assure that all Retail Marijuana, Retail Marijuana Concentrate and Retail Marijuana Products that failed required testing is safely destroyed in accordance with Rule R 307.

J. 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 includes but is not limited to sections 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. Nothing in this rule authorizes the unlicensed practice of engineering under Article 25 of Title 12, C.R.S.

R 605 –Retail Marijuana Products Manufacturing Facility: Retail Marijuana Concentrate Production.

A. Permitted Categories of Retail Marijuana Concentrate Production

1. A Retail Marijuana Products Manufacturing Facility may produce Water-Based Retail Marijuana Concentrate, Food-Based Retail Marijuana Concentrate and Heat/Pressure-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, CO_2, ethanol, isopropanol, acetone, heptane and pentane. 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 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, Food-Based Retail Marijuana Concentrate and Heat/Pressure-Based Retail Marijuana Concentrate. A Retail Marijuana Products Manufacturing Facility that engages in the production of a Water-Based Retail Marijuana Concentrate, a Food-Based Retail Marijuana Concentrate or a Heat/Pressure-Based Retail Marijuana Concentrate must:

1. Ensure that all equipment, counters and surfaces used in the production of a Water-Based Retail Marijuana Concentrate, a Food-Based Retail Marijuana Concentrate or a Heat/Pressure-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, a Food-Based Retail Marijuana Concentrate or a Heat/Pressure-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 CO_2.

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, Food-Based Retail Marijuana Concentrate or Heat/Pressure-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, a Food-Based Retail Marijuana Concentrate or a Heat/Pressure-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 CO_2 gas monitoring system must be installed within the room in which Retail Marijuana Concentrate is to be produced or CO_2 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 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

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. The Retail Marijuana Products Manufacturing Facility shall comply with contaminant testing required in Rule R 1501(C)(4).

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 701

The statutory authority for this rule includes but is not limited to sections12-43.4-202(2)(b), 12-43.4-202(3)(a)(IV), 12-43.4-202(3)(a)(X), 12-43.4-202(3)(a)(XVII), 12-43.4-202(3)(b)(IX), 12-43.4-202(3)(c)(IV), 12-43.4-309(7)(a), 12-43.4-402(4), 12-43.4-403(5), 12-43.4-404(6), 12-43.4-405, 35-61-104, and 35-61-105.5, C.R.S. The purpose of this rule is to establish that it is unlawful for a Retail Marijuana Testing Facility Licensee to exercise any privileges other than those granted by the State Licensing Authority and to clarify the license privileges.

R 701 – Retail Marijuana Testing Facilities: License Privileges

A. Privileges Granted. A Retail Marijuana Testing Facility shall only exercise those privileges granted to it by the State Licensing Authority.

B. Licensed Premises. A separate License is required for each specific Retail Marijuana Testing Facility and only those privileges granted by the Retail Code and any rules promulgated pursuant to it may be exercised on the Licensed Premises.

C. Testing of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product Authorized. A Retail Marijuana Testing Facility may accept Samples of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product from Retail Marijuana Establishments for

testing and research purposes only. The Division may require a Retail Marijuana Establishment to submit a Sample of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a Retail Marijuana Testing Facility upon demand.

D. Product Development Authorized. A Retail Marijuana Testing Facility may develop Retail Marijuana Product, but is not authorized to engage in the manufacturing privileges described in section 12-43.4-404, C.R.S. and Rule R 601 – Retail Marijuana Manufacturing Facilities: License Privileges.

E. Repealed.

F. Transferring Samples to Another Licensed and Certified Retail Marijuana Testing Facility. A Retail Marijuana Testing Facility may Transfer Samples to another Retail Marijuana Testing Facility for testing. All laboratory reports provided to or by a Retail Marijuana Establishment must identify the Retail Marijuana Testing Facility that actually conducted the test.

G. Testing of Registered and Tracked Industrial Hemp Authorized.

1. A Retail Marijuana Testing Facility may accept and test Samples of Industrial Hemp as regulated by Article 61 of Title 35, C.R.S. The Samples must be submitted by a registered cultivator and tracked through the radio frequency identification-based inventory tracking system approved by the Commissioner of the Colorado Department of Agriculture, pursuant to section 35-61-105.5, C.R.S.

2. Only Retail Marijuana Testing Facilities that are certified to test in the category of THC and other Cannabinoid potency shall be permitted to test Samples of Industrial Hemp as regulated by Article 61 of Title 35, C.R.S.

3. Nothing in these rules shall be construed to require a Retail Marijuana Testing Facility to accept and/or test Samples of Industrial Hemp.

H. Authorized Retail Marijuana Transport. A Retail Marijuana Testing Facility is authorized to utilize a licensed Retail Marijuana Transporter to transport Samples of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product for testing, in accordance with the Retail Marijuana Code and Retail Marijuana Rules, between the originating Retail Marijuana Establishment requesting testing services and the destination Retail Marijuana Testing Facility performing testing services. Nothing in this rule requires a Retail Marijuana Establishment to utilize a Retail Marijuana Transporter to transport Samples of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product for testing.

Basis and Purpose – R 702

The statutory authority for this rule includes but is not limited to sections 12-43.3-901(2), 12-43.4-105, 12-43.4-202(1), 12-43.4-202(2)(b), 12-43.4-202(3)(a)(IV), 12-43.4-202(3)(a)(X), 12-43.4-202(3)(a)(XII), 12-43.4-202(3)(a)(XVII), 12-43.4-202(3)(b)(IX), 12-43.4-405, 12-43.4-901, 35-61-104, and 35-61-105.5, C.R.S. The purpose of this rule is to clarify those acts that are limited in some fashion, or prohibited, by a Retail Marijuana Testing Facility.

R 702 – Retail Marijuana Testing Facilities: General Limitations or Prohibited Acts

A. Prohibited Financial Interest. A Person who is a Direct Beneficial Interest Owner or an Indirect Beneficial Interest Owner of a Retail Marijuana Cultivation Facility, Retail Marijuana Products Manufacturing Facility, Retail Marijuana Store, Medical Marijuana Center, Optional Premises Cultivation, or a Medical Marijuana Infused-Products Manufacturing Facility shall not be a Direct

Beneficial Interest Owner or an Indirect Beneficial Interest Owner of a Retail Marijuana Testing Facility.

A.2 Conflicts of Interest. The Retail Marijuana Testing Facility shall establish policies to prevent the existence of or appearance of undue commercial, financial, or other influences that may diminish the competency, impartiality, and integrity of the Retail Marijuana Testing Facility's testing processes or results, or that may diminish public confidence in the competency, impartiality and integrity of the Retail Marijuana Testing Facility's testing processes or results. At a minimum, employees, owners or agents of a Retail Marijuana Testing Facility who participate in any aspect of the analysis and results of a Sample or Test Batch are prohibited from improperly influencing the testing process, improperly manipulating data, or improperly benefiting from any on-going financial, employment, personal or business relationship with the Retail Marijuana Establishment that provided the Sample.

B. Transfer of Retail Marijuana Prohibited. A Retail Marijuana Testing Facility shall not Transfer Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product to another Retail Marijuana Establishment or a consumer, except that a Retail Marijuana Testing Facility may Transfer a Sample to another Retail Marijuana Testing Facility.

C. Destruction of Received Samples. A Retail Marijuana Testing Facility shall properly dispose of all Samples it receives, that are not Transferred to another Retail Marijuana Testing Facility, after all necessary tests have been conducted and any required period of storage. *See* Rule R 307 – Waste Disposal.

D. Consumption Prohibited. A Retail Marijuana Testing Facility shall not permit the consumption of marijuana or marijuana products on its Licensed Premises.

E. Sample Rejection. A Retail Marijuana Testing Facility shall reject any Sample where the condition of the Sample at receipt indicates that that the Sample may have been tampered with.

F. Retail Marijuana Establishment Requirements Applicable. A Retail Marijuana Testing Facility shall be considered a Licensed Premises. A Retail Marijuana Testing Facility shall be subject to all requirements applicable to Retail Marijuana Establishments.

G. Retail Marijuana Testing Facility – Inventory Tracking System Required. A Retail Marijuana Testing Facility must use the Inventory Tracking System to ensure all Test Batches or Samples containing Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Product or Industrial Hemp are identified and tracked from the point they are Transferred from a Retail Marijuana Establishment through the point of Transfer or destruction or disposal. The Inventory Tracking System reporting shall include the results of any tests that are conducted on Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Product or Industrial Hemp. *See also* Rule R 309 – Retail Marijuana Establishment: Inventory Tracking System and Rule R 711 – Reporting and Inventory Tracking System. The Retail Marijuana Testing Facility must have the ability to reconcile its Sample records with the Inventory Tracking System and the associated transaction history. *See also* Rule R 901 – Business Records Required and Rule R 711.

H. Testing of Unregistered or Untracked Industrial Hemp Prohibited. A Retail Marijuana Testing Facility is authorized to accept or test Samples of Industrial Hemp only if (1) the entity providing the Samples of Industrial Hemp is regulated by Article 61 of Title 35, C.R.S., (2) the Samples of Industrial Hemp are submitted by a registered cultivator, and (3) the Samples of Industrial Hemp are tracked through the radio frequency identification-based inventory tracking system approved by the Commissioner of the Colorado Department of Agriculture, pursuant to section 35-61-105.5, C.R.S.

I. Transporter Restrictions. A Retail Marijuana Testing Facility shall not sell or give away Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a Retail Marijuana Transporter, and shall not buy, or receive complimentary Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product from a Retail Marijuana Transporter.

Basis and Purpose – R 703

The statutory authority for this rule includes but is not limited to section 12-43.4-202(2)(b), 12-43.4-202(3)(a)(III), 12-43.4-202(3)(a)(IV), 12-43.4-202(3)(a)(V), 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), and 12-43.4-405, C.R.S. The purpose of this rule is to establish a frame work for certification for Retail Marijuana Testing Facilities.

R 703 – Retail Marijuana Testing Facilities: Certification Requirements

A. Certification Types. If certification in a testing category is required by the Division, then the Retail Marijuana Testing Facility must be certified in the category in order to perform that type of testing.

1. Residual solvents;

2. Microbials;

3. Mycotoxins;

4. Repealed.

5. Pesticides; and

6. Repealed.

7. THC and other Cannabinoid potency.

8. Repealed.

9. Repealed.

B. Certification Procedures. The Retail Marijuana Testing Facility certification program is contingent upon successful on-site inspection, successful participation in proficiency testing, and ongoing compliance with the applicable requirements in this rule.

1. Certification Inspection. A Retail Marijuana Testing Facility must be inspected prior to initial certification and annually thereafter by an inspector approved by the Division.

2. Standards for Certification. A Retail Marijuana Testing Facility must meet standards of performance, as established by these rules, in order to obtain and maintain certification. Standards of performance include but are not limited to: personnel qualifications, standard operating procedure manual, analytical processes, Proficiency Testing, quality control, quality assurance, security, chain of custody, Sample retention, space, records, and results reporting.

3. Personnel Qualifications

a. Laboratory Director. A Retail Marijuana Testing Facility must employ, at a minimum, a laboratory director with sufficient education and experience in a regulated laboratory environment in order to obtain and maintain certification. *See* Rule R 704 – Retail Marijuana Testing Facilities: Personnel.

b. Employee Competency. A Retail Marijuana Testing Facility must have a written and documented system to evaluate and document the competency in performing authorized tests for employees. Prior to independently analyzing Samples, testing personnel must demonstrate acceptable performance on precision, accuracy, specificity, reportable ranges, blanks, and unknown challenge samples (proficiency samples or internally generated quality controls).

4. Standard Operating Procedure Manual. A Retail Marijuana Testing Facility must have a written standard operating procedure manual meeting the minimum standards set forth in these rules detailing the performance of all methods employed by the facility used to test the analytes it reports and made available for testing analysts to follow at all times.

   a. The current laboratory director must approve, sign and date each procedure. If any modifications are made to those procedures, the laboratory director must approve, sign, and date the revised version prior to use.

   b. A Retail Marijuana Testing Facility must maintain a copy of all standard operating procedures to include any revised copies for a minimum of three years. See Rule R 710 – Retail Marijuana Testing Facilities: Records Retention and Rule R 901 – Business Records Required.

5. Analytical Processes. A Retail Marijuana Testing Facility must maintain a listing of all analytical methods used and all analytes tested and reported. The Retail Marijuana Testing Facility must provide this listing to the Division upon request.

6. Proficiency Testing. A Retail Marijuana Testing Facility must successfully participate in a Division approved Proficiency Testing program in order to obtain and maintain certification.

7. Quality Assurance and Quality Control. A Retail Marijuana Testing Facility must establish and follow a quality assurance and quality control program to ensure sufficient monitoring of laboratory processes and quality of results reported.

8. Security. A Retail Marijuana Testing Facility must be located in a secure setting as to prevent unauthorized persons from gaining access to the testing and storage areas of the laboratory.

9. Chain of Custody. A Retail Marijuana Testing Facility must establish a system to document the complete chain of custody for samples from receipt through disposal.

10. Space. A Retail Marijuana Testing Facility must be located in a fixed structure that provides adequate infrastructure to perform analysis in a safe and compliant manner consistent with federal, state and local requirements.

11. Records. A Retail Marijuana Testing Facility must establish a system to retain and maintain records for a period not less than three years. *See* Rules R 710 – Retail Marijuana Testing Facilities - Records Retention and Rule R 901 – Business Records Required.

12. Results Reporting. A Retail Marijuana Testing Facility must establish processes to ensure results are reported in a timely and accurate manner. *See* Rule R 711 – Reporting and Inventory Tracking System.

13. Conduct While Seeking Certification. A Retail Marijuana Testing Facility, and its agents and employees, shall provide all documents and information required or requested by the

Colorado Department of Public Health and Environment and its employees, and the Division and its employees in a full, faithful, truthful, and fair manner. A violation of this rule may be considered a license violation affecting public safety.

Basis and Purpose – R 704

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(III), 12-43.4-202(3)(a)(IV), 12-43.4-202(3)(b)(IX), and 12-43.4-405, C.R.S. The purpose of this rule is to establish personnel standards for the operation of a Retail Marijuana Testing Facility.

R 704 – Retail Marijuana Testing Facilities: Personnel

A. Laboratory Director. The laboratory director is responsible for the overall analytical operation and quality of the results reported by the Retail Marijuana Testing Facility, including the employment of personnel who are competent to perform test procedures, and record and report test results promptly, accurately, and proficiently and for assuring compliance with the standards set forth in this rule.

1. The laboratory director may also serve as a supervisory analyst or testing analyst, or both, for a Retail Marijuana Testing Facility.

2. The laboratory director for a Retail Marijuana Testing Facility must meet one of the following qualification requirements:

a. The laboratory director must be a Medical Doctor (M.D.) licensed to practice medicine in Colorado and have at least three years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body; or

b. The laboratory director must hold a doctoral degree in one of the natural sciences and have at least three years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body; or

c. The laboratory director must hold a master's degree in one of the natural sciences and have at least five years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body.

B. What the Laboratory Director May Delegate. The laboratory director may delegate the responsibilities assigned under this rule to a qualified supervisory analyst, provided that such delegation is made in writing and a record of the delegation is maintained. *See* Rule R 901 – Business Records Required. Despite the designation of a responsibility, the laboratory director remains responsible for ensuring that all duties are properly performed.

C. Responsibilities of the Laboratory Director. The laboratory director must:

1. Ensure that the Retail Marijuana Testing Facility has adequate space, equipment, materials, and controls available to perform the tests reported;

2. Establish and adhere to a written standard operating procedure used to perform the tests reported;

3. Ensure that testing systems developed and used for each of the tests performed in the laboratory provide quality laboratory services for all aspects of test performance, which includes the preanalytic, analytic, and postanalytic phases of testing;

4. Ensure that the physical location and environmental conditions of the laboratory are appropriate for the testing performed and provide a safe environment in which employees are protected from physical, chemical, and biological hazards;

5. Ensure that the test methodologies selected have the capability of providing the quality of results required for the level of testing the laboratory is certified to perform;

6. Ensure that validation and verification test methods used are adequate to determine the accuracy, precision, and other pertinent performance characteristics of the method;

7. Ensure that testing analysts perform the test methods as required for accurate and reliable results;

8. Ensure that the laboratory is enrolled in and successfully participates in a Division approved Proficiency Testing program;

9. Ensure that the quality control and quality assessment programs are established and maintained to assure the quality of laboratory services provided and to identify failures in quality as they occur;

10. Ensure the establishment and maintenance of acceptable levels of analytical performance for each test system;

11. Ensure that all necessary remedial actions are taken and documented whenever significant deviations from the laboratory's established performance specifications are identified, and that test results are reported only when the system is functioning properly;

12. Ensure that reports of test results include pertinent information required for interpretation;

13. Ensure that consultation is available to the laboratory's clients on matters relating to the quality of the test results reported and their interpretation of said results;

14. Employ a sufficient number of laboratory personnel who meet the qualification requirements and provide appropriate consultation, properly supervise, and ensure accurate performance of tests and reporting of test results;

15. Ensure that prior to testing any samples, all testing analysts receive the appropriate training for the type and complexity of tests performed, and have demonstrated and documented that they can perform all testing operations reliably to provide and report accurate results;

16. Ensure that policies and procedures are established for monitoring individuals who conduct preanalytical, analytical, and postanalytical phases of testing to assure that they are competent and maintain their competency to process Samples, perform test procedures and report test results promptly and proficiently, avoid actual and apparent conflicts of interests, and whenever necessary, identify needs for remedial training or continuing education to improve skills;

17. Ensure that an approved standard operating procedure manual is available to all personnel responsible for any aspect of the testing process; and

18. Specify, in writing, the responsibilities and duties of each person engaged in the performance of the preanalytic, analytic, and postanalytic phases of testing, that identifies which examinations and procedures each individual is authorized to perform, whether supervision is required for Sample processing, test performance or results reporting, and whether consultant or laboratory director review is required prior to reporting test results.

C.5 Change in Laboratory Director. In the event that the laboratory director leaves employment at the Retail Marijuana Testing Facility, the Retail Marijuana Testing Facility shall:

1. Provide written notice to the Colorado Department of Public Health and Environment and the Marijuana Enforcement Division within seven days of the laboratory director's departure; and

2. Designate an interim laboratory director within seven days of the laboratory director's departure. At a minimum, the interim laboratory director must meet the qualifications of a supervisory analyst.

3. The Retail Marijuana Testing Facility must hire a permanent laboratory director within 60 days from the date of the previous laboratory director's departure.

4. Notwithstanding the requirement of subparagraph (C.5)(3), the Retail Marijuana Testing Facility may submit a waiver request to the Division Director to receive an additional 60 days to hire a permanent laboratory director provided that the Retail Marijuana Testing Facility submits a detailed oversight plan along with the waiver request.

D. Supervisory Analyst. Supervisory analysts must meet one of the qualifications for a laboratory director or have at least a bachelor's degree in one of the natural sciences and three years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body. A combination of education and experience may substitute for the three years of full-time laboratory experience.

E. Laboratory Testing Analyst

1. Educational Requirements. An individual designated as a testing analyst must meet one of the qualifications for a laboratory director or supervisory analyst or have at least a bachelor's degree in one of the natural sciences and one year of full-time experience in laboratory testing.

2. Responsibilities. In order to independently perform any test for a Retail Marijuana Testing Facility, an individual must at least meet the educational requirements for a testing analyst.

R 705 – Basis and Purpose

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(3)(a)(IV) and 12-43.4-405, C.R.S. The purpose of this rule is to establish standard operating procedure manual standards for the operation of a Retail Marijuana Testing Facility.

R 705 –Retail Marijuana Testing Facilities: Standard Operating Procedure Manual

A. A standard operating procedure manual must include, but need not be limited to, procedures for:

1. Sample receiving;

2. Sample accessioning;

3. Sample storage;

4. Identifying and rejecting unacceptable specimens;

5. Recording and reporting discrepancies;

6. Security of Samples, aliquots and extracts and records;

7. Validating a new or revised method prior to testing Samples to include: accuracy, precision, analytical sensitivity, analytical specificity (interferences), LOD, LOQ, and verification of the reportable range;

8. Aliquoting Samples to avoid contamination and carry-over;

9. Sample retention to assure stability for 90 days;

10. Disposal of Samples;

11. The theory and principles behind each assay;

12. Preparation and identification of reagents, standards, calibrators and controls and ensure all standards are traceable to National Institute of Standards of Technology ("NIST");

13. Special requirements and safety precautions involved in performing assays;

14. Frequency and number of control and calibration materials;

15. Recording and reporting assay results;

16. Protocol and criteria for accepting or rejecting analytical Procedure to verify the accuracy of the final report;

17. Pertinent literature references for each method;

18. Current step-by-step instructions with sufficient detail to perform the assay to include equipment operation and any abbreviated versions used by a testing analyst;

19. Acceptability criteria for the results of calibration standards and controls as well as between two aliquots or columns;

20. A documented system for reviewing the results of testing calibrators, controls, standards, and subject tests results, as well as reviewing for clerical errors, analytical errors and any unusual analytical results and are corrective actions implemented and documented, and does the laboratory contact the requesting entity; and

21. Policies and procedures to follow when Samples are requested for referral and testing by another certified Retail Marijuana Testing Facility or an approved local or state agency's laboratory.

22. Testing Industrial Hemp, if the Retail Marijuana Testing Facility tests Industrial Hemp.

R 706 – Basis and Purpose

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(3)(a)(IV) and 12-43.4-405, C.R.S. The purpose of this rule is to establish analytical processes standards for the operation of a Retail Marijuana Testing Facility.

R 706 –Retail Marijuana Testing Facilities: Analytical Processes

A. Gas Chromatography ("GC"). A Retail Marijuana Testing Facility using GC must:

1. Document the conditions of the gas chromatograph, including the detector response;

2. Perform and document preventive maintenance as required by the manufacturer;

3. Ensure that records are maintained and readily available to the staff operating the equipment;

4. Document the performance of new columns before use;

5. Use an internal standard for each qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified;

6. Establish criteria of acceptability for variances between different aliquots and different columns; and

7. Document the monitoring of the response (area or peak height) of the internal standard to ensure consistency overtime of the analytical system.

B. Gas Chromatography Mass Spectrometry ("GC/MS"). A Retail Marijuana Testing Facility using GC/MS must:

1. Perform and document preventive maintenance as required by the manufacturer;

2. Document the changes of septa as specified in the standard operating procedure;

3. Document liners being cleaned or replaced as specified in the standard operating procedure;

4. Ensure that records are maintained and readily available to the staff operating the equipment;

5. Maintain records of mass spectrometric tuning;

6. Establish written criteria for an acceptable mass-spectrometric tune;

7. Document corrective actions if a mass-spectrometric tune is unacceptable;

8. Monitor analytic analyses to check for contamination and carry-over;

9. Use selected ion monitoring within each run to assure that the laboratory compare ion ratios and retention times between calibrators, controls and Samples for identification of an analyte;

10. Use an internal standard for qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified and is isotopically labeled when available or appropriate for the assay;

11. Document the monitoring of the response (area or peak height) for the internal standard to ensure consistency overtime of the analytical system;

12. Define the criteria for designating qualitative results as positive;

13. When a library is used to qualitatively match an analyte, the relative retention time and mass spectra from a known standard or control must be run on the same system before reporting the results; and

14. Evaluate the performance of the instrument after routine and preventive maintenance (*e.g*. clipping or replacing the column or cleaning the source) prior to analyzing subject Samples.

C. Immunoassays. A Retail Marijuana Testing Facility using Immunoassays must:

1. Perform and document preventive maintenance as required by the manufacturer;

2. Ensure that records are maintained and readily available to the staff operating the equipment;

3. Validate any changes or modifications to a manufacturer's approved assays or testing methods when a Sample is not included within the types of Samples approved by the manufacturer; and

4. Define acceptable separation or measurement units (absorbance intensity or counts per minute) for each assay, which must be consistent with manufacturer's instructions.

D. Thin Layer Chromatography ("TLC"). A Retail Marijuana Testing Facility using TLC must:

1. Apply unextracted standards to each thin layer chromatographic plate;

2. Include in their written procedure the preparation of mixed solvent systems, spray reagents and designation of lifetime;

3. Include in their written procedure the storage of unused thin layer chromatographic plates;

4. Evaluate, establish, and document acceptable performance for new thin layer chromatographic plates before placing them into service;

5. Verify that the spotting technique used precludes the possibility of contamination and carry-over;

6. Measure all appropriate RF values for qualitative identification purposes;

7. Use and record sequential color reactions, when applicable;

8. Maintain records of thin layer chromatographic plates; and

9. Analyze an appropriate matrix blank with each batch of Samples analyzed.

E. High Performance Liquid Chromatography ("HPLC"). A Retail Marijuana Testing Facility using HPLC must:

1. Perform and document preventive maintenance as required by the manufacturer;

2. Ensure that records are maintained and readily available to the staff operating the equipment;

3. Monitor and document the performance of the HPLC instrument each day of testing;

4. Evaluate the performance of new columns before use;

5. Create written standards for acceptability when eluting solvents are recycled;

6. Use an internal standard for each qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified when available or appropriate for the assay; and

7. Document the monitoring of the response (area or peak height) of the internal standard to ensure consistency overtime of the analytical system.

F. Liquid Chromatography Mass Spectroscopy ("LC/MS"). A Retail Marijuana Testing Facility using LC/MS must:

1. Perform and document preventive maintenance as required by the manufacturer;

2. Ensure that records are maintained and readily available to the staff operating the equipment;

3. Maintain records of mass spectrometric tuning;

4. Document corrective actions if a mass-spectrometric tune is unacceptable;

5. Use an internal standard with each qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified and is isotopically labeled when available or appropriate for the assay;

6. Document the monitoring of the response (area or peak height) of the internal standard to ensure consistency overtime of the analytical system;

7. Compare two transitions and retention times between calibrators, controls and Samples within each run;

8. Document and maintain records when changes in source, source conditions, eluent, or column are made to the instrument; and

9. Evaluate the performance of the instrument when changes in: source, source conditions, eluent, or column are made prior to reporting test results.

G. Other Analytical Methodology. A Retail Marijuana Testing Facility using other methodology or new methodology must:

1. Implement a performance based measurement system for the selected methodology and validate the method following good laboratory practices prior to reporting results. Validation of other or new methodology must include when applicable, but is not limited to:

a. Verification of Accuracy

b. Verification of Precision

c. Verification of Analytical Sensitivity

d. Verification of Analytical Specificity

e. Verification of the LOD

f. Verification of the LOQ

g. Verification of the Reportable Range

h. Identification of Interfering Substances

2. Validation of the other or new methodology must be documented.

3. Prior to use, other or new methodology must have a standard operating procedure approved and signed by the laboratory director.

4. Testing analysts must have documentation of competency assessment prior to testing Samples.

5. Any changes to the approved other or new methodology must be revalidated and documented prior to testing Samples.

R 707 – Basis and Purpose

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(3)(a)(IV) and 12-43.4-405, C.R.S. The purpose of this rule is to establish a proficiency testing program for Retail Marijuana Testing Facilities.

R 707 – Retail Marijuana Testing Facilities: Proficiency Testing

A. Proficiency Testing Required. A Retail Marijuana Testing Facility must participate in a Proficiency Testing program for each approved category in which it seeks certification under Rule R 703 – Retail Marijuana Testing Facilities: Certification Requirements.

B. Participation in Designated Proficiency Testing Event. If required by the Division as part of certification, the Retail Marijuana Testing Facility must have successfully participated in Proficiency Testing in the category for which it seeks certification, within the preceding 12 months.

C. Continued Certification. To maintain continued certification, a Retail Marijuana Testing Facility must participate in the designated Proficiency Testing program with continued satisfactory performance as determined by the Division as part of certification. The Division may designate a local agency, state agency, or independent third-party to provide Proficiency Testing.

D. Analyzing Proficiency Testing Samples. A Retail Marijuana Testing Facility must analyze Proficiency Test Samples using the same procedures with the same number of replicate analyses, standards, testing analysts and equipment as used in its standard operating procedures.

E. Proficiency Testing Attestation. The laboratory director and all testing analysts who participated in Proficiency Testing must sign corresponding attestation statements.

F. Laboratory Director Must Review Results. The laboratory director must review and evaluate all Proficiency Testing results.

G. Remedial Action. A Retail Marijuana Testing Facility must take and document remedial action when a score of less than 100% is achieved on any test during Proficiency Testing. Remedial action documentation must include a review of Samples tested and results reported since the last successful Proficiency Testing event. A requirement to take remedial action does not necessarily indicate unsatisfactory participation in a Proficiency Testing event.

H. Unsatisfactory Participation in a Proficiency Testing Event. Unless the Retail Marijuana Testing Facility positively identifies at least 80% of the target analytes tested, participation in the Proficiency Testing event will be considered unsatisfactory. A positive identification must include accurate quantitative and qualitative results as applicable. Any false positive result reported will be considered unsatisfactory participation in the Proficiency Testing event.

I. Consequence of Unsatisfactory Participation in Proficiency Testing Event. Unsatisfactory participation in a Proficiency Testing event may result in limitation, suspension or revocation of Rule R 703 certification.

R 708 – Basis and Purpose

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(3)(a)(IV) and 12-43.4-405, C.R.S. The purpose of this rule is to establish quality assurance and quality assurance standards for a Retail Marijuana Testing Facility.

R 708 – Retail Marijuana Testing Facilities: Quality Assurance and Quality Control

A. Quality Assurance Program Required. A Retail Marijuana Testing Facility must establish, monitor, and document the ongoing review of a quality assurance program that is sufficient to identify problems in the laboratory preanalytic, analytic and postanalytic systems when they occur and must include, but is not limited to:

1. Review of instrument preventive maintenance, repair, troubleshooting and corrective actions documentation must be performed by the laboratory director or designated supervisory analyst on an ongoing basis to ensure the effectiveness of actions taken over time;

2. Review by the laboratory director or designated supervisory analyst of all ongoing quality assurance; and

3. Review of the performance of validated methods used by the Retail Marijuana Testing Facility to include calibration standards, controls and the standard operating procedures used for analysis on an ongoing basis to ensure quality improvements are made when problems are identified or as needed.

B. Quality Control Measures Required. A Retail Marijuana Testing Facility must establish, monitor and document on an ongoing basis the quality control measures taken by the laboratory to ensure the proper functioning of equipment, validity of standard operating procedures and accuracy of results reported. Such quality control measures must include, but shall not be limited to:

1. Documentation of instrument preventive maintenance, repair, troubleshooting and corrective actions taken when performance does not meet established levels of quality;

2. Review and documentation of the accuracy of automatic and adjustable pipettes and other measuring devices when placed into service and annually thereafter;

3. Cleaning, maintaining and calibrating as needed the analytical balances and in addition, verifying the performance of the balance annually using certified weights to include three or more weights bracketing the ranges of measurement used by the laboratory;

4. Annually verifying and documenting the accuracy of thermometers using a NIST traceable reference thermometer;

5. Recording temperatures on all equipment when in use where temperature control is specified in the standard operating procedures manual, such as water baths, heating blocks, incubators, ovens, refrigerators, and freezers;

6. Properly labeling reagents as to the identity, the concentration, date of preparation, storage conditions, lot number tracking, expiration date and the identity of the preparer;

7. Avoiding mixing different lots of reagents in the same analytical run;

8. Performing and documenting a calibration curve with each analysis using at minimum three calibrators throughout the reporting range;

9. For qualitative analyses, analyzing, at minimum, a negative and a positive control with each batch of Samples analyzed;

10. For quantitative analyses, analyzing, at minimum, a negative and two levels of controls that challenge the linearity of the entire curve;

11. Using a control material or materials that differ in either source or, lot number, or concentration from the calibration material used with each analytical run;

12. For multi-analyte assays, performing and documenting calibration curves and controls specific to each analyte, or at minimum, one with similar chemical properties as reported in the analytical run;

13. Analyzing an appropriate matrix blank and control with each analytical run, when available;

14. Analyzing calibrators and controls in the same manner as unknowns;

15. Documenting the performance of calibration standards and controls for each analytical run to ensure the acceptability criteria as defined in the standard operating procedure is met;

16. Documenting all corrective actions taken when unacceptable calibration, control, and standard or instrument performance does not meet acceptability criteria as defined in the standard operating procedure;

17. Maintaining records of validation data for any new or modified methods to include; accuracy, precision, analytical specificity (interferences), LOD, LOQ, and verification of the linear range; and

18. Performing testing analysts that follow the current Standard Operating Procedures Manual for the test or tests to be performed.

R 709 – Basis and Purpose

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(3)(a)(IV) and 12-43.4-405, C.R.S. The purpose of this rule is to establish chain of custody standards for a Retail Marijuana Testing Facility. In addition, it establishes the requirement that a Retail Marijuana Testing Facility follow an adequate chain of custody for Samples it maintains.

R 709 –Retail Marijuana Testing Facilities: Chain of Custody

General Requirements. A Retail Marijuana Testing Facility must establish an adequate chain of custody and Sample requirement instructions that must include, but not limited to:

1. Issue instructions for the minimum Sample requirements and storage requirements;

2. Document the condition of the external package and integrity seals utilized to prevent contamination of, or tampering with, the Sample;

3. Document the condition and amount of Sample provided at the time of receipt;

4. Document all persons handling the original Samples, aliquots, and extracts;

5. Document all Transfers of Samples, aliquots, and extracts referred to another certified Retail Marijuana Testing Facility Licensee for additional testing or whenever requested by a client;

6. Maintain a current list of authorized personnel and restrict entry to the laboratory to only those authorized;

7. Secure the Laboratory during non-working hours;

8. Secure short and long-term storage areas when not in use;

9. Utilize a secured area to log-in and aliquot Samples;

10. Ensure Samples are stored appropriately; and

11. Document the disposal of Samples, aliquots, and extracts.

Basis and Purpose – R 710

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(3)(a)(IV) and 12-43.4-405, C.R.S. The purpose of this rule is to establish records retention standards for a Retail Marijuana Testing Facility.

R 710 –Retail Marijuana Testing Facilities: Records Retention

A. General Requirement. A Retail Marijuana Testing Facility must maintain all required business records. *See* Rule R 901 - Business Records Required.

B. Specific Business Records Required: Record Retention. A Retail Marijuana Testing Facility must establish processes to preserve records in accordance with Rule R 901 that includes, but is not limited to;

1. Test Results, including final and amended reports, and identification of analyst and date of analysis;

2. Quality Control and Quality Assurance Records, including accession numbers, Sample type, and acceptable reference range parameters;

3. Standard Operating Procedures;

4. Personnel Records;

5. Chain of Custody Records;

6. Proficiency Testing Records; and

7. Analytical Data to include data generated by the instrumentation, raw data of calibration standards and curves.

C. Repealed.

Basis and Purpose – R 711

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(3)(a)(IV) and 12-43.4-405, C.R.S. The purpose of this rule is to establish reporting standards for a Retail Marijuana Testing Facility.

R 711 –Reporting and Inventory Tracking System

Required Procedures. A Retail Marijuana Testing Facility must establish procedures to ensure that results are accurate, precise and scientifically valid prior to reporting such results.

A. Reports. Every final report, whether submitted to the Division, to a Retail Marijuana Establishment or to any other Person authorized to receive the report, must include the following:

1. Report quantitative results that are only above the lowest concentration of calibrator or standard used in the analytical run;

2. Verify results that are below the lowest concentration of calibrator or standard and above the LOQ by using a blank and a standard that falls below the expected value of the analyte in the Sample in duplicate prior to reporting a quantitative result;

3. Qualitatively report results below the lowest concentration of calibrator or standard and above the LOD as either trace or using a non-specific numerical designation;

4. Adequately document the available external chain of custody information;

5. Ensure all final reports contain the name and location of the Retail Marijuana Testing Facility that performed the test, name and unique identifier of Sample, submitting client, Sample received date, date of report, type of Sample tested, test result, units of measure, and any other information or qualifiers needed for interpretation when applicable to the test method and results being reported, to include any identified and documented discrepancies;

6. Provide the final report to the Division, as well as the Retail Marijuana Establishment and/or any other Person authorized to receive the report a timely manner; and

7. Repealed.

B. Inventory Tracking System. Each Retail Marijuana Testing Facility shall:

1. Report all test results to the Division as part of daily reconciliation by the close of business and in accordance with all Inventory Tracking System Procedures under Rule R 309 – Retail Marijuana Establishments: Inventory Tracking System. The requirement to report all test results includes:

    a. Both positive and negative test results;

    b. Results from both mandatory and voluntary testing; and

    c. For quantitative tests, a quantitative value.

2. As part of Inventory Tracking System reporting, when results of tested Samples exceed maximum levels of allowable potency or contamination, or otherwise result in failed potency, homogeneity, or contaminant testing, the Retail Marijuana Testing Facility shall, in the Inventory Tracking System, indicate failed test results for the Inventory Tracking System package associated with the failed Sample. This requirement only applies to testing of Samples that are comprised of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product.

C. Violation Affecting Public Safety. Violation of this Rule may constitute a license violation affecting public safety

Basis and Purpose – R 712

The statutory authority for this rule includes but is not limited to sections 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)(VIII), 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)(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. The allowable plus or minus 15% potency variance has been included in the rule pursuant to the mandate of House Bill 15-1283, which modified 12-43.4-202(3)(a)(IV)(E), C.R.S. The bill established that the acceptable potency variance, which the Division must determine, must be at least plus or minus 15 percent.

R 712 – Retail Marijuana Testing Facilities: Sampling and Testing Program

A. Division Authority. The Division may 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 Samples it requires to be included in each Test Batch of Retail Marijuana Product for every type of test that it conducts. *See* Rule R 1504 – Retail Marijuana Testing Program – Sampling Procedures.

C. Rejection of Test Batches

1. A Retail Marijuana Testing Facility may not accept a Test Batch that is smaller than its standard minimum amount.

2. A Retail Marijuana Testing Facility may not accept a Test Batch that it knows was not taken in accordance with these rules, except a Retail Marijuana Testing Facility may accept a Test Batch that was collected by Division representatives or that was collected by a Licensee pursuant to Division direction.

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 (1) notify the Retail Marijuana Establishment that submitted the Test Batch for testing and (2) report the failure in accordance with the Inventory Tracking System reporting requirements in Rule R 711(B)..

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-Based, Heat/Pressure-Based, and Food-Based Retail Marijuana Concentrate
Salmonella species* – Bacteria	< 1 Colony Forming Unit (CFU)	
Total Yeast and Mold	< 10^4 Colony Forming Unit (CFU)	

*The Retail Marijuana Testing Facility shall contact the Colorado Department of Public Health and Environment when STEC and Salmonella are detected beyond the acceptable limits.

2. Mycotoxins

Substance	**Acceptable Limits Per Gram**	**Product to be Tested**
Aflatoxins (B1, B2, G1, and G2)	< 20 parts per billion (PPB) (total of B1 + B2 + G1 + G2)	Solvent-Based Retail Marijuana Concentrate manufactured from Retail Marijuana flower or trim that failed microbial testing
Ochratoxin A	< 20 parts per billion (PPB)	

3. Residual Solvents

Substance	**Acceptable Limits Per Gram**	**Product to be Tested**
Acetone	< 1,000 Parts Per Million (PPM)	
Butanes	< 1,000 Parts Per Million (PPM)	
Ethanol***	< 1,000 Parts Per Million (PPM)	
Heptanes	< 1,000 Parts Per Million (PPM)	

Isopropyl Alcohol	< 1,000 Parts Per Million (PPM)	Solvent-Based Retail Marijuana Concentrate
Propane	< 1,000 Parts Per Million (PPM)	
Benzene**	< 2 Parts Per Million (PPM)	
Toluene**	< 180 Parts Per Million (PPM)	
Pentane	< 1,000 Parts Per Million (PPM)	
Hexane**	< 60 Parts Per Million (PPM)	
Total Xylenes (m,p, o-xylenes)**	< 430 Parts Per Million (PPM)	
Any other solvent not permitted for use pursuant to Rule R 605.	None Detected	

** Note: These solvents are not approved for use. Due to their possible presence in the solvents approved for use per Rule R 605, limits have been listed here accordingly.

***Note. If the Retail Marijuana Concentrate or Retail Marijuana Product intended use is oral consumption or skin and body products only this Solvent-Based Retail Marijuana Concentrate limit for ethanol does not apply. If the Retail Marijuana Concentrate or Retail Marijuana-Infused Product intended use includes inhaled product, this Solvent-Based Retail Marijuana Concentrate limit for ethanol applies.

4. Metals

Substance	**Acceptable Limits Per Gram**	**Product to be Tested**
Metals (Arsenic, Cadmium, Lead and Mercury)	Lead – Max Limit: < 1.0 ppm Arsenic – Max Limit: < 0.4 ppm Cadmium – Max Limit: < 0.4 ppm Mercury – Max Limit: < 0.2 ppm	Flower; Water-Based, Food-Based, Heat/Pressure-Based, and Solvent-Based Concentrate

5. Pesticides

Substance	**Detection Limits**	**Product to be Tested**
Abamectin (Avermectins: B1a & B1b)	< 0.07 Parts Per Million (PPM)	Retail Marijuana flower and trim
Azoxystrobin	< 0.02 Parts Per Million (PPM)	
Bifenazate	< 0.02 Parts Per Million (PPM)	
Etoxazole	< 0.01 Parts Per Million (PPM)	
Imazalil	< 0.04 Parts Per Million (PPM)	
Imidacloprid	< 0.02 Parts Per Million (PPM)	
Malathion	< 0.05 Parts Per Million (PPM)	

Myclobutanil	< 0.04 Parts Per Million (PPM)	
Permethrin (mix of isomers)	< 0.04 Parts Per Million (PPM)	
Spinosad (Mixture of A and D)	< 0.06 Parts Per Million (PPM)	
Spiromesifen	< 0.03 Parts Per Million (PPM)	
Spirotetramat	< 0.02 Parts Per Million (PPM)	
Tebuconazole	< 0.01 Parts Per Million (PPM)	

6. Other Contaminants

Pesticide	If the Test Batch is found to contain banned prohibited Pesticide not listed in Paragraph (5) above, 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 or as applied, 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 or present, then the Division may determine that the Test Batch has failed contaminant testing.

7. Division Notification. A Retail Marijuana Testing Facility must notify the Division by timely input in the Inventory Tracking System 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. See Rule R 711 – Reporting and Inventory Tracking System

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's standard operating procedure.

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. This includes reporting the Total THC in addition to each Cannabinoid required in Rule R 1503.

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 stating whether the THC content is homogenous as defined in Paragraph (4)(b) of this Rule.

3. Testing Retail Marijuana Ready for Transfer. All potency tests must occur at the time the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product has completed all steps required prior to Transfer to another Retail Marijuana Establishment as outlined in the Retail Marijuana Establishment's standard operating procedures.

4. Failed Potency Tests for Retail Marijuana Products

   a. If an individually packaged Edible Retail Marijuana Product is determined to have more than 100 milligrams of THC within it, then the Test Batch shall be considered to have failed potency testing. If an individually packaged Edible Retail Marijuana Product is determined to have more than the total milligrams of THC stated on the Container, or less than the total milligrams of THC stated on the Container, then the Test Batch shall be considered to have failed potency testing. If a single serving in an individually packaged Edible Retail Marijuana Product is determined to have more than 10 milligrams of THC, or less than 10 milligrams of THC, then the Test Batch shall be considered to have failed potency testing. Except that the potency variance provided for in subparagraph (F)(5) of this rule R 712 shall apply to potency testing.

   b. If the THC content of a Retail Marijuana Product is determined through testing not to 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.

5. Potency Variance. A potency variance of no more than plus or minus 15% is allowed.

R 800 Series – Transport and Storage

Basis and Purpose – R 801

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(X), 12-43.4-202(3)(a)(XVII), 12-43.4-202(3)(c)(IV), 12-43.4-309(4), 12-43.4-401(1), and section 12-43.4-406 C.R.S. The purpose of the rule is to provide clarity as to the requirements associated with the transport and delivery of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product between Licensed Premises. It also prescribes the manner in which licensed entities will track inventory in the transport process to prevent diversionary practices.

R 801 – Transport: All Retail Marijuana Establishments

A. Persons Authorized to Transport. Except as provided in the Rule R 1600 series, any individual who transports Retail Marijuana, Retail Marijuana Vegetative plants, Retail Marijuana Immature plants, Retail Marijuana Concentrate, or Retail Marijuana Product on behalf of a Retail Marijuana Establishment must hold a valid Occupational License and must be an employee or Owner of the Retail Marijuana Establishment. An individual who does not possess a current and valid Owner or Occupational License from the State Licensing Authority may not transport Retail Marijuana, Retail Marijuana Vegetative plants, Retail Marijuana Immature plants, Retail Marijuana Concentrate, or Retail Marijuana Product between Licensed Premises.

B. Transport Between Licensed Premises.

   1. Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product. Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product shall only be transported by Licensees between Licensed Premises; between Licensed Premises and a permitted off-premises storage facility; between Licensed Premises and a Medical

Research Facility; and between Licensed Premises and a Pesticide Manufacturer. Licensees transporting Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product are responsible for ensuring that all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product are secured at all times during transport.

2. Retail Marijuana Vegetative Plants and Retail Marijuana Immature Plants.

a. Retail Marijuana Vegetative plants may only be transported between Licensed Premises and such transport shall only be permitted due to an approved change of location pursuant to Rule R 206.

b. Retail Marijuana Immature plants shall only be transported between Licensed Premises; between Licensed Premises and a Medical Research Facility; and between Licensed Premises and a Pesticide Manufacturer.

c. Licensees transporting Retail Marijuana Vegetative plants and Retail Marijuana Immature plants are responsible for ensuring that all Retail Marijuana Vegetative plants and Retail Marijuana Immature plants are secure at all times during transport. Transportation of Retail Marijuana Vegetative plants and Retail Marijuana Immature plants to a permitted off-premises storage facility shall not be allowed. Transport of Retail Marijuana plants other than Vegetative Plants and Immature plants shall not be allowed.

C. Inventory Tracking System-Generated Transport Manifest Required. A Licensee may only transport Retail Marijuana, Retail Marijuana Vegetative plants, Retail Marijuana Immature plants, Retail Marijuana Concentrate, or Retail Marijuana Product if he or she has a hard copy of an Inventory Tracking System -generated transport manifest that contains all the information required by this rule and shall be in the format prepared by the State Licensing Authority.

1. Retail Marijuana, Retail Marijuana Immature Plants, Retail Marijuana Concentrate, and Retail Marijuana Product. A Licensee may transport Retail Marijuana, Retail Marijuana Immature plants, Retail Marijuana Concentrate, or Retail Marijuana Product from an originating location to multiple destination locations so long as the transport manifest correctly reflects the specific inventory destined for specific Retail Marijuana Establishments, Medical Research Facilities, and/or Pesticide Manufacturers.

2. Retail Marijuana Vegetative Plants. A Licensee shall transport Retail Marijuana Vegetative plants only from the originating Licensed Premises to the destination Licensed Premises due to a change of location that has been approved by the Division pursuant to Rule R 206.

3. Manifest for Transfers to Medical Research Facilities and Pesticide Manufacturers. A Licensee may not transport or permit the transportation of Retail Marijuana, Retail Marijuana Immature plants, Retail Marijuana Concentrate, or Retail Marijuana Product to a Medical Research Facility or Pesticide Manufacturer unless an Inventory Tracking System-generated transport manifest has been generated.

D. Motor Vehicle Required. Transport of Retail Marijuana, Retail Marijuana Vegetative plants, Retail Marijuana Immature plants, Retail Marijuana Concentrate, and/or Retail Marijuana Product shall be conducted by a motor vehicle that is properly registered in the state of Colorado pursuant to motor vehicle laws, but need not be registered in the name of the Licensee. Except that when a rental truck is required for transporting Retail Marijuana Vegetative plants or Retail Marijuana Immature plants, Colorado motor vehicle registration is not required.

E. Documents Required During Transport. Transport of Retail Marijuana, Retail Marijuana Vegetative plants, Retail Marijuana Immature plants, Retail Marijuana Concentrate, or Retail Marijuana Product shall be accompanied by a copy of the originating Retail Marijuana Establishment's business license, the driver's valid Owner or Occupational License, the driver's valid motor vehicle operator's license, and all required vehicle registration and insurance information.

F. Use of Colorado Roadways. State law does not prohibit the transport of Retail Marijuana, Retail Marijuana Vegetative plants, Retail Marijuana Immature plants, Retail Marijuana Concentrate, and/or Retail Marijuana Product on any public road within the state of Colorado as authorized in this rule. However, nothing herein authorizes a Licensee to violate specific local ordinances or resolutions enacted by any city, town, city and county, or county related to the transport of Retail Marijuana, Retail Marijuana Vegetative plants, Retail Marijuana Immature plants, Retail Marijuana Concentrate, or Retail Marijuana Product.

G. Preparation of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product for Transport

1. Final Weighing and Packaging. A Retail Marijuana Establishment shall comply with the specific rules associated with the final weighing and packaging of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product before such items are prepared for transport pursuant to this rule. The scale used to weigh product to be transported shall be tested and approved in accordance with measurement standards established in 35-14-127, C.R.S.

2. Preparation in Limited Access Area. Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product shall be prepared for transport in a Limited Access Area, including the packaging and labeling of Containers or Shipping Containers.

3. Shipping Containers. Licensees may Transfer multiple Containers of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product in a Shipping Container. The contents of Shipping Containers shall be easily accessible and may be inspected by the State Licensing Authority, local jurisdictions, and state and local law enforcement agency for a purpose authorized by the Retail Code or for any other state or local law enforcement purpose.

G.5. Required RFID Tags

1. Licensees shall ensure that either the multiple Containers placed within a Shipping Container each have an RFID tag, or the Shipping Container itself must have an RFID tag. If the Licensee elects to place the RFID tag on the Shipping Container, the Shipping Container shall contain only one Harvest Batch, or Production Batch of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product. If a Shipping Container consists of more than one Harvest Batch or Production Batch, then each group of multiple Containers shall be affixed with an RFID tag.

2. Retail Marijuana Vegetative Plants and Retail Marijuana Immature Plants. Each Retail Marijuana Vegetative plant that is transported pursuant to this rule must have a RFID tag affixed to it prior to transport. Each receptacle containing Retail Marijuana Immature plants transported pursuant to this rule must have an RFID tag affixed prior to transport.

H. Creation of Records and Inventory Tracking

1. Use of Inventory Tracking System -Generated Transport Manifest.

a. Retail Marijuana, Retail Marijuana Immature Plants, Retail Marijuana Concentrate, and Retail Marijuana Product. Licensees who transport or permit the transportation of Retail Marijuana, Retail Marijuana Immature plants, Retail Marijuana Concentrate, or Retail Marijuana Product shall create an Inventory Tracking System-generated transport manifest to reflect inventory that leaves the Licensed Premises destined for other Licensed Premises, Medical Research Facilities, or Pesticide Manufacturers. The transport manifest may either reflect all deliveries for multiple locations within a single trip or separate transport manifests may reflect each single delivery. In either case, no inventory shall be transported without an Inventory Tracking System -generated transport manifest.

a.1 Use of a Retail Marijuana Transporter. In addition to subparagraph (H)(1)(a), Licensees shall also follow the requirements of this subparagraph (H)(1)(a.1) when a Licensee utilizes the services of a Retail Marijuana Transporter.

i. When a Retail Marijuana Store, Retail Marijuana Cultivation Facility, Retail Marijuana Products Manufacturing Facility, or Retail Marijuana Testing Facility utilizes a Retail Marijuana Transporter for transporting its Retail Marijuana, Retail Marijuana Immature plants, Retail Marijuana Concentrate, or Retail Marijuana Products, the originating Licensee shall input the requisite information on the Inventory Tracking System-generated transport manifest for the final destination Licensee, Medical Research Facility, or Pesticide Manufacturer who will be receiving the Retail Marijuana, Retail Marijuana Immature plants, Retail Marijuana Concentrate, or Retail Marijuana Products.

ii. A Retail Marijuana Transporter is prohibited from being listed as the final destination Licensee.

iii. A Retail Marijuana Transporter shall not alter the information of the final destination Licensee, Medical Research Facility, or Pesticide Manufacturer after the information has been entered on the Inventory Tracking System-generated transport manifest by the Licensee.

iv. If the Retail Marijuana Transporter is not delivering the originating Licensee's Retail Marijuana, Retail Marijuana Immature plants, Retail Marijuana Concentrate, or Retail Marijuana Product directly to the final destination Licensee, Medical Research Facility, or Pesticide Manufacturer, the Retail Marijuana Transporter shall communicate to the originating Licensee which of the Retail Marijuana Transporter's Licensed Premises or off-premises storage facilities will receive and temporarily store the Retail Marijuana, Retail Marijuana Immature plants, Retail Marijuana Concentrate, or Retail Marijuana Product. The originating Licensee shall input the Retail Marijuana Transporter's location address and license number on the Inventory Tracking System-generated transport manifest.

b. Retail Marijuana Vegetative Plants.

i. Licensees who transport Retail Marijuana Vegetative plants shall create an Inventory Tracking System-generated transport manifest to reflect inventory that leaves the originating Licensed Premises to be transported to the destination Licensed Premises due to a change of location approved by the Division pursuant to Rule R 206.

ii. Retail Marijuana Transporters are permitted to transport Retail Marijuana Vegetative plants on behalf of other Licensees due to a change of location approved by the Division pursuant to Rule R 206. The Retail Marijuana Transporter shall transport the Retail Marijuana Vegetative Plants directly from the originating Licensed Premises to the final destination Licensed Premises.

2. Copy of Transport Manifest to Recipient. A Licensee shall provide a copy of the transport manifest to each Retail Marijuana Establishment, Medical Research Facility, or Pesticide Manufacturer receiving the inventory described in the transport manifest. In order to maintain transaction confidentiality, the originating Licensee may prepare a separate Inventory Tracking System-generated transport manifest for each recipient Retail Marijuana Establishment, Medical Research Facility, or Pesticide Manufacturer.

3. The Inventory Tracking System-generated transport manifest shall include the following:

a. Departure date and approximate time of departure;

b. Name, location address, and license number of the originating Retail Marijuana Establishment;

c. Name, location address, and license number of the destination Retail Marijuana Establishment(s), name and location address of the Medical Research Facility, or name and location address of the destination Pesticide Manufacturer;

c.1 Name, location address, and license number of the Retail Marijuana Transporter if applicable pursuant to R 801(H)(1)(a.1)(iv).

d. Product name and quantities (by weight or unit) of each product to be delivered to each specific destination location(s);

e. Arrival date and estimated time of arrival;

f. Delivery vehicle make and model and license plate number; and

g. Name, Occupational License number, and signature of the Licensee accompanying the transport.

J. Inventory Tracking. In addition to all the other tracking requirements set forth in these rules, a Retail Marijuana Establishment shall be responsible for all the procedures associated with the tracking of inventory that is transported between Licensed Premises. *See* Rule R 901 – Business Records Required.

1. Responsibilities of Originating Licensee.

a. Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product. Prior to departure, the originating Retail Marijuana Establishment shall adjust its records to reflect the removal of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product. The scale used to weigh product to be transported shall be tested and approved in accordance with measurement standards established in 35-14-127, C.R.S. Entries to the records shall note the Inventory Tracking System-generated transport manifest and shall be easily reconciled, by product name and quantity, with the applicable transport manifest.

b. Retail Marijuana Vegetative Plants and Retail Marijuana Immature plants. Prior to departure, the originating Retail Marijuana Cultivation Facility shall adjust its records to reflect the removal of Retail Marijuana Vegetative plants and Retail Marijuana Immature plants. Entries to the records shall note the Inventory Tracking System-generated transport manifest and shall be easily reconciled, by product name and quantity, with the applicable transport manifest.

2. Responsibilities of Recipient Licensee.

a. Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product. Upon receipt, the receiving Licensee shall ensure that the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product received are as described in the transport manifest and shall immediately adjust its records to reflect the receipt of inventory. The scale used to weigh product being received shall be tested and approved in accordance with measurement standards established in 35-14-127, C.R.S. Entries to the inventory records shall note the Inventory Tracking System-generated transport manifest and shall be easily reconciled, by product name and quantity, with the applicable transport manifest. Retail Marijuana Transporters shall comply with all requirements of this subparagraph (J)(2)(a) except that they are not required to weigh Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Products.

i. When a Retail Marijuana Establishment transfers Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a Medical Research Facility or Pesticide Manufacturer, the originating Licensee is responsible for confirming delivery of the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product in the Inventory Tracking System.

b. Retail Marijuana Vegetative Plants and Retail Marijuana Immature Plants. Upon receipt, the recipient Licensee shall ensure that the Retail Marijuana Vegetative plants received are as described in the transport manifest, accounting for all RFID tags and each associated plant, and shall immediately adjust its records to reflect the receipt of inventory. Upon Receipt, the recipient Licensee shall ensure that the Retail Marijuana Immature plants received are as described in the transport manifest, accounting for all RFID tags and each receptacle containing Retail Marijuana Immature plants, and shall immediately adjust its records to reflect the receipt of inventory.

i. When a Retail Marijuana Establishment transfers Retail Marijuana Immature plants to a Medical Research Facility or Pesticide Manufacturer, the originating Licensee is responsible for confirming delivery of the Retail Marijuana Immature plants in the Inventory Tracking System.

3. Discrepancies.

a. Licensees. A recipient Licensee shall separately document any differences between the quantity specified in the transport manifest and the quantities received. Such documentation shall be made in the Inventory Tracking System and in any relevant business records.

b. Medical Research Facilities and Pesticide Manufacturers. In the event of a discrepancy between the quantity specified in a transport manifest and the quantity received by a Medical Research Facility or Pesticide Manufacturer, the

originating Licensee shall document the discrepancy in the Inventory Tracking System and in any relevant business records, and account for the discrepancy.

K. Adequate Care of Perishable Retail Marijuana Product. A Retail Marijuana Establishment must provide adequate refrigeration for perishable Retail Marijuana Product during transport.

L. Failed Testing. In the event Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product has failed required testing, has been contaminated, or otherwise presents a risk of cross-contamination to other Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product, such Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product may only be transported if it is physically segregated and contained in a sealed package that prevents cross-contamination.

Basis and Purpose – R 802

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(X), 12-43.4-202(3)(a)(XVII), 12-43.4-406(2), and 12-43.4-701(2), C.R.S. The purpose of this rule is to establish that Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product may not be stored outside of Licensed Premises unless the Licensee obtains an off-premises storage facility permit.

R 802 – Off-Premises Storage of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product: All Retail Marijuana Establishments

A. Off-Premises Storage Permit Authorized. A Retail Marijuana Store, Retail Marijuana Products Manufacturing Facility, a Retail Marijuana Cultivation Facility, and a Retail Marijuana Testing Facility may only store Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product in their Licensed Premises or in their one permitted off-premises storage facility. Retail Marijuana Transporters are allowed to have more than one permitted off-premises storage facility.

B. Permitting. To obtain a permit for an off-premises storage facility, a Retail Marijuana Establishment must apply on current Division forms and pay any applicable fees. A Retail Marijuana Transporter may only apply for and hold an off-premises storage permit in a local jurisdiction that permits the operation of Retail Marijuana Stores.

C. Extension of Licensed Premises. A permitted off-premises storage facility shall constitute an extension of the Retail Marijuana Establishment's Licensed Premises, subject to all applicable Retail Marijuana regulations.

D. Limitation on Inventory to be Stored. A Retail Marijuana Store, Retail Marijuana Products Manufacturing Facility, and a Retail Marijuana Cultivation Facility may only have upon the permitted off-premises storage facility Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product that are part of the particular Retail Marijuana Establishment's finished goods inventory. The aforementioned Licensees may not share the premises with, or store inventory belonging to a Retail Marijuana Establishment that is not commonly-owned or a Medical Marijuana Business.

E. Restrictions. The permitted off-premises storage facility may be utilized for storage only. A Retail Marijuana Establishment may not Transfer, cultivate, manufacture, process, test, research, or consume any Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product within the premises of the permitted off-premises storage facility.

F. Display of Off-premises Storage Permit and License. The off-premises storage facility permit and a copy of the Retail Marijuana Establishment's license must be displayed in a prominent place within the permitted off-premises storage facility.

G. Local Jurisdiction Approval

1. Prior to submitting an application for an off-premises storage facility permit, the Retail Marijuana Establishment must obtain approval or acknowledgement from the relevant local jurisdiction.

2. A copy of the relevant local jurisdiction's approval or acknowledgement must be submitted by the Retail Marijuana Establishment in conjunction with its application for an off-premises storage facility.

3. No Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product may be stored within a permitted storage facility until the relevant local jurisdiction has been provided a copy of the off-premises storage facility permit.

4. Any off-premises storage permit issued by the Division shall be conditioned upon the Retail Marijuana Establishment's receipt of all required local jurisdiction approvals or acknowledgments.

H. Security in Storage Facility. A permitted off-premises storage facility must meet all video, security and lock requirements applicable to a Licensed Premises. *See* Rules R 305 – Security Alarm and Lock Standards and R 306 – Video Surveillance.

I. Transport to and from a Permitted Off-Premises Storage Facility. A Licensee must comply with the provisions of Rule R 801 – Transport: All Retail Marijuana Establishments, when transporting any Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to and from a permitted off-premises storage facility.

J. Inventory Tracking. In addition to all the other tracking requirements set forth in these rules, a Retail Marijuana Establishment shall utilize the Inventory Tracking System to track its inventories from the point of transfer to or from a permitted off-premises storage facility. *See* Rules R 309 – Retail Marijuana Establishment: Inventory Tracking System and R 901 – Business Records Required.

K. Inventory Tracking System Access and Scale. Every permitted off-premises storage facility must have an Inventory Tracking System terminal and a scale tested and approved in accordance with measurement standards established in section 35-14-127, C.R.S.

L. Adequate Care of Perishable Retail Marijuana Product. A Retail Marijuana Establishment must provide adequate refrigeration for perishable Retail Marijuana Product and shall utilize adequate storage facilities and transport methods.

M. Consumption Prohibited. A Retail Marijuana Establishment shall not permit the consumption of marijuana or marijuana product on the premises of its permitted off-premises storage facility.

R 900 Series – Business Records

Basis and Purpose – R 901

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(XII), 12-43.4-301, and 12-43.4-701(1), C.R.S. This rule explains what business records a Licensee must maintain and clarifies that such records must be made available to the Division on demand. Rule R 901(B) was added due to written commentary received from an industry representative.

R 901 – Business Records Required

A. General Requirements

1. A Retail Marijuana Establishment must maintain the information required in this rule in a format that is readily understood by a reasonably prudent business person.

2. Each Retail Marijuana Establishment shall retain all books and records necessary to fully account for the business transactions conducted under its license for the current year and three preceding calendar years.

    a. On premises records: The Retail Marijuana Establishment's books and records for the preceding six months (or complete copies of such records) must be maintained on the Licensed Premises at all times.

    b. On- or off-premises records: Books and records associated with older periods may be archived on or off of the Licensed Premises.

3. The books and records must fully account for the transactions of the business and must include, but shall not be limited to:

    a. Current Employee List – This list must provide the full name and Occupational License number of each employee and all non-employee Owners, who work at a Retail Marijuana Establishment.

        i. Each Licensed Premises shall enter the full name and Occupational License number of every employee that works on the premises into the Inventory Tracking System. The Licensed Premises shall update its list of employees in the Inventory Tracking System within 10 days of an employee commencing or ceasing employment on the premises.

    b. Secure Facility Information – For its Licensed Premises and any associated permitted off-premises storage facility, a Retail Marijuana Establishment must maintain the business contact information for vendors that maintain video surveillance systems and Security Alarm Systems.

    c. Advertising Records - All records related to Advertising and marketing, including, but not limited to, audience composition data.

    d. Licensed Premises – Diagram of all approved Limited Access Areas and any permitted off-premises storage facilities.

    e. Visitor Log – List of all visitors entering Limited Access Areas or Restricted Access Areas.

    f. All records normally retained for tax purposes.

    g. Waste Log – Comprehensive records regarding all waste material that accounts for, reconciles, and evidences all waste activity relate to the disposal of marijuana.

    h. Surveillance Logs – Surveillance logs as required by Rule R 306.

    i. Every Licensee shall maintain a record of its Identity Statement and Standardized Graphic Symbol which shall be available upon request by the State Licensing Authority or Division. A Licensee may elect to have its Identity

Statement also serve as its Standardized Graphic Symbol for purposes of complying with this rule.

j. Testing Records – all testing records required by Rule R 710.

k. All other records requires by these Rules.

B. Loss of Records and Data. Any loss of electronically-maintained records shall not be considered a mitigating factor for violations of this rule. Licensees are required to exercise due diligence in preserving and maintaining all required records.

C. Violation Affecting Public Safety. Violation of this rule may constitute a license violation affecting public safety.

D. Records Related to Inventory Tracking. A Retail Marijuana Establishment must maintain accurate and comprehensive inventory tracking records that account for, reconcile and evidence all inventory activity for Retail Marijuana from either seed or immature plant stage until the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product is destroyed or Transferred to another Retail Marijuana Establishment, a consumer, a Medical Research Facility, or a Pesticide Manufacturer.

E. Records Related to Transport. A Retail Marijuana Establishment must maintain adequate records for the transport of all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product. *See* Rule R 801 – Transport.

F. Provision of Any Requested Record to the Division. A Licensee must provide on-demand access to on-premises records following a request from the Division during normal business hours or hours of apparent operation, and must provide access to off-premises records within three business days following a request from the Division.

R 1000 Series – Labeling, Packaging, and Product Safety

Effective Date. Compliance with this R 1000 Series is mandatory until January 1, 2018. During the period January 1, 2018, to June 30, 2018, Licensees have the option of complying with this Rule R 1000 Series or with the Rule R 1000-1 Series, but must be fully compliant with at least one of those two Labeling, Packaging, and Product Safety Series. Beginning July 1, 2018, this Rule R 1000 Series is repealed, and compliance with the R 1000-1 Series is mandatory.

Basis and Purpose – R 1001

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(1), 12-43.4-202(2)(b), 12-43.4-202(3)(a)(IV), 12-43.4-202(3)(a)(VI), 12-43.4-202(3)(a)(VII), 12-43.4-202(3)(a)(X) , 12-43.4-202(3)(b)(IX), 12-43.4-202(3)(c)(I), 12-43.4-202(3)(c)(III), 12-43.3-402(2)(a), 12-43.4-404(4)(a), 12-43.4-404(6), and 12-43.4-901(4)(b), C.R.S. The State Licensing Authority finds it essential to regulate and establish labeling and secure packaging requirements for Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product. The purpose of this rule, and the rules in this series, is to ensure that all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product are sold and delivered to lawful consumers in packaging that is not easily opened by children. Further, the State Licensing Authority believes based on written and oral comments it received through the rulemaking process that prohibiting labels that appeal to or 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. One of the State Licensing Authority's primary goals is to prevent underage marijuana use. The State Licensing Authority has a compelling state interest in the reduction and prevention of accidental marijuana consumption by children. This can be achieved through avoidance of packaging designed to appeal to children and avoidance of use of the word "candy" on packaging, labeling and product. Children

generally have a strong attraction to and interest in candy. “Candy” is one of the first words children learn to speak. Children rely upon packaging to deduce a product’s contents. This rule is in the interest of the health of the people of Colorado and is necessary for the stringent and comprehensive administration of the Retail Code. The State Licensing Authority is adopting this rule as a narrowly-tailored way to reduce or prevent accidental ingestion of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Products by children and others.

R 1001 – Labeling and Packaging Requirements: General Applicability

A. Ship Product Ready for Sale. A Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility may package smaller quantities of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product in a Container prior to transport, provided the Containers are placed within a larger package that has an RFID tag and all required labels affixed to it. This larger package of Containers may serve as the Shipping Container. Licensees shall ensure that either each package of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product placed within a Shipping Container has an RFID tag and all required labels affixed to each package, or the Shipping Container itself must have an RFID tag and all required labels affixed to it for the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product contained within the Shipping Container. If the Licensee elects to place the RFID tag and all required labels on the Shipping Container, the Shipping Container shall contain only one Inventory Tracking System package, Harvest Batch, or Production Batch of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product. If a Shipping Container holds multiple Inventory Tracking System packages, each individual package shall be affixed with an RFID tag and all required labels. See Rule R 309 – Inventory Tracking System and Rule R 801 – Transport: All Retail Marijuana Establishments.

B. Inventory Tracking Compliance.

1. A Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility must package all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product in accordance with all Inventory Tracking System rules and procedures.

C. Packaging May Not Be Designed to Appeal to Children. A Retail Marijuana Establishment shall not place any content on a Container holding Retail Marijuana, Retail Marijuana Concentrate, or a Retail Marijuana Product in a manner that specifically targets individuals under the age of 21, including but not limited to, cartoon characters or similar images.

D. Health and Benefit Claims. Labeling text on a Container may not make any false or misleading statements regarding health or physical benefits to the consumer.

E. Font Size. Labeling text on a Container must be no smaller than 1/16 of an inch.

F. Use of English Language. Labeling text on a Container must be clearly written or printed and in the English language.

G. Unobstructed and Conspicuous. Labeling text on a Container must be unobstructed and conspicuous. A Licensee may affix multiple labels to a Container, provided that none of the information required by these rules is completely obstructed.

H. This paragraph (H) is effective beginning October 1, 2016. Use of the Word “Candy” and/or “Candies” Prohibited.

1. Licensees shall not use the word(s) “candy” and/or “candies” on the product, packaging or labeling for Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product.

2. Notwithstanding the requirements of subparagraph (H)(1), a licensed Retail Marijuana Establishment whose Identity Statement contains the word(s) "candy" and/or "candies" shall be permitted to place its Identity Statement on Retail Marijuana, Retail Marijuana Concentrate, and/or Retail Marijuana Product packaging and labeling.

Basis and Purpose – R 1002.5

The statutory authority for this rule includes but is not limited to sections 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)(b)(IX), 12-43.4-202(3)(c)(VI), 12-43.4-403(5), 12-43.4-404(1)(b), 12-43.4-404(4)(a), 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 Cultivation Facility and Retail Marijuana Products Manufacturing Facility label each package and Container of Retail Marijuana 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 all Retail Marijuana as this is a public health and safety concern.

R 1002.5 – Packaging and Labeling of Retail Marijuana by a Retail Marijuana Cultivation Facility or a Retail Marijuana Products Manufacturing Facility

A. Packaging of Retail Marijuana by a Retail Marijuana Cultivation Facility or a Retail Marijuana Products Manufacturing Facility. Every Retail Marijuana Cultivation Facility and Retail Marijuana Products Manufacturing Facility must ensure that all Retail Marijuana is placed within a sealed package that has no more than ten pounds of Retail Marijuana within it prior to transport or transfer of any Retail Marijuana to another Retail Marijuana Establishment. The package shall be affixed with an RFID tag in accordance with rule R 1001(A).

B. Labeling of Retail Marijuana Packages by a Retail Marijuana Cultivation Facility or a Retail Marijuana Products Manufacturing Facility. Every Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility must ensure that a label(s) is affixed to every package holding Retail Marijuana that includes all of the information required by this rule prior to transport or transfer to another Retail Marijuana Establishment.

1. Required Information. Every Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility must ensure the following information is affixed to every package holding Retail Marijuana:

a. The license number of the Retail Marijuana Cultivation Facility where the Retail Marijuana was grown;

b. The Harvest Batch Number(s) assigned to the Retail Marijuana;

c. The net weight, using a standard of measure compatible with the Inventory Tracking System, of the Retail Marijuana prior to its placement in thepackage; and

d. A complete list of all nonorganic pesticides, fungicides, and herbicides used during the cultivation of the Retail Marijuana.

2. Required Potency Statement. For each package of Retail Marijuana, the potency of at least the Retail Marijuana's THC and CBD shall be included on a label that is affixed to the package. The potency shall be expressed as a range of percentages that extends from the lowest percentage to the highest percentage of concentration for each cannabinoid listed, from every test conducted on that strain of Retail Marijuana cultivated by the same Retail Marijuana Cultivation Facility within the last six months.

3. Required Contaminant Testing Statement.

a. When All Required Contaminant Tests Are Not Performed. If a Retail Marijuana Testing Facility did not test a Harvest Batch for microbials, mold, mildew, and filth, then the package shall be labeled with the following statement: **"The marijuana contained within this package has not been tested for contaminants."** Except that when a Retail Marijuana Cultivation Facility has successfully validated its process regarding contaminants pursuant to rule R 1501, then the package instead shall be labeled with the following statement: "**The marijuana contained within this package complies with the mandatory contaminant testing required by rule R 1501.**"

b. When All Required Contaminant Tests Are Performed and Passed. If a Retail Marijuana Testing Facility tested a Harvest Batch for microbials, mold, mildew, and filth, and the required test(s) passed, then the package shall be labeled with the following statement: "**The marijuana contained within this package complies with the mandatory contaminant testing required by rule R 1501**."

c. Nothing in this rule permits a Retail Marijuana Establishment to Transfer Retail Marijuana that has failed contaminant testing and has not subsequently passed the additional contaminant testing required by rule R 1507(B).

C. Labeling of Retail Marijuana Containers by a Retail Marijuana Cultivation Facility or a Retail Marijuana Products Manufacturing Facility. If a Retail Marijuana Cultivation Facility or a Retail Marijuana Products Manufacturing Facility packages Retail Marijuana within a Container that is then placed within a larger package, each Container must be affixed with a label(s) containing all of the information required by Rule R 1002(B), except that the net weight statement required by Rule R 1002 (B)(1)(c) shall be based upon the weight in the Container and not the larger package or Shipping Container.

Basis and Purpose – R 1003.5

The statutory authority for this rule includes but is not limited to sections 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)(b)(IX), 12-43.4-202(3)(c)(VI), 12-43.4-403(5), 12-43.4-404(1)(b), 12-43.4-404(1)(e)(II), 12-43.4-404(1)(e)(III), 12-43.4-404(4)(a), 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 Cultivation Facility and Retail Marijuana Products Manufacturing Facility labels each package and Container of Retail Marijuana Concentrate 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 all Retail Marijuana Concentrate as this is a public health and safety concern.

R 1003.5 – Packaging and Labeling of Retail Marijuana Concentrate by a Retail Marijuana Cultivation Facility or a Retail Marijuana Products Manufacturing Facility.

A. Packaging of Retail Marijuana Concentrate by a Retail Marijuana Cultivation Facility or a Retail Marijuana Products Manufacturing Facility. Every Retail Marijuana Cultivation Facility and Retail Marijuana Products Manufacturing Facility must ensure that all Retail Marijuana Concentrate is placed within a sealed package that has no more than one pound of Retail Marijuana Concentrate within it prior to transport or transfer to another Retail Marijuana Establishment. The package shall be affixed with an RFID tag in accordance with rule R 1001(A).

B. Labeling Retail Marijuana Concentrate Packages by a Retail Marijuana Cultivation Facility or a Retail Marijuana Products Manufacturing Facility. Every Retail Marijuana Cultivation Facility or

Retail Marijuana Products Manufacturing Facility must ensure that a label(s) is affixed to every package holding Retail Marijuana Concentrate that includes all of the information required by this rule prior to transport or transfer to another Retail Marijuana Establishment.

1. Required Information. Every Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility must ensure the following information is affixed to every package holding Retail Marijuana Concentrate:

    a. The license number(s) of the Retail Marijuana Cultivation Facility(-ies) where the Retail Marijuana used to produce the Retail Marijuana Concentrate was grown;

    b. The license number of the Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility that produced the Retail Marijuana Concentrate;

    c. The Production Batch Number assigned to the Retail Marijuana Concentrate contained within the package;

    d. The net weight, using a standard of measure compatible with the Inventory Tracking System, of the Retail Marijuana Concentrate prior to its placement in the package;

    e. A complete list of all nonorganic pesticides, fungicides, and herbicides used during the cultivation of the Retail Marijuana used to produce the Retail Marijuana Concentrate contained within; and

    f. A complete list of solvents and chemicals used to create the Retail Marijuana Concentrate.

2. Required Potency Statement. For each package of Retail Marijuana Concentrate, the potency of at least the Retail Marijuana Concentrate's THC and CBD shall be included on a label that is affixed to the package. The potency shall be expressed in milligrams for each cannabinoid.

3. Required Contaminant Testing Statement.

    a. When All Required Contaminant Tests Are Not Performed.

        i. Solvent-Based Retail Marijuana Concentrate. If a Retail Marijuana Testing Facility did not test a Production Batch of Solvent-Based Retail Marijuana Concentrate for residual solvents, mold, and mildew, then the package shall be labeled with the following statement: **"The Retail Marijuana Concentrate contained within this package has not been tested for contaminants."** Except that when a Retail Marijuana Products Manufacturing Facility has successfully validated its process regarding contaminants pursuant to rule R 1501, the package instead shall be labeled with the following statement: "**The Retail Marijuana Concentrate contained within this package complies with the mandatory contaminant testing required by rule R 1501.**"

        ii. Food- and Water-Based Retail Marijuana Concentrate. If a Retail Marijuana Testing Facility did not test a Production Batch of Food- or Water-Based Retail Marijuana Concentrate for microbials, mold, and mildew, then the package shall be labeled with the following statement: **"The Retail Marijuana Concentrate contained within this package**

has not been tested for contaminants." Except that when a Retail Marijuana Cultivation Facility or a Retail Marijuana Products Manufacturing Facility has successfully validated its process regarding contaminants pursuant to rule R 1501, then the package instead shall be labeled with the following statement: "**The Retail Marijuana Concentrate contained within this package complies with the mandatory contaminant testing required by rule R 1501.**"

b. When All Required Contaminant Tests Are Performed and Passed.

i. Solvent-Based Retail Marijuana Concentrate. If a Retail Marijuana Testing Facility tested a Production Batch of Solvent-Based Retail Marijuana Concentrate for residual solvents, mold, and mildew, and the required test(s) passed, then the package instead shall be labeled with the following statement: "**The Retail Marijuana Concentrate contained within this package complies with the mandatory contaminant testing required by rule R 1501**."

ii. Food- and Water-Based Retail Marijuana Concentrate. If a Retail Marijuana Testing Facility tested a Production Batch for microbials, mold, and mildew, and the required test(s) passed, then the package instead shall be labeled with the following statement: "**The Retail Marijuana Concentrate contained within this package complies with the mandatory contaminant testing required by rule R 1501**."

c. Nothing in this rule permits a Retail Marijuana Establishment to Transfer Retail Marijuana Concentrate that has failed contaminant testing and has not subsequently passed the additional contaminant testing required by rule R 1507(B).

C. Labeling of Retail Marijuana Concentrate Containers by a Retail Marijuana Cultivation Facility or a Retail Marijuana Products Manufacturing Facility. If a Retail Marijuana Cultivation Facility or a Retail Marijuana Products Manufacturing Facility packages a Retail Marijuana Concentrate within a Container that is then placed within a larger package, each Container must be affixed with a label(s) containing all of the information required by Rule R 1003(B), except that the net weight statement required by Rule R 1003(B)(1)(d) shall be based upon the weight in the Container and not the larger package.

Basis and Purpose – R 1004

The statutory authority for this rule includes but is not limited to sections 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)(b)(IX), 12-43.4-202(3)(c)(III), 12-43.4-202(3)(c)(V), 12-43.4-202(3)(c)(VI), 12-43.4-404(4)(a), 12-43.4-404(b)(I-II),12-43.4-404(6), 12-43.4-404(8), 12-43.4-901(2)(a), 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 package 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. The allowable plus or minus 15% potency variance has been included in the rule pursuant to the mandate of House Bill 15-1283, which modified 12-43.4-202(3)(a)(IV)(E), C.R.S. The bill established that the acceptable potency variance, which the Division must determine for correct labeling, must be at least plus or minus 15 percent.

R 1004 – Packaging and Labeling Requirements of a Retail Marijuana Product by a Retail Marijuana Products Manufacturing Facility

A. Packaging of Retail Marijuana Product by a Retail Marijuana Products Manufacturing Facility

1. General Standard. Every Retail Marijuana Products Manufacturing Facility must ensure that each Container holding a Retail Marijuana Product is placed in a package prior to transport or transfer to another Retail Marijuana Establishment. The package shall be affixed with an RFID tag in accordance with rule R 1001(A).

2. Single-Serving Edible Retail Marijuana Product. Every Retail Marijuana Products Manufacturing Facility must ensure that each Single-Serving Edible Retail Marijuana Product is packaged within a Child-Resistant Container prior to transport or transfer to another Retail Marijuana Establishment.

3. Bundled Single-Serving Edible Retail Marijuana Product. A Retail Marijuana Products Manufacturing Facility may bundle Single-Serving Edible Retail Marijuana Products that are packaged in Child-Resistant packaging and labeled pursuant to Rule R 1004.5(B) into a larger package that does not need to be Child-Resistant so long as:

   a. The total amount of active THC contained within the larger package does not exceed 100 milligrams;

   b. The larger package complies with the Universal Symbol labeling requirement of subsubparagraph (B)(1)(i) of this rule R 1004; and

   c. The larger package complies with the Serving Size and Total Active THC Statement requirement of subsubparagraph (B)(2)(c) of this rule R 1004.

4. Multiple-Serving Edible Retail Marijuana Product. Every Retail Marijuana Products Manufacturing Facility must ensure that each Multiple-Serving Edible Marijuana Product is packaged within a Child-Resistant Container that is Resealable prior to transport or transfer to another Retail Marijuana Establishment.

4.5 Liquid Edible Retail Marijuana Product.

   a. Each Liquid Edible Retail Marijuana Product that is a Single-Serving Edible Retail Marijuana Product shall be packaged pursuant to subparagraph (A)(2) of this rule R 1004.

   b. Each Liquid Edible Retail Marijuana Product that is a Multiple-Serving Edible Retail Marijuana Product shall be:

      i. Packaged in a structure that uses a single mechanism to achieve both Child-Resistant properties and accurate pouring measurement of each liquid serving in increments equal to or less than 10mg of active THC per serving, with no more than 100mg of active THC total per Child-Resistant package; and

      ii. The measurement component is within the Child-Resistant cap or closure of the bottle and is not a separate component.

5. Retail Marijuana Product that is not Edible Retail Marijuana Product. Every Retail Marijuana Products Manufacturing Facility must ensure that each Retail Marijuana Product that is not an Edible Retail Marijuana Product is individually packaged within a 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. 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, which must be located on the front of the packaging and no smaller than ½ of an inch by ½ of an inch, and the following statement which must be labeled directly below the Universal Symbol: “Contains Marijuana. Keep out of the reach of children.”;

j. The following warning statements:

i. **“There may be health risks associated with the consumption of this product.”**

ii. **“This product contains marijuana and its potency was tested with an allowable plus or minus 15% variance pursuant to 12-43.4-202(3)(a)(IV)(E), C.R.S.”**

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.”**

k. 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.

l. 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.

m. Required Potency Statement. This subsubparagraph (B)(1)(m) of rule R 1004 shall become effective October 1, 2017. Each Container holding a Retail Marijuana Product shall be labeled with the potency of at least the Retail Marijuana Product’s THC and CBD. The potency shall be expressed in milligrams for each cannabinoid. The potency shall be labeled either:

i. In a font size that is at least two font sizes larger than the surrounding label text and also not less than 10 point font, bold, and enclosed within an outlined shape such as a circle or square; or

ii. Highlighted with a bright color such as yellow.

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 Potency Statement.

a. Every Retail Marijuana Products Manufacturing Facility must ensure that a label is affixed to the Container that includes the number of THC servings within the Container, and at least the Retail Marijuana Product's THC and CBD content.

b. Nothing in this rule permits a Retail Marijuana Establishment to Transfer Retail Marijuana Product that has failed potency testing and has not subsequently passed the additional potency testing required by rule R 1507(C).

5. Required Contaminant Testing Statement.

a. When All Required Contaminant Tests Are Not Performed. If a Retail Marijuana Testing Facility did not test a Production Batch of Retail Marijuana Product for microbials, mold, and mildew, then the Container shall be labeled with the following statement: **"The Retail Marijuana Product contained within this package has not been tested for contaminants."** Except that when a Retail Marijuana Products Manufacturing Facility has successfully validated its process regarding contaminants for the particular Retail Marijuana Product pursuant to rule R 1501, then the Container instead shall be labeled with the following statement: "**The Retail Marijuana Product contained within this package complies with the mandatory contaminant testing required by rule R 1501.**"

b. When All Contaminant Tests Are Performed and Passed. If a Retail Marijuana Testing Facility tested a Production Batch of Retail Marijuana Product for microbials, mold, and mildew, and the required test(s) passed, then the Container shall be labeled with the following statement: "**The Retail Marijuana Product contained within this package complies with the mandatory contaminant testing required by rule R 1501**."

c. Nothing in this rule permits a Retail Marijuana Establishment to Transfer Retail Marijuana Product that has failed contaminant testing and has not subsequently passed the additional contaminant testing required by rule R 1507(B).

D. Labeling of Retail Marijuana Product Packages 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 package 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 package:

1. The number of Containers holding a Retail Marijuana Product within the package; and

2. The license number of the Retail Marijuana Products Manufacturing Facility(-ies) that produced the Retail Marijuana Product within the package.

Basis and Purpose – R 1005.5

The statutory authority for this rule includes but is not limited to sections 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)(b)(IX), 12-43.4-202(3)(c)(VI), 12-43.4-402(4), 12-43.4-402(5), 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 of Retail Marijuana 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 all Retail Marijuana as this is a public health and safety concern. The allowable plus or minus 15% potency variance has been included in the rule pursuant to the mandate of House Bill 15-1283, which modified 12-43.4-202(3)(a)(IV)(E), C.R.S. The bill established that the acceptable potency variance, which the Division must determine for correct labeling, must be at least plus or minus 15 percent.

R 1005.5 – Packaging and Labeling of Retail Marijuana by a Retail Marijuana Store

A. Packaging of Retail Marijuana by a Retail Marijuana Store. A Retail Marijuana Store must ensure that all Retail Marijuana 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

B. Labeling of Retail Marijuana by a Retail Marijuana Store. A Retail Marijuana Store must affix all of the information required by this rule to every Container in which Retail Marijuana is placed no later than at the time of sale to a consumer:

1. A Retail Marijuana Store must include the following information on every Container:

a. The license number of the Retail Marijuana Cultivation Facility(-ies) where the Retail Marijuana was grown;

b. The license number of the Retail Marijuana Store that sold the Retail Marijuana to the consumer;

c. The Identity Statement and Standardized Graphic Symbol of the Retail Marijuana Store that sold the Retail Marijuana 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 Harvest Batch Number(s) assigned to the Retail Marijuana within the Container;

e. The date of sale to the consumer;

f. The net weight, in grams to at least the tenth of a gram, of the Retail Marijuana prior to its placement in the Container;

g. The Universal Symbol, which must be located on the front of the Container and no smaller than ½ of an inch by ½ of an inch, and the following statement which

must be labeled directly below the Universal Symbol: “Contains Marijuana. Keep out of the reach of children.”;

h. The following warning statements:

i. **“There may be health risks associated with the consumption of this product.”**

ii. **“This marijuana’s potency was tested with an allowable plus or minus 15% variance pursuant to 12-43.4-202(3)(a)(IV)(E), C.R.S.”**

iii. **“There may be additional health risks associated with the consumption of this product for women who are pregnant, breastfeeding, or planning on becoming pregnant.”**

iv. **“Do not drive or operate heavy machinery while using marijuana.”**

i. A complete list of all nonorganic pesticides, fungicides, and herbicides used during the cultivation of the Retail Marijuana.

2. Repealed.

2.1. Required Potency Statement. This subparagraph (B)(2.1) of rule R 1005.5 shall become effective on October 1, 2017. For each Harvest Batch of Retail Marijuana packaged within a Container, the Retail Marijuana Store shall ensure the potency of at least the Retail Marijuana’s THC and CBD is included on a label that is affixed to the Container. The potency shall be expressed as a range of percentages that extends from the lowest percentage to the highest percentage of concentration for each cannabinoid listed, from every test conducted on that strain of Retail Marijuana cultivated by the same Retail Marijuana Cultivation Facility within the last six months. The potency shall be labeled either:

a. In a font size that is at least two font sizes larger than the surrounding label text and also not less than 10 point font, bold, and enclosed within an outlined shape such as a circle or square; or

b. Highlighted with a bright color such as yellow.

3. Required Contaminant Testing Statement.

a. When All Required Contaminant Tests Are Not Performed. If a Retail Marijuana Testing Facility did not test a Harvest Batch for microbials, mold, mildew, and filth, then a Retail Marijuana Store must ensure that a label is affixed to a Container holding any Retail Marijuana from that Harvest Batch with the following statement: **“The marijuana contained within this package has not been tested for contaminants.”** Except that when a Retail Marijuana Cultivation Facility has successfully validated its process regarding contaminants pursuant to rule R 1501, then the Container instead shall be labeled with the following statement: “**The marijuana contained within this package complies with the mandatory contaminant testing required by rule R 1501**.”

b. When All Required Contaminant Tests Are Performed and Passed. If a Retail Marijuana Testing Facility tested a Harvest Batch for microbials, mold, mildew, and filth, and all the required test(s) passed, then the Container shall be labeled

with the following statement: "**The marijuana contained within this package complies with the mandatory contaminant testing required by rule R 1501**."

c. Nothing in this rule permits a Retail Marijuana Establishment to Transfer Retail Marijuana that has failed contaminant testing and has not subsequently passed the additional contaminant testing required by rule R 1507(B).

Basis and Purpose – R 1006

The statutory authority for this rule includes but is not limited to sections 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)(b)(IX), 12-43.4-202(3)(c)(III), 12-43.4-202(3)(c)(V), 12-43.4-202(3)(c)(VI), 12-43.4-402(2), 12-43.4-402(4), 12-43.4-402(5), 12-43.4-901(2)(a), 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. The allowable plus or minus 15% potency variance has been included in the rule pursuant to the mandate of House Bill 15-1283, which modified 12-43.4-202(3)(a)(IV)(E), C.R.S. The bill established that the acceptable potency variance, which the Division must determine for correct labeling, must be at least plus or minus 15 percent.

R 1006 – Packaging and Labeling of Retail Marijuana Product by a Retail Marijuana Store

A. Packaging Requirements for a Retail Marijuana Store.

1 Beginning December 1, 2016, a Retail Marijuana Store shall not purchase, take possession of, or sell Retail Marijuana Product that does not comply with rules R 604 and R 1004.

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.

B. 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. If an Exit Package is not required pursuant to paragraph (A)(3) of this rule, and the Retail Marijuana Store elects not to provide one, then the Retail Marijuana Store must ensure the labels required by this rule are affixed to each Container.

1. Required Information.

a. The license number of the Retail Marijuana Store that sold the Retail Marijuana Product to the consumer;

b. 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;

c. The date of sale to the consumer;

d. The following warning statements;

i. **"There may be health risks associated with the consumption of this product."**

ii. **"This product contains marijuana and its potency was tested with an allowable plus or minus 15% variance pursuant to 12-43.4-202(3)(a)(IV)(E), C.R.S."**

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."**

e. The Universal Symbol, which must be located on the front of the Container or Exit Package as appropriate and no smaller than ½ of an inch by ½ of an inch, and the following statement which must be labeled directly below the Universal Symbol: "Contains Marijuana. Keep out of the reach of children.".

f. Required Potency Statement. This subsubparagraph (B)(1)(f) of rule R 1006 shall become effective October 1, 2017. Each Container holding a Retail Marijuana Product shall be labeled with the potency of at least the Retail Marijuana Product's THC and CBD. The potency shall be expressed in milligrams for each cannabinoid. The potency shall be labeled either:

i. In a font size that is at least two font sizes larger than the surrounding label text and also not less than 10 point font, bold, and enclosed within an outlined shape such as a circle or square; or

ii. Highlighted with a bright color such as yellow.

Basis and Purpose – R 1007.5

The statutory authority for this rule includes but is not limited to sections 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)(b)(IX), 12-43.4-202(3)(c)(VI), 12-43.4-402(4), 12-43.4-402(5), 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 Concentrate 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 Concentrate because this is a public health and safety concern. The allowable plus or minus 15% potency variance has been included in the rule pursuant to the mandate of House Bill 15-1283, which modified 12-43.4-202(3)(a)(IV)(E), C.R.S. The bill established that the acceptable potency variance, which the Division must determine for correct labeling, must be at least plus or minus 15 percent.

R 1007.5 – Packaging and Labeling of Retail Marijuana Concentrate by a Retail Marijuana Store

A. Packaging of Retail Marijuana Concentrate by a Retail Marijuana Cultivation Facility. A Retail Marijuana Store must ensure that all Retail Marijuana Concentrate 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.

B. Labeling of Retail Marijuana Concentrate by Retail Marijuana Stores. Every Retail Marijuana Store must ensure that a label(s) is affixed to every Container holding Retail Marijuana Concentrate that includes all of the information required by this rule no later than at the time of sale to a consumer:

1. Every Retail Marijuana Store must ensure the following information is affixed to every Container holding a Retail Marijuana Concentrate:

a. The license number of the Retail Marijuana Cultivation Facility(-ies) where the Retail Marijuana used to produce the Retail Marijuana Concentrate within the Container was grown;

b. The license number of the Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility that produced the Retail Marijuana Concentrate;

c. The Production Batch Number assigned to the Retail Marijuana Concentrate;

d. The license number of the Retail Marijuana Store that sold the Retail Marijuana Concentrate to the consumer;

e. The net weight, in grams to at least the tenth of a gram, of the Retail Marijuana Concentrate prior to its placement in the Container;

f. The date of sale to the consumer;

g. The following warning statements:

i. **“There may be health risks associated with the consumption of this product.”**

ii. **“This product contains marijuana and its potency was tested with an allowable plus or minus 15% variance pursuant to 12-43.4-202(3)(a)(IV)(E), C.R.S.”**

iii. **"This product was produced without regulatory oversight for health, safety, or efficacy."**

iv. **"There may be additional health risks associated with the consumption of this product for women who are pregnant, breastfeeding, or planning on becoming pregnant."**

v. **"Do not drive a motor vehicle or operate heavy machinery while using marijuana."**

h. The Universal Symbol, which must be located on the front of the Container and no smaller than ½ of an inch by ½ of an inch, and the following statement which must be labeled directly below the Universal Symbol: "Contains Marijuana. Keep out of the reach of children.";

i. A complete list of all nonorganic pesticides, fungicides, and herbicides used during the cultivation of the Retail Marijuana used to produce the Retail Marijuana concentrate; and

j. A complete list of solvents and chemicals used to produce the Retail Marijuana Concentrate.

2. Repealed.

2.1. Required Potency Statement. This subparagraph (B)(2.1) of rule R 1007.5 shall become effective October 1, 2017. Each Container holding a Retail Marijuana Concentrate shall be labeled with the potency of at least the Retail Marijuana Concentrate's THC and CBD. The potency shall be expressed in milligrams for each cannabinoid. The potency shall be labeled either:

a. In a font size that is at least two font sizes larger than the surrounding label text and also not less than 10 point font, bold, and enclosed within an outlined shape such as a circle or square; or

b. Highlighted with a bright color such as yellow.

3. Required Contaminant Testing Statement.

a. When All Required Contaminant Tests Are Not Performed.

i. Solvent-Based Retail Marijuana Concentrate. If a Retail Marijuana Testing Facility did not test a Production Batch of Solvent-Based Retail Marijuana Concentrate for residual solvents, mold, and mildew, then the Container shall be labeled with the following statement: **"The Retail Marijuana Concentrate contained within this package has not been tested for contaminants."** Except that when a Retail Marijuana Products Manufacturing Facility has successfully validated its process regarding contaminants pursuant to rule R 1501, the Container instead shall be labeled with the following statement: "**The Retail Marijuana Concentrate contained within this package complies with the mandatory contaminant testing required by rule R 1501.**"

ii. Food- and Water-Based Retail Marijuana Concentrate. If a Retail Marijuana Testing Facility did not test a Production Batch of Food- or Water-Based Retail Marijuana Concentrate for microbials, mold, and

mildew, then the Container shall be labeled with the following statement: **"The Retail Marijuana Concentrate contained within this package has not been tested for contaminants."** Except that when a Retail Marijuana Cultivation Facility or a Retail Marijuana Products Manufacturing Facility has successfully validated its process regarding contaminants pursuant to rule R 1501, then the Container instead shall be labeled with the following statement: "**The Retail Marijuana Concentrate contained within this package complies with the mandatory contaminant testing required by rule R 1501.**"

b. When All Required Contaminant Tests Are Performed and Passed.

i. Solvent-Based Retail Marijuana Concentrate. If a Retail Marijuana Testing Facility tested a Production Batch of Solvent-Based Retail Marijuana Concentrate for residual solvents, mold, and mildew, and the required test(s) passed, then the Container shall be labeled with the following statement: "**The Retail Marijuana Concentrate contained within this package complies with the mandatory contaminant testing required by rule R 1501**."

ii. Food- and Water-Based Retail Marijuana Concentrate. If a Retail Marijuana Testing Facility tested a Production Batch for microbials, mold, and mildew, and the required test(s) passed, then the Container shall be labeled with the following statement: "**The Retail Marijuana Concentrate contained within this package complies with the mandatory contaminant testing required by rule R 1501**."

c. Nothing in this rule permits a Retail Marijuana Establishment to Transfer Retail Marijuana Concentrate that has failed contaminant testing and has not subsequently passed the additional contaminant testing required by rule R 1507(B).

R 1000-1 Series – Labeling, Packaging, and Product Safety

Effective Date. The revised Packaging, Labeling and Product Safety rules set forth in this Rule R 1000-1 Series are effective January 1, 2018, except that during the period January 1, 2018, to June 30, 2018, Licensees have the option of complying with the Rule R 1000 Series or with this Rule R 1000-1 Series, but must be fully compliant with at least one of those two Labeling, Packaging, and Product Safety Series. Beginning July 1, 2018, the Rule R 1000 Series is repealed, and compliance with this R 1000-1 Series is mandatory.

On and after July 1, 2018, all Licensees are required to package and label all Retail Marijuana, Retail Marijuana Concentrate and Retail Marijuana Product according to the Packaging, Labeling, and Product Safety rules in this Rule R 1000-1 Series.

Basis and Purpose – R 1001-1

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(1), 12-43.4-202(2)(b), 12-43.4-202(3)(a)(VII), 12-43.4-202(3)(b)(IX), 12-43.4-202(3)(c)(I), 12-43.4-202(3)(c)(III), 12-43.4-202(f), 12-43.4-402(2)(a), 12-43.4-402(5), 12-43.4-404(1)(e), 12-43.4-404(4)(a), and 12-43.4-404(8), C.R.S. The purpose of this rule is to define minimum packaging and labeling requirements for Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product transferred between Retail Marijuana Establishments. The State Licensing Authority finds it essential to regulate and establish labeling requirements for Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product and that this is in the interest of the health and safety of the people of Colorado. This rule identifies

information that is required on all labels to provide information necessary for the Division to regulate the cultivation, production and sale of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product. This rule also seeks to minimize, to the extent practicable, the burden of labeling compliance to Licensees. The labeling requirements in this rule apply to all Containers immediately containing Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product.

Rule R 1001-1 - Packaging and Labeling: Minimum Requirements Prior to Transfer to a Retail Marijuana Establishment

A. Applicability. This rule establishes minimum requirements for packaging and labeling Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product prior to Transfer to a Retail Marijuana Establishment. The labeling requirements in this rule apply to all Containers immediately containing Retail Marijuana, Retail Marijuana Concentrate and Retail Marijuana Product.

B. Packaging and Labeling of Retail Marijuana Flower and Trim and Retail Marijuana Concentrate Prior to Transfer to a Retail Marijuana Establishment. A Retail Marijuana Establishment shall comply with the following minimum packaging and labeling requirements prior to Transferring Retail Marijuana flower and trim or Retail Marijuana Concentrate to another Retail Marijuana Establishment:

1. Packaging of Retail Marijuana Flower and Trim and Retail Marijuana Concentrate.

    a. Prior to Transfer to a Retail Marijuana Establishment, Retail Marijuana flower and trim or Retail Marijuana Concentrate shall be placed into a Container. The Container may but is not required to be Child-Resistant.

    b. Each Container of Retail Marijuana flower or trim that is Transferred to a Retail Marijuana Establishment shall not exceed 10 pounds of Retail Marijuana flower or trim, but may include pre-weighed units that are within the sales limit in Rule R 402(C).

    c. Each Container of Retail Marijuana Concentrate that is Transferred to a Retail Marijuana Establishment shall not exceed 10 pounds of Retail Marijuana Concentrate, but may include pre-weighed units that are within the sales limit in Rule R 402(C).

2. Labeling of Retail Marijuana Flower and Trim and Retail Marijuana Concentrate. Prior to Transfer to a Retail Marijuana Establishment, every Container of Retail Marijuana flower and trim or Retail Marijuana Concentrate shall be affixed with a label that includes at least the following information:

    a. The license number of the Retail Marijuana Cultivation Facility where the Retail Marijuana was grown;

    b. The Harvest Batch Number(s) assigned to the Retail Marijuana or the Production Batch Number(s) assigned to the Retail Marijuana Concentrate;

    c. If applicable, the license number of the Retail Marijuana Cultivation Facility(ies) that produced the Water-Based Retail Marijuana Concentrate;

    d. If applicable, the license number of the Retail Marijuana Products Manufacturing Facility(ies) where the Retail Marijuana Concentrate was produced;

e. The net contents, using a standard of measure compatibility with the Inventory Tracking System, of the Retail Marijuana or Retail Marijuana Concentrate prior to its placement in the Container; and

f. Potency test results as required to permit the receiving Retail Marijuana Establishment to label the Retail Marijuana or Retail Marijuana Concentrate as required by these rules.

C. Packaging and Labeling of Retail Marijuana Product Prior to Transfer to a Retail Marijuana Establishment. A Retail Marijuana Establishment shall comply with the following minimum packaging and labeling requirements prior to Transferring Retail Marijuana Product to another Retail Marijuana Establishment:

1. Packaging of Retail Marijuana Product.

a. Transfer to a Retail Marijuana Establishment Other Than a Retail Marijuana Store. Prior to Transfer to a Retail Marijuana Establishment other than a Retail Marijuana Store, Retail Marijuana Product shall be placed into a Container. The Container may but is not required to be Child-Resistant.

b. Transfer to a Retail Marijuana Store. Prior to Transfer to a Retail Marijuana Store, all Retail Marijuana Product shall be packaged in a Child-Resistant Container that is ready for sale to the consumer as required by the Rule R 1002-1(D)(1).

2. Labeling of Retail Marijuana Product.

a. Transfer to a Retail Marijuana Establishment other than a Retail Marijuana Store. Prior to Transfer to a Retail Marijuana Establishment other than a Retail Marijuana Store, every Container of Retail Marijuana Product shall be affixed with a label that includes at least the following information:

i. The license number of the Retail Marijuana Cultivation Facility(ies) where the Retail Marijuana was grown;

ii. The license number of the Retail Marijuana Products Manufacturing Facility that produced the Retail Marijuana Product;

iii. The Production Batch Number(s) assigned to the Retail Marijuana Product;

iv. The net contents, using a standard of measure compatibility with the Inventory Tracking System, of the Retail Marijuana Product prior to its placement in the Container; and

v. Potency test results as required to permit the receiving Retail Marijuana Establishment to label the Retail Marijuana Product as required by these rules.

b. Transfer to a Retail Marijuana Store. Prior to Transfer to a Retail Marijuana Store, every Container of Retail Marijuana Product shall be affixed with a label ready for sale to the consumer including all information required by Rules R 1002-1(D)(2) and 1003-1(B).

D. Packaging and Labeling of Retail Marijuana Seeds and Immature Plants Prior to Transfer to a Retail Marijuana Establishment. A Retail Marijuana Establishment shall comply with the following minimum packaging and labeling requirements prior to Transferring Retail Marijuana seeds or Immature plants to another Retail Marijuana Establishment:

1. Packaging of Retail Marijuana Seeds.

   a. Prior to Transfer to a Retail Marijuana Establishment, Retail Marijuana seeds shall be placed into a Container. The Container may but is not required to be Child-Resistant.

   b. Each Container of Retail Marijuana seeds that is Transferred to a Retail Marijuana Establishment shall not exceed 10 pounds of Retail Marijuana seeds.

2. Packaging of Immature Plants. Prior to Transfer to a Retail Marijuana Establishment, Immature plants shall be placed into a receptacle. The receptacle may but is not required to be Child-Resistant.

3. Labeling of Retail Marijuana Seeds and Immature Plants. Prior to Transfer to a Retail Marijuana Establishment, every Container of Retail Marijuana seeds and all receptacles holding an Immature plant shall be affixed with a label that includes at least the license number of the Retail Marijuana Cultivation Facility where the Retail Marijuana that produced the seeds or the Immature plant was grown.

E. Prohibited Transfers – All Retail Marijuana Establishments. A Retail Marijuana Establishment shall not Transfer to a Retail Marijuana Store and a Retail Marijuana Store shall not accept nor offer for sale, any Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product that is not packaged and labeled in conformance with the requirements of these rules or that does not provide all information necessary to permit the Retail Marijuana Store to package and label the Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product prior to Transfer to a consumer. However, a Retail Marijuana Store is not required to open any tamper evident Marketing Layer received from a Retail Marijuana Cultivation Facility or a Retail Marijuana Products Manufacturing Facility to verify the Container is Child-Resistant or labeled.

F. Shipping Containers. Licensees may Transfer multiple Containers of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product to a Retail Marijuana Establishment in a Shipping Container.

1. RFID Tag Required. Licensees shall ensure that either the multiple Containers placed within a Shipping Container each have an RFID tag, or the Shipping Container itself must have an RFID tag. If the Licensee elects to place the RFID tag on the Shipping Container, the Shipping Container shall contain only one Harvest Batch of Retail Marijuana, one Production Batch of Retail Marijuana Concentrate, or one Production Batch of Retail Marijuana Product. If a Shipping Container consists of more than one Harvest Batch or Production Batch, then each group of multiple Containers shall be affixed with an RFID tag. *See* Rule R 309 – Inventory Tracking System; Rule R 801 – Transport: All Retail Marijuana Establishments.

2. Labeling of Shipping Containers. Any Shipping Container that will not be displayed to the consumer is not required to be labeled according to these rules.

G. Packaging and Labeling of Retail Marijuana Flower and Trim Prior to Transfer to a Medical Research Facility or a Pesticide Manufacturer. The packaging and labeling requirements in these R 1000-1 Series also apply to any Transfer of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a Medical Research Facility or a Pesticide Manufacturer.

H. Violation Affecting Public Safety. A violation of any rule in these R 1000-1 Series may be considered a license violation affecting public safety.

Basis and Purpose – R 1002-1

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(1), 12-43.4-202(2)(b), 12-43.4-202(3)(b)(IX), 12-43.4-202(3)(c)(I), 12-43.4-202(3)(c)(III), 12-43.4-202(f), 12-43.3-402(2)(a), 12-43.4-402(5), 12-43.4-404(1)(e), 12-43.4-404(4)(a), and 12-43.4-404(8), C.R.S. The purpose of this rule is to define general packaging and labeling requirements for Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product prior to Transfer to a consumer. The labeling requirements in this rule apply to all Containers immediately containing Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product. The State Licensing Authority finds it essential to regulate and establish labeling requirements for Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product and that this is in the interest of the health and safety of the people of Colorado. This rule identifies information that is required on all labels to provide necessary information to consumers to make informed decisions and first responders in the event of accidental ingestion, over ingestion or allergic reaction. This rule also seeks to minimize, to the extent practicable, the burden of labeling compliance to Licensees.

Rule R 1002-1 - Packaging and Labeling: General Requirements Prior to Transfer to a Consumer

A. Applicability. This rule establishes general requirements for packaging and labeling Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product prior to Transfer to a consumer. The labeling requirements in this rule apply to all Containers immediately containing Retail Marijuana, Retail Marijuana Concentrate and Retail Marijuana Product. The labeling requirements based on intended use in Rule R 1003-1 are in addition to, not in lieu of, the requirements in this rule.

B. Labeling Requirements – All Retail Marijuana, Retail Marijuana Concentrate and Retail Marijuana Product.

1. Font Size. Labeling text on the Container and any Marketing Layer must be no smaller than 1/16 of an inch.

2. Labels Shall Not Be Designed to Appeal to Children. A Retail Marijuana Establishment shall not place any content on a Container or the Marketing Layer in a manner that reasonably appears to target individuals under the age of 21, including but not limited to, cartoon characters or similar images.

3. False or Misleading Statements. Label(s) on a Container and any Marketing Layer shall not include any false or misleading statements.

4. Trademark Infringement Prohibited. No Container or Marketing Layer shall be intentionally or knowingly labeled so as to cause a reasonable consumer confusion as to whether the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product is a trademarked product or labeled in a manner that violates any federal trademark law or regulation.

5. Health and Benefit Claims. The label(s) on the Container and any Marketing Layer shall not make any claims regarding health or physical benefits to the consumer.

6. Use of English Language. Labeling text on the Container and any Marketing Layer must be clearly written or printed and in the English language. In addition to the required English label, Licensees may include an additional, accurate foreign language translation on the label that otherwise complies with these rules.

7. Unobstructed and Conspicuous. Labeling text on the Container and any Marketing Layer must be unobstructed and conspicuous. A Licensee may affix multiple labels to the Container, provided that none of the information required by these rules is obstructed. For example and not by means of limitation, labels may be accordion, expandable, extendable or layered to permit labeling of small Containers.

8. Use of the Word "Candy" and/or "Candies" Prohibited.

   a. Licensees shall not use the word(s) "candy" and/or "candies" on the label of any Container holding Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product, or of any Marketing Layer.

   b. Notwithstanding the requirements of this subparagraph, a Retail Marijuana Establishment whose Identity Statement contains the word(s) "candy" and/or "candies" may place its Identity Statement on the label of the Container holding Retail Marijuana, Retail Marijuana Concentrate and/or Retail Marijuana Product, or of any Marketing Layer.

9. Child Resistant Certificate(s). A Licensee shall maintain a copy of the certificate showing that each Child-Resistant Container into which the Licensee places Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product is Child-Resistant and complies with the requirements of 16 C.F.R. 1700.15 (1995) and 16 C.F.R. 1700.20 (1995) in accordance with the requirements of Rule R 901(A).

   a. 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 16 C.F.R. 1700.15 (1995) and 16 C.F.R. 1700.20 (1995), which is available to the public for inspection and copying during the Division's regular business hours.

10. Containers and Marketing Layers. The Container and any Marketing Layer shall have a label with all information required by this R 1000-1 Series. Any intermediary packaging between the Container and the Marketing Layer is not required to be labeled in accordance with these rules.

11. Exit Packages.

   a. Exit Packages Permitted for Child-Resistant Containers. A Retail Marijuana Store may but is not required to place a Child-Resistant Container into an Opaque Exit Package at the point of Transfer to the consumer.

   b. Exit Packages Required for Retail Marijuana Flower, Trim, and Seeds. Any Retail Marijuana flower, trim, or seeds in a Container that is not Child-Resistant shall be placed into a Child-Resistant Exit Package at the point of Transfer to a consumer. The Exit Package is not required to be labeled but may include the Retail Marijuana Store's Identity Statement and/or Standardized Graphic Symbol.

C. Packaging and Labeling of Retail Marijuana Flower and Trim and Retail Marijuana Concentrate Prior to Transfer to a Consumer. A Retail Marijuana Store shall comply with the following minimum packaging and labeling requirements prior to Transferring Retail Marijuana flower and trim or Retail Marijuana Concentrate to a consumer:

1. Packaging of Retail Marijuana Flower and Trim. Prior to Transfer to a consumer, Retail Marijuana flower and trim shall be in a Container that does not exceed the sales limit in Rule R 402(C). The Container may but is not required to be Child-Resistant. Any Retail

Marijuana flower and trim in a Container that is not Child-Resistant shall be placed into a Child-Resistant Exit Package at the point of Transfer to a consumer.

2. Packaging of Retail Marijuana Concentrate. Prior to Transfer to a consumer, Retail Marijuana Concentrate shall be in a Child-Resistant Container that does not exceed the sales limit in Rule R 402(C). A sealed vaporizer cartridge or disposable vaporizer pen need not itself be Child-Resistant but must be placed into a Child-Resistant Container prior to Transfer to a consumer.

3. Labeling of Retail Marijuana Flower and Trim and Retail Marijuana Concentrate. Prior to Transfer to a consumer, every Container of Retail Marijuana flower and trim or Retail Marijuana Concentrate and any Marketing Layer shall be affixed with a label that includes at least the following information:

    a. Required License Number(s). The license number for each of the following:

        i. The Retail Marijuana Cultivation Facility where the Retail Marijuana was grown;

        ii. If applicable, the Retail Marijuana Cultivation Facility(ies) where the Water-Based Retail Marijuana Concentrate was produced;

        iii. If applicable, the Retail Marijuana Products Manufacturing Facility where the Retail Marijuana Concentrate was produced; and

        iv. The Retail Marijuana Store that sold the Retail Marijuana or Retail Marijuana Concentrate to the consumer, except the Retail Marijuana Store may affix its license number to the Container or Marketing Layer.

    b. Batch Numbers. The Harvest Batch Number(s) assigned to the Retail Marijuana or the Production Batch Number(s) assigned to the Retail Marijuana Concentrate.

    c. Statement of Net Contents. The statement of net contents must identify the net weight of the Retail Marijuana or net weight or volume of Retail Marijuana Concentrate prior to its placement in the Container, using a standard of measure compatible with the Inventory Tracking System.

    d. Universal Symbol. The Universal Symbol on the front of the Container and any Marketing Layer, no smaller than ½ of an inch by ½ of an inch, with the following statement directly below the Universal Symbol: "**Contains Marijuana. Keep away from children."**

    e. Required Potency Statement. The potency of the Retail Marijuana's or Retail Marijuana Concentrate's Total THC and CBD expressed as a percentage, which shall be displayed either:

        i. In a font that is bold, and enclosed within an outlined shape such as a circle or square; or

        ii. Highlighted with a bright color such as yellow.

    f. Date of Sale. The Retail Marijuana Store shall affix the date of sale to the consumer to the Container or Marketing Layer.

g. Solvent List. A list of any solvent(s) used to produce any Solvent-Based Retail Marijuana Concentrate.

h. Ingredient List Including Major Allergens. If applicable, a list of all ingredients used to manufacture the Retail Marijuana Concentrate including identification of any major allergens contained in the Retail Marijuana Concentrate in accordance with the Food Allergen Labeling and Consumer Protection Act of 2004, 21 U.S.C. § 343 (2010). The Food Allergen Labeling and Consumer Protection Act of 2004, 21 U.S.C. § 343 (2010) requires disclosure of the following major food allergens: milk, eggs, fish, crustacean shellfish, tree nuts, peanuts, wheat, and soybeans.

i. Note that this rule does not include any later amendments or editions to the United States Code. The Division maintains a copy of 21 U.S.C. § 343 (2010), which is available to the public for inspection and copying during the Division's regular business hours.

i. Required Warning Statements. Either the label affixed to the Container or the Marketing Layer shall include the following information:

i. "**This product was produced without regulatory oversight for health, safety, or efficacy.**"

ii. "**This product complies with testing requirements**."

iii. "**There may be long term physical or mental health risks from use of marijuana including additional risks for women who are or may become pregnant or are breastfeeding. Use of marijuana may impair your ability to drive a car or operate machinery**."

D. Packaging and Labeling of Retail Marijuana Product. A Retail Marijuana Products Manufacturing Facility and a Retail Marijuana Store shall comply with the following minimum packaging and labeling requirements prior to Transferring Retail Marijuana Product:

1. Packaging of Retail Marijuana Product. Every Retail Marijuana Product shall be in a Child-Resistant Container at the time of Transfer to a Retail Marijuana Store in accordance with the following packaging limits:

a. Retail Marijuana Product Other than Edible Retail Marijuana Product. Retail Marijuana Product that is not Edible Retail Marijuana Product shall be placed into a Child-Resistant Container that does not exceed the sales limit in Rule R 402(C). A sealed vaporizer cartridge or disposable vaporizer pen need not itself be Child-Resistant but must be placed into a Child-Resistant Container prior to Transfer to a consumer.

b. Edible Retail Marijuana Product. Edible Retail Marijuana Product shall be in a Child-Resistant Container as follows:

i. Single-Serving Edible Retail Marijuana Product. Every Single-Serving Edible Retail Marijuana Product must be placed into a Child-Resistant Container.

ii. Bundled Single-Serving Edible Retail Marijuana Product. Single-Serving Edible Retail Marijuana Products that are placed into a Child-Resistant Container may be bundled into a larger Marketing Layer so long as the

total amount of active THC per Marketing Layer does not exceed 100 milligrams.

iii. Multiple-Serving Edible Retail Marijuana Product. Every Multiple-Serving Edible Retail Marijuana Product shall be placed into a Child-Resistant Container that is Resealable and shall not exceed 100 milligrams of active THC per Container.

c. Liquid Edible Retail Marijuana Product. Liquid Edible Retail Marijuana Product shall be in a Child-Resistant Container as follows:

i. Single-Serving Liquid Edible Retail Marijuana Product. Each Liquid Edible Retail Marijuana Product that is a Single-Serving Edible Retail Marijuana Product must be packaged in a Child-Resistant Container.

ii. Multiple-Serving Liquid Edible Retail Marijuana Product. Each Liquid Edible Retail Marijuana Product that is a Multiple-Serving Edible Retail Marijuana Product shall be:

a. Packaged in a structure that uses a single mechanism to achieve both Child-Resistant properties and accurate pouring measurement of each liquid serving in increments equal to or less than 10 milligrams of active THC per serving, with no more than 100 milligrams of active THC total per Container; and

b. The measurement component is within the Child-Resistant cap or closure of the bottle and is not a separate component.

2. Labeling of Retail Marijuana Product. Prior to Transfer to a Retail Marijuana Store and a consumer, every Container of Retail Marijuana Product and any Marketing Layer shall be affixed with a label that includes at least the following information:

a. Required License Number(s). The license number for each of the following:

i. The Retail Marijuana Cultivation Facility where the Retail Marijuana was grown;

ii. The Retail Marijuana Products Manufacturing Facility where the Retail Marijuana Product was produced; and

iii. The Retail Marijuana Store that sold the Retail Marijuana Product to the consumer, except the Retail Marijuana Store may affix its license number to the Container or Marketing Layer.

b. Batch Numbers. The Production Batch Number(s) assigned to the Retail Marijuana Product.

c. Statement of Net Contents. The statement of net contents must identify the net weight, volume, or number of Retail Marijuana Products prior to its placement in the Container, using a standard of measure compatible with the Inventory Tracking System.

d. Universal Symbol. The Universal Symbol on the front of the Container and any Marketing Layer, no smaller than ½ of an inch by ½ of an inch, with the following

statement directly below the Universal Symbol: "**Contains Marijuana. Keep away from children**."

e. Ingredient List Including Major Allergens. A list of all ingredients used to manufacture the Retail Marijuana Product including identification of any major allergens contained in the Retail Marijuana Product in accordance with the Food Allergen Labeling and Consumer Protection Act of 2004, 21 U.S.C. § 343 (2010). The Food Allergen Labeling and Consumer Protection Act of 2004, 21 U.S.C. § 343 (2010) requires disclosure of the following major food allergens: milk, eggs, fish, crustacean shellfish, tree nuts, peanuts, wheat, and soybeans.

i. Note that this rule does not include any later amendments or editions to the United States Code. The Division maintains a copy of 21 U.S.C. § 343 (2010), which is available to the public for inspection and copying during the Division's regular business hours.

f. Required Potency Statement. The potency of the Retail Marijuana Product's active THC and CBD expressed in milligrams, which shall be displayed either:

i. In a font that is bold, and enclosed within an outlined shape such as a circle or square; or

ii. Highlighted with a bright color such as yellow.

g. Solvent List. A list of any solvent(s) used to produce any Solvent-Based Retail Marijuana Concentrate used as a production input in any Retail Marijuana Product.

h. Date of Sale. The Retail Marijuana Store shall affix the date of sale to the consumer to the Container or Marketing Layer.

i. Required Warning Statements. Either the label affixed to the Container or the Marketing Layer shall include the following information:

i. "**This product was produced without regulatory oversight for health, safety, or efficacy.**"

ii. "**This product complies with testing requirements**."

iii. "**There may be long term physical or mental health risks from use of marijuana including additional risks for women who are or may become pregnant or are breastfeeding. Use of marijuana may impair your ability to drive a car or operate machinery.**"

E. Packaging and Labeling of Seeds and Immature Plants Prior to Transfer to a Consumer. A Retail Marijuana Store shall comply with the following minimum packaging and labeling requirements prior to Transferring seeds or Immature plants to a consumer:

1. Packaging of Retail Marijuana Seeds. Prior to Transfer to a consumer, Retail Marijuana seeds shall be in a Container. The Container may but is not required to be Child-Resistant. Any Retail Marijuana seeds in a Container that is not Child-Resistant shall be placed into a Child-Resistant Exit Package at the point of Transfer to a consumer.

2. Packaging of Immature Plants. Prior to Transfer to a consumer, Immature plants shall be placed into a receptacle. The receptacle may but is not required to be Child-Resistant.

3. Labeling of Seeds and Immature Plants. Prior to Transfer to a consumer, every Container holding Retail Marijuana seeds and any receptacle containing an Immature plant must be affixed with a label that includes at least the following information:

a. Required License Number(s). The license number for each of the following:

i. The Retail Marijuana Cultivation Facility where the Retail Marijuana that produced the seeds or the Immature plant was grown; and

ii. The Retail Marijuana Store that sold the seeds or Immature plant to the consumer.

b. Universal Symbol. The Universal Symbol on the front of the Container holding seeds and the receptacle containing each Immature plant, no smaller than ½ of an inch by ½ of an inch, with the following statement directly below the Universal Symbol: "**Contains Marijuana. Keep away from children.**"

c. Statement of Net Contents for Seeds. A statement of net contents identifying the number of seeds in the Container.

d. Date of Sale. The Retail Marijuana Store shall affix the date of sale to the consumer to the Container or receptacle.

e. Required Warning Statements:

i. "**This product was produced without regulatory oversight for health, safety, or efficacy**."

ii. "**There may be long term physical or mental health risks from use of marijuana including additional risks for women who are or may become pregnant or are breastfeeding. Use of marijuana may impair your ability to drive a car or operate machinery**."

F. Permissive Information.

1. Identity Statement. A label affixed to a Container of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product or any Marketing Layer may include, but is not required to include, the Identity Statement and/or Standardized Graphic Symbol for:

a. The Retail Marijuana Cultivation Facility(ies) where the Retail Marijuana was grown;

b. The Retail Marijuana Products Manufacturing Facility that manufactured the Retail Marijuana Product or Retail Marijuana Concentrate; and/or

c. The Retail Marijuana Store that sold the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product.

2. Nutritional Fact Panel. Label(s) may include, but are not required to include, a nutritional fact panel or dietary supplement fact panel in substantial conformance with 21 CFR 101.9 (2016) or 21 C.F.R. 101.36 (2016) as follows:

a. For Edible Retail Marijuana Products other than pills, capsules, and tinctures and Food-Based Retail Marijuana Concentrate the nutritional fact panel shall be in substantial conformance with the requirements of 21 C.F.R. 101.9(C) (2016) which provides the FDA's nutritional labeling requirements for food;

b. For pills, capsules, and tinctures, the dietary supplement fact panel shall be in substantial conformance with the requirements of 21 C.F.R. 101.36 (2016) which provides the FDA's nutritional labeling requirements for dietary supplements.

i.. Note that this rule does not include any later amendments or editions to the Code of Federal Regulations. The Division maintains copies of 21 C.F.R. 101.9(C) (2016) and 21 C.F.R. 101.36 (2016), which are available to the public for inspection and copying during the Division's regular business hours.

3. Other Permissive Information. The labeling requirements in these R 1000-1 Series provide only the minimum labeling requirements. Licensees may include additional information on the label(s) so long as such information is consistent with the requirements of these Rules.

Basis and Purpose – R 1003-1

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(1), 12-43.4-202(2)(b), 12-43.4-202(3)(a)(IV)(D), 12-43.4-202(3)(a)(VII), 12-43.4-202(3)(b)(IX), 12-43.4-202(c)(VI), 12-43.4-202(f), 12-43.3-402(2)(a), 12-43.4-404(4)(a), and 12-43.4-404(8), C.R.S. The purpose of this rule is to define additional labeling requirements for Retail Marijuana, Retail Marijuana Concentrate, and/or Retail Marijuana Product (except Retail Marijuana seeds and Immature plants) based on its intended use. These labeling requirements are in addition to, not in lieu of, the labeling requirements in Rule R 1002-1.

Rule R 1003-1 - Additional Labeling Requirements Prior to Transfer to a Consumer

A. Applicability. This rule establishes additional labeling requirements for Retail Marijuana (except seeds and Immature plants), Retail Marijuana Concentrate, and Retail Marijuana Product prior to Transfer to a consumer. The labeling requirements in this rule apply to all Containers immediately containing Retail Marijuana, Retail Marijuana Concentrate and Retail Marijuana Product. These labeling requirements based on intended use are in addition to, not in lieu of, the requirements in Rule R 1002-1.

B. Additional Information Required on Every Container (Except Seeds and Immature Plants) Prior to Transfer to a Consumer. Prior to Transfer to a consumer, every Container of Retail Marijuana (excepts seeds and Immature plants), Retail Marijuana Concentrate, or Retail Marijuana Product and any Marketing Layer must have a label that includes at least the following additional information.

1. Statement of Intended Use. The Container and any Marketing Layer shall identify one or more intended use for Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product from the following exclusive list:

a. Inhaled Product:

i. Flower or Trim (including pre-rolled joint and kief);

ii. Solvent-Based Retail Marijuana Concentrate;

iii. Water-Based Retail Marijuana Concentrate;

iv. Heat/Pressure-Based Retail Marijuana Concentrate;

v. Vaporizer cartridge/vaporizer pen.

b. For Oral Consumption (Edible Retail Marijuana Product):

i. Food or drink infused with Retail Marijuana;

ii. Retail Marijuana Concentrate;

iii. Pills and capsules;

iv. Tinctures.

c. Skin and Body Products:

i. Topical;

ii. Suppository;

iii. Transdermal.

2. Inhaled Product. The label(s) on all inhaled product intended use shall also include:

a. The potency statement required by Rule R 1002-1 for: (1) flower (including prerolls and kief), (2) Solvent-Based Retail Marijuana Concentrate, (3) Water-Based Retail Marijuana Concentrate, (4) Heat/Pressure-Based Retail Marijuana Concentrate shall be stated as the percentage of Total THC and CBD.

b. The potency statement required by Rule R 1002-1 for vaporizer cartridges and disposable vaporizer pens shall be stated as either the percentage of Total THC and CBD, or the number of milligrams of Total THC and CBD, per cartridge or pen.

3. For Oral Consumption (Edible Retail Marijuana Products). The label(s) on all Edible Retail Marijuana Products, including but not limited to confections, liquids, Retail Marijuana-infused foods, pills, capsules and tinctures, shall also include:

a. Potency Statement. The potency statement required by Rule R 1002-1 shall be stated as: (1) milligrams of active THC and CBD per serving and (2) milligrams of active THC and CBD per Container where the Container contains more than one serving.

b. Additional Warning Statement Required. The following additional warning statement shall be included on the label on the Container or Marketing Layer for all Edible Retail Marijuana Product: **"The intoxicating effects of this product may be delayed by up to 4 hours.**"

c. Expiration/Use-By Date. A product expiration date, upon which the Edible Retail Marijuana Product will no longer be fit for consumption, or a use-by-date, upon which the Edible Retail Marijuana Product will no longer be optimally fresh. Once a label with an expiration or use-by date has been affixed to a Container containing an Edible Retail Marijuana Product and any Marketing Layer, a Licensee shall not alter that expiration or use-by date or affix a new label with a later expiration or use-by date.

d. Production Date. The date on which the Edible Retail Marijuana Product was produced which may be included in the Batch Number required by Rule R 1002-1.

e. Statement Regarding Refrigeration. If an Edible Retail Marijuana Product is perishable, a statement that the product must be refrigerated.

4. Skin and Body Products (Topical, Suppositories and Transdermal). The label(s) on all skin and body products shall also include:

a. Topical Product Potency Statement. For topical product the potency statement required by Rule R 1002-1 shall be stated as the number of milligrams of active THC and CBD per Container.

b. Suppository and Transdermal Product Potency Statement. For suppository and transdermal product, the potency statement required by Rule R 1002-1 shall be stated as the number of milligrams of active THC and CBD per suppository or transdermal and the total number of milligrams of active THC and CBD per Container.

c. Expiration/Use-By Date. A product expiration or use-by date, after which the skin and body product will no longer be fit for use. Once a label with an expiration or use-by date has been affixed to any Container holding a skin and body product and any Marketing Layer, a Licensee shall not alter that expiration or use-by date or affix a new label with a later expiration or use-by date.

d. Production Date. The date on which the skin and body product was produced which may be included in the Batch Number required by Rule R 1002-1.

C. No Other Intended Use Permitted. No intended use other than those identified in this rule shall be identified on any label. Licensees shall accurately identify all intended use(s) from the exclusive list of intended uses in this rule on the label.

D. Multiple Intended Uses. Any Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product having more than one intended use shall identify every intended use on the label and shall comply with all labeling requirements for each intended use. If there is any conflict between the labeling requirements for multiple intended uses, the most restrictive labeling requirements shall be followed. Licensees shall not counsel or advise any consumer to use Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product other than in accordance with the intended use(s) identified on the label.

R 1200 Series – Enforcement

Basis and Purpose – R 1201

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(2)(b), 12-43.4-202(3)(b)(II), 12-43.4-202(3)(b)(III), and section 12-43.4-602, C.R.S. This rule explains that Licensees must cooperate with Division employees when they are acting within the normal scope of their duties and that failure to do so may result in sanctions. It also explains the administrative hold process, the handling of inventory subject to administrative hold and under investigation and the process for voluntary surrender of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product

R 1201 – Duties of Employees of the State Licensing Authority

A. Duties of Director

1. The State Licensing Authority may delegate an act required to be performed by the State Licensing Authority related to the day-to-day operation of the Division to the Director.

2. The Director may authorize Division employees to perform tasks delegated from the State Licensing Authority.

B. Duties of Division Investigators. The State Licensing Authority, the Department's Senior Director of Enforcement, the Director, and Division investigators shall have all the powers of any peace officer to:

1. Investigate violations or suspected violations of the Retail Code and any rules promulgated pursuant to it. Make arrests, with or without warrant, for any violation of the Retail Code, any rules promulgated pursuant to it, Article 18 of Title 18, C.R.S., any other laws or regulations pertaining to Retail Marijuana in this state, or any criminal law of this state, if, during an officer's exercise of powers or performance of duties pursuant to the Retail Code, probable cause exists that a crime related to such laws has been or is being committed;

2. Serve all warrants, summonses, subpoenas, administrative citations, notices or other processes relating to the enforcement of laws regulating Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product;

3. Assist or aid any law enforcement officer in the performance of his or her duties upon such law enforcement officer's request or the request of other local officials having jurisdiction;

4. Inspect, examine, or investigate any premises where the Licensee's Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product are grown, stored, cultivated, manufactured, tested, distributed, or sold, and any books and records in any way connected with any licensed or unlicensed activity;

5. Require any Licensee, upon demand, to permit an inspection of Licensed Premises during business hours or at any time of apparent operation, marijuana equipment, and marijuana accessories, or books and records; and, to permit the testing of or examination of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product;

6. Require Applicants to submit complete and current applications and fees and other information the Division deems necessary to make licensing decisions and approve material changes made by the Applicant or Licensee;

7. Conduct investigations into the character, criminal history, and all other relevant factors related to suitability of all Licensees and Applicants for Retail Marijuana licenses and such other Persons with a direct or indirect interest in an Applicant or Licensee, as the State Licensing Authority may require; and

8. Exercise any other power or duty authorized by law.

C. Duties of State Licensing Authority and Division Employees.

1. Employees shall maintain the confidentiality of State Licensing Authority and Division records and information. For confidentiality requirements of State Licensing Authority and Division employees who leave the employment of the State Licensing Authority, see Rule R 1308 - Confidential Information and Former State Licensing Authority Employees.

2. Pursuant to subsection 12-43.3-201(4), C.R.S., State Licensing Authority employees with regulatory oversight responsibilities for marijuana businesses licensed by the state licensing authority shall not work for, represent, or provide consulting services to or otherwise derive pecuniary gain from a marijuana business licensed by the State

Licensing Authority or other business entity established for the primary purpose of providing services to the marijuana industry for a period of six months following his or her last day of employment with the State Licensing Authority.

3. Pursuant to subsection 12-43.3-201(5), C.R.S., disclosure of confidential records or information in violation of the provisions of the Medical Code (some of which also pertain to regulation of Retail Marijuana Establishments) constitutes a class 1 misdemeanor.

Basis and Purpose – R 1202

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(2)(b), 12-43.4-202(3)(b)(II), 12-43.4-202(3)(b)(III), and section 12-43.4-602, C.R.S. This rule explains that Licensees must cooperate with Division employees when they are acting within the normal scope of their duties and that failure to do so may result in sanctions. It also explains the administrative hold process, the handling of inventory subject to administrative hold and under investigation and the process for voluntary surrender of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product.

R 1202 – Requirement for Inspections and Investigations, Searches, Administrative Holds, Voluntary Surrenders and Such Additional Activities as May Become Necessary from Time to Time

A. Applicants and Licensees Shall Cooperate with Division Employees

1. Applicants and Licensees must cooperate with employees of the Division who are conducting inspections or investigations relevant to the enforcement of laws and regulations related to the Retail Code.

2. No Applicant or Licensee shall by any means interfere with, obstruct or impede the State Licensing Authority or any employee of the Division from exercising their duties pursuant to the provisions of the Retail Code and all rules promulgated pursuant to it. This would include, but is not limited to:

a. Threatening force or violence against an employee or investigator of the Division, or otherwise endeavoring to intimidate, obstruct, or impede employees or investigator of the Division, their supervisors, or any peace officers from exercising their duties. The term “threatening force” includes the threat of bodily harm to such individual or to a member of his or her family;

b. Denying investigators of the Division access to premises where the licensee’s Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product are grown, stored, cultivated, manufactured, tested, distributed, or Transferred during business hours or times of apparent activity;

c. Providing false or misleading statements;

d. Providing false or misleading documents and records;

e. Failing to timely produce requested books and records required to be maintained by the Licensee; or

f. Failing to timely respond to any other request for information made by a Division employee or investigator in connection with an investigation of the qualifications, conduct or compliance of an Applicant or Licensee.

B. Administrative Hold

1. To prevent destruction of evidence, diversion or other threats to public safety, while permitting a Licensee to retain its inventory pending further investigation, a Division investigator may order an administrative hold of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product pursuant to the following procedure:

    a. If during an investigation or inspection of a Licensee, a Division investigator develops reasonable grounds to believe certain Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product constitute evidence of acts in violation of the Retail Code or rules promulgated pursuant to it, or constitute a threat to the public safety, the Division investigator may issue a notice of administrative hold of any such Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product. The notice of administrative hold shall provide a documented description of the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to be subject to the administrative hold and a concise statement that is promptly issued and approved by the Director or his or her designee regarding the reasons for issuing the administrative hold.

    b. Following the issuance of a notice of administrative hold, the Division will identify the Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product subject to the administrative hold in the Inventory Tracking System. The Licensee shall continue to comply with all tracking requirements. *See* Rule R 309 Retail Marijuana Establishments: Inventory Tracking System.

    c. The Licensee shall completely and physically segregate the Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product subject to the administrative hold in a Limited Access Area of the Licensed Premises under investigation, where it shall be safeguarded by the Licensee.

    d. While the administrative hold is in effect, the Licensee is prohibited from, giving away, Transferring, transporting, or destroying the Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product subject to the administrative hold, except as otherwise authorized by these rules.

    e. While the administrative hold is in effect, the Licensee must safeguard the Retail Marijuana, Retail Marijuana Concentrate, and Retail Product subject to the administrative hold and must fully comply with all security requirements including but not limited to surveillance, lock and alarm requirements set forth in the Retail Code and the rules of the State Licensing Authority. *See* Rule R 1309 Administrative Warrants.

    f. Nothing herein shall prevent a Licensee from voluntarily surrendering Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product that is subject to an administrative hold, except that the Licensee must follow the procedures set forth in paragraph (C) for voluntary surrender of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product.

    g. Nothing herein shall prevent a Licensee from the continued possession, cultivation or harvesting of the Retail Marijuana subject to the administrative hold. All Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product subject to an administrative hold must be put into separate Harvest Batches.

    h. At any time after the initiation of the administrative hold, the Division may lift the administrative hold, order the continuation of the administrative hold pending the administrative process, or seek other appropriate relief.

C. Voluntary Surrender of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product

1. A Licensee, prior to a Final Agency Order and upon mutual agreement with the Division, may elect to voluntarily surrender any Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product to the Division.

    a. Such voluntary surrender may require destruction of any Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product in the presence of a Division investigator and at the Licensee's expense.

    b. The individual signing the Division's voluntary surrender form on behalf of the Licensee must certify that the individual has authority to represent and bind the Licensee.

2. The voluntary surrender form may be utilized in connection with a stipulated agency order through which the Licensee waives the right to hearing and any associated rights.

3. The voluntary surrender form may be utilized even if the Licensee does not waive the right to hearing and any associated rights, with the understanding that the outcome of the hearing does not impact the validity of the voluntary surrender.

4. A Licensee, after a Final Agency Order and upon mutual agreement with the Division, may elect to voluntarily surrender any Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to the Division.

    a. The Licensee must complete and return the Division's voluntary surrender form within 15 calendar days of the date of the Final Agency Order.

    b. Such voluntary surrender may require destruction of any Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product in the presence of a Division investigator and at the Licensee's expense.

    c. The individual signing the Division's voluntary surrender form on behalf of the Licensee must certify that the individual has authority to represent and bind the Licensee.

Basis and Purpose – R 1203

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(2)(b), 12-43.4-202(3)(b)(I), 12-43.3-202(2)(b)(III), and 12-43.4-602, C.R.S. The purpose of this rule is to provide guidance following either an agency decision or under any circumstances where the Licensee is ordered to surrender and/or destroy unauthorized Retail Marijuana, unauthorized Retail Marijuana Concentrate, or unauthorized Retail Marijuana Product. This rule also provides guidance as to the need to preserve evidence during agency investigations or subject to agency order.

R 1203 – Disposition of Unauthorized Retail Marijuana

A. After a Final Agency Order Orders the Destruction of Marijuana. If the State Licensing Authority issues a Final Agency Order pursuant to section 12-43.4-602, C.R.S., that orders the destruction of some or all of the Licensee's unauthorized Retail Marijuana, unauthorized Retail Marijuana Concentrate, or unauthorized Retail Marijuana Product, the Licensee may:

1. Voluntarily Surrender. The Licensee may voluntarily surrender to the Division all of its unauthorized Retail Marijuana, unauthorized Retail Marijuana Concentrate, and

unauthorized Retail Marijuana Product that are described in the Final Agency Order in accordance with the provisions of Rule R 1202(C).

2. Seek A Stay. The Licensee may file a petition for a stay of the Final Agency Order with the Denver district court within 15 days of the date of the Final Agency Order.

3. Take No Action. If the Licensee does not either (1) voluntarily surrender its unauthorized Retail Marijuana, unauthorized Retail Marijuana Concentrate, or unauthorized Retail Marijuana Product as set forth in subparagraph (A)(1) of this rule; or (2) properly seek a stay of the Final Agency Order as set forth in subparagraph (A)(2) of this rule, the Division will enter upon the Licensed Premises and seize and destroy the unauthorized Retail Marijuana, unauthorized Retail Marijuana Concentrate, and/or Retail Marijuana Product that are the subject of the Final Agency Order.

B. General Requirements Applicable To All Licensees Following Final Agency Order To Destroy Unauthorized Retail Marijuana, Unauthorized Retail Marijuana Concentrate, and Unauthorized Retail Marijuana Product. The following requirements apply regardless of whether the Licensee voluntarily surrenders its unauthorized Retail Marijuana, unauthorized Retail Marijuana Concentrate, or unauthorized Retail Marijuana Product seeks a stay of agency action, or takes no action:

1. The 15 day period set forth in section 12-43.4-602(5), C.R.S., and this rule shall include holidays and weekends.

2. During the period of time between the issuance of the Final Agency Order and the destruction of the unauthorized Retail Marijuana, unauthorized Retail Marijuana Concentrate, or unauthorized Retail Marijuana Product the Licensee shall not sell, destroy, or otherwise let any unauthorized Retail Marijuana, unauthorized Retail Marijuana Concentrate, or unauthorized Retail Marijuana Product that are subject to the Final Agency Order leave the Licensed Premises, unless specifically authorized by the State Licensing Authority or Court order.

3. During the period of time between the issuance of the Final Agency Order and the destruction of unauthorized Retail Marijuana, unauthorized Retail Marijuana Concentrate, or unauthorized Retail Marijuana Product, the Licensee must safeguard any unauthorized Retail Marijuana, unauthorized Retail Marijuana Concentrate, or unauthorized Retail Marijuana Product in its possession or control and must fully comply with all security requirements including but not limited to surveillance, lock and alarm requirements set forth in the Retail Code and the rules of the State Licensing Authority.

4. Unless the State Licensing Authority otherwise orders, the Licensee may cultivate, water, or otherwise care for any unauthorized Retail Marijuana, unauthorized Retail Marijuana Concentrate, or unauthorized Retail Marijuana Product that are subject to the Final Agency Order during the period of time between the issuance of the Final Agency order and the destruction of the unauthorized Retail Marijuana or unauthorized Retail Marijuana Product.

5. If a district attorney notifies the Division that some or all of the unauthorized Retail Marijuana, unauthorized Retail Marijuana Concentrate, or unauthorized Retail Marijuana Product is involved in an investigation, the Division shall not destroy the unauthorized Retail Marijuana, unauthorized Retail Marijuana Concentrate, or unauthorized Retail Marijuana Product until approved by the district attorney.

R 1300 Series – Discipline

Basis and Purpose – R 1303

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(2)(b), 12-43.4-202(2)(c), 12-43.4-202(3)(a)(I), 12-43.4-202(3)(a)(XVI) 12-43.4-202(3)(b)(IX), 24-4-104(4)(a), sections 12-43.3-601 and 24-4-105, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I). The State Licensing Authority recognizes that if Licensees are not able to care for their products during a period of active suspension, then their plants could die, their edible products could deteriorate, and their on-hand inventory may not be properly maintained. Accordingly, this rule was written to clarify that Licensees whose licenses are summarily suspended may care for on-hand inventory, manufactured products, and plants during the suspension (unless the State Licensing Authority does not allow such activity), provided the Licensed Premises and all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product are adequately secured. In addition, the rule clarifies what activity is always prohibited during such suspension.

R 1303 – Suspension Process: Regular and Summary Suspensions

A. Signs Required During Suspension. Every Licensee whose license has been suspended, whether summarily or after an administrative hearing, shall post two notices in conspicuous places, one on the exterior and one on the interior of its premises, for the duration of the suspension. The notices shall be at least 17 inches in length and 11 inches in width containing lettering not less 1/2'' in height.

1. For suspension following issuance of a Final Agency Order, the sign shall be in the following form:

   NOTICE OF SUSPENSION

   RETAIL MARIJUANA LICENSES ISSUED

   FOR THESE PREMISES HAVE BEEN

   SUSPENDED BY ORDER OF THE STATE LICENSING AUTHORITY

   FOR VIOLATION OF THE COLORADO RETAIL MARIJUANA CODE

2. For a summary suspension pending issuance of a Final Agency Order, the sign shall be in the following form:

   NOTICE OF SUSPENSION

   RETAIL MARIJUANA LICENSES ISSUED

   FOR THESE PREMISES HAVE BEEN

   SUSPENDED BY ORDER OF THE STATE LICENSING AUTHORITY

   FOR ALLEGED VIOLATION OF THE COLORADO RETAIL MARIJUANA CODE

Any advertisement or posted signs that indicate that the premises have been closed or business suspended for any reason other than by the manner described in this rule shall be deemed a violation of these rules.

B. Prohibited Activity During Active Suspension

1. Unless otherwise ordered by the State Licensing Authority, during any period of active license suspension the Licensee shall not permit the, serving, giving away, distribution, manufacture, sampling, acquisition, purchase , Transfer, or transport of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product on the Licensed Premises, nor allow customers to enter the Licensed Premises.

2. Unless otherwise ordered by the State Licensing Authority, during any period of suspension the Licensee may continue to possess, maintain, cultivate or harvest Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product on the Licensed Premises. The Licensee must fully account for all such Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product in the Inventory Tracking System. The Licensee must safeguard any Retail Marijuana or Retail Marijuana Product in its possession or control. The Licensee must fully comply with all security requirements including but not limited to surveillance, lock and alarm requirements set forth in the Retail Code and the rules of the State Licensing Authority.

C. Removal and Destruction of Marijuana, Retail Marijuana Concentrate, and Marijuana Product. Retail Marijuana and Retail Marijuana Product shall not be removed from the Licensed Premises or destroyed unless and until:

1. The provisions described in section 12-43.4-602, C.R.S., related to the proper destruction of unauthorized marijuana are met, and the State Licensing Authority orders forfeiture and destruction. See also Rule R 1203 – Disposition of Unauthorized Retail Marijuana;

2. The Licensee has voluntarily surrendered the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product in accordance with Rule R 1202(C) – Voluntary Surrender;

3. The State Licensing Authority has seized the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product pursuant to an Administrative Warrant. See Rule R 1309 – Administrative Warrant.

D. Renewal. The issuance of a suspension or an Order of Summary Suspension does not relieve the Licensee of the obligation to timely comply with all license renewal requirements.

Basis and Purpose – R 1307

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(XV), 12-43.4-104(6)(f), and 12-43.4-601(3)(b), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(IX). The purpose of this rule is to establish guidelines for enforcement and penalties that will be imposed by the State Licensing Authority for non-compliance with Retail Code, section 18-18-406.3(7), or any other applicable rule. The State Licensing Authority considered the type of violation and the threat of harm to the public versus purely administrative harm when setting the penalty structure. Based upon public testimony and a written commentary, Rule R 1307(A) was amended to include additional license violations affecting public safety and Rule R 1307(C.1) was added.

R 1307 – Penalties

A. Penalty Schedule. The State Licensing Authority will make determinations regarding the type of penalty to impose based on the severity of the violation in the following categories:

1. License Violations Affecting Public Safety. This category of violation is the most severe and may include, but is not limited to, Retail Marijuana sales to persons under the age of 21 years, consuming marijuana on the Licensed Premises, Retail Marijuana sales in

excess of the relevant transaction limit, permitting the diversion of Retail Marijuana outside the regulated distribution system, possessing Retail Marijuana or Retail Marijuana Product obtained from outside the regulated distribution system or from an unauthorized source, making misstatements or omissions in the Inventory Tracking System, failing to continuously escort a visitor in a Limited Access Area, violations related to co-located Medical Marijuana Centers and Retail Marijuana Businesses, failure to maintain books and records to fully account for all transactions of the business, Advertising violations directly targeting minors, or packaging or labeling violations that directly impact consumer safety. Violations of this nature generally have an immediate impact on the health, safety, and welfare of the public at large. The range of penalties for this category of violation may include license suspension, a fine per individual violation, a fine in lieu of suspension of up to $100,000, and/or license revocation depending on the mitigating and aggravating circumstances. Sanctions may also include restrictions on the license.

2. License Violations. This category of violation is more severe than a license infraction but generally does not have an immediate impact on the health, safety and welfare of the public at large. License violations may include but are not limited to, Advertising and/or marketing violations, packaging or labeling violations that do not directly impact consumer safety, failure to maintain minimum security requirements, failure to keep and maintain adequate business books and records, or minor or clerical errors in the inventory tracking procedures. The range of penalties for this category of violation may include a written warning, license suspension, a fine per individual violation, a fine in lieu of suspension of up to $50,000, and/or license revocation depending on the mitigating and aggravating circumstances. Sanctions may also include restrictions on the license.

3. License Infractions. This category of violation is the least severe and may include, but is not limited to, failure to display required badges, unauthorized modifications of the Licensed Premises of a minor nature, or failure to notify the State Licensing Authority of a minor change in ownership. The range of penalties for this category of violation may include a verbal or written warning, license suspension, a fine per individual violation, and/or a fine in lieu of suspension of up to $10,000 depending on the mitigating and aggravating circumstances. Sanctions may also include restrictions on the license.

B. Other Factors

1. The State Licensing Authority may take into consideration any aggravating and mitigating factors surrounding the violation which could impact the type or severity of penalty imposed.

2. The penalty structure is a framework providing guidance as to the range of violations, suspension description, fines, and mitigating and aggravating factors. The circumstances surrounding any penalty imposed will be determined on a case-by-case basis.

3. For all administrative offenses involving a proposed suspension, a Licensee may petition the State Licensing Authority for permission to pay a monetary fine, within the provisions of section 12-43.4-601, C.R.S., in lieu of having its license suspended for all or part of the suspension.

C. Mitigating and Aggravating Factors. The State Licensing Authority may consider mitigating and aggravating factors when considering the imposition of a penalty. These factors may include, but are not limited to:

1. Any prior violations that the Licensee has admitted to or was found to have engaged in.

2. Good faith measures by the Licensee to prevent the violation, including the following:

    a. Proper supervision;

    b. Regularly-provided and documented employee training, provided the Licensee demonstrates all reasonable training measures were delivered prior to the Division's investigation;

    c. Standard operating procedures established prior to the Division's investigation, and which include procedures directly addressing the conduct for which imposition of a penalty is being considered; and

    d. Previously established and maintained responsible-vendor designation pursuant to Rule R 407.

3. Licensee's past history of success or failure with compliance checks.

4. Corrective action(s) taken by the Licensee related to the current violation or prior violations.

5. Willfulness and deliberateness of the violation.

6. Likelihood of reoccurrence of the violation.

7. Circumstances surrounding the violation, which may include, but are not limited to:

    a. Prior notification letter to the Licensee that an underage compliance check would be forthcoming.

    b. The dress or appearance of an underage operative used during an underage compliance check (*e.g.*, the operative was wearing a high school letter jacket).

    c. Licensee self-reported violation(s) of the Retail Code or rules promulgated pursuant to the Retail Code.

8. Owner or manager is the violator or has directed an employee or other individual to violate the law.

9. Repealed.

R 1500 Series – Retail Marijuana Testing Program

Basis and Purpose – R 1501

The statutory authority for this rule includes but is not limited to sections 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)(VIII), 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), 12-43.4-404(3), 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 contaminant testing and related process validation portion of the Division's Retail Marijuana sampling and testing program.

R 1501 – Retail Marijuana Testing Program – Contaminant Testing

A. Contaminant Testing Required. Unless a Retail Marijuana Cultivation Facility's or a Retail Marijuana Product Manufacturing Facility's cultivation or production process has achieved process validation under this rule, it shall not 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 each Harvest Batch or Production Batch from which that Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product was derived has been tested by a Retail Marijuana Testing Facility for contaminants and passed all contaminant tests required by Paragraph (C) of this rule.

B. Process Validation and Ongoing Testing – Contaminant Testing

1. Retail Marijuana. A Retail Marijuana Cultivation Facility's cultivation process shall be deemed validated for Contaminant testing if every Harvest Batch that it produced during at least a six-week period but no longer than a 12-week period passed all contaminant tests required by Paragraph (C) of this Rule. This must include at least six Test 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 validated for contaminant testing if every Production Batch that it produced during at least a four-week period but no longer than an eight-week period passed all contaminant tests required by Paragraph (C) of this Rule. This must include at least four Test Batches.

3. Expiration of Process Validation. A Retail Marijuana Cultivation Facility and Retail Marijuana Products Manufacturing Facility shall be required to re-validate its process for contaminant testing every 12 months from the date process validation is achieved, after which point the process validation expires. If the process validation expires, the Retail Marijuana Cultivation Facility shall comply with the requirements of Paragraph (A) of this Rule.

4. Retail Marijuana Ongoing Contaminant Testing. After successfully obtaining process validation, once every 30 days a Retail Marijuana Cultivation Facility shall subject at least one Harvest Batch to all contaminant testing required by Paragraph (C) of this Rule. If during any 30-day period a Retail Marijuana Cultivation Facility does not possess a Harvest Batch that is ready for testing, the Retail Marijuana Cultivation Facility must subject its first Harvest Batch that is ready for testing to the required contaminant testing prior to Transfer or processing of the Retail Marijuana. If a Harvest Batch subject to ongoing contaminant testing fails contaminant testing, the Retail Marijuana Cultivation Facility shall follow the procedure in Paragraph (F)(2) of this Rule. Ongoing contaminant testing pursuant to this Rule R 1501 shall be subject to the requirements in Rule R 1504. See Rule R 1504(A) – Collection of Samples.

   a. The Division may reduce the frequency of ongoing contaminant testing required by Retail Marijuana Cultivation Facilities if the Division has reasonable grounds to believe Retail Marijuana Testing Facilities have reached maximum capacity to perform testing required by this Rule. The Division will provide notification of any reduction to the frequency of ongoing contaminant testing to the Licensee's last electronic mailing address provided to the Division.

5. Retail Marijuana Concentrate or Retail Marijuana Product Ongoing Contaminant Testing. After successfully obtaining process validation, once every 30 days a Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility shall subject at least one Production Batch to all contaminant testing required by Paragraph (C) of this Rule. If during any 30-day period a Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility does not possess a Production Batch that is ready for testing, the Retail Marijuana Cultivation Facility or Retail Marijuana Products

Manufacturing Facility must subject its first Production Batch that is ready for testing to the required contaminant testing prior to Transfer or processing of the Retail Marijuana. If a Production Batch submitted for ongoing contaminant testing fails contaminant testing, the Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility shall follow the procedure in Paragraph (F)(2) of this Rule.

a. The Division may reduce the frequency of ongoing contaminant testing required by Retail Marijuana Cultivation Facilities and Retail Marijuana Products Manufacturing Facilities if the Division has reasonable grounds to believe Retail Marijuana Testing Facilities have reached maximum capacity to perform testing required by this Rule. The Division will provide notification of any reduction to the frequency of ongoing contaminant testing to the Licensee's last electronic mailing address provided to the Division.

C. Required Contaminant Tests

1. Microbial Contaminant Testing. Harvest Batches of Retail Marijuana and Production Batches of Water, Heat/Pressure-, or Food-Based Retail Marijuana Concentrate and Retail Marijuana Product must be tested for microbial contamination by a Retail Marijuana Testing Facility at the frequency established by Paragraphs (A) and (B) fo this Rule. The microbial contamination test must include, but need not be limited to, testing to determine the presence of Salmonella sp. and shiga-toxin producing Escherichia coli., and the amount of total yeast and mold.

2. Repealed

3. Repealed.

4. Residual Solvent Contaminant Testing. Production Batches of Solvent-Based Retail Marijuana Concentrate produced by a Retail Marijuana Products Manufacturing Facility must be tested by a Retail Marijuana Testing Facility for residual solvent contamination at the frequency established by Paragraphs (A) and (B) of this Rule. The residual solvent contamination test must include, but need not be limited to, testing to determine the presence of, and amounts present of acetone,, butane, ethanol, heptanes, isopropyl alcohol, propane, benzene*, toluene*, pentane, hexane*, and total xylenes* (m, p, o – 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.

5. Mycotoxin Contaminant Testing. As part of Remediation, each Production Batch of Solvent-Based Retail Marijuana Concentrate produced by a Retail Marijuana Products Manufacturing Facility from Retail Marijuana that failed microbial contaminant testing produced must be tested by a Retail Marijuana Testing Facility for mycotoxin contamination. The mycotoxin contaminant test must include, but need not be limited to, testing to determine the presence of, and amounts present of, aflatoxins (B1, B2, G1, and G2) and ochratoxin A. This is in addition to all other contaminant testing required by this Paragraph (C).

6. Pesticide Contaminant Testing. Harvest Batches of Retail Marijuana must be tested for Pesticide contamination by a Retail Marijuana Testing Facility at the frequency established by this Rule R 1501(A) and (B). The Pesticide contamination test must include, but need not be limited to, testing to determine the presence of, and amounts present of, the Pesticides listed in Rule R 712(E)(5).

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 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, chemical contaminants, biological contaminants, or other types of microbials, molds, metals, 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 Transfer any portion of the Production Batch and uses the entire Production Batch to manufacture Retail Marijuana Product, except that a Solvent-Based Retail Marijuana Concentrate must still be submitted for residual solvent contaminant testing. The manufactured Retail Marijuana Product shall be subject to testing under this Rule.

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 or its standard operating procedure manual, then it must have the first five Harvest Batches or Production Batches produced using the new 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.

    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 or changes any parameters for equipment related to the solvent purging process, including but not limited to, time, temperature, or pressure.

    c. Cultivation. It shall be considered a Material Change if a Retail Marijuana Cultivation Facility begins using a new or different method for any material part of the cultivation process, including, but not limited to, changing from one growing medium to another.

    d. Notification. A Retail Marijuana Cultivation Facility or a Retail Marijuana Product Manufacturing Facility must notify the Retail Marijuana Testing Facility of the Material Change.

    e. Testing Required Prior to 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 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 unless and until the Harvest Batch or Production Batch passes all required testing..

2. Failed Contaminant Testing and Re-Validation. Failed contaminant testing may constitute a violation of these rules. Additionally, if a Sample the Division requires to be tested fails contaminant testing, the Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility shall follow the procedures in Rule R 1507(B) for any Inventory Tracking System package, Harvest Batch, or Production Batch from which the failed Sample was taken. The Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility shall also submit three additional Test Batches of the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product for contaminant testing by a Retail Marijuana Testing Facility within no more than 30 days. If any one of the three submitted Test Batches fails contaminant testing, the Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility shall re-validate its process for contaminants.

3. Repealed.

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 includes but is not limited to sections 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)(VIII), 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), 12-43.4-404(3), 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

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, mycotoxn, molds, metals, residual solvents, biological contaminants, and chemical contaminants..

2. When a Sample(s) is required to be submitted for testing, the Retail Marijuana Establishment may Transfer or process into a Retail Marijuana Concentrate or Retail Marijuana Product any Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product from the Inventory Tracking System package, Harvest Batch or Production Batch from which the Sample was taken, unless or until it passes all required testing.

B. Methods for Determining Required Testing

1. Random Testing. The Division may 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, regardless of whether a Retail Marijuana Establishment's process has been validated.

2. Inspection or Enforcement Tests. In addition, 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 statute, rule or regulation; or

   c. The results of a test would further an investigation by the Division into a violation of any statute, rule or regulation.

3. Beta Testing. 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 prior to implementing mandatory testing.

C. Minimum Testing Standards. The testing requirements contained in the R 1500 series are the minimum required testing standards. Retail Marijuana Establishments are responsible for ensuring adequate testing on any Retail Marijuana, Retail Marijuana Concentrate, and/or Retail Marijuana Product they produce or Transfer to ensure safety for human consumption.

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, residual solvents, biological contaminants, and chemical contaminants.. The following is a non-exhaustive list of the types of Samples that may be required to be submitted for contaminant testing:

1. Specific Retail Marijuana plant(s) or any portion of a Retail Marijuana 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 includes but is not limited to sections 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 and related process validation portion of the Division's Retail Marijuana sampling and testing program.

R 1503 – Retail Marijuana Testing Program – Potency Testing

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 one week 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 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 per quarter.

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 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 for Retail Marijuana Product. A Retail Marijuana Products Manufacturing Facility shall have potency tests conducted by a Retail Marijuana Testing Facility on every Production Batch of each type of Retail Marijuana Product that it produces prior to Transferring any of the Retail Marijuana Product from that Production Batch, unless the Retail Marijuana Products Manufacturing Facility has successfully completed process validation for potency and homogeneity for the particular type of Retail Marijuana Product.

1.5 Repealed.

2. Required Tests. Potency and homogeneity 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 infused.

E. Process Validation - Potency and Homogeneity.

1. A Retail Marijuana Products Manufacturing Facility may process validate potency and homogeneity for each type of Retail Marijuana Product it manufactures.

2. A Retail Marijuana Products Manufacturing Facility's production process for a particular type of Retail Marijuana Product shall be deemed valid regarding potency and homogeneity if every Production Batch that it produces for that particular type of Edible Retail Marijuana Product during at least a four-week period but no longer than an eight-week period passes all potency and homogeneity tests required by Rule R 1503(D)(2). This must include at least four Test Batches.

3. Expiration of Process Validation. Once a Retail Marijuana Products Manufacturing Facility shall be required to re-validate its process every 12 months from the date process validation is achieved, after which point the process validation expires. If the process validation expires, the Retail Marijuana Products Manufacturing Facility shall comply with the requirements of Paragraph (D)(1) of this Rule.

4. Retail Marijuana Product Ongoing Potency and Homogeneity Testing. After successfully obtaining process validation, once per quarter a Retail Marijuana Products Manufacturing Facility shall subject at least one Production Batch of each type of Retail Marijuana Product that it produces to potency and homogeneity testing required by Paragraph (D) of this Rule. If during any quarter a Retail Marijuana Products Manufacturing Facility does not possess a Production Batch that is ready for testing, the Retail Marijuana Products Manufacturing Facility must subject its first Production Batch that is ready for testing to the required potency and homogeneity testing prior to Transfer or processing of the Retail Marijuana. If a Test Batch submitted for ongoing potency and homogeneity testing fails potency and homogeneity testing, the Retail Marijuana Products Manufacturing Facility shall follow the procedure in Paragraph (F)(2) of this Rule. Ongoing potency and homogeneity testing pursuant to this Rule R 1503 shall be subject to the requirements in Rule R 1504. See Rule R 1504(A) – Collection of Samples.

    a. The Division may reduce the frequency of ongoing potency and homogeneity testing required by Retail Marijuana Products Manufacturing Facilities if the Division has reasonable grounds to believe Retail Marijuana Testing Facilities have reached maximum capacity to perform testing required by this Rule. The Division will provide notification of any reduction to the frequency of ongoing potency and homogeneity testing to the Licensee's last electronic mailing address provided to the Division.

F. Required Re-Validation - Potency and Homogeneity - Retail Marijuana Product.

1. Material Change Re-Validation. If a Retail Marijuana Products Manufacturing Facility elects to process validate any Retail Marijuana Product for potency and homogeneity and it makes a Material Change to its production process for that particular type of Retail Marijuana Product, 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 must notify the Retail Marijuana Testing Facility of a Material Change.

    c. Testing Required Prior to 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 Transfer Retail Marijuana Product from that Production Batch unless or until it obtains a passing test.

2. Failed Potency Testing Re-Validation. If a Sample the Division requires to be tested fails potency testing, the Retail Marijuana Products Manufacturing Facility shall follow the procedures in Rule R 1507(C) for any Inventory Tracking System package or Production Batch associated with the failed Sample. The Retail Marijuana Products Manufacturing Facility shall also submit three additional Test Batches of the Retail Marijuana Product for potency testing by a Retail Marijuana Testing Facility within no more than 30 days. If any one of the three submitted Test Batches fails potency testing, the Retail Marijuana Products Manufacturing Facility shall re-validate its process for potency.

3. Repealed.

G. Violation Affecting Public Safety. Failure to comply with this rule may constitute a license violation affecting public safety.

Basis and Purpose – R 1504

The statutory authority for this rule includes but is not limited to sections 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)(VIII), 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)(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), 12-43.4-404(3), 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 sampling procedures and rules for the Division's Retail Marijuana sampling and testing program.

R 1504 – Retail Marijuana Testing Program – Sampling Procedures

A. Collection of Samples

1. Sample Collection. All Samples submitted for testing pursuant to this rule must be collected by Division representatives or in accordance with the Division's sampling policy which is found in the Colorado Department of Public Health and Environment Reference Library at https://tinyurl.com/y8p86vu3. This Reference Library may be continuously updated as new materials become available in accordance with section 25-1.5-106(3.5)(d), C.R.S..

2. Sample Selection. The Division may elect, at its sole direction, to assign Division representatives to collect Samples, or may otherwise direct Sample selection, including, but not limited to, through Division designation of a Harvest Batch or Production Batch in the Inventory Tracking System from which a Retail Marijuana Establishment shall select Samples for testing. A Retail Marijuana Establishment, its Owners and employees shall not attempt to influence the Samples selected by Division representatives. If the Division does not select the Harvest Batch or Production Batch to be tested, a Retail Marijuana Establishment must collect and submit Sample(s) that are representative of the Harvest Batch or Production Batch being tested.

3. Adulteration or Alteration Prohibited. A Licensee or its agent shall not adulterate or alter, or attempt to adulterate or alter, any Samples of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product for the purpose of circumventing contaminant testing detection limits or potency testing requirements. The Sample(s) collected and submitted for testing must be representative of the Harvest Batch or Production Batch being tested. A violation of this sub-paragraph (A)(3) shall be considered a license violation affecting public safety.

B. Minimum Number of Samples Per Test Batch Submission. These sampling rules shall apply until such time as the State Licensing Authority revises these rules to implement a statistical sampling model. Each Test Batch of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product submitted for testing must be comprised of a representative selection of Samples. Unless a greater amount is required to comply with these rules, each Test Batch of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product must be comprised of at least the following number of separately taken Samples, which may be submitted for testing in all required testing categories:

1. Samples for Test Batches of Retail Marijuana.

   a. For Harvest Batches weighing up to 10 pounds, a minimum of eight separate 0.5 gram Samples must be submitted as one Test Batch.

   b. For Harvest Batches weighing more than 10 pounds but less than 20 pounds, a minimum of 12 separate 0.5 gram Samples must be submitted as one Test Batch.

   c. For Harvest Batches weighing 20 pounds or more but less than 30 pounds, a minimum of 15 separate 0.5 gram Samples must be submitted as one Test Batch.

   d. For Harvest Batches or weighing 30 pound or more but less than 40 pounds, a minimum of 18 separate 0.5 gram Samples must be submitted as one Test Batch.

   e. For Harvest Batches or weighing 40 pounds or more but less than 100 pounds, a minimum of 23 separate 0.5 gram Samples must be submitted as one Test Batch.

   f. For Harvest Batches weighing 100 pounds or more, a minimum of 29 separate 0.5 gram Samples must be submitted as one Test Batch.

2. Repealed.

3. Samples for Test Batches of Retail Marijuana Concentrate.

   a. For Production Batches weighing up to one pound, a minimum of eight separate 0.5 gram Samples must be submitted as one Test Batch.

   b. For Production Batches weighing more than one pound and less than two pounds, a minimum of 12 separate 0.5 gram Samples must be submitted as one Test Batch.

   c. For Production Batches weighing two pounds or more but less than three pounds, a minimum of 15 separate 0.5 gram Samples must be submitted as one Test Batch.

   d. For Production Batches weighing three pounds or more but less than four pounds, a minimum of 18 separate 0.5 gram Samples must be submitted as one Test Batch.

   e. For Production Batches weighing four pounds or more but less than 10 pounds, a minimum of 23 separate 0.5 gram Samples must be submitted as one Test Batch.

f. For Production Batches weighing 10 pounds or more, a minimum of 29 separate 0.5 gram Samples must be submitted as one Test Batch.

4. Samples for Test Batches of Retail Marijuana Product. A Sample of Retail Marijuana Product must be packaged for sale prior to Transfer to a Retail Marijuana Testing Facility. Each such package of Retail Marijuana Product shall constitute one Sample.

a. For Production Batches of up to 100 Samples, a minimum of two separate Samples must be submitted as one Test Batch.

b. For Production Batches of up to 500 Samples, a minimum of four separate Samples must be submitted as one Test Batch.

c. For Production Batches of up to 1000 Samples, a minimum of six separate Samples must be submitted as one Test Batch.

d. For Production Batches of up to 5000 Samples, a minimum of eight separate Samples must be submitted as one Test Batch.

e. For Production Batches of up to 10,000 Samples, a minimum of 10 Samples must be submitted as one Test Batch.

f. For Production Batches of more than 10,000 Samples, a minimum 12 Samples must be submitted as one Test Batch.

C. Repealed.

D. Retail Marijuana Testing Facility Selection. The Division will generally permit a Retail Marijuana Establishment to select which Retail Marijuana Testing Facility will test a Sample collected pursuant to this rule. However, the Division may elect, at is sole discretion, to assign a Retail Marijuana Testing Facility to test the Sample.

E. Violation Affecting Public Safety. Failure to comply with this rule may constitute a license violation affecting public safety.

R 1505 – Retail Marijuana Testing Program – Test Batches – Repealed.

Basis and Purpose – R 1507

The statutory authority for this rule includes but is not limited to sections 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)(VIII), 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)(V), 12-43.4-202(3)(c)(VII), 12-43.4-402(4), 12-43.4-403(5), 12-43.4-404(3), 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 rules governing the quarantining of potentially contaminated product and the destruction of product that failed contaminant or potency testing for Division's Retail Marijuana Sampling and Testing Program.

R 1507 – Retail Marijuana Testing Program – Contaminated Product and Failed Test Results

A. Quarantining of Product

1. If the Division has reasonable grounds to believe that a particular Harvest Batch, Production Batch, or Inventory Tracking System package of Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product is contaminated or presents a risk to public safety, then the Division may require a Retail Marijuana Establishment to quarantine it until the completion of the Division's investigation, which may include, but is not limited to, the receipt of any test results.

2. If a Retail Marijuana Establishment is notified by any local or state agency, or by a Retail Marijuana Testing Facility, that a Test Batch failed a contaminant or potency testing, then the Retail Marijuana Establishment shall quarantine any Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product from any Inventory Tracking System package, Harvest Batch or Production Batch associated with that failed Test Batch and must follow the procedures established pursuant to paragraph (B), (B.1), (B.2), and/or (C) of this Rule.

3. Except as provided by this Rule, Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product that has been quarantined pursuant to this Rule must be physically separated from all other inventory and the Licensee may not Transfer or further process the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product.

4. In addition to any other method authorized by law, the Division may implement the quarantine through the Inventory Tracking System by (a) indicating failed test results and (b) limiting the Licensee's ability to Transfer the quarantined Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product unless otherwise permitted by these rules.

B. Failed Contaminant Testing: All Contaminant Testing Except Microbial Testing of Retail Marijuana Flower or Trim and Pesticide Testing. If a Retail Marijuana Establishment is notified by the Division or a Retail Marijuana Testing Facility that a Test Batch failed contaminant testing (except microbial testing of Retail Marijuana flower or trim and Pesticide testing), then for each Inventory Tracking System package, Harvest Batch or Production Batch associated with that failed Test Batch the Retail Marijuana Establishment must either:

1. Destroy and document the destruction of the Inventory Tracking System package, Harvest Batch or Production Batch pursuant to Rule R 307 – Waste Disposal; or

2. Decontaminate the Inventory Tracking System package, Harvest Batch or Production Batch, if possible, and create two new Test Batches, each containing the requisite number of Samples, and have those Test Batches tested for the required contaminant test that failed. Unless at least one of the two retests is conducted by the same Retail Marijuana Testing Facility that reported the original failed test result, the two retests must be performed by two different Retail Marijuana Testing Facilities. Such testing must comport with the sampling procedures under Rule R 1504.

    a. If both new Test Batches pass the required contaminant testing, then the Inventory Tracking System package, Harvest Batch, or Production Batch of Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product associated with each Test Batch may be Transferred or processed into a Retail Marijuana Concentrate or Retail Marijuana Product.

    b. If one or both of the Test Batches do not pass contaminant testing, then the Retail Marijuana Establishment must destroy and document the destruction of the Inventory Tracking System package, Harvest Batch or Production Batch included in that Test Batch pursuant to Rule R 307 – Waste Disposal.

B.1. Failed Contaminant Testing: Microbial Testing of Retail Marijuana Flower or Trim. If a Retail Marijuana Establishment is notified by the Division or a Retail Marijuana Testing Facility that a Test Batch of Retail Marijuana flower or trim failed microbial testing, then for each Inventory Tracking System package or Harvest Batch associated with that failed Test Batch the Retail Marijuana Establishment must either:

1. Destroy and document the destruction of the Inventory Tracking System package or Harvest Batch pursuant to Rule R 307 – Waste Disposal;

2. Decontaminate the Inventory Tracking System package or Harvest Batch of Retail Marijuana flower or trim, if possible, and create two new Test Batches, each containing the requisite number of Samples, and have those Test Batches tested for the required microbial test that failed. Unless at least one of the two retests is conducted by the same Retail Marijuana Testing Facility that reported the original failed test result, the two retests must be performed by two different Retail Marijuana Testing Facilities. Such testing must comport with the sampling procedures under Rule R 1504.

    a. If both Test Batches pass the required microbial testing, then the Inventory Tracking System package or Harvest Batch of Retail Marijuana flower or trim associated with each Test Batch may be Transferred or processed into a Retail Marijuana Concentrate or Retail Marijuana Product.

    b. If one or both of the Test Batches do not pass microbial testing, then the Retail Marijuana Establishment must either: (i) destroy and document the destruction of the Inventory Tracking System package or Harvest Batch pursuant to Rule R 307 – Waste Disposal; or (ii) Transfer the Inventory Tracking System package or Harvest Batch for Remediation pursuant to Paragraph (B.1)(3)(b) below.

3. In lieu of decontamination pursuant to Paragraph (B.1)(2) above, the Retail Marijuana Establishment may transfer all Inventory Tracking System packages or Harvest Batches associated with that failed Test Batch to a Retail Marijuana Products Manufacturing Facility for decontamination and/or Remediation by the Retail Marijuana Products Manufacturing Facility.

    a. Decontamination. Only if the Retail Marijuana Establishment has not already attempted to decontaminate pursuant to Paragraph (B.1)(2) above, the Retail Marijuana Products Manufacturing Facility may decontaminate the Inventory Tracking System package or Harvest Batch of Retail Marijuana flower or trim, if possible, and create two new Test Batches, each containing the requisite number of Samples, and have those Test Batches tested for the required microbial test that failed. Unless at least one of the two retests is conducted by the same Retail Marijuana Testing Facility that reported the original failed test result, the two retests must be performed by two different Retail Marijuana Testing Facilities. Such testing must comport with the sampling procedures under Rule R 1504.

        i. If both Test Batches pass the required microbial testing, then the Inventory Tracking System package or Harvest Batch of Retail Marijuana flower or trim associated with each Test Batch may be Transferred or processed into a Retail Marijuana Concentrate or Retail Marijuana Product.

        ii. If one or both of the Test Batches do not pass microbial testing, then the Retail Marijuana Establishment must either: (i) destroy and document the destruction of the Inventory Tracking System package or Harvest Batch pursuant to Rule R 307 – Waste Disposal; or (ii) attempt Remediation of

the Inventory Tracking System package or Harvest Batch for Remediation pursuant to Paragraph (B.1)(3)(b) below.

b. Remediation.

i. For Remediation, the Retail Marijuana Establishment shall process the Inventory Tracking System package or Harvest Batch of Retail Marijuana flower or trim associated with the failed Test Batch into a Solvent-Based Retail Marijuana Concentrate. No other Retail Marijuana shall be included in the Solvent-Based Retail Marijuana Concentrate.

ii. The Solvent-Based Retail Marijuana Concentrate that was manufactured pursuant to Paragraph (B.1)(3)(b) shall undergo all required contaminant testing pursuant to Rule R 1501(C) – Retail Marijuana Testing Program – Contaminant Testing, potency testing pursuant to Rule R 1503 – Retail Marijuana Testing Program – Potency Testing, and any other testing required or allowed by the Retail Marijuana Code or these rules, including but not limited to mycotoxins. Such testing must comport with the sampling procedures under Rule R 1504.

iii. If the Solvent-Based Retail Marijuana Concentrate that was manufactured pursuant to Paragraph (B.1)(3)(b) fails contaminant testing, the Retail Marijuana Establishment shall destroy and document the destruction of the Inventory Tracking System package(s) or Production Batch(es) of Solvent-Based Retail Marijuana Concentrate pursuant to Rule R 307 – Waste Disposal.

c. Repealed.

4. Nothing in this rule removes or alters the responsibility of the Retail Marijuana Establishment transferring the Retail Marijuana that failed microbial testing from complying with the requirement to pay excise tax pursuant to Rule R 502(E) and article 28.8 of title 39, C.R.S.

B.2. Failed Contaminant Testing: Pesticide Testing. If a Retail Marijuana Establishment is notified by the Division or a Retail Marijuana Testing Facility that a Test Batch failed Pesticide testing, then for each Inventory Tracking System package, Harvest Batch, or Production Batch associated with that failed Test Batch the Retail Marijuana Establishment must either:

1. Destroy and document the destruction of the Inventory Tracking System package, Harvest Batch or Production Batch pursuant to Rule R 307 – Waste Disposal; or

2. Request that the Retail Marijuana Testing Facility that reported the original fail conduct two additional analyses of the original Test Batch submitted in accordance with Rule R 1504.

a. If both retesting analyses pass the required Pesticide testing, then the Inventory Tracking System package, Harvest Batch, or Production Batch of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product may be Transferred or processed into a Retail Marijuana Concentrate or Retail Marijuana Product.

b. If one or both of the retesting analyses do not pass Pesticide testing, then the Retail Marijuana Establishment must destroy and document the destruction of

the Inventory Tracking System package, Harvest Batch, or Production Batch pursuant to Rule R 307 – Waste Disposal.

C. Failed Potency Testing. If a Retail Marijuana Establishment is notified by the Division or a Retail Marijuana Testing Facility that a Test Batch of Retail Marijuana Product failed potency testing, then for each Inventory Tracking System package or Production Batch associated with that failed Test Batch the Retail Marijuana Establishment must either:

1. Destroy and document the destruction of the Inventory Tracking System package or Production Batch pursuant to Rule R 307 – Waste Disposal; or

2. Attempt corrective measures, if possible, and create two new Test Batches each containing the requisite number of Samples, and have those Test Batches tested for the required potency test that failed. Unless at least one of the two retests is conducted by the same Retail Marijuana Testing Facility that reported the original failed test result, the two retests must be performed by two different Retail Marijuana Testing Facilities. Such testing must comport with the sampling procedures under Rule R 1504.

    a. If both new Test Batches pass potency testing, then the Inventory Tracking System package or Production Batch associated with each Test Batch may be Transferred.

    b. If one or both of the Test Batches do not pass potency testing, then the Retail Marijuana Products Manufacturing Facility must destroy and document the destruction of Inventory Tracking System package or Production Batch pursuant to Rule R 307 – Waste Disposal.

D. Violation Affecting Public Safety. Failure to comply with this rule may constitute a license violation affecting public safety.

R 1600 Series – Retail Marijuana Transporters

Basis and Purpose – R 1602

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(X), 12-43.4-202(3)(a)(XVII), 12-43.4-202(3)(b)(IX), and12-43.4-406, C.R.S. The purpose of this rule is to clarify those acts that are limited in some fashion or prohibited by a Retail Marijuana Transporter.

R 1602 – Retail Marijuana Transporter: General Limitations or Prohibited Acts

A. Sales, Liens, and Secured Interests Prohibited. A Retail Marijuana Transporter is prohibited from buying, selling, or giving away Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product, or from receiving complimentary Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product. A Retail Marijuana Transporter shall not place or hold a lien or secured interest on Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product.

B. Licensed Premises Permitted. A Retail Marijuana Transporter shall maintain a Licensed Premises if it: (1) temporarily store any Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product or (2) modifies any information in the Inventory Tracking System generated transport manifest. The Licensed Premises shall be in a local jurisdiction that authorizes the operation of Retail Marijuana Stores. If a Retail Marijuana Transporter Licensed Premises is co-located with a Medical Marijuana Transporter Licensed Premises, then the combined Licensed Premises shall

be in a local jurisdiction that authorizes the operation of both Retail Marijuana Stores and Medical Marijuana Centers.

C. Off-Premises Storage Permit. A Retail Marijuana Transporter may maintain one or more permitted off-premises storage facilities. See rule R 802 – Off-Premises Storage of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product: All Retail Marijuana Establishments.

D. Storage Duration. A Retail Marijuana Transporter shall not store Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product for longer than 7 days from receiving it at its Licensed Premises or off-premises storage facility. The total allowable 7 day storage duration begins and applies regardless of which of the Retail Marijuana Transporter's premises receives the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product first, ie. the Retail Marijuana Transporter's Licensed Premises, or any of its off-premises storage facilities.

E. Control of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product. A Retail Marijuana Transporter is responsible for the Retail Marijuana, Retail Marijuana Concentrate and Retail Marijuana Product once it takes control of the Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product and until the Retail Marijuana Transporter delivers it to the receiving Retail Marijuana Establishment, Medical Research Facility, or Pesticide Manufacturer. For purposes of this rule, taking control of the Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product means removing it from the originating Retail Marijuana Establishment's Licensed Premises and placing the Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product in the transport vehicle.

F. Location of Orders Taken and Delivered. A Retail Marijuana Transporter is permitted to take orders on the Licensed Premises of any Retail Marijuana Establishment to transport Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product. The Retail Marijuana Transporter shall deliver the Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product to the Licensed Premises of a licensed Retail Marijuana Establishment, a Medical Research Facility, or a Pesticide Manufacturer.

G. Consumption Prohibited. A Licensee shall not permit the consumption of marijuana or marijuana product on the Licensed Premises or in transport vehicles.

H. A Retail Marijuana Transporter shall receive Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product from the originating Licensee packaged in the way that it is intended to be delivered to the final destination Licensee, Medical Research Facility, or Pesticide Manufacturer. The Retail Marijuana Transporter shall deliver the Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product in the same, unaltered packaging to the final destination Licensee.

I. Opening of Bulk Packages or Containers and Re-Packaging Prohibited. A Retail Marijuana Transporter shall not open Containers of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product. Retail Marijuana Transporters are prohibited from re-packaging Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product.

J. Temperature-Controlled Transport Vehicles. A Retail Marijuana Transporter shall utilize temperature-controlled transport vehicles when necessary to prevent spoilage of the transported Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product.

K. Damaged or Refused Product. Any damaged Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product that is undeliverable to the final destination Retail Marijuana Establishment, or any Retail Marijuana or Retail Marijuana Product that is refused by the final

destination Retail Marijuana Establishment shall be transported back to the originating Retail Marijuana Establishment.

L. Transport of Retail Marijuana Vegetative Plants Authorized. Retail Marijuana Vegetative plants may only be transported between Licensed Premises and such transport shall only be permitted due to an approved change of location pursuant to Rule R 206. Transportation of Vegetative plants to a permitted off-premises storage facility shall not be allowed.

Basis and Purpose – R 1603

The statutory authority for this rule includes but is not limited to sections 12-43.4-202(1), 12-43.4-202(2)(b), 12-43.4-202(3)(a)(X), 12-43.4-202(3)(a)(XII), 12-43.4-202(3)(a)(XVII), 12-43.4-202(3)(b)(IX), and 12-43.4-406(3) C.R.S. The purpose of this rule is to establish a Retail Marijuana Transporter's obligation to account for and track all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product on the Licensed Premises from the point they are Transferred from the originating Retail Marijuana Establishment to the destination Retail Marijuana Establishment.

R 1603 – Retail Marijuana Transporter: Inventory Tracking System

A. Minimum Tracking Requirement. A Retail Marijuana Transporter must use the Inventory Tracking System to ensure its transported Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product are identified and tracked from the point they are transferred from a Retail Marijuana Establishment when the Retail Marijuana Transporter takes control of the Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product by removing it from the originating Retail Marijuana Establishment's Licensed Premises and placing the Retail Marijuana and Retail Marijuana Product in the Retail Marijuana Transporter's transport vehicle, through delivery to the destination Retail Marijuana Establishment, Medical Research Facility, or Pesticide Manufacturer. See also Rule R 309 –Inventory Tracking System. A Retail Marijuana Transporter must have the ability to reconcile its transported Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product with the Inventory Tracking System and the associated transaction history and transportation order receipts. See also Rule R 901 – Business Records Required.

1. A Retail Marijuana Transporter is prohibited from accepting any Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product from another Retail Marijuana Establishment without receiving a valid transport manifest generated from the Inventory Tracking System.

2. A Retail Marijuana Transporter must immediately input all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product received at its Licensed Premises or off-premises storage facility, accounting for all RFID tags, into the Inventory Tracking System at the time of receipt of the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product.

3. A Retail Marijuana Transporter must reconcile transactions to the Inventory Tracking System at the close of business each day.

4. All information on the Inventory Tracking System generated transport manifests must be accurate.

R 1800 Series – Retail Marijuana Transfers to Unlicensed Medical Research Facilities and Pesticide Manufacturers

Basis and Purpose - R 1801

The statutory authority for this rule includes but is not limited to subsections 12-43.4-202(1)(a), 12-43.4-202(2)(b), and subsection 25-1.5-106.5(5)(b), C.R.S. The purpose of this rule is to establish requirements associated with the Transfer of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product to Medical Research Facilities, including requirements for the possession and disposition of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product by Medical Research Facilities.

R 1801 – Medical Research Facilities

A. Transfers to Medical Research Facilities. A Retail Marijuana Cultivation Facility may Transfer Retail Marijuana and Retail Marijuana Concentrate to a Medical Research Facility pursuant to Rule R 501. A Retail Marijuana Products Manufacturing Facility may Transfer Retail Marijuana Concentrate and Retail Marijuana Product to a Medical Research Facility pursuant to Rule R 601.

1. Upon Transfer of the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to the Medical Research Facility, such Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product shall be deemed Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product.

B. Agreement with Medical Research Facility. A Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility that Transfers Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a Medical Research Facility shall enter into a written agreement with the Medical Research Facility prior to Transferring any Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to the Medical Research Facility. The written agreement shall constitute a business record. See Rule R 901 – Business Records Required. The written agreement shall include the following information:

1. The identity of the Medical Research Facility;

2. The quantity of Retail Marijuana, Retail Marijuana Concentrate and/or Retail Marijuana Product that will be Transferred to the Medical Research Facility;

3. An affirmation by the Medical Research Facility that it (a) has received approval and funding from the State Board of Health for the research to be conducted on the marijuana; (b) remains authorized to receive the quantity of Retail Marijuana, Retail Marijuana Concentrate and/or Retail Marijuana Product that will be Transferred to the Medical Research Facility; and (c) will destroy all Retail Marijuana, Retail Marijuana Concentrate and/or Retail Marijuana Product that will be Transferred to the Medical Research Facility, following completion of research activities as required by subsection 25-1.5-106.5(5)(b), C.R.S.;

4. An affirmation by the Licensee that the Medical Research Facility has provided it with written proof of the State Board of Health's approval and funding of the Medical Research Facility's research;

5. The date(s) upon which Transfer of the Retail Marijuana, Retail Marijuana Concentrate, and/or Retail Marijuana Product will occur; and

6. An acknowledgement that, pursuant to these rules, upon Transfer of the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to the Medical Research Facility, such Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product shall be deemed Medical Marijuana, Medical Marijuana Concentrate or Medical Marijuana-Infused Product.

C. State Board of Health Approval. A Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility shall not Transfer Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product unless and until the State Board of Health approves and funds the Medical Research Facility's research pursuant to section 25-1.5-106.5, C.R.S.

1. A Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility shall not Transfer any Retail Marijuana, Retail Marijuana Concentrate and/or Retail Marijuana Product until the Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility receives written proof of the State Board of Health's approval and funding of the Medical Research Facility's research. The written proof of the State Board of Health's approval and funding of the Medical Research Facility's research shall constitute a business record. See Rule R 901 – Business Records Required.

2. Transferring Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Concentrate, or Retail Marijuana Product to a Medical Research Facility before the Medical Research Facility receives approval and funding from the State Board of Health shall be considered a violation affecting public safety.

D. Inventory Tracking Requirements. A Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility shall track all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product in the Inventory Tracking System until it is delivered to a Medical Research Facility.

1. Transport Manifest. A Licensee shall not deliver or permit the delivery of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product unless a manifest is generated from the Inventory Tracking System. See Rule R 801(C) - Transport: All Retail Marijuana Establishments.

2. Complete Manifest. A Licensee shall not relinquish possession or control of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a Medical Research Facility until a natural person authorized by the Medical Research Facility acknowledges receipt of the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Concentrate, or Retail Marijuana Product by signing the transport manifest. See Rule R 801(I).

3. No Inventory Tracking Following Delivery. Once Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product has been Transferred by a Licensee to a Medical Research Facility, no further inventory tracking is required.

4. Licensee Delivery Responsibility. The originating Licensee is responsible for confirming delivery of the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product in the Inventory Tracking System. See Rule R 801(I).

E. Packaging, Labeling, and Testing. A Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility that Transfers Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a Medical Research Facility shall package, label, and test all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product in conformance with these Retail Marijuana Rules, 1 CCR 212-2, rules prior to Transferring the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product. See R 1000-1 Series – Labeling, Packaging, and Product Safety; R 1500 Series – Retail Marijuana Testing Program.

F. Business Records. A Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility that Transfers Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a Medical Research Facility shall keep all documents concerning the

relationship and Transfer of any Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product in accordance with Rules R 801 and 901.

G. Quantity Limitations for Medical Research Facilities. A Medical Research Facility shall only obtain Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product for the medical research approved pursuant to section 25-1.5-106.5, C.R.S. A Medical Research Facility shall not possess at any time a quantity of Transferred Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product greater than the quantity approved by the research grant awarded to the Medical Research Facility by the State Board of Health. In no event shall the Medical Research Facility possess at any given time more than (i) 12 Retail Marijuana Plants and (ii) four pounds of Retail Marijuana or its equivalency in Retail Marijuana Concentrate (512 grams) or Retail Marijuana Product (5,120 ten-milligram servings of Retail Marijuana Product).

H. Colorado Department of Public Health and Environment and State Board of Health Administration. The Colorado Department of Public Health and Environment is responsible for the administration of grants to Medical Research Facilities pursuant to section 25-1.5-106.5(2), C.R.S. The Colorado Department of Public Health, through the Scientific Advisory council, has the authority to review and make recommendations regarding research grant proposals. The State Board of Health has the authority to approve or deny research grant proposals pursuant to section 25-1.5-106.5, C.R.S.

I. Disposal of Medical Marijuana. A Medical Research Facility shall destroy all Transferred Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product following completion of research activities as required by subsection 25-1.5-106.5(5)(b), C.R.S.

J. No Transfer to Licensees. Under no circumstance may a Licensee receive or obtain for any purposes any Transferred Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product or Medical Marijuana or Medical Marijuana-Infused Product from a Medical Research Facility.

Basis and Purpose - R 1802

The statutory authority for this rule includes but is not limited to subsections 12-43.4-202(1)(b) and 12-43.4-202(2)(b), C.R.S. The purpose of this rule is to establish requirements associated with the Transfer of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product to Pesticide Manufacturers, including requirements for the possession and disposition of Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Products by Pesticide Manufacturers.

R 1802 – Pesticide Manufacturers

A. Transfers to Pesticide Manufacturers. A Retail Marijuana Cultivation Facility may Transfer Retail Marijuana and Retail Marijuana Concentrate to a Pesticide Manufacturer solely for the purpose of conducting research to establish safe and effective protocols, including but not limited to establishing efficacy and toxicity, for the use of Pesticides on Medical Marijuana. See also Rule R 501. A Retail Marijuana Products Manufacturing Facility may Transfer Retail Marijuana Concentrate and Retail Marijuana Product to a Pesticide Manufacturer solely for the purpose of research to establish safe and effective protocols, including but not limited to establishing efficacy and toxicity, for the use of Pesticides on Medical Marijuana. See also Rule R 601.

B. Written Documentation Required. A Licensee shall require, and shall not Transfer Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product prior to receiving, written proof under oath, as evidenced by an affidavit entered into by an authorized person on behalf of the Pesticide Manufacturer, affirming that the Pesticide Manufacturer meets the requirements set forth in subparagraph (C)(4) of this rule.: This documentation shall constitute a business record under Rule R 901 – Business Records Required.

C. Agreement with Pesticide Manufacturer. A Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility that Transfers Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a Pesticide Manufacturer shall enter into a written agreement with the Pesticide Manufacturer prior to Transferring any Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product to the Pesticide Manufacturer. The written agreement, which shall constitute a business record under Rule R 901, shall include:

1. The identity of the Pesticide Manufacturer;

2. The quantity of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product that will be Transferred to the Pesticide Manufacturer;

3. The date(s) upon which Transfer of the Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product will occur;

4. An affirmation by the Pesticide Manufacturer that it:

   i. Has an establishment number with the U.S. Environmental Protection Agency pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 et seq.;

   ii. Is authorized to do business in Colorado;

   iii. Is in possession of a physical location in the State of Colorado where its research activities will occur;

   iv. Has applied for and received any necessary license, registration, certification, or permit from the Colorado Department of Agriculture pursuant to the Pesticide Act, sections 35-9-101 et seq., C.R.S. and/or the Pesticide Applicators' Act, sections 35-10-101 et seq., C.R.S.;

   v. Remains authorized to receive the quantity of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product that will be Transferred to the Pesticide Manufacturer; and

   vi. Will only use the Transferred Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product for the purpose of research to establish safe and effective protocols for the use of Pesticides on Medical Marijuana, which protocols may include but not be limited to establishing efficacy and toxicity; and

5. An affirmation by the Licensee that it has received written proof the Pesticide Manufacturer meets the requirements set forth in subparagraph (C)(4) of this rule.

D. Inventory Tracking Requirements. A Retail Marijuana Cultivation Facility and Retail Marijuana Products Manufacturing Facility shall track all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product in the Inventory Tracking System until it is delivered to a Pesticide Manufacturer.

1. Transport Manifest. A Licensee shall not deliver or permit the delivery of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product unless a manifest is generated from the Inventory Tracking System.

2. Complete Manifest. A Licensee shall not relinquish possession or control of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product to a Pesticide Manufacturer until a natural person authorized by the Pesticide Manufacturer

acknowledges receipt of the Retail Marijuana, Retail Marijuana Concentrate, and/or Retail Marijuana Product by signing the transport manifest.

3. No Inventory Tracking Following Delivery. Once Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product has been Transferred by a Licensee to a Pesticide Manufacturer, no further inventory tracking is required.

4. Licensee Delivery Responsibility. The originating Licensee is responsible for confirming delivery of all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product in the Inventory Tracking System.

E. Packaging, Labeling, and Testing. A Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility that Transfers Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product to a Pesticide Manufacturer shall package, label, and test all Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product in conformance with these rules prior to Transferring the Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product. See R 1000-1 Series – Labeling, Packaging, and Product Safety; R 1500 Series – Medical Marijuana Testing Program.

F. Business Records. A Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility that Transfers Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product to a Pesticide Manufacturer shall keep all documents concerning the relationship and Transfer of any Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product in accordance with Rules R 801 and R 901.

G. Pesticide Manufacturer Authorized Activities. A Pesticide Manufacturer is only authorized to possess Transferred Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product in order to conduct research to establish safe and effective protocols, including but not limited to establishing efficacy and toxicity, for the use of Pesticides on Medical Marijuana.

H. Quantity Limitations for Pesticide Manufacturer. In no event shall a Pesticide Manufacturer possess at any given time more than (i) 12 Retail Marijuana plants and (ii) four pounds of Retail Marijuana or its equivalency in Retail Marijuana Concentrate (512 grams) or Retail Marijuana Products (5,120 ten-milligram servings of Retail Marijuana Product).

I. Disposition of Transferred Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product. A Pesticide Manufacturer shall destroy all Transferred Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product received from a Licensee following completion of research activities.

1. A Pesticide Manufacturer shall destroy Transferred Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product in conformance with Rule R 307 – Waste Disposal.

2. A Pesticide Manufacturer shall document the destruction of Transferred Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product, which documentation shall include:

   i. Whether the destroyed material was Transferred Retail Marijuana, Retail Marijuana Concentrate, and/or Retail Marijuana Product;

   ii. The date of destruction;

   iii. The location of the destruction;

iv. The manner in which the Transferred Retail Marijuana, Retail Marijuana Concentrate, and/or Retail Marijuana Product was rendered unusable and unrecognizable;

v. The method of final disposition pursuant to Rule R 307; and

vi. The identity(ies) and contact information of all Person(s) involved in the destruction.

3. A Pesticide Manufacturer shall keep all documentation regarding destruction of Transferred Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product for the current year and three preceding calendar years.

J. No Pesticide on Licensed Premises. Under no circumstance may a Pesticide Manufacturer apply Pesticide(s) for research purposes on the Licensed Premises of a Retail Marijuana Establishment.

1. Licensees Shall Not Permit Pesticide on Licensed Premises. Under no circumstance may a Licensee allow or permit the application of Pesticide(s) by a Pesticide Manufacturer for research purposes on the Licensed Premises of a Retail Marijuana Establishment.

2. Violation Affecting Public Safety. A violation of this prohibition shall be considered a violation affecting public safety.

K. No Human or Animal Subjects. Under no circumstance shall a Pesticide Manufacturer receiving Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product from a Licensee engage in research involving human subjects. Additionally, under no circumstance shall a Pesticide Manufacturer receiving Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product from a Licensee engage in research involving animal subjects, as defined in the Animal Welfare Act, 7 U.S.C. § 2132(g).

1. Licensees Shall Not Permit Human or Animal Subject Research. If a Licensee knows or reasonably should know that a Pesticide Manufacturer intends to engage in or has engaged in marijuana-related research involving human and/or animal subjects, the Licensee shall not Transfer any Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product to the Pesticide Manufacturer.

2. Violation Affecting Public Safety. A violation of this prohibition shall be considered a violation affecting public safety.

L. No Transfer to Licensees. Under no circumstance may a Licensee receive or obtain for any purposes any Transferred Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product or Medical Marijuana or Medical Marijuana-Infused Product from a Pesticide Manufacturer.

STATEMENT OF ADOPTION

To: Jim Burack, Director, Marijuana Enforcement Division

From: Michael S. Hartman,
Executive Director of the Colorado Department of Revenue, State Licensing Authority

Re: Statement of Adoption

Revised Medical Marijuana Rules, 1 CCR 212-1
Revised Retail Marijuana Rules, 1 CCR 212-2

Pursuant to the Administrative Procedure Act, Title 24, Article 4, of the Colorado Revised Statutes, I, Michael S. Hartman, Executive Director of the Colorado Department of Revenue, State Licensing Authority, promulgate the following rules to become effective on January 1, 2018:

Permanent Rules, Medical Marijuana, 1 CCR 212-1

Secretary of State Filing Tracking Number 2017-00440

M 100 Series – General Applicability

M 101 (Revised) – Engaging in Business

M 103 (New and Revised) – Definitions

M 200 Series – Licensing and Interests

M 201(Revised) – Application Process

M 202.1 (Revised) – Applications, Agreements, Contracts and Certifications Required for Indirect Beneficial Interest Owners: Medical Marijuana Businesses

M 204 (Revised) – Ownership Interests of a License: Medical Marijuana Businesses

M 204.5 (Revised) – Disclosure, Approval and Review of Business Interests

M 206 (Revised) – Changing Location of the Licensed Premises: Medical Marijuana Businesses

M 207 (Revised) – Schedule of Application Fees: Medical Marijuana Businesses

M 210 (Revised) – Schedule of Other Application Fees: All Licensees

M 231 (Revised) – Qualifications for Licensure and Residency

M 231.1 (Revised) – Finding of Suitability, Residency and Reporting Requirements for Direct Beneficial Interest Owners

M 231.2 (Revised) – Qualifications for Indirect Beneficial Interest Owners and Qualified Limited Passive Investors

M 300 Series – The Licensed Premises

M 301 (Revised) – Limited Access Areas

M 302 (Revised) – Possession of Licensed Premises

M 304 (Repealed) – Medical Marijuana Business and Retail Marijuana Establishment – Shared Licensed Premises and Operational Separation

M 304.1 (New) – Medical Marijuana Business and Retail Marijuana Establishment – Shared Licensed Premises and Operational Separation

M 305 (Revised) – Security Alarm Systems and Lock Standards

M 306 (Revised) – Video Surveillance

M 307 (Revised) – Waste Disposal

M 309 (Revised) – Medical Marijuana Business: Inventory Tracking System

M 400 Series – Medical Marijuana Centers

M 401 (Revised) – Medical Marijuana Center: License Privileges

M 402 (Revised) – Registration of a Primary Medical Marijuana Center

M 403 (Revised) – Medical Marijuana Sales: General Limitations or Prohibited Acts

M 405 (Revised) – Acceptable Forms of Identification for Medical Marijuana Sales

M 406 (Revised) – Medical Marijuana Center: Inventory Tracking System

M 407 (Revised) – Health and Safety Regulations: Medical Marijuana Center

M 408 (Revised) – Medical Marijuana Center: Responsible Vendor Program

M 500 Series – Medical Marijuana Optional Premises Cultivation Operation: License Privileges

M 501 (Revised) – Medical Marijuana Optional Premises Cultivation Operation: License Privileges

M 502 (Revised) – Medical Marijuana Optional Premises Cultivation Operation: General Limitations or Prohibited Acts

M 503 (Revised) – Medical Marijuana Optional Premises Cultivation Operation: Inventory Tracking System

M 504 (Revised) – Optional Premises Cultivation Operation: Health and Safety Regulations

M 505 (Revised) – Optional Premises Cultivation Operation: Testing

M 506 (Revised) – Optional Premises Cultivation Operation: Medical Marijuana Concentrate Production

M 600 Series – Medical Marijuana-Infused Products Manufacturers

M 601 (Revised) – Medical Marijuana-Infused Products Manufacturer: License Privileges

M 602 (Revised) – Medical Marijuana-Infused Products Manufacturer: General Limitations or Prohibited Acts

M 603 (Revised) – Medical Marijuana-Infused Products Manufacturer: Inventory Tracking System

M 604 (Revised) – Medical Marijuana-Infused Products Manufacturer: Health and Safety Regulations

M 605 (Revised) – Medical Marijuana-Infused Products Manufacturer: Medical Marijuana Concentrate Production

M 700 Series – Medical Marijuana Testing Facilities

M 701.5 (Revised) – Medical Marijuana Testing Facilities: License Privileges

M 702 (Revised) – Medical Marijuana Testing Facilities: General Limitations or Prohibited Acts

M 703 (Revised) – Medical Marijuana Testing Facilities: Certification Requirements

M 704 (Revised) – Medical Marijuana Testing Facilities: Personnel

M 705 (Revised) – Medical Marijuana Testing Facilities: Standard Operating Procedure Manual

M 706 (Revised) – Medical Marijuana Testing Facilities: Analytical Processes

M 707 (Revised) – Medical Marijuana Testing Facilities: Proficiency Testing

M 708 (Revised) – Medical Marijuana Testing Facilities: Quality Assurance and Quality Control

M 709 (Revised) – Medical Marijuana Testing Facilities: Chain of Custody

M 710 (Revised) – Medical Marijuana Testing Facilities: Records Retention

M 711 (Revised & Renamed) – Reporting and Inventory Tracking System

M 712 (Revised) – Medical Marijuana Testing Facilities: Sampling and Testing Program

M 800 Series – Transport and Storage

M 801 (Renamed & Revised) – Transport: All Medical Marijuana Businesses

M 802 (Renamed & Revised) – Off-Premises Storage of Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product: All Medical Marijuana Businesses

M 900 Series – Business Records

M 901 (Revised) – Business Records Required

M 1000 Series – Labeling, Packaging, and Product Safety

M 1000 Series (Revised Effective and Compliance Dates) – Labeling, Packaging, and Product Safety

M 1001.5 (Revised) – Labeling and Packaging Requirements: General Applicability

M 1002.5 (Revised) – Packaging and Labeling of Medical Marijuana by an Optional Premises Cultivation Operation or a Medical Marijuana-Infused Products Manufacturer

M 1003.5 (Revised) – Packaging and Labeling of Medical Marijuana Concentrate by an Optional Premises Cultivation Operation or Medical Marijuana-Infused Products Manufacturer

M 1004.5 (Revised) – Packaging and Labeling Requirements of Medical Marijuana-Infused Products Manufacturer

M 1005 (Revised) – Packaging and Labeling of Medical Marijuana by a Medical Marijuana Center

M 1006 (Revised) – Packaging and Labeling of Medical Marijuana-Infused Product by a Medical Marijuana Center

M 1007 (Revised) – Packaging and Labeling of Medical Marijuana Concentrate by a Medical Marijuana Center

M 1000-1 Series – Labeling, Packaging, and Product Safety (New Series)

M 1000-1 Series (New Effective and Compliance Dates) – Labeling, Packaging, and Product Safety

M 1001-1 (New) – Packaging and Labeling: Minimum Requirements Prior to Transfer to a Medical Marijuana Business

M 1002-1 (New) – Packaging and Labeling: General Requirements Prior to Transfer to a Patient

M 1003-1 (New) – Additional Labeling Requirements Prior to Transfer to a Patient

M 1200 Series – Enforcement

M 1201 (Revised) – Duties of Employees of the State Licensing Authority

M 1202 (Revised) – Requirement for Inspections and Investigation, Searches, Administrative Holds, Voluntary Surrenders and Such Additional Activities as May Become Necessary from Time to Time

M 1203 (Revised) – Disposition of Unauthorized Medical Marijuana

M 1300 Series – Discipline

M 1303 (Revised) – Suspension Process: Regular and Summary Suspensions

M 1307 (Revised) – Penalties

M 1500 Series – Medical Marijuana Testing Program

M 1501 (Revised) – Medical Marijuana Testing Program – Contaminant Testing

M 1502 (Revised) – Medical Marijuana Testing Program – Mandatory Testing

M 1503 (Revised) – Medical Marijuana Testing Program – Potency Testing

M 1504 (Revised) – Medical Marijuana Testing Program – Sampling Procedures

M 1505 (Repealed) – Medical Marijuana Testing Program – Test Batches

M 1507 (Revised) – Medical Marijuana Testing Program – Contaminated Product and Failed Test Results

M 1600 Series – Medical Marijuana Transporters

M 1602 (Revised) – Medical Marijuana Transporter: General Limitations or Prohibited Acts

M 1603 (Revised) – Medical Marijuana Transporter: Inventory Tracking System

M 1800 Series – Medical Marijuana Transfers to Unlicensed Medical Research Facilities and Pesticide Manufacturers (New Series)

M 1801 (New) – Medical Research Facilities

M 1802 (New) – Pesticide Manufacturers

M 1900 Series – Licensed Research Businesses (New Series)

M 1901 (New) – Licensed Research Businesses: License Privileges

M 1902 (New) – Licensed Research Businesses: General Limitations or Prohibited Acts

M 1903 (New) – Licensed Research Businesses: Inventory Tracking

M 1904 (New) – Licensed Research Businesses: Project Approval

M 1905 (New) – Licensed Research Businesses: Authorized Research Activities

M 1906 (New) – Licensed Research Businesses: Health and Safety Regulations

M 1907 (New) – Licensed Research Businesses: Testing

M 1908 (New) – Licensed Research Businesses: Production Management and Possession Limits

Permanent Rules, Retail Marijuana, 1 CCR 212-2

Secretary of State Filing Tracking Number 2017-00441

R 100 Series – General Applicability

R 101 (New) – Engaging in Business

R 103 (Revised) – Definitions

R 200 Series – Licensing and Interests

R 201 (Revised) – Application Process

R 202.1 (Revised) – Applications, Agreements, Contracts and Certifications Required for Indirect Beneficial Interest Owners: Retail Marijuana Establishments

R 204 (Revised) – Ownership Interests of a License: Retail Marijuana Establishments

R 204.5 (Revised) – Disclosure, Approval and Review of Business Interests

R 206 (Revised) – Changing Location of Licensed Premises: Retail Marijuana Establishments

R 207 (Revised) – Schedule of Applications Fees: Retail Marijuana Establishments

R 210 (Revised) – Schedule of Other Application Fees: All Licensees

R 211 (Revised) – Conversion - Medical Marijuana Business to Retail Marijuana Establishment Pursuant to 12-43.4-104(1)(a)(I), C.R.S.

R 212 (Revised) – New Applicant Retail Marijuana Cultivation Facilities Licensed Pursuant To 12-43.4-104(1)(b)(II), C.R.S.

R 231 (Revised) – Qualifications for Licensure and Residency

R 231.1 (Revised) – Finding of Suitability, Residency and Reporting Requirements for Direct Beneficial Interest Owners

R 231.2 (Revised) – Qualifications for Indirect Beneficial Interest Owners and Qualified Limited Passive Investors

R 233 (Revised) – Retail Code or Medical Code Occupational Licenses Required

R 251 (Revised) – Application Denial and Voluntary Withdrawal: All Licensees

R 300 Series – The Licensed Premises

R 301 (Revised) – Limited Access Areas

R 304 (Repealed) – Medical Marijuana Business and Retail Marijuana Establishment – Shared Licensed Premises and Operational Separation

R 304.1 (New) – Medical Marijuana Business and Retail Marijuana Establishment – Shared Licensed Premises and Operational Separation

R 305 (Revised) – Security Alarm Systems and Lock Standards

R 307 (Revised) – Waste Disposal

R 309 (Renamed & Revised) – Retail Marijuana Establishments: Inventory Tracking System

R 400 Series – Retail Marijuana Stores

R 401 (Revised) – Retail Marijuana Store: License Privileges

R 402 (Revised) – Retail Marijuana Sales: General Limitations or Prohibited Acts

R 404 (Revised) – Acceptable Forms of Identification for Retail Sales

R 405 (Revised) – Retail Marijuana Store: Inventory Tracking System

R 406 (Revised) – Retail Marijuana Store: Health and Safety Regulations

R 407 (Revised) – Retail Marijuana Store: Responsible Vendor Program

R 500 Series – Retail Marijuana Cultivation Facilities

R 501 (Revised) – Retail Marijuana Cultivation Facility: License Privileges

R 502 (Revised) – Retail Marijuana Cultivation Facility: General Limitations or Prohibited Acts

R 503 (Revised) – Retail Marijuana Cultivation Facility: Inventory Tracking System

R 504 (Revised) – Retail Marijuana Cultivation Facility: Health and Safety Regulations

R 505 (Revised) – Retail Marijuana Cultivation Facilities: Retail Marijuana Concentrate Production

R 506 (Revised) – Retail Marijuana Cultivation Facility: Production Management

R 600 Series – Retail Marijuana Products Manufacturing Facilities

R 601 (Revised) – Retail Marijuana Products Manufacturing Facilities: License Privileges

R 602 (Revised) – Retail Marijuana Products Manufacturing Facility: General Limitations or Prohibited Acts

R 603 (Revised) – Retail Marijuana Products Manufacturing Facility: Inventory Tracking System

R 604 (Revised) – Retail Marijuana Products Manufacturing Facility: Health and Safety Regulations

R 605 (Revised) – Retail Marijuana Products Manufacturing Facility: Retail Marijuana Concentrate Production

R 700 Series – Retail Marijuana Testing Facilities

R 701 (Revised) – Retail Marijuana Testing Facilities: License Privileges

R 702 (Revised) – Retail Marijuana Testing Facilities: General Limitations or Prohibited Acts

R 703 (Revised) – Retail Marijuana Testing Facilities: Certification Requirements

R 704 (Revised) – Retail Marijuana Testing Facilities: Personnel

R 705 (Revised) – Retail Marijuana Testing Facilities: Standard Operating Procedure Manual

R 706 (Revised) – Retail Marijuana Testing Facilities: Analytical Processes

R 707 (Revised) – Retail Marijuana Testing Facilities: Proficiency Testing

R 708 (Revised) – Retail Marijuana Testing Facilities: Quality Assurance and Quality Control

R 709 (Revised) – Retail Marijuana Testing Facilities: Chain of Custody

R 710 (Revised) – Retail Marijuana Testing Facilities: Records Retention

R 711 (Renamed & Revised) – Reporting and Inventory Tracking System

R 712 (Revised) – Retail Marijuana Testing Facilities: Sampling and Testing Program

R 800 Series – Transport and Storage

R 801 (Renamed & Revised) – Transport: All Retail Marijuana Establishments

R 802 (Renamed & Revised) – Off-Premises Storage of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product: All Retail Marijuana Establishments

R 900 Series – Business Records

R 901 (Revised) – Business Records Required

R 1000 Series – Labeling, Packaging, and Product Safety

R 1000 Series (Revised Effective and Compliance Dates) – Labeling, Packaging, and Product Safety

R 1001 (Revised) – Labeling and Packaging Requirements: General Applicability

R 1002.5 (Revised) – Packaging and Labeling of Retail Marijuana by a Retail Marijuana Cultivation Facility and Retail Marijuana Manufacturing Facility

R 1003.5 (Revised) - Packaging and Labeling of Retail Marijuana Concentrate by a Retail Marijuana Cultivation Facility or a Retail Marijuana Products Manufacturing Facility

R 1004 (Revised) – Packaging and Labeling Requirements of a Retail Marijuana Product by a Retail Marijuana Products Manufacturing Facility

R 1005.5 (Revised) – Packaging and Labeling of Retail Marijuana by a Retail Marijuana Store

R 1006 (Revised) – Packaging and Labeling of Retail Marijuana Product by a Retail Marijuana Store

R 1007.5 (Revised) – Packaging and Labeling of Retail Marijuana Concentrate by a Retail Marijuana Store

R 1000-1 Series – Labeling, Packaging, and Product Safety (New Series)

R 1000-1 Series (New) – Effective and Compliance Dates

R 1001-1 (New) – Packaging and Labeling: Minimum Requirements Prior to Transfer to a Retail Marijuana Establishment

R 1002-1 (New) – Packing and Labeling: General Requirements Prior to Transfer to a Consumer

R 1003-1 (New) – Additional Labeling Requirements Prior to Transfer to a Consumer

R 1200 Series – Enforcement

R 1201 (Revised) – Duties of Employees of the State Licensing Authority

R 1202 (Revised) – Requirements for Inspections and Investigations, Searches, and Administrative Holds, Voluntary Surrenders and Such Additional Activities as May Become Necessary from Time to Time

R 1203 (Revised) – Disposition of Unauthorized Retail Marijuana

R 1300 Series – Discipline

R 1303 (Revised) – Suspension Process: Regular and Summary Suspensions

R 1307 (Revised) – Penalties

R 1500 Series – Retail Marijuana Testing Program

R 1501 (Revised) – Retail Marijuana Testing Program – Contaminant Testing

R 1502 (Revised) – Retail Marijuana Testing Program – Mandatory Testing

R 1503 (Revised) – Retail Marijuana Testing Program – Potency Testing

R 1504 (Revised) – Retail Marijuana Testing Program – Sampling Procedures

R 1505 (Repealed) – Retail Marijuana Testing Program – Test Batches

R 1507 (Revised) – Retail Marijuana Testing Program – Contaminated Product and Failed Test Results

R 1600 Series – Retail Marijuana Transporters

R 1602 (Revised) – Retail Marijuana Transporter: General Limitations or Prohibited Acts

R 1603 (Revised) – Retail Marijuana Transporter: Inventory Tracking System

R 1800 Series – Retail Marijuana Transfers to Unlicensed Medical Research Facilities and Pesticide Manufacturers (New Series)

R 1801 (New) – Medical Research Facilities

R 1802 (New) – Pesticide Manufacturers

Signed this 17th **day of November, 2017.**

Michael S. Hartman
State Licensing Authority

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Office of the Attorney General

Tracking number: 2017-00441

Opinion of the Attorney General rendered in connection with the rules adopted by the

Marijuana Enforcement Division

on 11/17/2017

1 CCR 212-2

RETAIL MARIJUANA RULES

The above-referenced rules were submitted to this office on 11/17/2017 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.

November 28, 2017 16:39:08

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Education

Agency

Colorado State Board of Education

CCR number

1 CCR 301-35

Rule title

1 CCR 301-35 RULES FOR THE ADMINISTRATION OF THE WAIVER OF STATUTE AND RULE 1 - eff 12/30/2017

Effective date

12/30/2017

DEPARTMENT OF EDUCATION

Colorado State Board of Education

RULES FOR THE ADMINISTRATION OF THE WAIVER OF STATUTE AND RULE

1 CCR 301-35

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

2217-R-1.00 General Requirements

1.01 Definitions

1.01 "Charter School" means a public school that enters into a charter contract pursuant to Article 30.5 of Title 22.

1.02 "Institute Charter School" means a charter school authorized pursuant to Article 30.5 of Title 22.

1.03 "State Board" means the state board of education.

1.04 "Automatic Waiver" means the waiver of a state statute or state board rule:

(a) That is included on the list of automatic waivers adopted by rule of the state board;

(b) That is available to each charter school, including an Institute Charter School, and is valid for the initial or subsequent renewal, term of the charter contract; and

(c) For which a charter school, including an Institute Charter School, is not required to submit a statement that specifies the manner in which the charter school intends to comply with the intent of the automatically waived state statute or state board rule.

2217-R-2.00 Waiver Requests by School Districts

2.01 Legal Standard for granting waivers

The State Board shall grant waivers to school districts when it determines that such waivers would enhance educational opportunity and quality within the school district and when the costs to the school district of complying with the requirements for which the waiver is requested significantly limit educational opportunities within the school district

2.02 Duration/Revocation

Any waiver granted by the State Board of Education to a school district (not involving a charter school) shall continue **indefinitely** unless:

2.02(a) The school district board of education that holds the waiver by resolution requests revocation of the waiver; or

2.02(b) The State Board receives evidence that constitutes good and just cause for revocation of the waiver, as determined by the State Board.

2.03 Pre-Application Process

2.03(a) Prior to submitting an application for a waiver, a school district board of education, in a public meeting including a public hearing, shall adopt a resolution stating the board's intent to apply for a waiver and specifying the statutes and rules for which the board will request waivers.

2.03(b) The school district board of education shall post notice of such public meeting in three public places within the school district for a period of not less than thirty calendar days prior to such meeting, giving the time and location of such meeting and a description of the waiver request, and, if a newspaper is published within the county, shall publish such notice once each week for at least four weeks prior to the meeting in such newspaper.

2.03(c) At least sixty days prior to such public meeting and hearing, the school district board of education shall meet with the school district accountability committee to consult with the committee concerning the intent to seek the waiver(s).

2.04 Application Process

Waiver requests by school districts shall be submitted as follows:

2.04(a) Written requests for waivers shall be submitted electronically to the State Board of Education by emailing state.board@cde.state.co.us and electronically copying the Schools of Choice Unit at schoolsofchoice@cde.state.co.us.

2.04(b) A complete request for a waiver shall include:

2.04(b)(i) A list of statutes and/or rules requested for waiver;

2.04(b)(ii) A statement explaining how the waiver would enhance educational opportunity and quality within the school district;

2.04(b)(iii) A statement explaining how costs to the school district of complying with the requirement for which the waiver is requested significantly limit educational opportunity within the school district;

2.04(b)(iv) A statement describing the manner in which the school district shall comply with the intent of the waived rules or statutes as well as how it shall be accountable to the state board for such compliance;

2.04(b)(v) Documentation of legal requirements for district's public hearing process; and

2.04(b)(vi) Additionally, a school district of 3,000 or more pupils shall provide signatures demonstrating that its application has the consent of a majority of the appropriate accountability committee, a majority of the affected licensed administrators, and a majority of the affected school district teachers and shall indicate how the affected staff and committee were determined.

2.05 State Board Ruling

The State Board of Education will rule on a waiver request by a school district within 120 days of receipt of a complete request for waiver.

2.06 Sections Of Law Ineligible For Waiver

The State Board of Education shall not waive any of the requirements specified in the following statutory provisions:

2.06(a) The Public School Finance Act Of 1994, Title 22, Article 54, C.R.S.

2.06(b) The Exceptional Children's Educational Act, Title 22, Article 20, C.R.S.

2.06(c) Any provision of Title 22, Article 11, Part 5, C.R.S., pertaining to the data necessary for performance reports

2.06(d) Any provision of Title 22, C.R.S., that related to fingerprinting and criminal history record checks of educators and school personnel.

2.02(e) The Children's Internet Protection Act, Title 22, Article 87, C.R.S.

2.02(f) Accountability, pursuant to Title 22, Article 11, C.R.S.

2.06(g) Assessments, pursuant to section 22-7-1006.3, C.R.S.

2.06(h) Duties of the president and vice president of a school district board of education, pursuant to 22-32-105, C.R.S.

2.06(i) Duty of a school district board of education to adopt a policy mandating prohibition against the use of all tobacco products on school property and at school-sponsored activities by students, teachers, staff, and visitors, and to adopt rules to enforce such prohibition, excluding expulsion of any student solely for such tobacco use pursuant to 22-32-109(1)(bb)(I), C.R.S.

2.06(j) Limits and requirements for a school district that conducts an educational program outside of its territorial boundaries, pursuant to 22-32-109(2), C.R.S.

2.06(k) Conduct and school discipline codes, pursuant to 22-32-109.1(2)(a), C.R.S.

2.06(l) Use of on-site peace officers as school resource officers and notifications of arrests and notices issued, pursuant to 22-32-146, C.R.S.

2.06(m) Duty of each school district board of education to adopt a written policy setting forth the district's attendance requirements, pursuant to 22-33-104(4), C.R.S.

2.06(n) The requirement to post on the internet the statutes for which waivers are granted as provided in Section 22-44-305, C.R.S.

2217-R-3.00 Waiver Requests by Charter Schools and Automatic Waivers

3.01 List of Automatically Waived Statutes for all charter schools:

The following statutes will be automatically waived for Charter Schools, including an Institute Charter School. These waivers will be automatically granted to a charter school upon entering into a charter contract with its authorizer, pursuant to section 22-30.5-105, C.R.S.

3.01(A) 22-32-109(1)(f), C.R.S. Local board duties concerning selection of staff and pay

3.01(B) 22-32-109(1)(t), C.R.S. Determine educational program and prescribe textbooks

3.01(C) 22-32-110 (1)(h), C.R.S. Local board powers-Terminate employment of personnel

3.01(D) 22-32-110(1)(i), C.R.S. Local board duties-Reimburse employees for expenses

3.01(E) 22-32-110(1)(j), C.R.S. Local board powers-Procure life, health, or accident insurance

3.01(F) 22-32-110(1)(k), C.R.S. Local board powers-Policies relating the in-service training and official conduct

3.01(G) 22-32-110(1)(ee), C.R.S. Local board powers-Employ teachers' aides and other non-certificated personnel

3.01(H) 22-32-126, C.R.S. Employment and authority of principals

3.01(I) 22-33-104(4), C.R.S. Compulsory school attendance-Attendance policies and excused absences

3.01(J) 22-63-301, C.R.S. Teacher Employment Act- Grounds for dismissal

3.01(K) 22-63-302, C.R.S. Teacher Employment Act-Procedures for dismissal of teachers

3.01(L) 2-63-401, C.R.S. Teacher Employment Act-Teachers subject to adopted salary schedule

3.01(M) 22-63-402, C.R.S. Teacher Employment Act-Certificate required to pay teachers

3.01(N) 22-63-403, C.R.S. Teacher Employment Act-Describes payment of salaries

3.01(O) 22-1-112, C.R.S School Year-National Holidays

3.02 Legal Standard for granting waivers to charter schools

3.02(a) Pursuant to contract, a charter school may operate free from specified school district regulations and state regulations. Pursuant to contract, a local board of education may waive locally imposed school district requirements, without seeking approval of the State Board.

3.02(b) The State Board of Education shall grant waivers of state statutory requirements or rules promulgated by the State Board to charter schools when in the judgment of the State Board it deems waivers necessary.

3.02(c) Upon request of the charter applicant, the State Board and the charter school authorizer shall provide summaries of such regulations and policies to use in preparing a charter school application.

3.03 Duration/Revocation

3.03(a) Any waiver of state or local school district regulations shall be for the term of the charter for which the waiver is made.

3.03(b) A waiver of state statutes or regulations by the State Board shall be subject to review periodically, but at least every five years. A waiver may be revoked if the waiver is deemed no longer necessary by the State Board of Education.

3.04 Application Process

Waiver requests by charter schools shall be submitted for the term of the charter as follows:

Within ten days after the charter school contract is approved, a complete copy of the signed charter contract must be submitted to the State Board of Education by the charter school authorizer and charter school.

3.05 Sections of Law Ineligible for Waiver

The State Board of Education shall not waive any of the requirements specified in the following statutes and/or related rules:

3.05(a) School accountability committees as described in section 22-11-401, C.R.S.

3.05(b) Assessments required to be administered pursuant to section 22-7-1006.3, C.R.S.;

3.05(c) School performance reports pursuant to Title 22, Article 11, Part 5, C.R.S.;

3.05(d) The Public School Finance Act of 1994, Title 22, Article 54, C.R.S.;

3.05(e) The Children's Internet Protection Act, Title 22, Article 87, C.R.S; or

3.05(f) The requirement to post on the internet the statutes for which waivers are granted as provided in Section 22-44-305, C.R.S.

2217-R-4.00 Statement of Basis and Purpose

The basis of these rules, adopted by the State Board of Education on (January 11, 1990) is found in 22-2-106(1) (A) and (C), 22-2-107(1)(C) and 22-2-117, C.R.S. The purpose of these amendments is to clarify the process that schools and school districts must follow in order for the State Board of Education to consider waiver requests involving statutes and rules and regulations that have been imposed on schools and school districts.

4.01 The basis for these amendments, adopted by the State Board of Education on (November 10, 1994) is found in sections 22-30.5-104(6) and 22-2-117, C.R.S. which were amended by the General Assembly in 1994. The purpose of these amendments is to specify the process by which waivers may be granted to charter schools pursuant to the aforementioned statutes and to clarify the standards that the State Board will use in determining which waiver requests meet the statutory requirements.

4.02 The basis for these amendments, adopted by the State Board of Education on (08-13-98) is found in sections 22-30.5-105(3), C.R.S., which was amended by the general assembly in 1998. The purpose of these amendments is to specify the process by which waivers may be granted to charter schools pursuant to the aforementioned statute.

4.03 The basis for these amendments, adopted by the State Board of Education on August 9, 2001 is found in 22-2-117, et seq., 22-7-601 et seq., and 22-30.5-104(6) and 105(3), C.R.S. the purpose of these amendments is to conform the State Board's rules to statute, including major amendments to 22-2-117 and the addition of 22-7-601 from the 2000 legislative session.

4.04 The basis for these amendments, adopted by the State Board of Education on January 13, 2005, is found in 22-30.5-104 (6), C.R.S., which was amended by the General Assembly in 2004 by House Bill 04-1141. The purpose of these amendments is to identify the state statutes that the State Board has determined will be automatic waivers for charter schools.

4.05 The basis for these amendments, adopted by the State Board of Education in November 2012, is found in section 22-30.5-104 (6), C.R.S., which authorizes the board to promulgate rules identifying state statutes and state rules that are automatically waived for all charter schools.

4.06 The basis for amendments to section 3.0 of these rules, adopted by the State Board of Education in November 2014 is found in sections 22-30.5-104-106, 22-30.5-507 and 22-30.5-507, C.R.S., which were amended by the General Assembly in 2014 by House Bill 14-1292. The purpose of these amendments is to repeal the obsolete provisions concerning the process for Charter Schools to request automatic waivers of statute and rule and to revise the list of automatic waivers.

4.07 The basis for amendments to section 3.01 of these rules, adopted in by the State Board of Education in 2016 is found in Section 22-30.5-104, C.R.S., which was amended by the General Assembly in 2016 in House Bill 16-1422.

4.08 The basis for amendments adopted by the State Board of Education 2017 is House Bill 17-1375 which removed two waivers from the list of automatic waivers for charter schools and created a requirement for districts and charter schools to post information on the internet regarding the statutes for which waivers have been granted.

Editor's Notes

History

Sections 2.04(a), 3.06(b)-(w), 4.05 eff. 01/14/2013.

Sections 2217-R-1.00, 2217-R-3.00, 4.06 eff. 01/15/2015.

Entire rule eff. 01/30/2016.

Sections 2.05, 2.06(j)-(m), 3.01(C)-(Q), 4.07 eff. 12/15/2016.

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Office of the Attorney General

Tracking number: 2017-00446

Opinion of the Attorney General rendered in connection with the rules adopted by the

Colorado State Board of Education

on 11/09/2017

1 CCR 301-35

RULES FOR THE ADMINISTRATION OF THE WAIVER OF STATUTE AND RULE

The above-referenced rules were submitted to this office on 11/10/2017 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.

November 21, 2017 14:40:36

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Education

Agency

Colorado State Board of Education

CCR number

1 CCR 301-74

Rule title

1 CCR 301-74 ADMINISTRATION OF THE SCHOOL COUNSELOR CORPS GRANT PROGRAM 1 - eff 12/30/2017

Effective date

12/30/2017

DEPARTMENT OF EDUCATION

Colorado State Board of Education

RULES FOR THE ADMINISTRATION OF THE SCHOOL COUNSELOR CORPS GRANT PROGRAM

1 CCR 301-74

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

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 adopted on August 14, 2008 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.

These rules were updated in September 2017 to reflect changes to the program eligibility as a result of SB 17-068.

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 School: A 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) 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 Schools, the number ofProfessional School Counselors employed by the Education Provider prior to receipt of a grant, and the ratio of students to School Counselors in the 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 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 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 Schools;

2.01(2)(g) The Education Provider's plan for involving leaders at the Recipient Schools and in the surrounding community and the faculty at Recipient Schools in increasing the capacity and effectiveness of the school counseling and postsecondary preparation services provided to 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 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 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, post-secondary 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, as applicable:

2.01(3)(a) The dropout rate at the intended Recipient School or schools and, if the Education Provider is a school district, at all of the schools within the school district. Priority will be given to Education Providers that intend to use the grant moneys to assist schools at which the dropout rate exceeds the statewide average;

2.01(3)(b) The remediation rate at the intended recipient school(s), at which remediation rates exceed the statewide average.

2.01(3)(c) The percentage of students enrolled in the intended Recipient 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 Schools with a high percentage of said students;

2.01(3)(d) The percentage of students enrolled in the intended Recipient 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 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 Recipient 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 students at Recipient 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.

Editor's Notes

History

Entire rule emer. rule eff. 06/11/2008; expired 09/04/2008.

Entire rule eff. 09/30/2008.

Entire rule eff. 10/30/2014.

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Tracking number: 2017-00445

Opinion of the Attorney General rendered in connection with the rules adopted by the

Colorado State Board of Education

on 11/09/2017

1 CCR 301-74

ADMINISTRATION OF THE SCHOOL COUNSELOR CORPS GRANT PROGRAM

The above-referenced rules were submitted to this office on 11/10/2017 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.

November 21, 2017 14:42:00

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Education

Agency

Colorado State Board of Education

CCR number

1 CCR 301-97

Rule title

1 CCR 301-97 RULES FOR THE ADMINISTRATION OF THE SCHOOL HEALTH PROFESSIONAL GRANT PROGRAM 1 - eff 12/30/2017

Effective date

12/30/2017

DEPARTMENT OF EDUCATION

Colorado State Board of Education

RULES FOR THE ADMINISTRATION OF THE SCHOOL HEALTH PROFESSIONAL GRANT PROGRAM

1 CCR 301-97

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

Authority: Article IX, Section 1, Colorado Constitution. 22-2-106(1)(a) and (c); 22-2-107(1)(c); 22-7-409(1.5); 22-96-101 et seq. of the Colorado Revised Statutes (C.R.S.).

1.00 Statement of Basis and Purpose.

The statutory basis for these emergency rules adopted on August 14, 2014 is found in 22-2-106(1)(a) and (c), State Board Duties; 22-2-107(1)(c), State Board Powers; and 22-96-101 through 22-96-105, the School Health Professional Grant Program, C.R.S.

The School Health Professional Grant Program, 22-96-101 through 22-96-105, C.R.S., requires the State Board of Education to promulgate rules for the implementation of the program, including but not limited to: the timeline for submitting applications to the Department; the form of the grant application and any information in addition to that specified in section 22-96-104 (2), C.R.S. to be included in the application; any criteria for awarding grants in addition to those specified in section 22-96-104 (3), C.R.S.; and any information to be included in the Department's program report in addition to that required in section 22-96-105, C.R.S.

2.00 Definitions.

2.00 (1) Department: The Department of Education created and existing pursuant to section 24-1-115, C.R.S.

2.00 (2) Education Provider: A school district, a board of cooperative services, a charter school authorized by a school district pursuant to Part 1 of Article 30.5 of Title 22 C.R.S., or a charter school authorized by the State Charter School Institute pursuant to Part 5 of Article 30.5 of Title 22 C.R.S.

2.00 (3) School Health Professional: A state-licensed or state-certified school nurse or other state-licensed or state-certified health professional qualified under state law to provide support services to children and adolescents.

2.00 (4) School: A public elementary, middle, junior high, or high school..

2.00 (5) State Board: The State Board of Education created pursuant to Section 1 of Article IX of the State Constitution.

2.01 Implementation Procedures.

2.01 (1) **Application Timeline.** Grants will be awarded for three-year terms, based on available appropriations. Applications will be due to the Department on or before May 1 of each funding cycle, subject to available appropriations. The Department will make funding available to grantees July 1 of the subsequent fiscal year.

2.01 (2) **Application Procedures.** The Department will be the responsible agency for implementing the School Health Professional Grant Program. The Department will develop a Request for Proposal (RFP), pursuant to the Department's RFP process and pursuant to the requirements and timelines found in 22-96-104, C.R.S. If the Department determines an application is missing any information required by rule to be included with the application, the Department may contact the education provider to obtain the missing information. As applicable, each grant application, at a minimum, shall specify:

2.01 (2) (a) The intended recipient schools, the number of health professionals employed by the education provider in schools prior to receipt of a grant, and the ratio of students to school health providers in the schools operated by or receiving services from the education provider;

2.01 (2) (b) The education provider's plan for use of the grant moneys, including the extent to which the grant moneys will be used to increase the number of school health professionals at recipient schools and to provide substance abuse and behavioral health care services at recipient schools, including screenings, referrals to community organizations, and training for students, families and staff on substance abuse issues;

2.01 (2) (c) The education provider's plan for involving leaders at the recipient schools and in the surrounding community and the faculty at recipient schools in increasing the capacity and effectiveness of the substance abuse and behavioral health care services provided to school students enrolled in or receiving educational services from the education provider;

2.01 (2) (d) The extent to which the education provider has developed or plans to develop community partnerships to serve substance abuse and behavioral health care needs of all of the students enrolled in or receiving educational services from the education provider;

2.01 (2) (e) The extent to which the education provider has seen increased incidence of disciplinary actions for drug use or selling drugs;

2.01 (2) (f) The extent to which the education provider has an existing program that can be expanded to increase the availability of school health professionals;

2.01 (2) (g) The amount of matching funds that the education provider intends to provide to augment any grant moneys received from the program and the anticipated amount and source of any matching funds;

2.01 (2) (h) The education provider's plan for continuing to fund the increase in school health professional services following expiration of the grant; and

2.01 (3) **Application Priority Criteria.** In reviewing applications and making recommendations to the State Board, the Department shall prioritize applications based on the following criteria:

2.01 (3) (a) The education provider's need for additional school Health professionals in schools, demonstrated by the local school and community data regarding marijuana and the number of marijuana establishments located within the boundaries of a school district;

2.01 (3) (b) The existence of a successful school health team in the education provider's school or schools;

2.01 (3) (c) The amount of the matching funds that the education provider is able to commit;

2.01 (3) (d) The education provider's emphasis and commitment to implement evidence-based and research-based programs and strategies; and

2.01 (3) (e) The likelihood that the education provider will continue to fund the increases in the level of school health professional services following expiration of the grant.

2.01 (4) **Additional Review Criteria.** The Department and the State Board shall consult with experts in the area of school health professional services when establishing any additional criteria for awarding grants and in reviewing applications and selecting grant recipients.

2.01 (5) **Duration and Amount of Grant Awards.** Subject to available appropriations, the State Board shall award grants to applying education providers pursuant to 22-96-104, C.R.S. The State Board shall base the grant awards on the Department's recommendations. Each grant shall have a term of three years, based on available appropriation. In making the award, the State Board shall specify the amount of each grant.

2.01 (5) (a) An education provider that receives a grant under the program shall use the moneys to increase the level of funding the education provider allocates to school health professionals to provide substance abuse and behavioral health care to students prior to receiving the grant and not to replace other funding sources allocated to provide school health professionals for students in schools.

2.01 (6) **Reporting.** In any fiscal year in which the general assembly makes an appropriation to the department for the purposes of the program, each education provider that receives a grant through the program shall report the following Information to the department each year during the term of the grant:

2.01 (6) (a) The number of school health professionals hired using grant moneys; and

2.01 (6) (b) A list and explanation of the services provided using grant moneys.

2.01 (7) **Evaluation of Program.** On or before May 1, 2015, and on or before May 1 in each fiscal year thereafter in which the general assembly makes an appropriation to the Department for the purposes of the program, the Department shall submit to the Education Committees of the Senate and the House of Representatives, or any successor Committees, a report that, at a minimum, summarizes the Information received by the department pursuant to subsection (1) of this 22-96-105, C.R.S. The Department shall also post the report to its web site.

Editor's Notes

History

Entire rule emer. rule eff. 08/13/2014.

Entire rule eff. 11/30/2014.

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Tracking number: 2017-00376

Opinion of the Attorney General rendered in connection with the rules adopted by the

Colorado State Board of Education

on 11/09/2017

1 CCR 301-97

RULES FOR THE ADMINISTRATION OF THE SCHOOL HEALTH PROFESSIONAL GRANT PROGRAM

The above-referenced rules were submitted to this office on 11/10/2017 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.

November 21, 2017 14:41:45

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Education

Agency

Colorado State Board of Education

CCR number

1 CCR 301-100

Rule title

1 CCR 301-100 RULES FOR THE ADMINISTRATION OF THE TEACHER GRANTS FOR COMPUTER SCIENCE EDUCATION PROGRAM 1 - eff 12/30/2017

Effective date

12/30/2017

DEPARTMENT OF EDUCATION

Colorado State Board of Education

RULES FOR THE ADMINISTRATION OF THE TEACHER GRANTS FOR COMPUTER SCIENCE EDUCATION PROGRAM

1 CCR 301-100

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

AUTHORITY: ARTICLE IX, SECTION 1, COLORADO CONSTITUTION. 22-97-101 ET SEQ.; 22-2-107(1)(C) OF THE COLORADO REVISED STATUTES (C.R.S.).

0.0 STATEMENT OF BASIS AND PURPOSE

The Teacher Grants for Computer Science Education Program, sections 22-97-102 and 22-97-103, 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: the application process, including requirements; and deadlines; criteria for the award of grants, including award priorities; the amount and duration of the grants; and the approved uses of the grant.

1.0 DEFINITIONS

1.01 "Computer science education" means the study of computers, algorithmic processes, and computer programming and coding, including their principles, their hardware and software designs, their applications, and their impact on society.

1.02 "Department" means the Department of Education created and existing pursuant to Section 24-1-115, C.R.S.

1.03 "Eligible teacher" means a person who is employed as a teacher in a public school in the state.

1.04 "Public school" has the same meaning as provided in Section 22-1-101 and includes, but is not limited to, a district charter school, an institute charter school, and an online school, as defined in Section 22-30.7-102(9.5).

1.05 "School district" means a school district authorized by Section 15 of Article IX of the state constitution and organized pursuant to Article 30 of Title 22. "School district" also includes a Board of Cooperative Services created pursuant to Article 5 of Title 22, if it is operating a public school; a district charter school; an institute charter school; or an online school, as defined in Section 22-30.7-102(9.5).

1.06 "State Board" means the state board of education created pursuant to Section 1 of Article IX of the state constitution.

2.0 COMPUTER SCIENCE EDUCATION GRANTS FOR TEACHERS PROGRAM

2.01 The Department shall create and administer a grant program for eligible teachers who wish to pursue additional postsecondary education in order to provide computer science education to students in public schools.

3.0 ELIGIBILITY, APPLICATION REQUIREMENTS, AND TIMELINE

3.01 A school district or school district on behalf of an eligible teacher or teachers may apply for a grant under the Teacher Grants for Computer Science Education program. Individual teachers are not eligible to receive grant funding directly from the Department.

3.01 As legislated monies are available, the Department shall solicit, review, and recommend awards to school districts for a period of one year. The State Board shall approve awards under the Computer Science Education Grants for Teachers program. Each grant shall be for a maximum of $10,000.00 and must be used for tuition, fees, training program costs, and/or books and materials.

3.02 On or before March of each year that monies are available, school districts interested in obtaining funding shall submit a grant application electronically to the Department, using the application form provided by the Department.

3.03 Each application submitted shall include, but need not be limited to the following:

3.03.1 The number of eligible school teachers the grant will serve and a description of whether those teachers teach a high-poverty student population; a high number of minority students; or students in rural areas.

3.03.2 A description of how the grantee plans to use funds, including:

3.03.2(a) If applicable, a description of how the eligible teachers served by the grant intend to continue teaching in public schools in Colorado after completing postsecondary education obtained through the grant program (i.e. what type of role the eligible teacher will serve in a public school). If an applicant applies on behalf of teachers who fit this description, an assurance from those teachers is required as part of the application.

3.03.2(b) If applicable, a description of how eligible teachers will use the grant for postsecondary coursework or training that enables them to teach computer science, including concurrent enrollment in computer science or Advanced Placement computer science courses, and whether that coursework or training applies toward the completion of a degree or industry-recognized certificate in computer science, the completion of a high-quality training program, or the mastery of a teaching content area in computer science.

3.03.2(c) If applicable, a description of the high-quality training program to be offered in the district that will enable teachers to teach computer science.

4.0 APPLICATION EVALUATION PRIORITIES

4.01 In reviewing grant applications to make recommendations to the State Board for grant awards, the Department shall consider the following priorities:

4.01.1 The extent to which the grant will benefit a teacher or teachers in a school district that serves a high-poverty student population;

4.01.2 The extent to which the grant will benefit a teacher or teachers in a school district that serves a high-number of minority students;

4.01.3 The extent to which the grant will benefit a teacher or teachers in a school district that serves students in rural areas;

4.01.4 The extent to which the grant will benefit a teacher or teachers who intend to continue teaching in public schools in Colorado after completing postsecondary education obtained through the grant program;

4.01.5 The extent to which the grant funding will be used for postsecondary coursework or training that enables a teacher or teachers to teach computer science, including concurrent enrollment courses in computer science or Advanced Placement computer science and whether that coursework or training applies toward the completion of a degree or industry-recognized certificate in computer science, the completion of a high-quality training program, or the mastery of a teaching content area in computer science;

4.01.6 The extent to which the school district intends to use the grant to fund high-quality training programs to be offered to teachers in the district that enable the teachers to teach computer science courses; and

4.01.7 The cost of the professional development activities that the applicant intends to pursue using the grant funds.

5.0 AWARD PROCESS

5.01 On an annual basis, as legislated moneys are available, the Department shall make recommendations for grant awards to the State Board.

5.02 The State Board shall approve grant awards to school districts on an annual basis, as legislated moneys are available, for a term of one year.

5.03 Awards shall be made available to grantees on the first of the month following approval by the State Board.

6.0 REPORTING

6.01 Each school district funded through the Computer Science Grants for Teachers program shall submit annually information to the Department describing the following:

6.01.1 The number of teachers in each school district who benefitted from the grant;

6.01.2 The outcomes of the grant, including the postsecondary courses, degrees, training programs, or industry-recognized certificates completed and the education provider that provided the education;

6.01.3 The amount of funding each grantee dedicated toward allowable expenses, including tuition, fees, training programs, books, and/or materials on behalf of teachers; and

6.01.4 The expected impact of the additional teacher training and education on students.

6.02 On or before January 1, 2019, and each year thereafter as long as monies are available, the Department shall submit annually to the education committees of the senate and house of representatives, or any successor committees, the following information regarding the administration of the program in the preceding calendar year:

6.02.1 The number of grants awarded during the previous calendar year;

6.02.2 The amount of each grant awarded to each grant recipient in the previous calendar year;

6.02.3 The number of teachers in each school district who benefitted from the grant;

6.02.4 The uses of each grant, including the postsecondary courses, degrees, training programs, or industry-recognized certificates completed and the education provider that provided the education; and

6.02.5 The expected impact of the additional teacher training and education on students.

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on 11/08/2017

1 CCR 301-100

RULES FOR THE ADMINISTRATION OF THE TEACHER GRANTS FOR COMPUTER SCIENCE EDUCATION PROGRAM

The above-referenced rules were submitted to this office on 11/10/2017 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.

November 21, 2017 14:29:44

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Education

Agency

Division of Public School Capital Construction Assistance

CCR number

1 CCR 303-1

Rule title

1 CCR 303-1 RULES PERTAINING TO THE ADMINISTRATION OF THE PUBLIC SCHOOL CAPITAL CONSTRUCTION ASSISTANCE BOARD 1 - eff 12/30/2017

Effective date

12/30/2017

DEPARTMENT OF EDUCATION

Division of Public School Capital Construction Assistance

PUBLIC SCHOOL FACILITY CONSTRUCTION GUIDELINES

1 CCR 303-1

PUBLIC SCHOOL FACILITY CONSTRUCTION GUIDELINES

Article 1 – Purpose and Authority to Promulgate Rules

1.1. Purpose

1.1.1. Section 22-43.7-107(1)(a), C.R.S. states, The board shall establish public school facility construction guidelines for use by the board in assessing and prioritizing public school capital construction needs throughout the state as required by section 22-43.7-108, C.R.S. reviewing applications for financial assistance, and making recommendations to the state board regarding appropriate allocation of awards of financial assistance from the assistance fund only to applicants. The board shall establish the guidelines in rules promulgated in accordance with article 4 of title 24, C.R.S.

1.1.2. Section 22-43.7-107(1)(b), C.R.S. states, It is the intent of the general assembly that the Public School Facility Construction Guidelines established by the board be used only for the purposes specified in section 1.1.1 above.

1.1.3. The Public School Facility Construction Guidelines shall identify and describe the capital construction, renovation, and equipment needs in public school facilities and means of addressing those needs that will provide educational and safety benefits at a reasonable cost.

1.2. Statutory Authority

1.2.1. Section 22-43.7-106(2)(i)(I) C.R.S. states, the board may promulgate rules in accordance with article 4 of title 24, C.R.S. The board is directed to establish Public School Facility Construction Guidelines in rule pursuant to 22-43.7-107(1)(a), C.R.S.

Article 2 – Definitions

2.1. The definitions provided in 22-43.7-103, C.R.S., shall apply to these rules. The following additional definitions shall also apply:

"C.R.S." means Colorado Revised Statutes.

"ES" means Elementary School.

“F.T.E.s” means Full Time Equivalent Students.

“Gross Square Feet (GSF)” means the total area of the building (inclusive of all levels as applicable) of a building within the outside faces of the exterior walls, including all vertical circulation and other shaft (HVAC) areas connecting one floor to another.

“Guidelines” means the Public School Facility Construction Guidelines.

"Historical significance" means having importance in the history, architecture, archaeology, or culture of this state or any political subdivision thereof or of the United States, as determined by the state historical society.

“HS” means High School.

“K12” means Kindergarten through 12th Grade School that is under all one facility / campus.

“MS” means Middle School.

“SF” means Square Foot.

“S.T.E.M.” means Science, Technology, Engineering, & Mathematics.

Article 3 – Codes, Documents and Standards incorporated by reference

3.1. The following materials are incorporated by reference within the Public School Facility Construction Guidelines:

3.1.1. ASHRAE 90.1-2013 Energy Standard for Buildings Except Low-Rise Residential Buildings.

3.1.2. ASHRAE Standard Benchmark Energy Utilization Index (October 2009).

3.1.3. ASHRAE Standard 189.1 - 2011 Standard for the Design of High-Performance Green Buildings.

3.1.4. ANSI/ASA S12.60-2010/ Part 1, Acoustical Performance Criteria, Design Requirements, and Guidelines for Schools, Part 1 Permanent Schools

3.1.5. International Code Council’s International Plumbing Code (2015) amended by Rules and Regulations of the Colorado State Plumbing Board 3 CCR 720-1, 2016-4-1

3.1.6. National Fire Protection Association (NFPA) 70: National Electrical Code (2014).

3.1.7. National Fire Protection Association (NFPA) 13: Standard for the Installation of Sprinkler Systems, 2013 Edition

3.1.8. National Fire Protection Association (NFPA) 72: National Fire Alarm and Signaling Code, 2013 Edition.

3.1.9. National Fire Protection Association (NFPA) 80: Standard for Fire Doors and Other Opening Protectives, 2016 Edition

3.1.10. ASHRAE Standard 62.1-2013 Ventilation for Acceptable Indoor Air Quality (2013).

3.1.11. Colorado Department of Public Health and Environment which references Air Quality, Hazardous Waste, Public and environmental health, Radiation Control, Solid Waste and Water Quality.

3.1.12. International Fire Code (IFC) – 2015 Edition, First Printing: May 2014 (Copyright 2014 by International Code Council, Inc. - Washington, D.C.), including Appendices B and C.

3.1.13. International Mechanical Code - 2015 Edition, First Printing: May 2014 (Copyright 2014 by International Code Council, Inc. - Washington, D.C.)

3.1.14. International Energy Conservation Code (IECC) - 2015 Edition, First Printing: May 2014 (Copyright 2014 by International Code Council, Inc. - Washington, D.C.)

3.1.15. International Existing Building Code – 2015 Edition, First Printing: May 2014 (Copyright 201 by International Code Council, Inc. - Washington, D.C.)

3.1.16. All projects shall be constructed and maintained in accordance with the codes and regulations as currently adopted by the Colorado Division of Fire Prevention & Control which incorporates current building, fire, existing building, mechanical, and energy conservation codes.

3.2. The Division shall maintain copies of the complete texts of the referenced incorporated materials, which are available for public inspection during regular business hours with copies available at a reasonable charge. Interested parties may inspect the referenced incorporated materials by contacting the Director of the Division of Public School Capital Construction Assistance, 1580 Logan Street, Suite 310, Denver, Colorado 80203.

3.3. This rule does not include later amendments or editions of the incorporated material.

Article 4 - These Guidelines are not mandatory standards to be imposed on school districts, charter schools, institute charter schools, the boards of cooperative services or the Colorado School for the Deaf and Blind. As required by statute, the Guidelines address:

4.1 Health and safety issues, including security needs and all applicable health, safety and

environmental codes and standards as required by state and federal law. Public school facility accessibility.

4.1.1 **Sound building structures.** Each building should be constructed and maintained with sound structural foundation, floor, wall and roof systems.

4.1.1.1 - All building structures shall conform to all applicable codes adopted by the Colorado Division of Fire Prevention and Control in 8 CCR 1507-30.

4.1.2 **Classroom Acoustics**. To address issues of reverberation time and background noise in classrooms refer to ANSI/ASA S12.60-2010/ Part 1, American National Standard Acoustical Performance Criteria, Design Requirements, and Guidelines for Schools, Part 1: Permanent Schools.

4.1.3 **Roofs.** A weather-tight roof that drains water positively off the roof and discharges the water off and away from the building. All roofs shall be installed by a qualified contractor who is approved by the roofing manufacturer to install the specified roof system and shall receive the specified warranty upon completion of the roof. The National Roofing Contractors Association divides roofing into two generic classifications: low-slope roofing and steep-slope roofing. Low-slope roofing includes water impermeable, or weatherproof types of roof membranes installed on slopes of less than or equal to 3:12 (fourteen degrees). Steep slope roofing includes water-shedding types of roof coverings installed on slopes exceeding 3:12 (fourteen degrees).

4.1.3.1 - Low slope roofing systems:

4.1.3.1.1- Built-up – minimum 4 ply, type IV fiberglass felt, asphalt BUR system. Gravel or cap sheet surfacing required.

4.1.3.1.2- Ethylene Propylene Diene Monomer - minimum 60 mil EPDM membrane, with a ballasted or adhered system.

4.1.3.1.3- Poly Vinyl Chloride - minimum 60 mil PVC membrane adhered or mechanically attached systems.

4.1.3.1.4- Thermal Polyolefin - minimum 60 mil membrane adhered or mechanically attached systems.

4.1.3.1.5- Polymer-modified bitumen sheet membrane - Styrene-Butadiene-Styrene (SBS) membranes only, to be used only as a component of a built-up system noted above.

4.1.3.2 - Steep slope roofing systems:

4.1.3.2.1 - Asphalt shingles - minimum 50 year spec asphalt shingles, UL Class A.

4.1.3.2.2 - Clay tile and concrete tile - minimum 50 year spec clay or concrete tile, UL Class A.

4.1.3.2.3 - Metal roof systems for steep-slope applications - minimum 24 gage prefinished steel, standing seam roof system with a minimum 1.5" seam height.

4.1.3.2.4 - Slate - ¼" minimum thickness, 50 year spec. UL Class A.

4.1.3.2.5 - Synthetic shingles - minimum 50 year spec, UL Class A.

4.1.4 **Electrical Systems – Power Distribution and Utilization.** Safe and secure electrical service and distribution systems shall be designed and installed to meet the National Electrical Code (NEC, NFPA 70); edition as enforced by the Colorado State Buildings Programs (SBP), unless otherwise more stringent based on local Authority Having Jurisdiction (AHJ), and ANSI/ASHRAE/IES Standard 90.1-2013 "Energy Standard for Buildings Except Low-Rise Residential Buildings".

4.1.4.1 – Energy use intensity should not exceed the U.S. Department of Energy (DOE) building benchmarks, and shall conform to ASHRAE Standard Benchmark Energy Utilization Index (October 2009).

4.1.4.2 - Emergency lighting shall operate when normal lighting systems fail in locations and shall conform to all applicable codes adopted by the Colorado Division of Fire Prevention and Control in 8 CCR 1507-30.

4.1.5 **Lighting Systems.** Lighting systems shall be designed and installed to achieve appropriate lighting levels utilizing energy-efficient lighting fixtures and energy-saving automatic and manual control systems.

4.1.5.1 **-** Lighting systems shall be designed and installed to meet the National Electrical Code (NEC, NFPA 70) edition as enforced by the Colorado State Buildings Programs (SBP), unless otherwise more stringent based on local Authority Having Jurisdiction (AHJ).

4.1.5.2 **–** Illuminance levels shall meet the requirements for applicable spaces as recommended within in the Illuminating Engineering Society (IES) Handbook, and dictated by the Rules and Regulations Governing Schools in the State of Colorado 6 CCR 1010-6.

4.1.5.3 **–** Lighting power density shall not exceed the values indicated in ANSI/ASHRAE/IES Standard 90.1-2013.

4.1.5.4 - Lighting Control Systems shall be provided to comply with ANSI/ASHRAE/IES Standard 90.1-2013.

4.1.6 **Mechanical Systems – Heating, Ventilation, and Air Conditioning (HVAC).** Safe and energy efficient mechanical systems shall be designed and installed to provide proper ventilation, and maintain the building temperature and relative humidity, while achieving appropriate sound levels.

4.1.6.1 – Mechanical systems shall be designed and installed to meet the International Mechanical Code, International Fuel Gas Code, International Building Code, and other Codes as adopted by the Colorado Division of Fire Prevention and Control in 8 CCR 1507.

4.1.6.2 - Healthy building indoor air quality (IAQ) shall be provided through the use of the mechanical heating, ventilation and air conditioning (HVAC) systems, or by operable windows, and by reducing air infiltration and water penetration with a tight building envelope, in compliance with the enforced International Building Code and ASHRAE Standard 62. 1- 2013.

4.1.6.3 - Mechanical systems shall comply with: ASHRAE Standard 62.1-2013 Ventilation for Acceptable Indoor Air Quality, ASHRAE Standard 90.1-2013 Energy Standard for Buildings Except Low-Rise Residential Buildings, and ASHRAE Standard 189.1-2014 Standard for the Design of High-Performance Green Buildings.

4.1.6.4 Sound levels due to mechanical equipment shall comply with Occupational Safety & Health Administration Standard 1910.95 and ANSI/ASA Standard S12.60-2010 Part 1 for acoustical considerations within school facilities.

4.1.7 **Plumbing Systems -** Waste Water, Storm water, Domestic Water and Plumbing Supporting HVAC shall be in compliance with Division of Fire Prevention and Control in 8 CCR1507 and the Colorado Department of Health & Environment regulations.

4.1.8 **Fire Protection Systems.** Building fire detection, alarm and emergency notification systems in all school facilities shall be designed in accordance with State requirements. Exceptions where code required systems are not mandatory and the occupancy classification according to the International Building Code 2015 does not warrant a system. All fire management systems shall conform to all applicable codes adopted by the Colorado Division of Fire Prevention and Control in 8 CCR 1507-30

and the adopted Fire Code.

4.1.8.1 - Types of fire alarm notifications systems.

4.1.8.1.1– Internal audible and visual alarms.

4.1.8.1.2– External alarm monitoring and dispatch via internet / modem, telephone, radio, or cellular monitoring systems.

4.1.8.2 - Automatic Sprinkler Systems in Group E Occupancy a sprinkler system shall be provided as noted in the adopted Fire Code. Refer to the adopted Fire Code for exceptions.

4.1.8.2.1 All Group E fire areas greater than 12,000 square feet in area.

4.1.8.2.2 Throughout every portion of educational buildings below the lowest level of exit discharge serving that portion of the building.

4.1.8.3 - Types of Fire Protection Water Supplies.

4.1.8.3.1- Fire hydrants.

4.1.8.3.2- Static fire water storage tanks.

4.1.9 **Means of egress.** A continuous and unobstructed path of vertical and horizontal egress travel from any occupied portion of a building or structure to a *public way*. A means of egress consists of three separate and distinct parts: the exit access, the *exit* and the *exit discharge*. Reference 2015 International Building Code, Chapter 2, Definitions. A building code analysis shall be conducted to determine all code requirements.

4.1.10 **Facilities with safely managed hazardous materials.** Potential hazardous materials in building components, which are identified in the Asbestos Hazard Emergency Response Act (AHERA) report, may include: asbestos, radon, lead, lamps and devices containing mercury. Additional hazardous materials may include: science chemicals, cleaning chemicals, blood-borne pathogens, acid neutralization tank for science departments, and bulk fuel storage (UST/AST) management that may be stored by the occupant.

4.1.10.1- Public schools shall comply with all AHERA criteria and develop, maintain, and update an asbestos management plan, to be kept on record at the school district. This should include a building survey of the exterior of the building, and identification of all friable, non-friable, and trace asbestos materials. Reference regulation Number 8, Control of Hazardous Air Pollutants, 5 CCR 1001-10.

4.1.10.2- All new facilities and additions shall conduct radon testing following completion of construction within nineteen months after occupancy as required by Colorado Department of Public Health and Environment, 6 CCR 1010-6.

4.1.10.3- Lead based paint. All schools shall conform to the regulations adopted by the Colorado Air Quality Control Commission governing the abatement of lead-based paint from target housing (constructed prior to 1978) and child-occupied facilities, reference C.R.S. 25-5-1101.

4.1.11 **Security.** The degree of resistance to, or protection from, harm. It applies to any vulnerable and valuable asset; such as a person, building or dwelling. Security provides "a form of protection where a separation is created between the assets and the threat." These separations are generically called "controls," and sometimes include changes to the asset or the threat. These separations and degrees of resistance can be achieved through several models and techniques.

4.1.11.1- Video Management Systems (VMS).

4.1.11.1.1- Cameras. Video cameras are typically used to implement a video management system. In new construction, these should be internet protocol (IP) cameras on Power over Ethernet (PoE) cabling infrastructure, with color CCD, day-night operation and supplemental IR illuminators and environmental accessories as required for application, Cameras should support motion activation, digital zoom and focus, and standard video compression. Fixed and pan-tilt-zoom (PTZ) cameras shall be considered to meet requirements. Consideration shall be given to cameras with integral audio microphones.

4.1.11.1.2- Monitoring & Recording Systems. - A central video management system should be capable of monitoring live feeds from multiple cameras from a central location and remote locations, recording all video, searching and reviewing recorded video, and exporting video to portable digital media. A minimum of 30 days of storage of all videos at 15fps (frames per second) is required.

4.1.11.2- Controlled Access.

4.1.11.2.1- General Requirements

4.1.11.2.1.1- The number of entryways into the building or onto the campus should be limited. New construction shall be designed to restrict normal entrance to only one or two locations, with no recessed doorways, provided that sufficient entryways are available for fire department access and shall conform to all applicable codes adopted by the Colorado Division of Fire Prevention and Control in 8 CCR 1507-30.

4.1.11.2.1.2- All exterior doors shall be locking and equipped with panic bars to open readily from the egress side. Panic bars should utilize flush push bar hardware to prevent chaining doors shut.

4.1.11.2.1.2.1- Unless a door is intended for ingress, exterior doors should not have handles and locks on the outside. In all cases exposed hardware should be minimized, provided that sufficient entryways are available for fire department access and shall conform to all applicable codes adopted by the Colorado Division of Fire Prevention and Control in 8 CCR 1507-30.

4.1.11.2.1.3- Doors should be constructed of steel, aluminum alloy, or solid-core hardwood. If necessary, glass doors should be fully framed and equipped with burglar-resistant tempered glass. Translucent glass should be avoided in all cases.

4.1.11.2.1.4- Exit doors with panic push-bars should be “Access Control Doors” per the codes adopted by the Colorado Division of Fire Prevention and Control in 8 CCR 1507-30, to prevent easy access by criminals and vandals, or in a lock-down / lock-out situation.

4.1.11.2.1.5- Heavy-duty metal or solid-core wooden doors should be used at entrances in areas containing expensive items. These areas include classrooms, storerooms, and custodians’ rooms. Interior doorway doors should also be heavy-duty metal or solid-core wooden doors.

4.1.11.2.1.6- Door hinges should have non-removable pins.

4.1.11.2.1.7- Door frames should be constructed of pry-proof material.

4.1.11.2.1.8- Armored strike plates shall be securely fastened to the door frame in direct alignment to receive the latch easily.

4.1.11.3- Automated Locking Mechanisms.

4.1.11.3.1.1Use of automated locking mechanisms (electronic access control) should be considered for exterior doors identified for entry and select interior doors associated with the main entry vestibule.

4.1.11.3.1.2Acceptable automated electronic access control systems include RF-based proximity credential readers and biometric scanning devices. If the electronic access control systems are to be utilized the following shall apply:

4.1.11.3.1.2.1- School personnel may be issued credentials for authenticating their identity in order to maintain efficient access to school facilities.

4.1.11.3.1.2.2Students are not necessarily expected to carry electronic access control credentials. During normal arrival times, electronic locking systems may be disengaged via a timer while entries are monitored by school personnel.

4.1.11.3.1.2.3All exterior doors shall utilize door position switches to notify staff of open doors and eliminate “door propping”.

4.1.11.3.1.2.4Doors utilizing electronic access controls shall “fail secure” from the unsecure side. Free egress shall not be inhibited from the secure side in any scenario.

4.1.11.4Manual Locking Devices

4.1.11.4.1Use of a manual locking mechanism, such as traditional cylinder and key locks, should be provided for all interior doors requiring access control.

4.1.11.4.2 Manual and Electronic access control should not be used on the same door.

4.1.11.5 Emergency Lockdown

4.1.11.5.1 All exterior doors shall be able to be quickly and automatically secured from a position of safety (Administrative desk, Principal's office, etc) without traveling to each individual exterior door.

4.1.11.5.2 Interior doors to occupied spaces shall be capable of quickly being secured from the inside by school personnel. Locking of doors may be done via manual deadbolt or automatic locking mechanism. Locking mechanism shall not interfere with automatic closing and latching functions required by the fire code and may have door sidelights, or door vision glass that allow line of sight into the corridors during emergencies, and shall conform to all applicable codes adopted by the Colorado Division of Fire Prevention and Control in 8 CCR 1507-30.

4.1.11.6 Intrusion Detection

4.1.11.6.1 A system shall be put in place to identify, alarm, and notify authorities in the case of unauthorized entry.

4.1.11.7 Alarm System

Passive infrared (PIR) sensors shall be located interior to all building entries to monitor human movement.

4.1.11.7.1.1– An alarm keypad shall be located at selected building entries to arm and disarm the intrusion detection system.

4.1.11.7.1.2– A manual alarm device shall be located in a position of safety (Administrative desk, Principal's office, etc.) to force intrusion detection system into alarm status.

4.1.11.7.1.3– The intrusion detection shall notify local authorities or monitoring company upon alarm status.

4.1.11.8Security Integration

4.1.11.8.1The Video Management System (VMS), Access Control System, and Intrusion Detection System may be components of an integrated security solution.

4.1.11.9- Main Entry Physical Security

4.1.11.9.1- Building vestibules. Where appropriate, buildings shall employ double entry door designs that provide a secured area for visitors to authenticate and gain clearance. Known as “man traps”, security vestibules solve several common security issues such as students opening doors for visitors, visitors bypassing check-in points, direct access to the interior from attackers, piggy-back entrances, and propped doors.

4.1.11.9.2- Video based entrance intercom systems. Building designs shall allow for school personnel to be able to monitor incoming visitors from a safe location out of reach, or line of site from incoming visitors who have not yet been authenticated or cleared for entry. These entry points shall use remote video and access control technology to conduct multi-factor authentication of incoming visitors (e.g. visual verification and ID, PIN/password and ID, or biometric and other form of visual identification).

4.1.11.9.2.1- Video based entrance systems shall use IP technology to allow access control to be conducted by school personnel from multiple locations, so that multiple personnel can provide coverage for screening incoming visitors.

4.1.11.9.3- Line of sight. The front entrance should be designed to maximize the line of sight distance for school occupants to detect an intruder from each relevant perimeter (e.g. classroom to hallway, office or guard station to entryway, or entryway to exterior fence access, or exterior fence access to property perimeter).

4.1.11.10- Event alerting and notification (EAN) system. An EAN system that utilizes an intercom / phone system with communication devices located in all classrooms and throughout the school to provide efficient inter-school communications, and communication with local fire, police, and medical agencies during emergency situations.

4.1.11.11- Secure sites should include the following:

4.1.11.11.1- Locations to avoid.

4.1.11.11.2- Location of utilities.

4.1.11.11.3- Roof access.

4.1.11.11.4- Lighted walkways.

4.1.11.11.5- Secured playgrounds.

4.1.11.11.6- Bollards at main entrances and shop areas with overhead doors.

4.1.11.11.7- Signage.

4.1.12 **Health code standards.** Schools, including labs, shops, vocational and other areas with hazardous substances shall conform to the Department Of Public Health and Environment, Division of Environmental Health and Sustainability, 6 CCR 1010-6 Rules and Regulations Governing Schools in the State of Colorado.

4.1.13 **Food preparation equipment and maintenance**. Food preparation and associated facilities equipped and maintained to provide sanitary facilities for the preparation, distribution, and storage of food as required by Department Of Public Health And Environment, Division of Environmental Health and Sustainability, 6 CCR 1010-6 Rules and Regulations Governing Schools in the State of Colorado.

4.1.14 **Health care room.** A separate health care room shall be provided and shall comply with the Department Of Public Health and Environment, Division of Environmental Health and Sustainability, 6 CCR 1010-6 Rules and Regulations Governing Schools in the State of Colorado.

4.1.15 **A site that safely separates pedestrian and vehicular traffic and is laid out with the following guidelines:**

4.1.15.1- Physical routes for basic modes (busses, cars, pedestrians, and bicycles) of traffic should be separated as much as possible from each other. If schools are located on busy streets and/or

high traffic intersections, coordinate with the applicable municipality or county to provide for adequate signage, traffic lights, and crosswalk signals to assist school traffic in entering the regular traffic flow.

4.1.15.2- When possible, provide a dedicated bus staging and unloading area located away from students, staff, and visitor parking.

4.1.15.3- Provide an adequate driveway zone for stacking cars on site for parent drop-off/pick-up zones. Drop-off area design should not require backward movement by vehicles, and be one-way in a counterclockwise direction where students are loaded and unloaded directly to the curb/sidewalk. Students should not have to load or unload where they have to cross a vehicle path before entering the building. It is recommended all loading areas have “No Parking” signs posted.

4.1.15.4- Provide well-maintained sidewalks and a designated safe path leading to the school entrance(s).

4.1.15.5- Building service loading areas and docks should be independent from other traffic and pedestrian crosswalks. If possible, loading areas shall be located away from school pedestrian entries.

4.1.15.6- Facilities should provide bicycle access and storage if appropriate.

4.1.15.7- Fire lanes shall conform to all applicable codes adopted by the Colorado Division of Fire Prevention and Control in 8 CCR 1507-30 or the local fire department. Local fire department must adhere to the codes adopted by DFPC.

4.1.15.8- Playgrounds shall comply with the ICC A117.1-2009 Accessible and Usable Buildings and Facilities and shall conform to all applicable codes adopted by the Colorado Division of Fire Prevention and Control in 8 CCR 1507-30.

4.1.16**Severe weather preparedness.**

4.1.16.1- Designated emergency shelters shall conform to all applicable codes adopted by the Colorado Division of Fire Prevention and Control in 8 CCR 1507-30 and ICC 500.

4.2 <u>Technology, including but not limited to telecommunications and internet connectivity technology and hardware, devices or equipment necessary for individual student learning and classroom instruction, including access to electronic instructional materials, or necessary for professional use by a classroom teacher..</u>

4.2.1 Educational facilities for individual student learning, classroom instruction, online instruction and associated technologies, connected to the Colorado institutions of higher education distant learning networks “Internet” and “Internet two.”

4.2.2 Educational facilities shall be supplied with standards-based wired and wireless network connectivity.

4.2.2 Security and associated filtering and intrusion control for internal voice, video and data networks shall be provided.

4.2.3 External internet service provider (ISP) connection and internal wide area network (WAN) connections meeting or exceeding recommended guidelines of the state education technology education directors association (SETDA) broadband imperative, and devices meeting or exceeding recommended specifications according to the most current version of technology guidelines for the partnership for assessment of readiness for college and careers (PARCC) assessments.

4.2.4 Provide school administrative offices with web-based activity access.

4.2.5 Building shall be constructed with long-term sustainable technology infrastructure. Facilities should be built with sufficient data cabling and/or conduit and power infrastructure to allow for maximum flexibility as technological systems are upgraded and replaced in the future. A plan for technology lifecycle review intervals should be put in place for review at 2-4 year intervals.

4.2.5.1 Applicable Standards. The design and installation of technology systems shall comply with:

4.2.5.1.1 ANSI/TIA/EIA-568-C

4.2.5.1.2 ANSI/TIA/EIA-569

4.2.5.1.3 ANSI/TIA/EIA-606-B

4.2.5.1.4 ANSI/TIA/EIA-607-B

4.2.5.1.5 ANSI/BICSI 001-2009, Information Transport Systems Design Standard for K-12 Educational Institutions.

4.2.6 Telecom Equipment Rooms

4.2.6.1 - Uninterruptible power supplies (UPS). Telecom Rooms (TRs) and Equipment Rooms (ERs) shall be provided with UPS equipment to provide continuous clean power to communications systems for a minimum of 90 minutes.

4.2.6.2 - Generators. A backup generator shall be considered for providing backup power to telecommunications systems of backup power is required beyond 9 minutes, or if the generator is already located for other purposes.

4.2.6.3 - Heating, Ventilation and Air Conditioning (HVAC). Mechanical equipment shall be used to accommodate heating loads within TRs and ERs. Ventilation-only systems may be used in spaces with limited equipment, active cooling systems should be considered for larger rooms. Maintained space temperatures shall target 65 degrees F. peak space temperatures shall not exceed 90 degrees F.

4.2.6.3.1 Direct evaporative cooling systems shall not be used, due to lack of control on humidity levels.

4.2.6.4 - Alarms shall be provided to notify assigned school personnel if environmental conditions approach or exceed bounds of operational conditions.

4.2.7 Connectivity standards.

4.2.7.1 - Wireless. Data cabling shall be planned to support appropriately spaced multiple-antenna wireless networking infrastructure allowing for wireless access points to support expected quantity of connected devices and required bandwidth. Support for 802.11b/g/n, 802.11ac, and/or newer protocols are recommended.

4.2.7.2 - Wired.

4.2.7.2.1 - Cabling. All new runs of copper data cable should be Category 6 cable or newer standards. Any data outlet should be supplied by two cables. Unshielded twisted pair (UTP) shall be used unless local conditions warrant otherwise.

4.2.7.2.2 - Telecom Rooms (TRs) and Equipment Rooms (ERs). TRs and ERs shall be connected by conduit and a combination of copper and fiber optic cable to allow for maximum data performance and upgradeability.

4.2.7.2.3 - TR to classroom. Classrooms should have a data outlet on the wall at the front and back of the room at a minimum for network/ internet access. Additional cabling may be warranted for security, audiovisual and special systems purposes.

4.2.7.2.4 - TR to office, and library or technology/media centers. Any areas designed for independent work or study should have a dedicated data ~~jack~~ outlet with two copper cable runs each.

4.2.7.2.5 - TR to common areas, auditorium, and cafeteria. Common areas should contain data outlets located as required to support program and curriculum requirements.

4.3 <u>Building site requirements. Functionality of existing and planned public school facilities for core educational programs, particularly those educational programs for which the State Board has adopted state model content standards. Capacity of existing and planned public school facilities, taking into consideration potential expansion of services for the benefit of students such as full-day kindergarten and preschool- and school-based health services and programs.</u>

4.3.1 **Traditional education model, S.T.E.M. & Montessori / Expeditionary education models.**

4.3.1.1 - Minimum occupancy requirements for schools:

Median Gross Square Foot (GSF) Per Pupil								
	Traditional ES (K-5)		Traditional MS (6-8)		Traditional HS (9-12)		Traditional K-12	
F.T.E.s	GSF/Pupil	Total GSF	GSF/Pupil	Total GSF	GSF/Pupil	Total GSF	GSF/Pupil	Total GSF
100	151	15,064	161	16,102	192	19,183	164	16,393
200	146	29,197	159	31,813	190	38,030	161	32,298
300	141	42,401	157	47,136	188	56,540	159	47,715
400	137	54,674	155	62,068	187	74,713	157	62,645
500	132	66,017	153	76,610	185	92,550	154	77,087
600	127	76,429	151	90,763	183	110,050	152	91,041
700	123	85,912	149	104,526	182	127,214	149	104,508
800	118	94,464	147	117,899	180	144,041	147	117,488
900	113	102,086	145	130,883	178	160,531	144	129,979
1000	109	108,778	143	143,476	177	176,685	142	141,984
1100	104	114,540	142	155,680	175	192,502	140	153,500
1200	99	119,371	140	167,494	173	207,982	137	164,529

Median Gross Square Foot Per Pupil - Alternate Programs (Expeditionary (Exp.), Montessori (Mtsri.), S.T.E.M.)												
	Alt. ES (GSF/Pupil)			Alt. MS (GSF/Pupil)			Alt. HS (GSF/Pupil)			Alt. K12 (GSF/Pupil)		
F.T.E.s	Exp.	Mtsri.	S.T.E.M.	Exp.	Mtsri.	S.T.E.M.	Exp.	Mtsri.	S.T.E.M.	Exp.	Mtsri.	S.T.E.M.
100	160	161	156	171	169	166	203	198	201	174	172	180
200	155	156	151	169	167	164	202	196	199	171	170	177
300	150	151	146	167	165	162	200	194	197	169	167	175
400	145	146	141	164	163	160	198	192	195	166	164	172
500	140	141	137	162	161	158	196	191	194	163	162	169
600	135	136	132	160	159	156	194	189	192	161	159	167
700	130	131	127	158	157	154	193	187	190	158	157	164
800	125	126	122	156	155	152	191	185	188	156	154	161
900	120	121	117	154	153	150	189	184	187	153	152	159
1000	115	116	113	152	151	148	187	182	185	151	149	156
1100	110	111	108	150	149	146	186	180	183	148	146	153
1200	105	106	103	148	147	144	184	179	181	145	144	151

Square Foot Values - Assembly								
	ES Assembly		MS Assembly		HS Assembly		K12 Assembly	
F.T.E.s	Cafeteria	Auditorium	Cafeteria	Auditorium	Cafeteria	Auditorium	Cafeteria	Auditorium
100	675	1,300	675	1,500	675	1,700	675	1,700
200	1,200	1,600	1,200	1,800	1,200	2,000	1,200	2,000
300	1,800	1,900	1,800	2,100	1,800	2,300	1,800	2,300
400	2,400	2,400	2,400	2,600	2,400	2,800	2,400	2,800
500	3,000	2,700	3,000	2,900	3,000	3,100	3,000	3,100
600	3,600	3,000	3,600	3,200	3,600	3,400	3,600	3,400
700	4,200	3,900	4,200	3,900	4,200	3,900	4,200	3,900
800	4,800	4,200	4,800	4,200	4,800	4,200	4,800	4,200
900	5,400	4,500	5,400	4,500	5,400	4,500	5,400	4,500
1000	6,000	4,800	6,000	4,800	6,000	4,800	6,000	4,800
1100	6,600	5,100	6,600	5,100	6,600	5,100	6,600	5,100
1200	7,200	5,400	7,200	5,400	7,200	5,400	7,200	5,400

- Cafeteria Capacity assumes three (3) seatings without a secondary function overlay.

- Auditorium Capacity SF is sized for 1/3 of General enrollment and is inclusive of stage (size varies: 1,000 to 1,800); Basis is 9 SF per seat (1/3 FTES) plus stage at various sizes, stage includes a small amount of storage or similar support.

Square Foot (SF) Values - Core Classrooms (Minimum (Min) classroom size = 675 sf)								
	ES Min (24-30 FTES)		MS Min (24-30 FTES)		HS Min (24-30 FTES)		K12 Min (24-30 FTES)	
F.T.E.s	SF/Pupil	Total SF	SF/Pupil	Total SF	SF/Pupil	Total SF	SF/Pupil	Total SF
Kindergarten	38	1,140	-	-	-	-	38	1,140
Grade 1	32	960	-	-	-	-	32	960
Grade 2	32	960	-	-	-	-	32	960
Grade 3	32	960	-	-	-	-	32	960
Grade 4	30	900	-	-	-	-	30	900
Grade 5	30	900	-	-	-	-	30	900
Grade 6	-	-	30	900	-	-	30	900
Grade 7	-	-	28	840	-	-	28	840
Grade 8	-	-	28	840	-	-	28	840
Grade 9	-	-	-	-	28	840	28	840
Grade 10	-	-	-	-	28	840	28	840
Grade 11	-	-	-	-	28	840	28	840
Grade 12	-	-	-	-	28	840	28	840
Montessori	40	1,200	40	1,200	40	1,200	40	1,200
Expeditionary	36	1,080	36	1,080	36	1,080	36	1,080

Square Foot (SF) Values - Exploratory Spaces (minimum size = 675 sf)								
	ES Min (24-30 F.T.E.s)		MS Min (24-30 F.T.E.s)		HS Min (24-30 F.T.E.s)		K12 Min (24-30 F.T.E.s)	
F.T.E.s	SF/Pupil	Total SF	SF/Pupil	Total SF	SF/Pupil	Total SF	SF/Pupil	Total SF
Comp/Tech	30		32	-	32	-	32	
Music	35		35	-	35	-	35	
Science	38		40		44		44	
Lecture	28		28		28		28	
Art	35		40		45		45	
Gym / MP	3,000 SF (50'x60')		5,400 SF (60'x90')		7,300 SF (70'x104')		7,300 SF (70'x104')	
Special Ed	37		37		37		37	
VoAg	-	-	-	-	60	-	60	-
Media Center	1200 sf (30 occ)		2400 sf (60 occ)		3600 sf (60 occ)		3600 sf (60 occ)	
"Gymatorium"	4,400 SF (See notes)		4,400 SF (See notes)		-		-	

- ES Gymnasium basis is 50'X60' play area; Capacity Assumes (GE.25)/7 periods (without fixed seats)*

- MS Gymnasium basis is 60'X90' play area; Capacity Assumes (GE.5)/7 periods (without fixed seats)*

- HS Gymnasium basis is 70'X104' practice gym; Capacity Assumes (GE.5)/7 periods (with limited fixed seats) Note: National Federation of State High School Association's standards outline an "ideal" court for high school age as 84'x50' (and not greater than 94'x50')*

- "Gymatorium" basis is 50'x60' play area and 1000 SF platform stage with 400 SF storage

Instructor / Support Areas		
Space Type:	**Square Feet**	**Notes:**
Office - typical	120	
Office - large	150	
Work room	250	Multiple indivual (or in aggregate) may be required due to scale
Team planning (conf)	240	12-16 occupants (assembly use)
Instruction - sm group	320	16 occupants (classroom use)
Storage	50	Ave per instructor
Staff toilets	50	Multiple may be required due to scale

4.3.2 **Other rooms.**

4.3.2.1 - Facilities with preschools shall comply with Rules Regulating Child Care Centers (Less Than 24-Hour Care) 12 CCR 2509-8 and shall comply with the Colorado Department of Public Health and Safety's Regulations Governing Child Care, 6 CCR 1010-7.

4.3.2.2 - Special education classrooms. Special Education classrooms and facilities meeting or exceeding the accessibility and adaptive needs of the current and reasonably anticipated student population, in accordance with Section 504 and Title II of the Americans with Disabilities Act, the Exceptional Children's Educational Act, and Individuals with Disabilities Education Act.

4.4 Building performance standards and guidelines for green building and energy efficiency.

Section 24-30-1305.5 C.R.S., requires all new facilities, additions, and renovation projects funded with 25% or more of state funds to conform with the High Performance Certification Program (HPCP) policy adopted by the Office of the State Architect (OSA) if:

- The new facility, addition, or renovation project contains 5,000 or more building square feet; and
- The project includes an HVAC system; and
- If increased initial cost resulting from HPCP can be recouped by decreased operational costs within 15 years, and
- In the case of a renovation project, the cost of the renovation exceeds 25% of the current value of the property.

4.4.1 **High Performance Certification Programs.**

4.4.1.1 The Department of Personnel and Administration, Office of the State Architect has determined the following three guidelines as meeting the High Performance Certification Program (HPCP) requirements per C.R.S.24-30-1305.5; the U.S. Green Building Council, Leadership in Energy and Environmental Design – New Construction (USGBC LEED™-NC) guideline with Gold as the targeted certification level; and the Green Building Initiative (GBI), Green Globes guideline with Three Globes the targeted certification level; and for the Colorado Department of Education, K-12 construction, the Collaborative for High Performance Schools (US-CHPS) is an optional guideline with Verified Leader as the targeted certification level.

4.4.1.2 – LEED, or Leadership in Energy and Environmental Design (for schools) is a globally recognized symbol of excellence in green building.

4.4.1.2.1 LEED is an internationally recognized certification system that measures a building using several metrics, including: energy savings, water efficiency, sustainable land use, improved air quality, and stewardship of natural resources.

4.4.1.2.2 Points are awarded on a 100-point scale, and credits are weighted to reflect their potential environmental impacts. Different levels of certification are granted based on the total number of earned points. The four progressive levels of certification from lowest to highest are: certified, silver, gold and platinum.

4.4.1.3 United States Collaborative for High Performance Schools (US-CHPS). US-CHPS reflects the three priority outcomes of the Core Criteria. These are, in order of importance.

4.4.1.3.1 Maximize the health and performance of students and staff.

4.4.1.3.2 Conserve energy, water and other resources in order to save precious operating dollars.

4.4.1.3.3 Minimize material waste, pollution and environmental degradation created by a school.

4.4.1.3.4 The CHPS National Technical Committee has weighted the available point totals for prerequisites and credits in seven categories to reflect these three priorities.

Renewable energy strategies.

4.4.2.1 - Solar Photovoltaic / Solar Thermal.

4.4.2.2 - Geothermal / Geo exchange.

4.4.2.3 - Wind.

4.4.2.4 - Passive Solar Design.

4.4.3 **Energy management plan.**

- Energy programs assist with creating a culture of energy efficiency within a school. Reference Energy Star Guidelines for Energy Management to help develop a plan.

Other energy efficient options.

- ENERGY STAR Labeled HVAC / mechanical systems.

- Windows, doors, and skylights (collectively known as fenestration).

4.4.1.4 - Building Envelope.

4.4.1.4.1 - The interface between the interior of the building and the outdoor environment, including the walls, roof, and foundation – serves as a thermal barrier and plays an important role in determining the amount of energy necessary to maintain a comfortable indoor environment relative to the outside environment.

4.4.1.4.2 - Roof. Roof design and materials can reduce the amount of air conditioning required in hot climates by increasing the amount of solar heat that is reflected, rather than absorbed, by the roof. For example, roofs that qualify for ENERGY STAR® are estimated to reduce the demand for peak cooling by 10 to 15 percent.

4.4.1.4.3 - Insulation is important throughout the building envelope.

4.4.1.5 - Lighting.

4.4.1.5.1 - Light emitting diodes (LEDs), compact fluorescents (CFLs) and fluorescent lighting should be considered over traditional incandescent lighting.

4.4.1.6 - Commissioning, retro commissioning and re-commissioning.

4.4.1.6.1 - Commissioning ensures that a new building operates initially as the owner intended and that building staff are prepared to operate and maintain its systems and equipment.

4.4.1.6.2 - Retro commissioning is the application of the commissioning process to existing buildings.

4.4.1.6.3- Re-commissioning is another type of commissioning that occurs when a building that has already been commissioned, undergoes another commissioning process.

4.4.1.7 - Measurement and verification. Measurement and verification (M&V) is the term given to the process for quantifying savings delivered by an Energy Conservation Measure (ECM), as well as the sub-sector of the energy industry involved with this practice. M & V demonstrates how much energy the ECM has avoided using, rather than the total cost saved.

4.4.2 - **Landscaping**

4.4.2.1.1 Irrigation: Consider water management which could include reducing storm-water run-off, preventing erosion and decreasing the effects of soil expansion.

4.4.2.1.2 Plant Materials: Consider Native materials, Xeriscaping.

4.4.2.1.3 Grass/ Sod Areas: Consider use of grass/ sod areas, consider water use, alternate options if planting sports fields.

4.4.3 – **Permitting**

4.4.3.1 Application for public school construction projects permits can be made at the DFPC website, www.colorado.gov/dfpc > Sections > Fire & Life Safety > Permits and Construction > School Construction.

4.4.3.2 If a local building department has entered into a memorandum of understanding (MOU) with DFPC, that local building department is considered a Prequalified Building Department (PBD). A School District may, at its discretion, choose to apply for permit through DFPC or the PBD that has jurisdiction of construction projects for the location of the school construction project. The list of PBD' is available on the DFPC website, School Construction.

4.5 <u>The historic significance of existing public school facilities and their potential to meet current programming needs by rehabilitating such facilities.</u>

4.5.1 Buildings that are 50 years or older at the time of application may be subject to the State Register Act 24-80.1-101 to 108 in determining if the affected properties have historical significance.

4.5.1.1 - Historical significance means having importance in the history, architecture, archaeology, or culture of this state or any political subdivision thereof or of the United States, as determined by the state historical society.

When determining if a facility should be replaced, the cost to rehabilitate versus the cost to replace should be evaluated.

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Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Public School Capital Construction Assistance

on 11/09/2017

1 CCR 303-1

RULES PERTAINING TO THE ADMINISTRATION OF THE PUBLIC SCHOOL CAPITAL CONSTRUCTION ASSISTANCE BOARD

The above-referenced rules were submitted to this office on 11/10/2017 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.

November 21, 2017 14:39:19

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Permanent Rules Adopted

Department

Department of Education

Agency

Division of Public School Capital Construction Assistance

CCR number

1 CCR 303-3

Rule title

1 CCR 303-3 BUILDING EXCELLENT SCHOOLS TODAY GRANT PROGRAM 1 - eff 12/30/2017

Effective date

12/30/2017

COLORADO DEPARTMENT OF EDUCATION

DIVISION OF PUBLIC SCHOOL CAPITAL CONSTRUCTION ASSISTANCE

1 CCR 303-3

BUILDING EXCELLENT SCHOOLS TODAY GRANT PROGRAM

Authority

§ 22-43.7-106(2)(i)(I) C.R.S., the Public School Capital Construction Assistance Board may promulgate rules, in accordance with Article 4 of Title 24, C.R.S., as are necessary and proper for the administration of the BEST Act.

Scope and Purpose

This regulation shall govern the Building Excellent Schools Today (BEST) Public School Capital Construction Assistance Program pursuant to the BEST Act.

1. Definitions

1.1. "Applicant" means an entity that submits an Application for Financial Assistance to the Board, including:

1.1.1. A School District;

1.1.2. A District Charter School;

1.1.3. An Institute Charter School;

1.1.4. A Board of Cooperative Educational Services (BOCES);

1.1.5. The Colorado School for the Deaf and Blind.

1.2. "Application" means the Application for Financial Assistance submitted by an Applicant.

1.3. "Assistance Fund" means the public school capital construction assistance fund created in § 22-43.7-104(1) C.R.S.

1.4. "Authorizer" means the School District that authorized the charter contract of a Charter School or, in the case of an Institute Charter School, as defined in § 22-43.7-106(1) C.R.S., the State Charter School Institute created and existing pursuant to § 22-30.5-502(6) C.R.S.

1.5. "BEST Act" means § 22-43.7-101 C.R.S. et seq.

1.6. "BEST Lease-purchase Funding" means funding from a sublease-purchase agreement entered into between the state and an entity as described in 2.1 pursuant to § 22-43.7-110(2) C.R.S.

1.7. "BEST Cash Grant" means cash funding as a matching grant.

1.8. "BEST Emergency Grant" means a request for Financial Assistance in connection with a Public School Facility Emergency.

1.9. “Board” means the Public School Capital Construction Assistance Board created in § 22-43.7-106 (1) C.R.S.

1.10. “Board of Cooperative Educational Services" or “BOCES” means a Board of Cooperative Services created and existing pursuant to § 22-5-104 C.R.S. that is eligible to receive State moneys pursuant to § 22-5-114 C.R.S.

1.11. “Capital Construction” has the same meaning as set forth in § 24-30-1301 (2); C.R.S. except that the term also includes technology, as defined in § 22-43.7-109 (5)(a)(I)(B)

1.12. “Capital Renewal Reserve" means moneys set aside by an Applicant that has received an award for a project for the specific purpose of replacing major Public School Facility systems with projected life cycles such as, but not limited to, roofs, interior finishes, electrical systems and heating, ventilating, and air conditioning systems.

1.13. “Charter School” means a Charter School as described in § 22-54-124 (1)(f.6)(I)(A) or (1)(f.6)(I)(B) C.R.S.

1.14. “Eligible Charter School” means a qualified charter school that is eligible for the Loan Program as defined in § 22-30.5-408(1)(c) C.R.S. and authorized to receive financial assistance pursuant to 22-43.7-103(7) C.R.S.

1.15. “Division” means the Division of Public School Capital Construction Assistance created in § 22-43.7-105 C.R.S.

1.16. “Financial Assistance” means BEST Cash Grants; BEST Lease-purchase Funding; BEST Emergency Grants; funding provided as matching grants by the Board from the Assistance Fund to an Applicant; or any other expenditure made from the Assistance Fund for the purpose of financing Public School Facility Capital Construction as authorized by the BEST Act.

1.17. “Grantee” means a School District, Charter School, Institute Charter School, BOCES or the Colorado School for the Deaf and Blind that has applied for Financial Assistance and received an award.

1.18. “Institute Charter School” means a Charter School chartered by the Colorado State Charter School Institute pursuant to § 22-30.5-507 C.R.S.

1.19. “Loan Program” means the charter school matching moneys loan program pursuant to 22-43.7-110.5 C.R.S.

1.20. “Matching Moneys” means moneys required to be used directly to pay a portion of the costs of a Public School Facility Capital Construction project by an Applicant as a condition of an award of Financial Assistance to the Applicant pursuant to § 22-43.7-109 (9) C.R.S and/or 22-43.7-110(2) C.R.S.

1.21. “Project” means the Capital Construction Project for which Financial Assistance is being requested.

1.22. “Public School Facility” means a building or portion of a building used for educational purposes by a School District, Charter School, Institute Charter School, a Board of Cooperative Education Services, the Colorado School for the Deaf and Blind created and existing pursuant to § 22-80-102(1)(a) C.R.S., including but not limited to school sites, classrooms, data centers, libraries and media centers, cafeterias and kitchens, auditoriums, multipurpose rooms, and other multi-use spaces; except that “Public School Facility” does not include a learning center, as defined in § 22-30.7-102(4) C.R.S., that is not used for any other public school purpose and is not part of a building

otherwise owned, or leased in its entirety, by a School District, a Board of Cooperative Education Services, a Charter School, Institute Charter School, or the Colorado School for the Deaf and Blind for educational purposes.

1.23. "Public School Facility Construction Guidelines" means Public School Facility Construction Guidelines as established in § 22-43.7-107 C.R.S.

1.24. "Public School Facility Emergency" means an unanticipated event that makes all or a significant portion of a Public School Facility unusable for educational purposes or poses an imminent threat to the health or safety of persons using the Public School Facility.

1.25. "School District" means a School District, other than a junior or community college district, organized and existing pursuant to law in Colorado pursuant to § 22-43.7-103 (14) C.R.S.

1.26. "State Board" means the State Board of Education created and existing pursuant to section 1 of article IX of the State Constitution.

1.27. "Statewide Assessment" means the Financial Assistance priority assessment conducted pursuant to § 22-43.7-108 C.R.S.

2. Eligibility

2.1. The following entities are eligible to apply for Financial Assistance:

2.1.1. A School District;

2.1.2. A District Charter School or individual school of a School District if the school applies through the School District in which the school is located. The School District shall forward the Application from a Charter School or individual school of a School District to the Division with its comments;

2.1.3. An Institute Charter School;

2.1.4. A Board of Cooperative Educational Services (BOCES);

2.1.5. The Colorado School for the Deaf and Blind.

2.2. The Board may only provide Financial Assistance for a Project for a Public School Facility that the Applicant owns or will have the right to own in the future under the terms of a lease-purchase agreement with the owner of the facility or a sublease-purchase agreement with the state entered into pursuant to § 22-43.7-110(2) C.R.S.

2.3. The Board, with the support of the Division and subject to the approval of the State Board and the lessor of the property, may provide financial assistance as specified in this section to an applicant that is operating or will operate in the next budget year in a leased facility that is:

2.3.1. Listed on the state inventory of real property and improvements and other capital assets maintained by the Office of the State Architect pursuant to § 24-30-1303.5, C.R.S.; or

2.3.2. State-owned property leased by the State Board of Land Commissioners, described in § 36-1-101.5, C.R.S., to the applicant.

2.3.3. An award of financial assistance must be used to preserve or enhance the value of state-owned, leased property.

2.4. The Board may only provide financial assistance for a capital construction project for a public school in existence for at least three years at any time before the Board receives an application for financial assistance.

2.5. For a BEST Emergency Grant, the Applicant shall be operating in the Public School Facility for which Financial Assistance is requested.

3. Assistance Board

3.1. Conflict of Interest

3.1.1. In regard to Board members providing information to potential Applicants:

3.1.1.1. Board members shall exercise caution when responding to requests for information regarding potential Applications, especially in regard to questions that may increase the chances that the Board would give a favorable recommendation on an Application or Project.

3.1.2. If a potential or actual conflict of interest occurs with a Board member, the Board member will complete a Conflict of Interest disclosure form and it will be presented at the following CCAB meeting. The Division shall document the date of the disclosure, the name of the board member and conflict disclosed, and the documented disclosure shall be retained and made available at all board meetings which evaluation of applications or voting occurs.

3.1.3. Board members, and their firms, shall not present their position on the Board to School Districts, Charter Schools, Institute Charter Schools, BOCES, or the Colorado School for the Deaf and Blind as an advantage for using their firm over other firms in a bid to provide services on any capital construction project.

3.1.4. In regard to Board members avoiding potential conflicts of interest in evaluation of and voting on Applications:

3.1.4.1. If a Board member's firm has no prior involvement regarding the Project included in an Application and the Board member does not have a direct or indirect substantial financial interest in an Application, the Board member may appropriately vote on the Application, but may not bid or work on the Project. The Board member's firm may bid or work on the Project, so long as the Board member plays no role in the entire procurement process and the Board member discloses any conflict of interest;

3.1.4.2. No Board member shall participate in the Board's evaluation process, including voting, for any Application when the Board member has a direct or indirect substantial financial interest in the Project or Application or the Board member's firm has had prior involvement with the Applicant directly related to the Project or Application;

3.1.4.3. At all times Board members must exercise judgment and caution to avoid conflicts of interest and/or appearance of impropriety, and should inform the Division staff of any questionable situation that may arise. A Board member may recuse himself or herself from any vote.

3.1.4.4. Board members shall be aware of and comply with the Colorado Code of Ethics, § 24-18-108.5(2), C.R.S., and shall not perform any official act which may have a direct economic benefit on a business or other undertaking in which the member has a direct or substantial financial interest.

3.1.4.4.1. A financial interest means a substantial interest held by an individual which is (i) an ownership interest in a business, (ii) a creditor interest in an insolvent business, (iii) an employment or prospective employment for which negotiations have begun, (iv) an ownership interest in real or personal property, (v) a loan or any other, or (vi) a directorship or officer ship in a business.

3.1.4.4.2. An official action means any vote decision, recommendation, approval, disapproval or other action, including inaction, which involves the use of discretionary authority.

3.1.5. In cases where a Board member has violated the conflict of interest policy as determined by the board chair, the Division Director will notify the Board member's appointing authority of the violation in writing. In the event of a conflict involving the board chair, the vice-chair will make the determination.

4. Matching Requirement

4.1. Except as provided below in section 4.2, Financial Assistance may be provided only if the Applicant provides Matching Moneys in an amount equal to a percentage of the total cost of the Project determined by the Board after consideration of the Applicant's financial capacity, based on the following factors:

4.1.1. With respect to a School District's Application for Financial Assistance:

4.1.1.1. The School District's assessed value per pupil relative to the state average;

4.1.1.2. The School District's median household income relative to the state average;

4.1.1.3. The School District's bond redemption fund mill levy relative to the statewide average;

4.1.1.4. The percentage of pupils enrolled in the School District who are eligible for free or reduced-cost lunch;

4.1.1.5. The school district's current available bond capacity remaining;

4.1.1.6. The school district's unreserved fund balance as a percentage of its annual budget; and

4.1.1.7. The amount of effort put forth by the School District to obtain voter approval for a ballot question for bonded indebtedness, including but not limited to, a ballot question for entry by the district into a sublease-purchase agreement of the type that constitutes an indebtedness of the district pursuant to § 22-32-127 C.R.S., during the ten years preceding the year in which the district submitted the Application, which factor may be used only to reduce the percentage of Matching Moneys required from a district that has put forth such effort and not to increase the amount of Matching Moneys required from any district;

4.1.1.8. A School District shall not be required to provide any amount of Matching Moneys in excess of the difference between the School District's limit of bonded indebtedness, as calculated pursuant to § 22-42-104 C.R.S., and the total amount of outstanding bonded indebtedness already incurred by the School District.

4.1.2. With respect to a Board of Cooperative Education Services' Application for Financial Assistance:

4.1.2.1. The average assessed value per pupil of all members of the Board of Cooperative Education Services participating in the Project relative to the state average;

4.1.2.2. The average median household income of all members of the Board of Cooperative Education Services participating in the Project relative to the state average;

4.1.2.3. The average bond redemption fund mill levy of all members of the Board of Cooperative Education Services participating in the Project relative to the statewide average;

4.1.2.4. The percentage of pupils enrolled in the member schools within the Board of Cooperative Education Services that are participating in the Project who are eligible for free or reduced-cost lunch;

4.1.2.5. The average available bond capacity remaining of all members of the board of cooperative services participating in the capital construction project;

4.1.2.6. The average unreserved fund balance as a percentage of the annual budget of all members of the board of cooperative services participating in the capital construction project; and

4.1.2.7. The amount of effort put forth by the members of the Board of Cooperative Education Services to obtain voter approval for a ballot question for bonded indebtedness, including but not limited to a ballot question for entry by any member into a sublease-purchase agreement of the type that constitutes an indebtedness of the member pursuant to § 22-32-127 C.R.S., during the ten years preceding the year in which the Board of Cooperative Education Services submitted the Application, which factor may be used only to reduce the percentage of Matching Moneys required from a Board of Cooperative Education Services whose members, or any of them, have put forth such effort and not to increase the amount of Matching Moneys required from any Board of Cooperative Education Services.

4.1.3. With respect to a Charter School's Application for Financial Assistance:

4.1.3.1. The weighted average of the match percentages for the school districts of residence for the students enrolled in a district charter school or fifty percent of the average of the match percentages for all school districts in the state for an institute charter school;

4.1.3.2. Whether the charter school's authorizer retains no more than ten percent of its capacity to issue bonds;

4.1.3.3. Whether the charter school is operating in a district-owned facility at the time it submits its application;

4.1.3.4. In the ten years preceding the year in which the charter school submits the application, the number of times the charter school has attempted to obtain or has obtained:

4.1.3.4.1. Bond proceeds pursuant to 22-30.5-404 C.R.S through inclusion in a ballot measure submitted by the charter school’s authorizer to the registered electors of the school district:

4.1.3.4.2. Proceeds from a special mill levy for capital needs pursuant to 22-30.5-405 C.R.S.;

4.1.3.4.3. Grant funding for capital needs from a source other than the assistance fund; and

4.1.3.4.4. Funding for capital construction from bonds issued on its behalf by the Colorado Educational and Cultural Facilities authority created and existing pursuant to 23-15-104(1)(a), C.R.S., or from some other source of financing.

4.1.3.5. If the charter school is a district charter school, the student enrollment of the charter school as a percentage of the student enrollment of the charter school's authorizing school district.

4.1.3.6. The percentage of students enrolled in the charter school who are eligible for the federal free and reduced-cost lunch program in relation to the overall percentage of students enrolled in the public schools in the State who are eligible for the federal free and reduced-cost lunch program.

4.1.3.7. The percentage of the per pupil revenue received by the charter school that the charter school spends on facility costs other than facilities operations and maintenance.

4.1.3.8. The charter school's unreserved fund balance as a percentage of its annual budget.

4.1.3.9. The match percentage for a charter school calculated based on the above criteria shall not be higher than the highest match percentage for a school district, or lower than the lowest match percentage for a school district, in the same grant cycle.

4.2. Waiver or reduction of Matching Moneys

4.2.1. An Applicant may apply to the Board for a waiver or reduction of the Matching Moneys requirement. Such application shall discuss unique issues demonstrating why the percentage is not representative of the Applicant's current financial state. The Board may grant a waiver or reduction if it determines:

4.2.1.1. That the waiver or reduction would significantly enhance educational opportunity and quality within a School District, Board of Cooperative Education Services, or Applicant school,

4.2.1.2. That the cost of complying with the Matching Moneys requirement would significantly limit educational opportunities within a School District, Board of Cooperative Education Services, or Applicant school, or

4.2.1.3. That extenuating circumstances deemed significant by the Board make a waiver appropriate.

4.2.2. An applicant must complete a waiver application and submit it to the Board in conjunction with their grant application. The waiver application shall explain issues and impacts in detail, including dollar amounts of the issues and impacts, and demonstrate why each of the factors used to calculate their Matching Moneys percentage are not representative of their actual financial capacity. The Board will determine the merit of the waiver by evaluating each wavier application using the prescribed wavier application evaluation tool.

4.3. Charter School matching moneys Loan Program.

4.3.1. The Charter School matching moneys Loan Program will assist Eligible Charter Schools in obtaining the Matching Moneys requirement for an award of Financial Assistance pursuant to 22-43.7-109 C.R.S.

4.3.2. An Eligible Charter School that chooses to seek a loan through the Loan Program shall apply to the Board to receive a loan.

4.3.3. To be an Eligible Charter School for the Loan Program means a Charter School that is described in § 22-30.5-104 or an Institute Charter School as that term is defined in § 22-30.5-502 has a stand-alone credit assessment or rating of at least investment grade by a nationally recognized rating agency at the time of issuance of any qualified Charter School bonds on behalf of the Charter School by the Colorado educational and cultural facilities authority pursuant to the "Colorado Educational and Cultural Facilities Authority Act", article 15 of title 23, C.R.S., and that has been certified as a qualified Charter School by the State Treasurer.

4.3.4. The Board may approve a loan for an Eligible Charter School in an amount that does not exceed fifty percent of the amount of Matching Moneys calculated for the Eligible Charter School pursuant to 22-43.7-109(9)(c) C.R.S.

4.3.5. If a loan is approved by the Board the project will be considered as a BEST Lease-Purchase project pursuant to 22-43.7-110.5(2)(b)C.R.S., and the proposed project must be one that is financeable.

4.3.6. The Board shall direct the State Treasurer to include the amount of a loan approved pursuant to the terms in the Lease-Purchase agreement entered into pursuant to 22-43.7-110 (2) C.R.S. to provide Financial Assistance to the Eligible Charter School for which the loan is approved.

4.3.7. Charter School Loan Program application

4.3.7.1. An application for a loan shall include:

4.3.7.1.1. Basic contact information, justification for seeking a BEST loan and documentation of a stand-alone credit assessment or rating of at least investment grade by a nationally recognized rating agency for the Charter School;

4.3.7.1.2. Identify the Charter Schools current facilities and indicate if those facilities are owned, leased or in a lease-purchase agreement;

4.3.7.1.3. A current credit disclosure statement along, any business notes payable or reviews, notices or warnings from the Charter School's authorizer;

4.3.7.1.4. Financial information to include internal financial statements, CPA Audits and IRS 990's for the previous three years. Detailed operating budget for the current and next year. The Charter School's projected operating budget for the next five years. Enrollment figures for the previous three years, the current year and the following three years;

4.3.7.1.5. CDE listed minimum match requirement for the BEST grant;

4.3.7.1.6. Amount of total match provided by the Charter School for the BEST grant;

4.3.7.1.7. Amount of the loan request for the BEST grant;

4.3.7.1.8. A loan application from a Charter School shall include signatures of the District Superintendent, School Board Officer, and the Charter School Director;

4.3.7.1.9. A loan application from an Institute Charter School shall include signatures of the Charter School Institute Director and the Institute Charter School Director;

4.3.7.1.10. Applications that are incomplete may be rejected without further review.

4.3.8. Charter School Loan Program deadline for submission

4.3.8.1. The loan application, along with any supporting material, shall be submitted with the BEST grant application on or before the BEST grant application due date.

4.3.8.2. An application will not be accepted unless it is received in the Board office by 4:30 p.m. on or before the deadline date determined by the board.

4.3.8.3. The Board may, in its sole discretion and upon a showing of good cause in written request from an Applicant, extend the deadline for filing an Application.

4.3.9. To receive a loan through the Loan Program, an Eligible Charter School shall:

4.3.9.1. Authorize the State Treasurer to withhold moneys payable to the Eligible Charter School in the amount of the loan payments pursuant to 22-30.5-406 C.R.S.;

4.3.9.2. Pay an interest rate on the loan that is equal to the interest rate paid by the State Treasurer on the Lease-Purchase agreement entered into pursuant to 22-43.7-110 C.R.S. to provide Financial Assistance to the Eligible Charter School for which the loan is approved;

4.3.9.3. Amortize the loan payments over the same period in years as the Lease-Purchase agreement entered into pursuant to 22-43.7-110 C.R.S. to provide Financial Assistance to the Eligible Charter School for which the loan is approved; except that the Eligible Charter School may pay the full amount of the loan early without incurring a prepayment penalty; and

4.3.9.4. Create an escrow account for the benefit of the state with a balance in the amount of six months of loan payments.

5. Applications

5.1. Deadline for submission

5.1.1. Except as provided below, Applications shall be filed with the Board on or before a date determined by the Board.

5.1.2. An Application will not be accepted unless it is received in the Board office by 4:00 p.m. on or before the deadline date determined by the Board. This does not apply to an Application in connection with a Public School Facility Emergency;

5.1.3. The Board may, in its sole discretion and upon a showing of good cause in a written request from an Applicant, extend the deadline for filing an Application.

5.2. The Board prefers Applications to be in electronic form, but one hard copy to the Board office is acceptable. Each Application shall be in a form prescribed by the Board and shall include, but not be limited to, the following (with supporting documentation):

5.2.1. A description of the scope and nature of the Project;

5.2.2. A description of the architectural, functional, and construction standards that are to be applied to the Project that indicates whether the standards are consistent with the Construction

Guidelines and provides an explanation for the use of any standard that is not consistent with the Construction Guidelines;

5.2.3. The estimated amount of Financial Assistance needed for the Project and the form and amount of Matching Moneys that the Applicant will provide for the Project;

5.2.4. If the Project involves the construction of a new Public School Facility or a major renovation of an existing Public School Facility, a demonstration of the ability and willingness of the Applicant to renew the Project over time that includes, at a minimum, the establishment of a capital renewal budget and a commitment to make annual contributions to a Capital Renewal Reserve within a School District's capital reserve fund or any functionally similar reserve fund separately maintained by an Applicant that is not a School District;

5.2.5. If the Application is for Financial Assistance for the renovation, reconstruction, expansion, or replacement of an existing Public School Facility, a description of the condition of the Public School Facility at the time the Applicant purchased or completed the construction of the Public School Facility and, if the Public School Facility was not new or was not adequate at that time, the rationale of the Applicant for purchasing the Public School Facility or constructing it in the manner in which it did;

5.2.6. A statement regarding the means by which the Applicant intends to provide Matching Moneys required for the project, including but not limited to voter-approved multiple-fiscal year debt or other financial obligations, utility cost savings associated with any utility costs-savings contract, as defined in § 24-30-2001 (6), gifts, grants, donations, or any other means of financing permitted by law, or the intent of the Applicant to seek a waiver of the Matching Moneys requirement. If an Applicant that is a School District or a Board of Cooperative Educational Services with a participating School District intends to raise Matching Moneys by obtaining voter approval to enter into a sublease-purchase agreement that constitutes an indebtedness of the district as pursuant to § 22-32-127 C.R.S., it shall indicate whether it has received the required voter approval or, if the election has not already been held, the anticipated date of the election;

5.2.7. A description of any efforts by the Applicant to coordinate Capital Construction projects with local governmental entities or community-based or other organizations that provide facilities or services that benefit the community in order to more efficiently or effectively provide such facilities or services, including but not limited to a description of any financial commitment received from any such entity or organization that will allow better leveraging of any Financial Assistance awarded;

5.2.8. If deemed relevant by the applicant, a statement of the applicant’s annualized utility costs, including electricity, natural gas, propane, water, sewer, waste removal, telecommunications, internet, or other monthly billed utility services, and the amount of any reduction in such costs expected to result if the applicant receives financial assistance;

5.2.9. A copy of any existing Master Plan or facility assessment relating to the facility(ies) for which Financial Assistance is sought;

5.2.10. Any other information that the Board may require for the evaluation of the project;

5.2.11. An Application from a School District shall include signatures of the Superintendent and a District Board Officer;

5.2.12. An Application from a Charter School shall include signatures of the District Superintendent, School Board Officer, and the Charter School Director;

5.2.13. An Application from an Institute Charter School shall include signatures of the Charter School Institute Director and the Institute Charter School Director;

5.2.14. An Application from a Board of Cooperative Educational Services shall include signatures of the BOCES Director and a BOCES Board Officer;

5.2.15. An Application from the Colorado School for the Deaf and Blind shall include signatures of the Colorado School for the Deaf and Blind Director and a Colorado School for the Deaf and Blind Board Officer.

5.3. BEST Lease-Purchase Funding

5.3.1. In addition to the information required in section 5.2 above, the Applicant shall agree to provide any necessary documentation related to securing the lease-purchase agreement.

5.4. BEST Emergency Grants

5.4.1. Applicant shall contact the Division by phone, fax, or email. Appropriate follow up documentation will be determined based on type and severity of emergency, including financial need.

5.4.2. In the event the Governor declares a disaster emergency, pursuant to § 24-33.5-704(4) C.R.S., the Division shall, as soon as possible following the declaration of the disaster emergency, contact each affected school facility in any area of the State in which the Governor declared the disaster emergency to assess any facility needs resulting from the declared disaster emergency.

5.4.2.1. The Division must report its findings to the Board as soon as possible following its outreach.

5.4.2.2. In determining whether to recommend to the State Board that Emergency Financial Assistance be provided, the Board shall consider the findings that the Division provided to the Board.

5.4.3. The Board shall meet within fifteen days of receiving the Application for a BEST Emergency Grant to determine whether to recommend to the State Board that emergency Financial Assistance be provided, the amount of any assistance recommended to be provided, and any conditions that the Applicant shall meet to receive the assistance.

5.5. Applications that are incomplete may be rejected without further review.

5.6. The Board may request supplementation of an Application with additional information or supporting documentation.

6. Application Review

6.1. Time for Review

6.1.1. The Board, with the support of the Division, will review the Applications;

6.1.2. The Board will submit the prioritized list of Projects to the State Board for which the Board is recommending Financial Assistance according to the timeline established by the Board;

6.1.3. In the case of Financial Assistance that involves lease-purchase agreements, the prioritized list is subject to both the preliminary approval of the state board and the final approval of the capital development committee.

6.1.4. The Board may, in its discretion, extend these deadlines.

6.2. The Board, taking into consideration the Statewide Financial Assistance Priority Assessment, conducted pursuant to § 22-43.7-108 shall prioritize and determine the type and amount of the grant or matching grant for Applications for Projects deemed eligible for Financial Assistance based on the following criteria, in descending order of importance:

6.2.1. Projects that will address safety hazards or health concerns at existing Public School Facilities, including concerns relating to Public School Facility security, and projects that are designed to incorporate technology into the educational environment

6.2.2. As used in § 22-43.7-109(5)(a)(1), "technology" means hardware, devices, or equipment necessary for individual student learning and classroom instruction, including access to electronic instructional materials, or necessary for professional use by a classroom teacher.

6.2.2.1. In prioritizing an Application for a Public School Facility renovation project that will address safety hazards or health concerns, the Board shall consider the condition of the entire Public School Facility for which the project is proposed and determine whether it would be more fiscally prudent to replace the entire facility than to provide Financial Assistance for the renovation project.

6.2.3. Projects that will relieve overcrowding in Public School Facilities, including but not limited to projects that will allow students to move from temporary instructional facilities into permanent facilities, and.

6.2.4. All other projects.

6.2.5. Among other considerations, the Board may take into account the following in reviewing Applications:

6.2.5.1. The amount of the matching contribution being provided in excess of or less than the minimum;

6.2.5.2. Whether the Applicant has been placed on financial watch by the Colorado Department of Education;

6.2.5.3. Overall condition of the Applicant's existing facilities;

6.2.5.4. The project cost per pupil based on number of pupils affected by the proposed Project;

6.2.5.5. The project life cycle.

6.2.5.6. The Public School Facility's Facility Condition Index (FCI), Colorado Facility Index (CFI), school priority score and construction guidelines score.

6.2.5.7. The Applicants ability to help itself, including available bonding capacity, planning and criteria in sections 4.1.1 or 4.1.2 or 4.1.3.

6.3. Additional actions the Board may take when reviewing an Application:

6.3.1. The Board may modify the amount of Financial Assistance requested or modify the amount of Matching Moneys required;

6.3.2. The Board may recommend funding a project in its entirety or recommend a partial award to the project;

6.3.2.1. If a project is partially funded a written explanation will be provided.

6.4. The Board shall submit to the State Board the prioritized list of Projects. The prioritized list shall include:

6.4.1. The Board's recommendation to the State Board as to the amount of Financial Assistance to be provided to each Applicant approved by the Board to receive funding and whether the assistance should be in the form of a BEST Cash Grant, BEST Lease-purchase Funding or a BEST Emergency Grant.

6.5. In considering the amount of each recommended award of Financial Assistance, the Board shall seek to be as equitable as practical in considering the total financial capacity of each Applicant.

7. BEST Lease-purchase Funding

7.1. Subject to the following limitations, the Board may instruct the State Treasurer to enter into lease-purchase agreements on behalf of the state to provide Lease-purchase Funding for Projects for which the State Board has authorized provision of Financial Assistance.

7.2. Whenever the State Treasurer enters into a lease-purchase agreement pursuant to § 22-43.7-110 C.R.S., the Applicant that will use the facility funded with the Lease-purchase Funding shall enter into a sublease-purchase agreement with the state that includes, but is not limited to, the following requirements:

7.2.1. The Applicant shall perform all the duties of the state to maintain and operate the Public School Facility that are required by the lease-purchase agreement;

7.2.2. The Applicant shall make periodic rental payments to the state, which payments shall be credited to the Assistance Fund as Matching Moneys of the Applicant;

7.2.3. Ownership of the Public School Facility shall be transferred by the state to the Applicant upon fulfillment of both the state's obligations under the lease-purchase agreement and the Applicant's obligations under the sublease-purchase agreement.

8. Payment and Oversight

8.1. Payment.

8.1.1. All Cash Grant Financial Assistance Grantees must sign a grant contract with CDE outlining the terms and conditions associated with the Financial Assistance.

8.1.2. All Financial Assistance awarded is expressly conditioned on the availability of funds.

8.1.3. Payment of Financial Assistance will be on a draw basis. As a Grantee expends funds on a Project, the Grantee may submit a request for funds to the Division on a fund request form provided by the Division. The fund request shall be accompanied by copies of invoices from the vendors for which reimbursement is being requested and any other documentation requested by the Division.

8.1.3.1. The Division will review the fund request and make payment. Payments will only be made for work that is included in the Project scope of work defined in the Application.

8.1.3.2. If the Grantee is a School District, request for payment shall come from the School District. Requests will not be accepted from individual School District schools.

8.1.3.3. If the Grantee is a District Charter School, request for payment shall come from the School District. Payment shall be made to the School District and the School District shall make payment to the charter school. The School District may not retain any portion of the moneys for any reason.

8.1.3.4. If the Grantee is an Institute Charter School, request for payment shall come from the Charter School Institute and the Charter School Institute shall make payment to the Institute Charter School. Payment shall be made directly to the Charter School Institute.

8.1.3.5. If the Grantee is a Board of Cooperative Educational Services, request for payment shall come from the Board of Cooperative Educational Services. Requests will not be accepted from individual Board of Cooperative Educational Services schools.

8.1.3.6. If the Grantee is the Colorado School for the Deaf and Blind, request for payment shall come from the Colorado School for the Deaf and Blind.

8.1.4. Payment of BEST Lease-purchase Funding will be determined by the terms of the lease-purchase agreement and any subsequent sublease-purchase agreements.

8.1.5. Each grant cycle the Board may make a motion to authorize up to 5% of the assistance fund dollars be used to address grant reserves for projects awarded in that given year.

8.1.5.1. Grant reserve requests shall be submitted on a Division provided application;

8.1.5.2. Grant reserve applications will be submitted to the Board as an action item at the board meeting following the date the grant reserve application was submitted to the Division.

8.1.5.3. Grant reserve draws shall be limited to issues that were unforeseen, unanticipated and could not have been known about or planned for at the time the Application was submitted.

8.2. Oversight

8.2.1. When a Grantee completes Project, it shall submit a final report to the Division on a Division provided form before final payment will be made. Once the final report is submitted and final payment is made, the Project shall be considered closed.

8.2.2. If a Grantee has not used all Financial Assistance on a closed out BEST Cash Grant, the unused balance will be returned to the Assistance Fund.

8.2.3. If a Grantee has not used all Financial Assistance on a closed out Lease-Purchase Grant, the unused balance will be treated in accordance with the Board policy on returning Matching Moneys.

8.2.4. The Division may make site visits to review Project progress or to review a completed Project;

8.2.5. The Division may require a Grantee to hire additional independent professional construction management to represent the Applicant's interests, if the Division deems it necessary due to

the size of the Project, the complexity of the Project, or the Grantee's ability to manage the Project with Grantee personnel.

8.2.6. Upon completion of a new school, major renovation or addition Project, the Grantee shall affix a permanent sign that reads: "Funding for this school was provided through the Building Excellent Schools Today Program from School Trust Lands," unless waived in writing by the Division.

9. Technical Consultation

9.1. The Division will provide technical consultation and administrative services to School Districts, Charter Schools, Institute Charter Schools, BOCES and the Colorado School for the Deaf and Blind.

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Office of the Attorney General

Tracking number: 2017-00416

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Public School Capital Construction Assistance

on 11/09/2017

1 CCR 303-3

BUILDING EXCELLENT SCHOOLS TODAY GRANT PROGRAM

The above-referenced rules were submitted to this office on 11/10/2017 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.

November 21, 2017 14:39:02

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Natural Resources

Agency

Division of Water Resources

CCR number

2 CCR 402-14

Rule title

2 CCR 402-14 RULES AND REGULATIONS FOR ADMINISTRATION OF LICENSING, FINANCIAL RESPONSIBILITY, CONTINUING EDUCATION AND REMEDIAL ACTION FOR WELL CONSTRUCTION AND PUMP INSTALLATION CONTRACTORS 1 - eff 01/01/2018

Effective date

01/01/2018

DEPARTMENT OF NATURAL RESOURCES

Division of Water Resources

RULES AND REGULATIONS FOR ADMINISTRATION OF LICENSING, FINANCIAL RESPONSIBILITY, CONTINUING EDUCATION AND REMEDIAL ACTION FOR WELL CONSTRUCTION AND PUMP INSTALLATION CONTRACTORS

2 CCR 402-14

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

Rule 1. Title

1.1 The title of these rules and regulations is "Rules and Regulations For Administration Of Licensing, Financial Responsibility, Continuing Education And Remedial Action For Well Construction And Pump Installation Contractors". The short title for these rules and regulations is "BOE Administration Rules," and they may be referred to herein collectively as the "Rules" or individually as a "Rule."

Rule 2. Authority

2.1 These Rules are promulgated pursuant to the authority granted to the State Board of Examiners of Water Well Construction and Pump Installation Contractors ("Board" or "Board of Examiners") in section 37-91-104(1)(c), C.R.S. (2017), that authorizes the Board to adopt and revise rules, not inconsistent with law, as may be necessary to effectuate the provisions of Article 91 of Title 37, C.R.S. (2017).

2.2 These Rules also provide for alternatives to surety bonds needed to obtain a license pursuant to sections 11-35-101(2) and 101.5(2), C.R.S. (2017).

Rule 3. Scope and Purpose of the Rules

3.1 These Rules apply to licensing and license renewal, bonds and other forms of financial responsibility, continuing education requirements, and remedial and disciplinary actions of the Board.

3.2 These Rules further define the requirements for obtaining and keeping a license or a special license to be a well construction contractor and/or pump installation contractor. These Rules also address evidence of financial responsibility by contractors as required by section 37-91-107, C.R.S. (2017), the resolution of claims against such evidence of financial responsibility, and the conditions for the release of funds from such evidence of financial responsibility when a contractor uses an alternative to a compliance bond.

3.3 The purpose of these Rules is:

3.3.1 To enable the Board to implement the provisions of Article 91 of Title 37;

3.3.2 To set standards and procedures for the licensing of well construction and pump installation contractors, for the issuance of special licenses, and for the filing and maintaining evidence of financial responsibility by such licensed contractors;

3.3.3 To establish a process for the renewal of licenses for water well construction and/or pump installation, and for the renewal of special licenses;

3.3.4 To set standards for continuing education and to provide a process for acquiring, completing, and reporting continuing education requirements; and

3.3.5 To establish a procedure for implementing the Board's authority to require nondestructive investigations, to require remedial action to correct well construction, pump installation, and/or cistern installation deficiencies, and to impose and collect fines for violations of Article 91 of Title 37, these Rules, and/or the Water Well Construction Rules, 2 CCR 402-2 (2016).

Rule 4. Definitions

4.1 Statutory Definitions – Certain terms used in these Rules have the identical meaning as provided in section 37-91-102, C.R.S. (2017), as quoted and cited in Rule 4.2.

4.2 Specific Definitions – Unless expressly stated otherwise, the following terms when used in these Rules have the meaning indicated in this Rule. Words in the singular include the plural. Words used in the masculine gender include the feminine and neuter.

4.2.1 "Abandonment" means, for the purpose of these Rules, the physical activity of properly plugging and sealing a well. The term, as used in these Rules, does not infer the abandonment of any vested or decreed right to use water.

4.2.2 "Accredited program" (or accredited course) means a program, course, seminar, conference, or other regimen of instruction approved by the Board for the purpose of providing continuing education training.

4.2.3 "Board" means the state board of examiners of water well construction and pump installation contractors created by section 37-91-103. § 37-91-102(3), C.R.S. (2017).

4.2.4 "Board Staff" or "Staff" means employees of the Division of Water Resources who assist the Board of Examiners in implementing its statutory authority.

4.2.5 "Certificate of Completion" means a form, prescribed by the Board, which a licensee must submit to the Board annually to indicate his/her completed hours of continuing education training.

4.2.6 "Construction of wells" means any act undertaken at the well site for the establishment or modification of a well, including, without limitation, the location of the well and the excavation or fracturing thereof but not including surveying or other acts preparatory thereto, site preparation and modification or site

modification, or the installation of pumping equipment. § 37-91-102(4), C.R.S. (2017).

4.2.7 “Continuing Education (CE) Committee” means a group formed for the purpose of evaluation of continuing education courses and appropriate hours accredited for each course and professional activity. The CE Committee will consist of a designee from the Colorado Water Well Contractors Association, a member of the Board, and a member of Board Staff. The CE Committee must make decisions by consensus.

4.2.8 “Contracting” means undertaking, or offering, bartering, or bargaining to construct a well, install pumping equipment, or install a cistern connected to a water well supply system by any person, firm, corporation, partnership, association or other organization, for another.

4.2.9 “Directly employed” means engaged in employment where the employer is responsible for and directly controls the performance of the employee, and, where applicable, the employee is covered by workers' compensation and unemployment compensation. “Directly employed” does not refer to independent contractors or subcontractors. § 37-91-102(4.7), C.R.S. (2017).

4.2.10 “Eight (8) hours” means the annual cumulative period of approved continuing education instruction required for license renewal.

4.2.10.1 For purposes of these Rules, one (1) hour of continuing education will be awarded for attendance during each period of instruction at an accredited continuing education training program, class, course, seminar, or conference consisting of at least fifty (50) minutes of instruction during each clock hour (60 minutes). However, the Board, at its discretion, may accredit certain continuing education training for less or more credit if it deems the material offered or discussed warrants awarding less or more hours (e.g., a one-day seminar might be accredited only 4 or 6 hours and preparing to instruct a one-hour course may result in more than one credit hour).

4.2.11 “Installation of pumping equipment” means the selection, placement, and preparation for operation of pumping equipment, including all construction involved in entering the well and establishing well seals and safeguards to protect groundwater from contamination. § 37-91-102(8), C.R.S. (2017).

4.2.12 “License” means the document issued by the board to qualified persons making application therefor, pursuant to section 37-91-105, authorizing such persons to engage in one or more methods of well construction or pump installation or any combination of such methods. § 37-91-102(10), C.R.S. (2017).

4.2.13 “Maintenance” (or well maintenance) as used in these Rules, means an action performed by the owner of a well to preserve the safeguards built into and installed on the well to prevent contamination from entering the well, to protect the groundwater from pollution, and to protect the public health. Maintenance

includes, but is not limited to, preserving the well cap and seal and ensuring that it is securely fastened to the well casing, preventing physical damage to the well that could compromise the integrity of the well casing and/or grout seal, and ensuring that the pitless adapter remains watertight and that backflow devices remain in proper working order.

4.2.14 “Nondestructive investigation” means a process of well examination and inspection that does not disturb or diminish the integrity of the construction of the well. Nondestructive investigation methods include, but are not limited to, geophysical logging, down-hole video, pump testing, water sampling, and other down-hole measurements.

4.2.15 “Person” means an individual, a partnership, a corporation, a municipality, the state, the United States, or any other legal entity, public or private. § 37-91-102(11.5), C.R.S. (2017).

4.2.16 “Private driller” means any individual, corporation, partnership, association, political subdivision, or public agency that uses equipment owned by it to dig, drill, redrill, case, recase, deepen, or excavate a well entirely for its own use upon property owned by it. § 37-91-102(12), C.R.S. (2017).

4.2.17 “Private pump installer” means any individual, corporation, partnership, association, political subdivision, or public agency that uses equipment owned by it to install pumping equipment on a well entirely for its own use on property owned by it. § 37-91-102(12.5), C.R.S. (2017).

4.2.18 “Pumping equipment” means any pump or related equipment used or intended for use in withdrawing or obtaining groundwater, including, but not limited to, well seals, pitless adapters, and other safeguards to protect the groundwater from contamination and any waterlines up to and including the pressure tank and any coupling appurtenant thereto. § 37-91-102(13), C.R.S. (2017).

4.2.18.1 “Pumping equipment” also includes cisterns or other water storage tanks connected to a water well supply system between the wellhead and the pressure tank or downstream of the wellhead if no pressure tank is utilized.

4.2.19 “Pump installation contractor” means any person licensed to install, remove, modify, or repair pumping equipment for compensation. § 37-91-102(14).

4.2.20 “Repair” means any change, replacement, or other alteration of any well or pumping equipment which requires a breaking or opening of the well seal or any waterlines up to and including the pressure tank and any coupling appurtenant thereto. § 37-91-102(15), C.R.S. (2017).

4.2.21 “Special license” means a license granted by the Board to an individual who demonstrates knowledge, experience, and competence in the performance of a specific task related to well construction or pump installation (e.g., installation of

pitless adapters and water lines, vault installation, cistern installation, formation fracturing, monitoring well construction, and other specialized tasks).

4.2.22 “Supervision” means personal and continuous on-the-site direction by a licensed well construction contractor or licensed pump installation contractor, unless the licensed contractor has applied for and received from the board an exemption from continuous on-the-site direction for a specific task. § 37-91-102(15.5), C.R.S. (2017).

4.2.23 “Well” as used in these Rules means any test hole or other excavation that is drilled, cored, bored, washed, fractured, driven, dug, jetted, or otherwise constructed for the purpose of location, monitoring, dewatering, observation, diversion, artificial recharge, or acquisition of groundwater for beneficial use or for conducting pumping equipment or aquifer tests. § 37-91-102(16)(a), C.R.S. (2017).

4.2.23.1 “Well” does not include an excavation made for the purpose of obtaining or prospecting for minerals or those wells subject to the jurisdiction of the oil and gas conservation commission, as provided in article 60 of title 34, C.R.S., or those wells subject to the jurisdiction of the office of mined land reclamation, as provided in article 33 of title 34, C.R.S. § 37-91-102(16)(b)(I), C.R.S. (2017).

4.2.23.2 “Well” does not include a naturally flowing spring or springs where the natural spring discharge is captured or concentrated by installation of a near-surface structure or device less than ten feet in depth located at or within fifty feet of the spring or springs’ natural discharge point and the water is conveyed directly by gravity flow or into a separate sump or storage, if the owner obtains a water right for such structure or device as a spring pursuant to article 92 of title 37. § 37-91-102(16)(b)(II), C.R.S. (2017).

4.2.24 “Well construction contractor” means any person licensed pursuant to article 91 of title 37, C.R.S., and responsible for the construction, test-pumping, or development of wells, either by contract or for hire or for any consideration whatsoever. § 37-91-102(17), C.R.S. (2017).

4.2.25 “Well owner” means any person, or his/her agent, who holds the title or other property rights in or to a well.

4.3 Other Definitions – All other words used herein are given their usual, customary, and accepted meaning. Terms not defined in this Rule that are defined in the statutes, the Water Well Construction Rules (2 CCR 402-2), or in rules of the State Engineer must use the meaning given therein. All words of a technical nature specific to the water well industry are given the meaning generally accepted in said industry.

Rule 5. General Rules

Rule 5.1 License Number –

5.1.1 Any well drilling rig, monitoring and observation hole rig, pump installation rig, or formation fracturing rig owned, leased or operated by any well construction contractor, pump installation contractor, or person having a special license must be registered with the Board. The rig must have prominently displayed thereon the contractor's license number in letters at least two inches in height and other comparable dimension; for example: "Lic. 1234". Each rig must contain a copy of the current Water Well Construction Rules (2 CCR 402-2).

5.1.2 The Board may re-issue or transfer a retired license number at its discretion. Re-issuance or transfer of a retired license number can occur under the following circumstances:

a. The license number must have been retired for at least one (1) year from the date that the license lapsed;

b. The person seeking the number must be a direct relative of the person who last held the license, or must be or have been a key individual within the company or corporation operated by the person who last held the license; and either,

c. The person requesting the number must provide an affidavit, signed by the person who previously held the license, that affirms:

1. the former contractor has relinquished his/her license and does not intend to seek renewal or re-issuance of his/her license under the subject number,

2. that the former contractor has no objection to the re-issuance of the number, and

3. that the former contractor has, to the best of his/her knowledge, submitted to the Division of Water Resources all work reports required for work performed under his/her license.

or,

d. In the case of a former contractor who is deceased, the person requesting the license number must submit a signed affidavit:

1. affirming that the former contractor is deceased,

2. explaining his/her relationship with the former contractor, and

3. stating to the best of his/her knowledge, all work reports for work performed under the former contractor's license have been submitted to the Division of Water Resources.

5.2 Advertisement - All advertisements for services offered by licensed contractors, including internet pages, social media, vehicles, mobile equipment, billboards, business cards,

advertising in newspapers, telephone directories, and trade journals, must state the contractor's license number. Standard listings consisting of the company name, address, and phone number such as in phone books, chamber of commerce business listings, data aggregator websites, and similar community publications are not considered advertisements, unless the listing mentions services not licensed to be performed by the company placing such advertisement. Any advertisement for services for which the company or individual is not licensed is a violation of section 37-91-111, C.R.S. (2017).

5.3 License Application and Renewal Fee - When applying for a new license, the applicant must pay the application fee required in section 37-91-107, at the time the application is requested. Thereafter, the fee to renew a license must be remitted with the renewal application and the associated documents required to maintain the license.

Rule 6. Licensing and License Renewal

6.1 License Required - Every individual, before engaging in the business of contracting for and performing either the construction and/or the repair of wells, the installation and/or repair of pumping equipment, or the installation and/or repair of cisterns connected to water well supply systems, must obtain a license for one or more methods of well construction or pump installation from the Board. Individuals who use special equipment or perform limited procedures in well construction, pump installation, or cistern installation must obtain a special license from the Board prior to engaging in such specialized services.

6.1.1 The licensee must submit to the Board, at the time of licensing and license renewal, an email address to be used as the primary contact email address for the licensee.

6.1.2 The licensee must inform the Board within thirty (30) days of any change in business mailing address, email address, telephone number, or business name.

6.1.3 The licensee must submit to the Board at the time of licensing and license renewal, on a form prescribed by the Board, a list of employees directly employed by the licensee who perform well construction, pump installation, and/or cistern installation under the license. The list must include a description of the areas of proficiency in well construction work or pump installation work for each listed employee.

6.1.3.1 Between license renewals, the licensee must maintain and update the information described in Rule 6.1.3, including providing changes in personnel.

6.1.3.2 At the time of license renewal, the licensee must catalog and provide to the Board any continuing education or training each employee listed under Rule 6.1.3 received throughout the duration of the license period.

6.1.4 A license issued by the Board authorizes a person to contract for well construction or pump installation services as specified on the license. A license does not authorize any advertisement for, contracting for, or performing other services for which the contractor is not licensed.

6.1.5 The Board will not recognize as lawful any operating agreements, business agreements, or any other contractual agreements between a licensed contractor and any individuals not licensed by the Board, where such an agreement purports to authorize the unlicensed individual to construct water wells or install pumping equipment under the license of the licensed individual. An unlicensed individual may construct water wells and install pumping equipment only if that individual is a private driller, is directly employed by a licensed contractor, or is supervised continuously on-the-site by a licensed contractor, as those terms are defined in section 37-91-102, C.R.S. Supervision means personal and continuous on-the-site direction by a licensed well construction contractor or licensed pump installation contractor, unless the licensed contractor has applied for and received from the board an exemption from continuous on-the-site direction for a specific task. § 37-91-102(15.5)

6.2 Water Well Construction Licenses - The Board designates the following types of licenses for methods of water well construction:

a. air rotary construction

b. mud rotary construction

c. reverse rotary construction

d. cable tool construction

6.2.1 A contractor licensed in one or more designated methods of water well construction will also be authorized, without examination, to construct, or have constructed by a person directly employed by him/her, or to supervise the construction of gallery wells and infiltration galleries. The contractor is required to comply with all applicable standards for such construction stated on the well permit, must have the construction plan approved per Board construction variance, must adhere to applicable rules and regulations, and is responsible for filing all work reports for such work performed under his/her license.

6.3 Pump Installation Licenses - The Board designates the following types of licenses for the installation of pumping equipment in water wells:

a. pumps producing less than or equal to 100 gallons per minute; and

b. pumps producing more than 100 gallons per minute and line shaft turbine pumps (vertical turbine pumps).

6.3.1 A contractor licensed for the installation of pumping equipment in water wells will also be authorized, without examination, to install, or have installed by a person directly employed by him/her, or to supervise the installation of cisterns connected to water well supply systems. The contractor is required to comply with all applicable standards for such installation, must adhere to applicable rules, and is responsible for filing all work reports for such work performed under his/her license.

6.4 License Application - An applicant for a well construction or pump installation contractor's license must specify to the Board the methods of well construction or pump installation for which the applicant is seeking a license. Once licensed in one of the above methods of water well construction, an applicant is eligible without further experience to take an examination for another listed method of well construction. Once licensed in one of the above categories of pump installation, an applicant is eligible without further experience to take an examination for another listed category of pump installation.

6.4.1 An applicant must demonstrate, to the satisfaction of the Board, two (2) years' active experience in the type of well construction work or pump installation work for which the applicant is applying to be licensed. The two (2) years' active experience means at least twenty-four (24) months of on-site, hands-on activities that directly result in the construction of a well or installation of pumping equipment. Work experience should result in the ability to solve well construction or pump installation problems, and to demonstrate knowledge of and ability to operate well construction or pump installation equipment. Applicable military experience in well construction or pump installation work may apply toward the required experience.

6.4.2 The applicant will be required to provide evidence of such experience and employment verification and may be required to provide information on the number of wells constructed or pumps installed, a detailed description of the work performed related to well construction or pump installation, and any problems encountered and solutions developed during well construction or pump installation. The Board may consider the listing of the applicant as an employee of a licensee under Rule 6.1.3 as evidence of the required experience.

6.4.3 Pursuant to section 37-91-105(2)(d)(III), C.R.S. (2017), the Board may accept education in an accredited program for a portion of the required experience. The Board may also accept related subject matter education and training for a portion of the required experience. Such training or education must be completed satisfactorily with a grade point average of 2.0 of a possible 4.0, or above, from a Board-approved educational program, curriculum, school, or institution. The amount of credit for education may not exceed one (1) year of experience. Generally, the satisfactory completion of four (4) full semesters or an equivalent thereof, will count as one (1) year of experience.

6.4.4 An applicant who has not received a license within two (2) years of initial submittal of the application must reapply.

6.5 Special License – The Board may issue a special license for well construction or pump installation methods other than those listed in Rules 6.2 and 6.3 or to perform specialized work on wells. Such license will specify the limited work allowed to be performed (e.g., monitoring well or hole construction, infiltration gallery or gallery-type well construction, installation of cylinder pumps, formation fracturing, cistern installation, etc.).

6.5.1 The applicant must make written application specifying the type of special license requested and identifying the type of equipment and installation methods to be

used. Based thereon, the Board will administer an examination it deems necessary for the issuance of such license.

6.5.2 A special license holder will be limited to the methods of well construction, pump installation, cistern installation, or use of special equipment and procedures as stated on the license.

6.5.3 A special licensee will not be entitled to take an examination for another method of well construction or type of pump installation without meeting the statutory requirements for such license and having experience in such method as required by the statutes and Rules for initial licensing.

6.5.4 A special license holder must comply with all statutory requirements and applicable provisions of the Water Well Construction Rules (2 CCR 402-2) and these Rules.

6.6 Examination - An applicant for a license must demonstrate professional competence by passing the written and oral examinations prescribed by the Board. The written examination(s) will test an applicant's technical knowledge of drilling and/or pump installation methods and knowledge of applicable state laws concerning the construction of wells or the installation of pumping equipment, or both, and rules promulgated in connection therewith.

6.6.1 Test results from examinations conducted by or recognized by the Board are valid for a period of two (2) years from the date of examination.

6.7 Private Driller and Private Pump Installer - The statutes provide an exemption from licensing provisions for a "private driller" (section 37-91-102(12)) and "private pump installer" (section 37-91-102(12.5)).

6.7.1 Work conducted by a private driller and/or private pump installer must comply with all applicable statutory provisions of Article 91 of Title 37, the requirements of the Water Well Construction Rules (2 CCR 402-2), and all other applicable federal, state, and local regulations.

6.8 License renewal – Licensed contractors must renew their license annually or may elect to renew at two or three-year intervals. The license renewal fee for a license issued for a two-year period will be twice the annual fee amount. The license renewal fee for a license issued for a three-year period will be three times the annual fee amount. All renewal fees must be paid at the time of license renewal for the duration of the license.

6.8.1 For license renewal, the period of financial responsibility, as described in Rule 7, must be maintained for the duration of renewal of the license.

6.8.2 Regardless of the renewal period of a license, a Certificate of Completion (see Rule 4.2.5) for continuing education must be filed with the Board by January 15 of each year. If a contractor fails to fulfill the continuing education training

requirement and to submit a Certificate of Completion by January 15 of each year, the license will lapse on February 1.

6.8.2.1 A license that is lapsed for failure to fulfill the continuing education training requirement and to file a Certificate of Completion by January 15 will remain lapsed until:

(1) the licensee has fulfilled the continuing education requirement, submitted the Certificate of Completion and has paid a reinstatement fee; and

(2) the Board determines that the contractor has fulfilled his/her continuing education training requirement, submitted the Certificate of Completion and paid a reinstatement fee, and the Board has notified the contractor in writing that the license is reinstated. Continuing education completed for the reinstatement of a lapsed license cannot be applied toward the continuing education requirement for the next license renewal period

Rule 7. Financial Responsibility

7.1 Evidence of Financial Responsibility Required - Prior to the initial issuance or renewal of any license, the applicant or licensee must file with the Board, on a form provided by the Board, evidence of financial responsibility by means of a corporate surety bond or alternative funds as provided for by section 37-91-107. The license automatically lapses if the bond is cancelled or terminated, or if the alternative funds are less than the required amount.

7.2 Corporate Surety Bonds - The bond must specifically cover the licensee's compliance with applicable laws and regulations governing the activities for which the individual is licensed. The bond and any subsequent renewal certificate must specifically identify the individual covered by that bond and also state the type of license or licenses held by the individual.

7.2.1 Each licensee must file and maintain with the Board evidence of financial responsibility, in the form of a savings account, deposit, or certificate of deposit, in the amount of twenty thousand dollars ($20,000), meeting the requirements of section 11-35-101, C.R.S. (2017), or an irrevocable letter of credit for the amount of twenty thousand dollars ($20,000), meeting the requirements of section 11-35-101.5, C.R.S. (2017), or must file and maintain with the Board an approved compliance bond with a corporate surety authorized to do business in the state of Colorado, in the amount of twenty thousand dollars ($20,000), for the use and benefit of any person or the state of Colorado suffering loss or damage, conditioned that such licensee will comply with the laws of the state of Colorado in engaging in the business for which he or she receives a license and the rules of the Board promulgated in the regulation of such business.

7.2.3 A claim against a corporate surety bond must be made in writing to the issuer of the bond, and a copy of the claim must be submitted to the Board.

7.2.4 The licensee must notify the Board of any change in the amount or status of a bond. The licensee must notify the Board of any cancellation or change at least thirty (30) days prior to the effective date of such cancellation or change.

7.3 Alternative Funds - The requirement for financial responsibility may be satisfied by a savings account, deposit, or a certificate of deposit or an irrevocable letter of credit meeting the requirements of sections 11-35-101.5 and 37-91-107. Irrevocable letters of credit must be completed on a form available from the Board. The name and types of licenses held by the individual under the alternative funds must be provided to the Board when first submitted and thereafter with the application for license renewal. These funds must specifically cover the licensee's compliance with applicable laws and regulations governing the activities for which the individual is licensed.

7.3.1 Alternative funds must be assigned to the Board for the use of any person or the State of Colorado suffering loss or damage, consistent with proper findings of the Board.

7.3.2 The licensee is responsible for paying all costs incurred from the maintenance or administration of alternative funds. Any costs incurred by the Board from the payment of claims, negotiation or litigation of claims, and court action taken in connection with such funds must be paid by the licensee. These costs may be taken from the fund if sufficient funds remain after satisfying claims. Otherwise, the Board may take other action to collect these costs.

7.3.3 A claim against an alternative fund must be initiated by certified mail to the contractor and by filing a copy with the Board. The Board will not make payments from or release the alternative fund until it receives either a written and notarized agreement between the parties resolving the claim or a court order directing the Board to make a payment from the fund.

7.4 Period of Liability - The period of liability of a bond is two (2) years after the submission of the last accepted work report. The period of liability for alternative funds provided as evidence of financial responsibility is two (2) years after the expiration, surrender, revocation, or suspension of the license. In the event the alternative funds are replaced by a bond, the period of liability, during which time the alternative funds will be held by the Board, will be two (2) years from the date the new form of financial responsibility becomes effective.

7.4.1 When there is an outstanding claim, the bond or alternative funds must not be released until such claim is finally resolved. Notwithstanding the two-year liability period for alternative funds, when there is a claim initiated, but not resolved, prior to the end of the two-year period, the Board will hold the alternative funds until such claim is resolved.

Rule 8. Continuing Education

8.1 Every contractor who is licensed by the Board to contract for the construction of water wells and/or for the installation of pumping equipment and cisterns, or who holds a special license from the Board must complete, annually:

a. eight (8) hours of continuing education training at programs or courses accredited by the Board.

b. no more than four (4) out of the eight (8) hours of approved continuing education can be obtained by internet or online participation.

c. no more than three (3) out the eight (8) hours of approved continuing education can be obtained from safety, CPR, First Aid, or other safety-related training.

8.1.1 Each contractor must obtain all eight (8) hours of continuing education between January 1st and December 31st of each calendar year in order to maintain or renew a license. No carryover hours are allowed. A contractor can accumulate continuing education credits prior to licensure by attending accredited courses in the same calendar year the license is issued.

8.2 Program or Course Accreditation - The Board, in conjunction with the CE Committee, designates the following general criteria for evaluating a continuing education training program or course for accreditation:

8.2.1 A program or course will be directly associated with the water well industry or will provide information or training that serves to enhance a licensee's knowledge of and ability to perform well construction and/or pump installation that protects the public health and the groundwater resource.

8.2.2 A program or course may be peripheral to the actual activity of constructing a water well or installing pumping equipment, but must be related to the business of contracting for such services (e.g., a water law seminar or a course on hydrogeology, engineering, or contracts).

8.2.3 A program or course must be sponsored by or offered and administered by or on behalf of a professional organization, recognized institution, or qualified industry business or association.

8.2.4 Instruction or presentation must be conducted by individuals qualified in the program or course topic.

8.2.5 A program or course sponsor must demonstrate a means of documenting and maintaining records of attendance at the program or course.

8.2.6 The Board, in conjunction with the CE Committee, will evaluate the program or course content to determine if the program or course meets criteria for accreditation.

8.2.7 The Board, in conjunction with the CE Committee, will determine the number of hours eligible for continuing education training credit at the time of program or course accreditation.

8.2.8 Once a program or course has received accreditation, the sponsor must notify the Board or the CE Committee if there is any substantial modification of the program

or course to ensure continued accreditation. Based on the information provided by the sponsor, the Board, in conjunction with the CE Committee, will modify the number of hours accordingly, if necessary.

8.2.9 The CE Committee will not consider post-attendance requests for continuing education course accreditation.

8.2.10 Continuing education credit will be awarded for preparing and presenting a continuing education course.

8.2.10.1 Each presenting contractor will be awarded one (1) hour of additional continuing education credit for the original preparation of the course.

8.2.10.2 Each contractor (Rule 8.2.4) presenting a continuing education course will qualify for the same number of continuing education credits the Board determines eligible for the program or course (Rule 8.2.7). If the course is a part of a conference, the credit hours will be determined by the length of the presentation.

8.2.10.3 The presenting contractor may only receive continuing education credit once per year even if the course is presented multiple times in a year.

8.3 Reporting – It is the responsibility of every licensee to submit annually a Certificate of Completion of continuing education training to the Board for license renewal or to maintain a license. The licensee is responsible for maintaining records of his/her attendance at accredited continuing education training and must provide the records to the Board upon request.

8.3.1 Certificates of Completion must be submitted on a form prescribed by the Board.

8.3.2 The Certificate of Completion form must be submitted to the Board no later than January 15 of each year to assure timely processing of license renewal or to maintain a license. The license(s) of a licensee who fails to submit a Certificate of Completion for license renewal or to maintain the license by January 15 of each year will lapse on February 1 (see Rule 6.8.2).

Rule 9. Remedial and Disciplinary Action

9.1 To carry out the provisions of Article 91 of Title 37 and its obligation to protect the health and welfare of the people of the State of Colorado and its water resources, the Board is vested with the statutory authority to impose fines, issue orders, and suspend, deny, or revoke licenses (see sections 37-91-104(1)(l) & 37-91-108 & 109(1), C.R.S. (2017)).

9.2 Remedial Action – The Board may order remedial action when the condition of a well renders the structure a potential hazard to the public health or the groundwater resources of the state. Such actions are intended to correct a well defect or deficiency, as required by sections 37-91-104 & 37-91-110, C.R.S. (2017). The Board may assess a penalty and require remedial actions, including, but not limited to, nondestructive investigation,

abandonment, repair, drilling, re-drilling, casing, re-casing, deepening, and excavation of wells.

9.3 Nondestructive Investigation – In order to protect the public health and the groundwater resources of the state, the Board may order a licensed contractor, private driller, private pump installer, or owner of a well to conduct, or to arrange to have conducted, a non-destructive investigation of a well. Such investigations may include, but are not limited to, pumping tests, photographs, down-hole video, water quality/chemistry analysis, geophysical and/or sonic/cement bond logs, and sounding (depth) measurements.

9.3.1 The Board may issue an order for a nondestructive investigation of a well based on evidence that a well is not properly constructed or maintained, such that it is a potential hazard to the public health and/or the groundwater resource.

9.3.2 An order of the Board for nondestructive investigation must be complied with in accordance with the terms, conditions, and time period(s) specified in the order. The results and all associated data and information obtained during an investigation must be submitted to the Board as directed in the order. Noncompliance with any of the specified terms, conditions, and/or time period(s) of a Board's order will be a violation of these Rules and subject to disciplinary action and/or penalties.

9.3.3 The removal and reinstallation of pumping equipment, when necessary to conduct a nondestructive investigation, must be performed only by a licensed pump installation contractor, or private pump installer in accordance with sections 37-91-102(12.5) and 106(3).

9.3.4 Any person ordered by the Board to conduct a nondestructive investigation must pay all associated costs, unless otherwise stipulated to by the parties.

9.4 Abandonment, Repair, Drilling, Re-drilling, Casing, Re-casing, Deepening, and Excavation - In order to protect the public health and the groundwater resources of the state, the Board may order a licensed contractor to remedy a construction defect or deficiency, or to perform or arrange to perform abandonment, repair, drilling, re-drilling, casing, re-casing, deepening, or excavation of any well constructed by or under the direction or supervision of the contractor. The Board may also order any private driller or owner of a well to have a well abandoned, repaired, re-drilling, cased, re-cased, deepened, or excavated to correct a noncompliant condition, or to remedy a construction or maintenance defect or deficiency.

9.4.1 The Board may issue an order to abandon, repair, drill, re-drill, case, re-case, deepen, or excavate a well, or to correct a noncompliant condition, or to remedy a construction or maintenance defect or deficiency. The order must be based on evidence that a well is not properly constructed or maintained such that it is a potential hazard to the public health and/or the groundwater resource.

9.4.2 An order of the Board requiring abandonment, repair, drilling, re-drilling, casing, re-casing, deepening, or excavation of a well; or any correction of a noncompliant condition, or construction or maintenance defect, or deficiency, must be complied

with in accordance with the terms, conditions, and time period specified in the order. Noncompliance with any of the specified terms, conditions, and/or time period of a Board's order will be a violation of these Rules and subject to disciplinary action and/or penalties.

9.4.3 The abandonment, repair, drilling, re-drilling, casing, re-casing, deepening, or excavation of any well must be performed only by a licensed well construction contractor or private driller in accordance with sections 37-91-102(12) and 106(3).

9.4.4 Any person ordered by the Board to abandon, repair, drill, re-drill, case, re-case, deepen, or excavate a well must pay all associated costs, unless otherwise stipulated to by the parties.

9.5 Disciplinary Action and Penalties - The Board may withhold, suspend, or revoke a license and may impose fines of not less than fifty dollars ($50) nor more than one thousand dollars ($1,000) for each violation of Articles 90 and 91 of Title 37, and the Board's rules promulgated pursuant to Article 91, Title 37. § 37-91-108(5), C.R.S. A disciplinary action and/or penalty will be imposed only after proper notice and a hearing before the Board.

9.5.1 The Board may accept stipulated settlements that include monetary penalties based upon a fine schedule established by the Board.

9.5.2 All terms, conditions, and time periods specified in the Board's order to withhold, suspend, or revoke a contractor's license and/or for the assessment of a fine must be complied with within the time frame stated in the order. Noncompliance with any of the specified terms, conditions, and/or time period of a Board's order will be a violation of these Rules and subject to further disciplinary action and penalties.

Rule 10. Petitions for Declaratory Orders

10.1 General – Pursuant to section 24-4-105(11), C.R.S., this Rule provides procedures for the Board's entertaining of petitions for declaratory orders 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 agency. The order disposing of the petition constitutes agency action subject to judicial review. The Board retains the right to determine, in its sound discretion, whether to entertain any such petition submitted pursuant to this Rule. See § 24-4-105(11), C.R.S.

10.2 Petition for Statement of Position – Any person may petition the Board Staff for a statement of position concerning the applicability to the petitioner of any provision of these BOE Administrative Rules, or any regulation of the Board. The Board Staff shall respond with a written statement of position within 30 days of receiving a proper petition.

10.3 Petition for Declaratory Order – Any person who has properly petitioned for a statement of position, and who is dissatisfied with the statement of position, or who has not received a response within 30 days of the petition, may petition the Board for a declaratory order pursuant to section 24-4-105(11), C.R.S. Such petition must be submitted to Board Staff

within 30 days of the date of the written statement of position. A petition for declaratory order must include the following:

a. The name and address of the petitioner.

b. Whether the petitioner holds an active license issued by the Board.

c. Whether the petitioner is involved in any pending administrative hearings with the Board.

d. The language of the statute, rule, or order of the Board to which the petition relates.

e. A concise statement of all facts necessary to show the nature of the controversy or the uncertainty as to the applicability of the statute, rule, or order of the Board to which the petition relates.

f. A concise statement of the legal authorities, if any, and other reasons or authorities upon which the petitioner relies.

g. A concise statement of the declaratory order sought by the petitioner.

10.4 Board's Exercise of Its Discretion to Entertain a Petition – The Board will determine, in its discretion and with no prior notice to the petitioner, whether to entertain any petition. If the Board decides it will not entertain a petition, it shall promptly notify the petitioner in writing of its decision and the reasons for that decision. Any of the following grounds are sufficient reason to refuse to entertain a petition:

a. The petitioner failed to properly petition the Board Staff for a statement of position, or if a statement of position was issued, the petition for declaratory order was filed with the Board more than 30 days after the statement of position was issued.

b. A ruling on the petition will neither terminate the controversy nor remove uncertainties concerning the applicability to the petitioner of the statute, rule, or order in question.

c. The petition involves a subject, question, or issue that is currently involved in a pending hearing before the Board or the State Engineer's Office, or that is involved in an on-going investigation conducted by the Board, or that is involved in a written complaint previously filed in any state court or with the State Engineer's Office.

d. The petition seeks an order on a moot or hypothetical question.

e. The petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to C.R.C.P. 57, that will terminate the controversy or remove any uncertainty concerning applicability of the statute, rule, or order.

10.5 If the Board Entertains a Petition – If the Board determines that it will entertain the petition for declaratory order, it must notify the petitioner within 30 days of making such determination, and the following procedures will apply:

a. The Board may expedite the hearing, so long as the interests of the petitioner will not be substantially prejudiced thereby, by ruling on the basis of the facts and legal authority presented in the petition, or by requesting the petitioner or the Board Staff to submit additional evidence and legal arguments in writing.

b. In the event the Board determines that an evidentiary hearing or legal argument is necessary to a ruling on the petition, a hearing must be conducted in accordance with the state Administrative Procedures Act. The petitioner will be identified as Respondent.

c. The parties to any proceeding pursuant to this rule shall be the petitioner/Respondent and the Board Staff. Any other interested person may seek leave of the Board to intervene in the proceeding, and such leave may be granted if the Board determines that such intervention will make unnecessary a separate petition for declaratory order by the interested person.

d. The declaratory order shall constitute a Final Agency Action subject to judicial review pursuant to section 24-4-106, C.R.S.

10.6 Records of Petitions and Declaratory Orders – Files of all petitions, requests, statements of position, and declaratory orders will be maintained by the Board. Such files will be available for public inspection, except for any material required by law to be kept confidential. The Board will post a copy of all statements of position and declaratory orders constituting Final Agency Action on the Board's web site.

Rule 11. Severability

If any portion of these Rules is found to be invalid, the remaining portion of the Rules will remain in force and unaffected.

Rule 12. Revisions

The Board may revise these Rules in accordance with section 24-4-103, C.R.S. (2017).

Rule 13. Effective Date

These Rules will become effective January 1, 2018.

Rule 14. Statement of Basis and Purpose

The Statement of Basis and Purpose for these Rules is incorporated herein by this reference.

Editor's Notes

History

Entire rule eff. 06/01/2004

STATEMENT OF BASIS AND PURPOSE

RULES AND REGULATIONS FOR ADMINISTRATION OF LICENSING, FINANCIAL RESPONSIBILITY, CONTINUING EDUCATION AND REMEDIAL ACTION FOR WELL CONSTRUCTION AND PUMP INSTALLATION CONTRACTORS

2 CCR 402-14

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

This Statement of Basis and Purpose describes the basis and purpose of each rule and modifications to the "Rules and Regulations For Administration Of Licensing, Financial Responsibility, Continuing Education And Remedial Action For Well Construction And Pump Installation Contractors" ("BOE Administration Rules" or "Rules").

The specific statutory authority for the promulgation and modifications to the BOE Administration Rules is found under section 37-91-104(1)(c), C.R.S. (2017), which provides that the Board of Examiners of Water Well Construction and Pump Installation Contractors ("Board" or "BOE") shall, "Adopt, and from time to time revise, such rules, not inconsistent with law, as may be necessary to effectuate the provisions of this article, all such rules to be adopted in accordance with article 4 of title 24, C.R.S." Where appropriate, additional statutory authority for specific rules is identified.

Rule 1. Title

The BOE Administration Rules are titled to reflect the implementation of administrative and quasi-judicial responsibilities of the Board as authorized in Article 91 of Title 37 of the Colorado Revised Statutes, (2017). The phrase "for Well Construction and Pump Installation Contractors" was added to the title to clarify the scope of the Rules.

Rule 2. Authority

This Rule cites 37-91-104(1)(c), C.R.S. (2017) as the specific statutory authority for the Board to promulgate and revise the BOE Administration Rules, and related statutory provisions providing for alternatives to surety bonds needed to obtain a license.

Rule 3. Scope and Purpose of the Rules

This Rule expresses the scope and purpose of the BOE Administration Rules. The BOE Administration Rules apply to licensing and license renewal, bonds and other forms of financial responsibility, continuing education requirements, and remedial and disciplinary actions of the Board. The Rules define the requirements for obtaining and keeping a license or a special license to be a well construction contractor and/or pump installation contractor. The Rules also address evidence of financial responsibility by contractors as required by section 37-91-107, C.R.S.

(2017), the resolution of claims against such evidence of financial responsibility, and the conditions for the release of funds from such evidence of financial responsibility when a contractor uses an alternative to a compliance bond. The purpose of the Rules is to enable to Board to implement the provisions of Article 91 of Title 37, including to set standards for licensing and license renewals, evidence of financial responsibility, and continuing education requirements, and to establish a procedure for remedial and disciplinary actions.

Previous Rule 3.3.2 was removed to comply with Senate Bill 05-161, which eliminated the examination requirement for private drillers and private pump installers (§37-91-106(3), C.R.S. (2017))".

Rule 4. Definitions

This Rule defines terms used in the BOE Administration Rules. Certain terms defined in statute, section 37-91-102, C.R.S. (2017), have identical meanings in Rule 4.2, and are restated verbatim. Many of the added definitions are simply adding the statutory definition. This Rule also defines additional terms to ensure that their meanings and usage are clearly understood.

The definition of "Authorized Individual" was removed because the term was not used in the Rules.

A definition for "Board Staff" was added to clarify the term, especially in regard to the process for petitions for declaratory orders added under Rule 10.

A definition for "Continuing Education (CE) Committee" was added to specify the composition of the committee who, in conjunction with the Board, would evaluate continuing education programs or courses for accreditation under Rule 8. Section 37-91-108(6), C.R.S. (2017), provides that "The board shall...develop a continuing education program in conjunction with the Colorado Water Well Contractors Association or any analogous or successor organization."

Rule 4.2.18.1 was added to clarify that the definition of "Pumping Equipment" also includes certain cisterns or other water storage tanks. Section 37-91-109(2), C.R.S. (2017), provides that, "Only a licensed pump installation contractor may install a cistern or other water storage tank between the wellhead and the pressure tank or downstream of the wellhead if no pressure tank is utilized."

The definition of "Two Years' Experience" was removed because the requirement of two years of experience in order to be licensed is adequately described under Rule 6.4.1.

Rule 5. General Rules

The statutory authority for this Rule is found under sections 37-91-104(1), 105(1), 107, and 111(1)(b), C.R.S. (2017).

Rule 5.1.1 requires the registration of certain rigs with the Board and the display of the contractor's license number on the rig. The Rule provides field personnel and the public the means to identify the licensee responsible for work being conducted using the equipment. The Rule was modified to require that each rig contain a copy of the Water Well Construction Rules. This will ensure the personnel on site have the ability to refer to the Rules if the licensed

contractor is not on site. This Rule assists the Board's staff and State Engineer personnel in enforcing the licensing provisions of Article 91 of Title 37 and these Rules.

Rule 5.1.2 was added to outline the process for the reissuance or transfer of a retired license number. The Board determined that record maintenance, bond issuance, or contractor identification will not be adversely impacted if retired license numbers are reused. The Rule is adapted from BOE Policy 2000-2. Under section 37-91-104(1)(e), C.R.S. (2017), the Board has general authority regarding well construction and pump installation licenses.

Rule 5.2 establishes a requirement for inclusion of the contractor's license number when advertising to provide services, and differentiates between media sources considered to be utilized for advertising and those that are not. The Rule was modified to clarify that social media would be considered an advertisement, while data aggregator websites would not. The Rule also makes clear that it is a violation of section 37-91-111, C.R.S. (2017), to advertise to perform well construction or pump installation services for which a contractor is not licensed. This Rule is developed to assist the Board and its staff in enforcing the licensing provisions of Article 91 of Title 37 and to identify persons who may be illegally performing well construction and/or pump installation services without a license.

Rule 5.3 specifies when license application and renewal fees are due. To ensure that staff time is adequately compensated for processing and sending out the license application and renewal forms, the Board has determined that the new license application fee must be submitted at the time the application is requested, and that that renewal fee must be submitted with the renewal application.

Rule 6. Licensing and License Renewal

The statutory authority for this Rule is found under sections 37-91-104(1), 105, 106, 107, and 110(2), C.R.S. (2017).

Rule 6.1 implements the provisions of section 37-91-105, C.R.S. (2017), that require obtaining a license from the Board prior to contracting for the construction of water wells and/or the installation of pumping equipment or cisterns. The Rule also provides for obtaining a special license when a person intends to conduct specialized services attendant to the construction, repair, modification, or enhancement of a well or to the installation of pumping equipment installed in a water well.

Rules 6.1.1 and 6.1.2 require the contractor to submit his or her contact information to the Board. These Rules were modified to require a primary email address for each licensed contractor, as most of the correspondence from the Division of Water Resources or the Board will be sent via email.

Rule 6.1.3 requires the licensee to identify employees who conduct work under the authority of the contractor's license. The Rule was adopted to enable the Board and its staff to keep accurate records regarding drillers and/or pump installers who are directly employed by the licensed contractor and who perform services under the license. Such records are helpful to determine if work performed by an unlicensed person was legally conducted under the authority of a contractor's license and as verification of two years' experience for a license application. The Rule was modified to include a requirement that the licensee also submit the areas of proficiency

of the listed employees. Rules 6.1.3.1 and 6.1.3.2 were also added to effectuate this Rule change. Under section 37-91-110(2), C.R.S. (2017), the Board has the authority to require the filing of information and reports relating to the construction or abandonment of wells and the installation of pumping equipment whenever it may deem such action to be necessary and to enact rules necessary to ensure the proper construction or abandonment of wells and the proper installation of pumping equipment. Under section 37-91-104(1)(c) and (e), C.R.S. (2017), the Board also has general authority to promulgate rules necessary to effectuate the provisions of Article 91, Title 37, which include requirements for license approval and renewal.

Rule 6.1.3.1 was added to direct the licensee to maintain a list of employees and the employees' areas of proficiency. This "real-time" list will help Division of Water Resources field personnel identify who is employed by a licensed contractor and will help determine if there are any illicit contractual relationships.

Rule 6.1.3.2 was added to supply information to the Board of Examiners regarding the continuing education of individuals conducting well construction or pump installation under a license. Field training or in-shop training given by the licensed contractor can be catalogued per this rule.

Rule 6.1.4 specifies the extent and limit of a contractor's license and clearly states that a license does not authorize advertising for, contracting to provide, or performance of services other than those specifically stated on the license. This Rule intends to eliminate an inappropriate practice of advertising and contracting to provide a service for which a person is not licensed and then subsequently subcontracting the service to another licensed contractor. Such practice effectively severs the direct contact and interaction between a well owner and the licensed contractor who is ultimately responsible for the work and compliance with established minimum construction standards.

Rule 6.1.5 was added to clarify that agreements that purportedly authorize unlicensed individuals to construct water wells or install pumping equipment under the license of another are prohibited. The Rule also states the limited exceptions under statute where an unlicensed individual can legally construct a well or install pumping equipment. Section 37-91-111, C.R.S. (2017), makes it unlawful for a person to construct water wells or install pumping equipment without a Board-issued license, unless one of three exceptions apply: 1) the person is a "private driller" (as defined under section 102(12)); 2) the person is "directly employed" (as defined under section 102(4.7)) by a licensed contractor; or 3) the person is under the "supervision" (as defined under section 102(15.5)) of a licensed contractor. An individual who forms a contractual business relationship with a licensed contractor is not "directly employed" by that licensed individual. An unlicensed individual who is not directly employed by a licensed contractor is allowed to work on water wells or pumps only if the licensed contractor personally and continuously directs the on-site work by the unlicensed individual. The Rule was adapted from BOE Policy 2015-1.

Rule 6.2 defines four different types of licenses for water well construction. Section 37-91-105, C.R.S. (2017), authorizes the Board to examine for and grant licenses for different methods of well construction. The types of methods of well construction represent the common methods now used in Colorado to construct water wells. These construction methods are recognized and tested for by the National Ground Water Association (NGWA), an organization representing the industry throughout the United States and internationally. This uniformity with the NGWA tests allows the Board to use the NGWA tests in its license examination procedures.

Rule 6.2.1 was added to clarify that licensed water well construction contractors can install gallery wells/infiltration galleries without additional examinations or a special license. The Rule is adapted from BOE Policy 2000-3. Section 37-91-105, C.R.S. (2017), authorizes the Board to examine for and grant licenses for different methods of well construction. Gallery wells/infiltration galleries are not included within any of the Board's designated methods of well construction. However, all contractors licensed in one or more of the designated methods of well construction are expected to be familiar with the standard for materials required for well construction, the precautions that must be taken to reduce the potential for contamination of near-surface sources of water, and the necessity of proper disinfection of the well after its construction. Accordingly, a well construction contractor who has the qualifications necessary to be licensed under any of the designated methods will also be qualified to construct gallery-type wells and spring wells.

Rule 6.3 uses the same two types of licenses for installation of pumping equipment as those used in the examinations administered by the NGWA. The categories are based on the rate (in gallons per minute) that water can be produced by a pumping system. A license for the installation of line shaft turbine pumps can be obtained by successfully completing the NGWA test that includes those types of pumps and by meeting the additional requirements for licensing set forth in statute and established the Board.

Rule 6.3.1 was added to clarify that a pump installation contractor is qualified to install cisterns connected to water well supply systems. Section 37-91-109(2), C.R.S. (2017), requires a pump installation license to install these cisterns.

Rule 6.4 explains the license application process as authorized by section 37-91-105, C.R.S. (2017).

Rule 6.4.1 clarifies that the requirement of at least two years of experience in the type of well construction or pump installation work for which an applicant has applied for a license means actual construction of wells or installation of pumping equipment by operating a well drilling or pump installation rig and performance of other tasks related to well construction or pump installation. Section 37-91-105(2)(d), C.R.S. (2017), requires that an applicant for a well construction or pump installation license have two years' experience in the type of well construction work or pump installation work for which the applicant is initially applying for a license. The Rule was modified to clarify the two years' experience requirement and that experience installing pumping equipment or constructing water wells in the military can be considered active experience.

Rule 6.4.2 identifies the type of information the Board may request as documentation of the required experience. Such information is often needed to verify and more fully evaluate an applicant's experience in the specific method of well construction or pump installation for which the person is requesting a license. The Rule was modified to specify that information provided under Rule 6.1.3, which provides a mechanism for an individual to track active experience and requires the licensed contractor to document such experience of his/her employees, can be considered by the Board as active experience.

Rule 6.4.3 implements section 37-91-105(2)(d)(III), C.R.S. (2017), which authorizes the Board to accept completion of approved educational programs as a portion of the two years of experience

in well construction and/or pump installation required for applicants to obtain a license. The Rule sets forth conditions under which the Board may accept the educational experience as a substitute for a portion of the required work experience.

Rule 6.4.4 establishes a two-year period of time in which an applicant must complete the application and examination process for obtaining a license.

Rule 6.5 and its subsections set forth the procedures and conditions for obtaining a special license, as authorized by section 37-91-105(2.5), C.R.S. (2017). Special licenses are granted for the use of special equipment or limited procedures in well construction or pump installation. An applicant for a special license must meet the requirements of section 37-91-105(2), C.R.S. (2017). Due to the limited nature of a special license, if a special licensee applies for a well construction or pump installation license, the applicant must demonstrate two years of experience in the method of well construction or pump installation for which that person is applying for a license. A licensed contractor does not need to obtain a special license for work that falls within the scope of the general well construction or pump installation license issued by the Board. A special license limits the scope of work of the licensee to the specific task or tasks stated on the license.

Rule 6.6 implements the exam requirements of section 37-91-105(5), C.R.S. (2017), to ensure that licensed contractors possess adequate knowledge of the technical aspects of well construction and/or pump installation and of the laws and rules that apply to well construction and/or pump installation.

Rule 6.6.1 limits the validity of exam results to two years. This ensures that an applicant completes the licensing process within two years, and therefore that a newly licensed contractor possesses knowledge of current technology, laws, and rules.

Rules 6.7.1 and 6.7.2 were removed to comply with Senate Bill 05-161, which eliminated the examination requirement for private drillers and private pump installers. Section 37-91-106(3), C.R.S. (2017), now reads, “Private drillers and private pump installers are exempt from all license requirements under this article; except that such entities shall be required to comply with minimum construction standards as required by section 37-91-110 and the rules of the board.”

Rule 6.7.1 (previously Rule 6.7.3) directs that all work performed by a private driller and private pump installer must comply with the standards of the Water Well Construction Rules and all other applicable regulations.

Rule 6.8 addresses license renewal and implements section 37-91-107(4), C.R.S. (2017), authorizing the Board to renew a contractor’s license for a period of up to three years. The Rule specifies the fee requirement is commensurate with the duration of the license renewal period.

Rule 6.8.1 directs that the period of the bond or other financial responsibility is the same as the period of license renewal.

Rule 6.8.2 implements the provisions of section 37-91-105(7), C.R.S. (2017), which require each licensed contractor to complete eight hours of approved continuing education training during each calendar year in order to renew a license. The Rule provides for submittal of a “certificate of completion” to the Board affirming that the continuing education requirement has been fulfilled.

The Rule specifies that the deadline for submitting the certificate is January 15 of each year and explains that the license of a contractor who fails to submit the certification annually will lapse regardless of the duration for which the license was renewed. January 15 is used as the annual deadline in order to provide sufficient time for renewal processing prior to the license lapse date of February 1.

Rule 6.8.2.1 explains the procedure for reinstatement of a license that is lapsed pursuant to section 37-91-107(4), C.R.S. (2017), because a contractor has failed to fulfill the continuing education training requirement or to file the required certificate of completion. The Rule provides for payment of a reinstatement fee, which is currently set by statute in the amount of $100. The Rule specifies that any continuing education training acquired after the fifteenth of January used to fulfill the previous year's obligation cannot be applied to the eight-hour requirement for the current calendar year.

Rule 7. Financial Responsibility

The statutory authority for this Rule is found under sections 11-35-101 and 101.5 and 37-91-107, C.R.S. (2017).

Rule 7 clarifies how a contractor may fulfill the financial responsibility requirement and how to file a claim against a bond or alternative funds. Section 37-91-107, C.R.S. (2017) requires a licensee to provide evidence of financial responsibility in the form of an approved compliance bond with a corporate surety authorized to do business in the state of Colorado, or in the form of alternative funds such as a savings account, deposit, certificate of deposit, or irrevocable letter of credit. A contractor's failure to maintain the statutorily required amount of financial responsibility will result in the lapse of that contractor's license.

Rule 7.2 describes the required coverage of a corporate surety bond and the information that must be listed on the bond. The bond must be a compliance bond that covers the licensee's compliance with all applicable laws and regulations that apply to the activity authorized by the license, including the Water Well Construction Rules and these Rules. Rule 7.2.3 addresses filing a claim against a bond, and Rule 7.2.4 charges the contractor with responsibility for notifying the Board of any change in or cancellation of a bond. Rule 7.2.1 was modified to raise in-state bonds to $20,000 in order to account for inflation and the rising costs of materials and labor. The Board is authorized under section 37-91-107(3.7), C.R.S. (2017), to increase the required bond amounts higher than the statutory minimums if such an increase becomes necessary to further the purposes of Article 91 of Title 37.

Rules 7.3 and 7.3.1 explain how a contractor may fulfill the requirement of financial responsibility through alternative funds. Rule 7.3.2 imposes responsibility on the contractor for costs incurred by the Board in maintaining and administering such funds, including the costs of negotiation or litigation of claims. Rule 7.3.3 addresses filing a claim against alternative funds and sets forth the conditions under which the Board will make payments from the alternative funds. The Board will not release any alternative funds without a written and notarized agreement of the parties that the Board may do so in a specified amount, or a court order directing the Board to pay a party a specified amount from the alternative funds.

Rule 7.4 establishes periods of liability of both bonds and alternative funds. The two-year periods are based upon the time limitations for initiating a hearing on a complaint as set forth in Section

37-91-108, C.R.S. (2017). Because a complaint may have been filed before the date the liability period ends, but not yet resolved by that date, this Rule authorizes the Board to retain the alternative funds until the complaint is resolved.

Rule 8. Continuing Education

The statutory authority for this Rule is found under sections 37-91-104(1), 105(7), and 107(6), C.R.S. (2017).

Rule 8.1 implements the continuing education requirement established in section 37-91-105(7), C.R.S. (2017). Eight hours of approved continuing education training must be obtained during each calendar year for license renewal. The Rule was modified to incorporate BOE Policy 2005-1, which limits the annual number of continuing education hours that can be obtained by internet or online participation and from safety, CPR, First Aid, or other safety-related training. This Rule encourages diversity in the areas of continuing education and limits the redundancy of safety-related training.

Rule 8.1.1 was modified to incorporate BOE Policies 2007-1 and 2009-1 to provide consistency in evaluating the fulfillment of the continuing education requirement. The Rule specifies that only training obtained during the applicable calendar year is eligible for the continuing education obligation for license renewal, and that training in excess of the required eight hours cannot be applied to the obligation for the following year.

Rule 8.2 and its subsections establish criteria for accreditation of training courses and programs in accordance with section 37-91-107(6), C.R.S. (2017). The Rule was modified to incorporate BOE Policy 2004-1 so that the Board will establish such accreditation in conjunction with the CE Committee, as defined under Rule 4.2.7, whose membership includes a designee from the Colorado Water Well Contractors Association. Subsections of Rule 8.2 designate general criteria for evaluating a continuing education training program or course for accreditation, provide standards for program or course sponsorship and instruction, and require the documentation of attendance. The subsections also provide for the determination of the number of eligible hours for an accredited course or program and a means of modifying the number of hours when necessary.

Rule 8.2.9 was added to specify that the CE Committee will not consider post-attendance requests for continuing education course accreditation. This Rule incorporates BOE Policy 2008-1. The purpose for the rule is so that prior approval of courses can be noticed and posted so that other contractors can attend, sponsor documentation and maintenance of attendance records can be demonstrated, and the Board can function more efficiently in evaluating continuing education accreditation requests.

Rule 8.2.10 and its subsections were added to establish a process for awarding continuing education credit for preparing and presenting a continuing education course. The Rule incorporates BOE Policy 2007-2. The provides for consistency in evaluating fulfillment of continuing education requirements.

Rule 8.3 addresses the Certificate of Completion required by section 37-91-107(4), C.R.S. (2017), and the contractor's responsibility to maintain records of attendance at accredited continuing education training that is reported on the certificate. The Rule and its subsections implement the statutory requirement for annual submittal of the Certificate of Completion, specify

the certificate will consist of a form prescribed by the Board, and advise that failure to submit the certificate by the fifteenth of January of each year for license renewal will result in lapse of the license.

Rule 9. Remedial and Disciplinary Action

The statutory authority for this Rule is found under sections 37-91-104(1), 108, and 109, C.R.S. (2017).

Rule 9.1 references the statutes vesting the Board with authority to carry out its obligation to protect the public health and the groundwater resources of the state by ordering remedial action and/or the imposition of a disciplinary actions.

Rule 9.2 provides for the issuance of an order by the Board assessing penalties or requiring the correction of a defective well that poses a hazard to the public health or the groundwater resource. Such defects may occur by failure to employ approved materials to construct a well or install pumping equipment, or as a deficiency in the application of materials resulting in failure to meet minimum standards. Rule 9.2 was modified to remove the reference to a notice and hearing process before issuing such orders. To the extent notice and hearing is required impose a penalty, such a process is already stated in Rule 9.5.

Rule 9.3 implements a portion of sections 37-91-104(l)(1) and 108(4), C.R.S. (2017), which authorizes the Board to require a nondestructive investigation of a well be conducted by a contractor, private driller/private pump installer, or well owner. The Rule gives examples of the types of nondestructive techniques the Board may require. Rule 9.3 and subsection 9.3.1 were modified to remove a notice and hearing process before issuing an order for nondestructive investigation. Such a process is not required by statute, and interferes with the Board's ability to correct violations of statutes and the Board's rules, and to protect public health and the groundwater resource.

Rule 9.3.1 provides that the Board may order a nondestructive investigation of a well based on evidence that a well is not properly constructed or maintained.

Rule 9.3.2 specifies that all work to complete a nondestructive investigation must be conducted in accordance with the terms and conditions of the order, including the submission of the results of the investigation. The Rule provides that noncompliance with terms and conditions of an order, or failure to fulfill the requirements of an order to conduct a nondestructive investigation, is considered to be a violation of these Rules. The purpose of the Rule is to enable the Board to pursue compliance with its order.

Rule 9.3.3 specifies that, in accordance with statutory requirements, only a licensed pump installation contractor or private pump installer can remove and reinstall pumping equipment when performing a nondestructive investigation.

Rule 9.3.4 requires the person ordered to conduct the nondestructive investigation pay all associated costs.

Rule 9.4 states the authority of the Board provided under section 37-91-108(4), C.R.S. (2017), to require abandonment, repair, drilling, re-drilling, casing, re-casing, deepening, or excavation of a well to protect public health or the groundwater resource.

Rule 9.4.1 explains that such an order of the Board must be based on evidence that a well is not properly constructed or maintained such that it is a potential hazard to the public health and/or the groundwater resource. Rule 9.4.1 was modified to remove a notice and hearing process before issuing such an order. Such a process is not required by statute, and interferes with the Board's ability to correct violations of statutes and the Board's rules, and to protect public health and the groundwater resource.

Rule 9.4.2 specifies that all work to perform a corrective action must be performed in accordance with the terms and conditions of the order. The Rule provides that noncompliance with terms and conditions of an order, or failure to fulfill the requirements of an order, is considered to be a violation of these Rules. The purpose of the Rule is to enable the Board to pursue compliance with its order.

Rule 9.4.3 specifies that, in accordance with statutory requirements, only a licensed water well construction contractor or private driller can perform corrective actions that include abandonment, repair, drilling, re-drilling, casing, re-casing, deepening, or excavation of a well.

Rule 9.4.4 addresses assignment of responsibility for costs associated with performing a corrective action. The purpose of the Rule is to provide the Board some flexibility when assigning responsibility for such costs.

Rule 9.5 and its subsections implement the Board's authority to take disciplinary action by withholding, suspending, or revoking a contractor's license and imposing fines as provided in section 37-91-108. Such disciplinary actions may only be invoked after proper notice and hearing.

Rule 9.5.1 allows the Board to accept a stipulated settlement that includes a provision for payment of a fine and provides for the establishment of a fine schedule to assist the Board in maintaining consistency in the imposition of fines.

Rule 9.5.2 specifies that all provisions of an order for disciplinary action must be complied with in accordance with the terms and conditions of the order. The Rule provides that noncompliance with terms and conditions of an order, or failure to fulfill the requirements of an order, is considered to be a violation of the BOE Administration Rules. The purpose of the Rule is to enable the Board to pursue compliance with its orders.

Rule 10. Petitions for Declaratory Orders

The statutory authority for this rule is found in section 24-4-105(11), C.R.S. (2017). Rule 10 was added is to comply with the requirement of this statute and provide procedures for entertaining, in the Board's discretion, any petitions for declaratory orders to terminate controversies or to remove uncertainties as to the applicability to the petitioners of any statutory provision or of any rule or order of the agency.

Rule 11. Severability

The purpose of this Rule is to clarify that each rule is independent of the others, so that if any one Rule is found to be invalid, the remainder will remain in effect.

Rule 12. Revisions

This Rule recognizes the ability of the Board to make any required changes, subject to the requirements of the State Administrative Procedure Act.

Rule 13. Effective Date

The Rules will be effective January 1, 2018 and will be in full force and effect for the 2018 calendar year licensing renewal. If any contractor is in the middle of an extended license period, the contractor must update their financial responsibility under these Rules or the license will lapse.

Editor's Notes

History

Entire rule eff. 06/01/2004

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Tracking number: 2017-00413

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Water Resources

on 11/06/2017

2 CCR 402-14

RULES AND REGULATIONS FOR ADMINISTRATION OF LICENSING, FINANCIAL RESPONSIBILITY, CONTINUING EDUCATION AND REMEDIAL ACTION FOR WELL CONSTRUCTION AND PUMP INSTALLATION CONTRACTORS

The above-referenced rules were submitted to this office on 11/06/2017 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.

November 17, 2017 10:58:19

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Natural Resources

Agency

Colorado Parks and Wildlife (405 Series, Parks)

CCR number

2 CCR 405-7

Rule title

2 CCR 405-7 CHAPTER P-7 - PASSES, PERMITS AND REGISTRATIONS 1 - eff 01/01/2018

Effective date

01/01/2018

FILING – 11/30/2017

FINAL REGULATIONS - CHAPTER P-7 - PASSES, PERMITS AND REGISTRATIONS

 # 708 - PASS AND PERMIT FEE SCHEDULE

8. The fees associated with the reservation system for phone or internet sales are as follows:

   a. Campsite, cabin and yurt reservation fee……$10.00/campsite, cabin or yurt

   b. Each reservation change or cancellation……$6.00/each

      (1) For cancellations made fourteen days or more prior to the beginning date of the reservation, the campsite reservation fee will be retained and the cancellation fee will be charged.

      (2) For cancellations made less than fourteen days prior to the beginning date of the reservation, the campsite reservation fee will be retained and the first night's camping fee will be charged.

   c. On-park facility reservation fee……...$10.00/facility

      (1) For group camping areas, group picnic areas, and event facilities, the cancellation fees shall be as described in regulations # 704, # 706, and # 708, respectively.

#717 – AGENT COMMISSION RATES

See also §33-4-101 C.R.S. relative to CPW agents and §33-4-102(1.6)(b) C.R.S. for price indexing information for nonresident big game licenses.

A. Commission Rates for Retail Agents:
   1. Retail agents shall be paid a 4.75% commission for each license sold electronically, except for those licenses with fixed commissions as shown below.
   2. Retail agents shall be paid a 5% commission for each pass sold electronically.
   3. Agents who sell registrations shall be paid a flat rate of $1.00 per registration issued.
   4. Fixed Commissions:

Division Product Type	2017 Fee	2017 Commission	2018 Fee	2018 Commission
Second Rod Stamp	$5.00	$.31	$5.00	$.31
Fishing - 1 day	$8.00	$.62	$8.00	$.62
Fishing - 5 day	$20.00	$1.23	$20.00	$1.23
Small Game - 1 day	$10.00	$.62	$10.00	$.62
Nonresident Deer	$385.00	$13.50	$395.00	$13.90

Nonresident Pronghorn	$385.00	$13.50	$395.00	13.90
Nonresident Bear	$350.00	$12.95	$350.00	$12.95
Nonresident Mountain Lion	$350.00	$12.95	$350.00	$12.95
Nonresident Antlerless Elk	$480.00	$13.50	$495.00	$17.55
Nonresident Either-sex Elk	$640.00	$22.70	$660.00	$23.40
Nonresident Antlered Elk	$640.00	$22.70	$660.00	$23.40
Nonresident Rocky Mtn Bighorn Sheep	$2,145.00	$74.95	$2,210.00	$77.25
Nonresident Desert Bighorn Sheep	$1,430.00	$50.05	$1,470.00	$51.60
Nonresident Goat	$2,145.00	$74.95	$2,210.00	$77.25
Nonresident Moose	$2,145.00	$74.95	$2,210.00	$77.25

All 2017 licenses sold through March 2018 shall be sold at the 2017 license fee and commission rates.

B. Commission Rates for the System Agent: The system agent shall be paid the commissions shown in the table below for each license sold through the system:

1. Fixed Commissions:

Division Product Sale Type	Commission			
	07/01/2008 - 06/30/2010	07/01/2010 - 06/30/2011	07/01/2011 - 06/30/2012	07/01/2012 - 12/31/2016*
Division products sold through point of sale terminals	$1.29	$1.32	$1.34	$1.35
Division products sold through the Internet	$2.00	$2.00	$2.00	$2.00
Division products sold by telephone	$2.37	$2.37	$2.37	$2.37
Limited Licenses fulfillment	$1.00	$1.00	$1.00	$1.00

*The Commission rates for 2018 will remain as listed until the new IPAWS system has been implemented.

a. For Internet and telephone sales, the system agent shall receive an additional 2.2 percent of the cost of any wildlife product.

 # 718 – REGISTRATIONS-ONLY AGENTS

1. Registration-only agents: except for agents exempted from surety requirements in accordance with C.R.S. 33-12-104(9) when cash sales are made to financially secured agents they shall be subject to the following conditions:

    a. Purchase of accountable inventory registrations shall be made at the designated Division office or by submitting funds by mail to the designated address. Funds submitted for purchase must be in the exact amount of the Division's share for the number of registrations;

    b. All mail orders shall be placed on forms supplied by the Division.

    c. Redemption of unsold registrations may be made at the designated Division office or by submitting unsold registrations to the Division by mail.

    d. The termination procedures of registration agents who purchase registrations for cash shall include having the agent turn over to the Division or its representative all unsold registrations.

    e. Yearly submit final payment and return all unused accountable inventory by no later than November 15. Registrations may be carried over from year to year unless otherwise notified by the Division, in which case instructions will be given as to return/payment deadlines.

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Tracking number: 2017-00476

Opinion of the Attorney General rendered in connection with the rules adopted by the

Colorado Parks and Wildlife (405 Series, Parks)

on 11/16/2017

2 CCR 405-7

CHAPTER P-7 - PASSES, PERMITS AND REGISTRATIONS

The above-referenced rules were submitted to this office on 11/21/2017 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.

November 29, 2017 12:43:13

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Natural Resources

Agency

Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-0

Rule title

2 CCR 406-0 CHAPTER W-0 - GENERAL PROVISIONS 1 - eff 01/01/2018

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01/01/2018

FILING – 11/30/2017

FINAL REGULATIONS - CHAPTER W-0 - GENERAL PROVISIONS

ARTICLE I - DEFINITIONS

#000 – The following definitions supplement the statutory definitions found in the Wildlife Act including, but not limited to, those definitions found in section 33-1-102, C.R.S.

A. General Definitions Including Manner of Take Definitions

1. "Aggregate" when applied to bag and possession limits, means the total number of species which are covered by such bag and possession limits. Any combination of the species may be possessed up to the total number established as the aggregate bag and possession limits.

2. "Air gun" means any rifle or handgun .177 caliber or larger firing pellets, slugs, or round ball ammunition powered by high pressure air or compressed inert gas. This includes devices referred to as pellet guns or pneumatic weapons.

3. "Archery" means the use of a hand-held bow.

4. "Bag Limit" means the maximum number of wildlife which may be taken in a single day during an established open season. This includes any wildlife which are consumed or donated during the same day they were legally taken. The terms "bag limit," "daily bag" and "bag" are considered to have the same meaning.

5. "Baiting" means the placing, exposing, depositing, distributing, or scattering of any salt, mineral, grain, or other feed so as to constitute a lure, attraction or enticement for wildlife.

6. "Crossbow" means a bow which is attached at a right angle to a stock with a mechanical mechanism for holding the bow string in a cocked position and fired from the shoulder.

7. "Feral Hog" means any species or hybrid of species from the family *Suidae* (European boar, Eurasian boar, Russian boar, feral hog) or the family *Tayassuidae* (Javelina and peccary), which possesses one or more morphological characteristic distinguishing it from domestic swine including, but not limited to, an elongated snout, visible tusks, muscular shoulders with small hams and short loins, coarse hair, or a predominant ridge of hair along its back. For the purposes of these regulations, any swine running at large which possesses one or more of the above characteristics, may be presumed to be a feral hog, unless a person has received actual notice that the swine has escaped containment and its return is actively sought, in which case the person should report its location to the owner, if known, and the Division and the Department of Agriculture.

8. "Handgun" means any pistol or revolver having no shoulder stock or attachment.

9. "Hand-held bow" means a long bow, recurved bow, or compound bow on which the string is not drawn mechanically or held mechanically under tension. String releases or mechanical releases which are hand-drawn and hand-held with no other attachment or connection to the bow other than to the bowstring are lawful devices.

10. Licenses

a. **"Leftover license"** means a limited license which is leftover after the primary application and drawing process.

b. **"Limited license"** means any license which is limited in number by regulation and which is issued through the drawing process.

c. **"Over the counter license"** means a license that may be purchased at a license agent. Most over the counter licenses are unlimited in number, but some may have an established cap.

d. **"Private Land Only license"** means a limited license valid only for use on private land and State Trust Lands not leased by the Division, excluding those limited licenses issued as part of the Ranching for Wildlife program. Contact the State Land Board for access restrictions.

e. **"Unlimited license"** means a hunting license and carcass tag when appropriate which is not restricted in quantity and which is sold by license agents throughout the state and is not valid in any unit where licenses are available only through application and computer or hand drawn selection.

11. "Mentor" means a person eighteen years of age or older who holds a valid hunter education certificate or who was born before January 1, 1949, and accompanies a youth or apprentice while hunting. A person whose hunting and fishing license privileges are suspended can not be a mentor.

12. "Muzzle-loading rifle or musket" means a firearm fired from the shoulder, with a single barrel which fires a single patched round ball or bullet.

13. "Pre-charged pneumatic air gun" means an air gun that is charged from an external high compression source such as an air compressor, air tank, or external hand pump.

14. "Private use" means the possession of wildlife only for private enjoyment and not intended to be sold, traded, bartered, or entered into commerce.

15. Privately-owned game birds" means game birds held in private ownership and otherwise acquired in accordance with Commission regulations.

16. "Processed meat" means those edible parts of wildlife which have been cut into normal portions and wrapped for storage. It does not include game meat that is whole, has been quartered, or has not been packaged into normally accepted butcher's portions including but not limited to steaks, roasts, loins, chops, and ground meat.

17. "Rifle" means a firearm fired from the shoulder, with a rifled bore, having a barrel length of sixteen (16) inches or more and a minimum overall length of twenty-six (26) inches.

18. "Shotgun" means a firearm fired from the shoulder with a smooth bore, having a barrel length of eighteen (18) inches or more and a minimum overall length of twenty-six (26) inches.

19. "Slingbow" means a hand-held device, not drawn or held mechanically, with the arms or attachment points to which an elastic band is attached for propelling an arrow. The term also includes string releases or mechanical releases which are hand-drawn and hand-held with no other attachment or connection to the slingbow other than to the bowstring. Wrist-brace attachments are considered normal components of a slingbow.

20. "Slingshot" means a hand-held device, not drawn or held mechanically, with the arms or attachment points to which an elastic band is attached for propelling small stones or metal projectiles. Wrist-brace attachments and non-elastic projectile pouches are considered normal components of a slingshot.

21. "State Trust Lands" means those lands owned or under the control of the State Board of Land Commissioners.

ARTICLE IV - MANNER OF TAKING WILDLIFE

#004 - AIDS IN TAKING WILDLIFE

A. Aids Used in Taking Big Game, Small Game and Furbearers - Except as expressly authorized by these regulations, the use of baits and other aids in hunting or taking big game, small game and furbearers is prohibited.
   1. Baits
      a. Furbearers may be taken with the aid of baiting. Where permitted, baits shall consist solely of material of animal or plant origin and shall not contain any materials of metal, glass, porcelain, plastic, cardboard or paper. Wildlife used as bait shall be the carcass, or parts thereof, of legally taken furbearers, carp, shad, white and longnose suckers, and nonedible portions of legally obtained game mammals, birds and game fish.
   2. Dogs
      a. Use of dogs in the taking of wildlife is prohibited except as authorized in Commission Regulations. (See also: §33-4-101.3, C.R.S.)
         1. Dogs may be used to hunt or take mountain lion, small game, waterfowl, and furbearers, only as an aid to pursue, bring to bay, retrieve, flush or point, but not otherwise. Except as provided in (3) of this subsection, dogs shall not be used to hunt or take cottontail rabbits, snowshoe hares, and tree squirrels where a regular deer, elk, pronghorn or moose season is in progress.
         2. A leashed dog may be used as an aid in locating and recovering wounded big game wildlife, except for black bears, with the purchase of an annual tracking permit. Tracking permits can be purchased for $40.00 from any Colorado Parks and Wildlife Office by the dog handler. Prior to using the permit, the dog handler must notify a Colorado Parks and Wildlife Office and provide the following information: the dog handler's name, hunter's name (if different than the handler), hunter's CID number, location of use, species to recover, and time of use. Within five business days of using the permit, the handler must also notify the Division regarding whether they recovered the carcass. A dog may only be used to pursue or locate wounded big game during legal big game hunting hours. Provided however, that such pursuit may continue after legal big game hunting hours if the handler contacts and obtains the permission of a Wildlife Officer prior to continuing such pursuit. In acting on any such request, the Wildlife Officer shall consider the general public safety and may authorize the dispatch of the wounded animal after legal hunting hours. The dog must be leashed at all times and can not be used to kill, chase, or harass wildlife. The properly licensed hunter is required to be present while the dog is tracking and the animal must be dispatched by the hunter using a legal method of take based on their license. The dog handler is required to wear daylight fluorescent orange or fluorescent pink while tracking, unless the handler is tracking an animal shot on an archery license.
         3. Organized dog pursuit events involving the hunting of rabbits or hares conducted by state or nationally-recognized sporting associations may be conducted on private lands or public lands not concurrently open to big game hunting during the extended dog pursuit season for such species.
         4. A valid small game license is required for all dog handlers participating in any dog pursuit event involving the hunting of rabbits or hares, in accordance with regulation #004(A)(2)(a)(3).

3. Other Aids
    a. Mechanical calls may be used to take all species of wildlife during established seasons.
    b. Except as otherwise provided in these regulations, electronic calls may be used as an aid in taking furbearers only.
    c. Decoys may be used.
    d. European ferret may be used as an aid in taking small game only in conjunction with hawking. All ferrets used in this activity must be neutered, permanently tattooed on the left inguinal area and dyed along one-fourth (1/4) of their body length for easy field identification.
    e. Manner of take accommodations may be issued to persons with disabilities, in accordance with #005.

B. It shall be unlawful to hunt any game birds, small game mammals or furbearers, with a centerfire rifle larger than .23 caliber during the regular deer and elk seasons west of Interstate 25, unless the hunter holds an unfilled deer or elk license for the season he is hunting.

C. It shall be unlawful to use a drone to look for, scout, or detect wildlife as an aid in the hunting or taking of wildlife.
    1. For the purposes of this regulation, drone shall be defined as including, without limitation, any contrivance invented, used or designed for navigation of, or flight in the air that is unmanned or guided remotely. A drone may also be referred to as "Unmanned Aerial Vehicle" (UAV) or "Unmanned Aerial Vehicle System" (UAVS).

D. Smart Rifles
    1. All firearms used to take or attempt to take wildlife shall be fired only by humanly controlled, manually-operated mechanical triggers. No person shall use a smart rifle to take or attempt to take wildlife.
    2. **"Smart Rifle"** means any firearm that is equipped with one or more of the following:
        a. A target tracking system;
        b. An electronically-controlled, electronically-assisted, or computer-linked trigger;
        c. A ballistics computer.

E. Live-Action Game Cameras
    1. No person shall use a live-action camera to locate, surveil, or aid or assist in any attempt to locate or surveil any game wildlife for the purpose of taking or attempting to take said wildlife during the same day or following day.
    2. **"Live-Action Game Camera"** means any device capable of recording and transmitting photographic or video data wirelessly to a remote device, such as a computer or smart phone. "Live-action game camera" does not include game cameras that merely record photographic or video data and store such data for later use, as long as the device cannot transmit data wirelessly.

F. **Aircraft,** by permit only.
    1. The Division may issue permits for the taking of coyotes by aircraft when it is determined by the Director that such a permit is necessary for the protection of wildlife populations. Applicants shall fill out applications furnished by the Division and shall give such information thereon as may be required by the Division; including, if requested, a map of the area where control of animal damage is needed.
    2. Permits shall not be issued for longer than a thirty (30) day period. A permit may, however, be renewed without submitting a new application unless deemed necessary by the Director. Any such permit may be revoked by the Director at any time. Permittees shall abide by restrictions and conditions set forth on the permit.
    3. Permits to use aircraft will be issued only upon authority of the Director.
    4. Reporting.
        a. Within ten (10) days after expiration of an aircraft permit the permittee shall file a report on forms provided by the Division. The report shall contain all information the

Division may request, including but not limited to: a) number of coyotes killed, b) location of each kill, and c) number of hours flown.

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Tracking number: 2017-00483

Opinion of the Attorney General rendered in connection with the rules adopted by the

Colorado Parks and Wildlife (406 Series, Wildlife)

on 11/16/2017

2 CCR 406-0

CHAPTER W-0 - GENERAL PROVISIONS

The above-referenced rules were submitted to this office on 11/21/2017 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.

November 29, 2017 12:46:07

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Natural Resources

Agency

Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-1

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2 CCR 406-1 CHAPTER W-1 - FISHING 1 - eff 04/01/2018

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FINAL REGULATIONS - CHAPTER W-1 FISHING

ARTICLE I - GENERAL PROVISIONS

#100 – DEFINITIONS
See also 33-1-102, C.R.S and Chapter 0 of these regulations for other applicable definitions.

A. **"Artificial flies and lures"** means devices made entirely of, or a combination of, natural or synthetic non-edible, non-scented (regardless if the scent is added in the manufacturing process or applied afterward), materials such as wood, plastic, silicone, rubber, epoxy, glass, hair, metal, feathers, or fiber, designed to attract fish. This definition does not include anything defined as bait in #100.B below.

B. **"Bait"** means any hand-moldable material designed to attract fish by the sense of taste or smell; those devices to which scents or smell attractants have been added or externally applied (regardless if the scent is added in the manufacturing process or applied afterward); scented manufactured fish eggs and traditional organic baits, including but not limited to worms, grubs, crickets, leeches, dough baits or stink baits, insects, crayfish, human food, fish, fish parts or fish eggs.

C. **"Chumming"** means placing fish, parts of fish, or other material upon which fish might feed in the waters of this state for the purpose of attracting fish to a particular area in order that they might be taken, but such term shall not include fishing with baited hooks or live traps.

D. **"Game fish**" means all species of fish except unregulated species, prohibited nongame, endangered and threatened species, which currently exist or may be introduced into the state and which are classified as game fish by the Commission. This includes, but is not limited to brown, brook, cutthroat, golden, lake (mackinaw), and rainbow trout; cutbow (rainbow trout x cutthroat trout hybrids), splake (lake trout x brook trout hybrids), and tiger trout (brown trout x brook trout hybrids); arctic char; grayling; kokanee salmon; whitefish; sculpin; smallmouth, largemouth, spotted, striped, and white bass; wipers (striped bass x white bass hybrids); carp; bullhead, blue, channel, and flathead catfish; black and white crappie; drum; northern pike; tiger muskie; sacramento and yellow perch; sauger; saugeye (walleye x sauger hybrids); speckled dace; rainbow smelt; tench; walleye; bluegill; bluegill hybrids (bluegill x green sunfish); green, redear and pumpkin-seed sunfish; gizzard shad; longnose and white suckers; and minnows.

E. **"Float tube"** means a floating device which suspends a single occupant in the water from the seat down and is not propelled by oars, paddles or motors.

F. **"Gig"** means a barbed fork with one or more tines which is attached to a handle.

G. **"Jugs"** means floats to which are attached a line and common hook.

H. **"Minnow"** means all members of the families of fish classified Cyprinidae (Carp, Chub, Dace, Goldfish, Minnow, Shiner, Stoneroller, and Tench) Cyprinodontidae (Killifish, Topminnow) and Clupeidae (Gizzard Shad), except those designated as nongame, threatened, or endangered in Chapter 10 of these regulations, or those designated as Unregulated Wildlife in Chapter 11 of these regulations.

I. **"Natural stream"** means an existing stream course where water naturally flows regularly or intermittently for at least part of the year. Ditches or other water conveyance channels which are man-made are not considered natural streams.

J. **"Net"** means seine, dip net, gill net, cast net, trap net, hoop net or similar devices used to take or as an aid in taking fish, amphibians or crustaceans.

K. **"Personally attended line"** means a rod and line, hand line, or tip up that is used for fishing and which is under the personal control of a person who is in proximity to it.

L. **"Common hook"** means any hook or multiple hooks having a common shank. All hooks attached to a manufactured artificial lure shall be considered a common hook.

M. **"Size" or "Length"** means the total length of a fish with head and tail attached measured from the tip of the snout to the tip of the tail.

N. **"Seining"** means the capture of live fish with the use of a net that hangs vertically in the water and is used to enclose fish when its ends are pulled together, or are drawn ashore.

O. **"Snagging"** means the taking of fish by snatching with hooks, gang hooks, artificial flies or lures, or similar devices where the fish is hooked in a part of the body other than the mouth.

P. **"Trotline"** means a single, anchored line with a float at each end from which droplines are attached.

#101 - SEASON DATES AND HOURS

A. Except as otherwise provided in these regulations, all waters of the state shall be open to fishing using all manners of take day and night, year around.

#102 - LICENSE AND STAMP REQUIREMENTS
See also 33-6-107 C.R.S. for general fishing license requirements

A. A valid commercial fishing license is required to take or possess bait fish, amphibians, or crustaceans for commercial purposes.

1. Commercial fishing licenses shall be available from the Division at a cost of forty dollars ($40.00). Applications for licenses are available from the Division. Licenses issued by the Division can be restricted to specific waters, specific bag limits and times designated by the Division on the basis of the following criteria:

    a. Negative impacts on sport fishing opportunity.
    b. Effects of commercial harvest on populations of target species.
    c. Detrimental effects of transplanting a species outside its current range.
    d. Presence of threatened or endangered species and species of special concern.

2. All commercial fishing license holders shall submit an annual report as specified on the commercial fishing license application to the Division within thirty (30) days of the expiration date of the license.

3. All commercial fishing license holders shall be required to provide each purchaser of live fish with a written receipt stating the seller's name, the date of sale, the species, and the number sold.

4. The taking of mollusks listed in Chapter 10 is prohibited.

B. Free fishing dates - The following dates are open to fishing without a license or Habitat Stamp in all waters of the state: The first full weekend of the month of June.

C. Second rod stamp – Any person may use one additional (second) personally attended line statewide when a second rod stamp is purchased, as identified on the user's fishing license.

1. Any person under 16 years of age who is not required to have a fishing license must have a second rod stamp with their signature in possession in order to use a second personally attended line.

2 Second rod stamps are not transferable to any other person, nor do they confer fishing privileges to any person other than the license-holder.

3. A second rod stamp is not required when fishing with a trotline or jugs only.

#103 - MANNER OF TAKE

A. The following are legal methods of take for species listed in this chapter. Any method of take not listed herein shall be prohibited, except as otherwise provided by statute or these regulations:

1. One personally attended line, except as otherwise authorized in these regulations.
   a. Each line shall have no more than 3 common hooks attached.

2. Trotlines

   a. Trotlines may only be used on waters specified in regulation #108.
   b. No one may use more than one trotline.
   c. Trotlines shall be anchored, marked at each end by floats, be no more than 150 feet in length, have no more than 25 droplines, and shall be weighted to place the line a minimum of 3 feet beneath the surface of the water.
   d. There shall be no more than 3 barbed hooks on a common hook on each dropline.
   e. Trotlines shall be tagged with the user's customer identification number and date set. If the user does not have a customer identification number, trotlines must be tagged with the user's name.
   f. All trotlines shall be personally checked at least once in each 24-hour period.

3. Jugs

   a. Jugs shall only be used only on waters specified in regulation #108.
   b. No one may use more than 10 jugs, each of which shall not have more than a single line with one common hook attached.
   c. Jugs shall be tagged with the user's customer identification number. If the user does not have a customer identification number, jugs must be tagged with the user's name.
   d. Jugs shall be personally checked at least once every hour.

4. Underwater spearfishing, archery, slingbows and gigs

a. Underwater spearfishing, archery, slingbows and gigs may be used statewide for the taking of carp and northern pike, except as otherwise prohibited by these regulations or land management agencies. East of the Continental Divide, gizzard shad, and white or long-nose suckers may also be taken, unless otherwise prohibited in regulation #108. Other game fish species may only be taken when authorized in regulation #108 for a specific water.
b. The following additional restrictions apply to underwater spearfishing:
    1. CO_2 guns or cartridge-powered spears are prohibited.
    2. Guns must be loaded and unloaded while the gun is submerged.
    3. Divers must stay within a radius of 100 feet of a float bearing the National Divers' Symbol.
    4. Spears must be attached by a safety line.
c. Archery and slingbows may be used for the taking of kokanee salmon during times and in locations otherwise open to snagging of salmon, as established in #108 of these regulations.
d. Archery, slingbows and gigs may be used for the taking of bullfrogs.
e. The following additional restrictions apply to fishing with archery hand-held bows and slingbows:
    1. All archery hand-held bows and slingbows must have a reel, fishing line and arrow attached to the bow.
    2. All archery hand-held bows must have an arrow safety slide mechanism, which maintains the fishing line in front of the arrow rest at all times.

5. Snagging
    a. Snagging shall be used for the taking of kokanee salmon only, and only where specifically authorized in regulation #108.
    b. Snagged fish species other than kokanee salmon must be returned to the water immediately upon catch.

6. Seines and cast-nets
    a. Seines shall be used only for fish taken in accordance with regulation #104(H), the gilled form aquatic tiger salamander larvae, and crayfish; or when authorized for emergency salvage.
    b. Seines shall be made of one-fourth (1/4) inch or less non-metallic square mesh.
    c. Seines shall not exceed 20 feet in length by 4 feet in depth

7. By hand or with the aid of dip nets
    a. Bullfrogs, crayfish, and the gilled form aquatic tiger salamander larvae may be taken by hand or with the aid of dip nets.
    b. Fish may be taken by hand or with the aid of dip nets or any other method approved by the Director, when emergency public salvage of fish has been approved in accordance with regulation #104(G).
    c. Hand held dip nets may be used for fish taken in accordance with regulation #104(H).

8. Livetraps
    a. Cage or box traps, including set pots, shall be used only for the taking of crayfish, snapping turtles, and fish taken in accordance with regulation #104(H). All cage or box traps, including set pots, shall be tagged with the user's customer identification number. If the user does not have a customer identification number, traps must be tagged with the user's name.

9. Artificial light
    a. Artificial light may be used as an aid in taking.

10. Bait
    a. Bait may be used as an aid in taking, except by chumming, in accordance with regulation #104(H).

#104 - SPECIAL CONDITIONS AND RESTRICTIONS

A. Any fish released upon catch must be released alive and into the same body of water from which it was taken. Transfer or transport of live fish is prohibited, except as otherwise permitted in the provisions of Article VII, #010 and Article I #104(H).

B. When fishing through the ice, the following additional restrictions apply:

1. Ice fishing holes shall not exceed 10 inches in diameter, or 10 inches on any side.
2. All fires on the ice must be enclosed in a container.
3. No litter may be left on the ice.
4. On waters where only portable shelters are permitted, all ice fishing shelters must be removed from the ice at the end of the day.
5. On waters where permanent ice fishing shelters are permitted; the name and customer identification number of the owner or user must be displayed on the outside, shore side, of the shelter, in legible, contrasting color letters at least 2 inches high.

C. Only those persons designated by the United States Fish and Wildlife Service may take fish, amphibians, mollusks or crustaceans within the boundaries of any Federal fish hatchery or rearing unit.

D. Molesting, disturbing, or damaging gill nets, traps, or seines set by the Division is prohibited.

E. Fishing may be prohibited as posted pending the adoption of water-specific regulations when necessary to:

1. Protect threatened or endangered species.
2. Protect spawning areas.
3. Protect waters being used in Division research projects.
4. Protect newly acquired access to fishing waters.
5. Protect the integrity of sport fish, native fish or other aquatic wildlife populations.

F. Emergency Closure of Fishing Waters

1. The Director may authorize emergency closure of fishing waters in the state for a period of up to 9 months when it is determined that environmental conditions in these waters are such that fishing could result in unacceptable levels of fish mortality. Such closures may be enacted when any one of the following criteria are met:

    a. Daily maximum water temperatures exceed 74 º F or the daily average temperature exceeds 72º F;
    b. Measured stream flows are 25 % or less of the historical average low flow for the time period in question;
    c. Fish condition is deteriorating such that fungus and other visible signs of deterioration may be present;
    d. Daily minimum dissolved oxygen levels are below five (5) parts per million (ppm).

e. When a natural or man-caused environmental event such as wildfire, mudslides, oil spills or other similar event has occurred, resulting in the need for recovery time or remedial action for a fish population

When such determination has been made; public notice will be given, including posting at the site.

G. Emergency Public Salvage of fish

1. The Director may authorize emergency public salvage when substantial numbers of fish in waters of the state are found to be in imminent danger of being lost. Such loss is deemed to be imminent when the volume and depth of water, water temperature and/or oxygen content are such that fish cannot survive. Measurements shall be made of these criteria as a basis for making a judgment on the total loss of fish and when such loss will occur, and will include:

    a. Water storage levels in lakes, reservoirs, or ponds of less than twenty-five (25) percent of total capacity or,
    b. River or stream flow essentially eliminated with only pools left standing or,
    c. Visual evidence of substantial numbers of sick or dying fish, or
    d. Reclamation projects.

2. When such determination has been made; public notice will be given, including posting at the site, that fish may be taken by hand or by dip net, or any other method authorized by the Director. When practical the Director shall exercise this authority within fourteen (14) days of receipt of the information or at such earlier time as the emergency necessitates.

3. Numbers of fish to be salvaged and possessed by an individual shall be determined by Division personnel at the site.

4. Emergency salvage shall be permitted only during daylight hours.

H. Take, Possession and Use of Fish, Amphibians, and Crustaceans for bait, personal or commercial use

1. The seining, netting, trapping, and dipping of fish is prohibited statewide in all natural streams, springs, all waters in Adams, Arapahoe, Boulder, Broomfield, Clear Creek, Denver, Douglas, Gilpin, Elbert, Jefferson, and Park counties, and all public standing waters in Rio Grande, Saguache, Conejos, Costilla, Alamosa, Mineral and Hinsdale counties in the Rio Grande drainage.

    a. Fish handled or produced on commercially licensed aquaculture facilities are exempt from this regulation.

2. The only fish species allowed to be taken and used for consumption or personal use as bait (either alive or dead) by fishing, seining, netting, trapping, or dipping are minnows, bluegill, hybrid bluegill, carp, sunfish, gizzard shad, sculpin, white and longnose suckers, yellow perch and rainbow smelt. Statewide bag limits apply to sunfish, bluegill, hybrid bluegills and yellow perch.

    a. Restrictions on Live Fish Used as Bait.

        1. The collection, use, or possession of live fish for use as bait is prohibited in the following waters:
        aa. All waters east of the Continental Divide above 7,000 feet elevation

bb. The Arkansas River above Parkdale – Fremont and Chaffee counties
cc. Watson Lake - Larimer County
dd. All waters west of the Continental Divide, except in Navajo Reservoir.

2. Except as otherwise provided by these regulations, live fish collected for use as bait may only be used in the same body of water from which they were collected. In addition, collection and use is allowed in any man-made ditches and canals within one-half mile of the adjoining lake or reservoir. Use of any baitfish collected in those ditches and canals is restricted to only the water from which it was collected and the adjoining lake or reservoir. Baitfish collected under this provision may not be otherwise transported or stored for later use.

3. In Baca, Bent, Crowley, Kiowa, Otero and Prowers Counties, live fish collected for personal use as bait may be transported, stored or used anywhere within the listed counties. Transportation to or use of any such baitfish in any other county is prohibited,

4. All live baitfish acquired from a commercial source and transported by anglers must at all times be accompanied by a receipt from the source.

3. The only fish species allowed to be taken for commercial use are minnows, gizzard shad, white and longnose suckers and carp.

4. Bullfrogs and Salamanders. The taking, possession and use of bullfrogs and the aquatic gilled form of the tiger salamander for private and commercial use is permitted. Statewide bag limits apply.

5. Crustaceans.

   a. The taking, possession and use of any crustacean under the authority of a commercial fishing license is subject to the following restrictions:
      1. The minimum size for crayfish taken for commercial food purposes shall be three (3) inches. (Measured from the tip of the acumen (bony spike between the eye) to the telson (last bony plate in the tail)).
      2. All crayfish taken with eggs attached must be returned to the water immediately.
      3. All set pots and traps shall be labeled with the user's customer identification number. If the user does not have a customer identification number, all set pots and traps must be labeled with the user's name.

   b. In all waters west of the Continental Divide - All crayfish must be returned to the water of origin immediately or killed and taken into possession immediately upon catch with kill being effected by separating the abdomen from the cephalothorax (tail from body).

6. Mollusks. The taking of mollusks for personal or commercial use as bait is prohibited.

#105 – VACANT

#106 - FISHING CONTESTS AND RELEASE OF TAGGED FISH

A. Fishing Contests using tagged or marked released fish

1. No person shall advertise, promote, conduct or offer to conduct any fishing contest where the object of such contest is to take marked or tagged fish released in any waters open to public fishing, except licensed commercial and private lakes, or release marked or tagged fish for this purpose, unless such contest is first approved by the Director.

    a. Application shall be made on a form provided by the Division at least sixty (60) days prior to the proposed contest date. Such application shall be accompanied by a nonrefundable fee of forty dollars ($40.00).

    b. Approval shall be granted to any person meeting the requirements of this regulation unless the Director determines the proposed contest would be significantly detrimental to the wildlife resource. In such cases, approval may be granted if conditions can be placed on the conduct of the contest which will avoid such detrimental effects. When an application for a contest is denied the applicant shall be promptly notified with a written notice stating the reason(s) for such denial.

2. Contests involving tagged or marked trout will be permitted only on lakes and reservoirs greater than 200 surface acres and managed primarily as a catchable fishery by Colorado Parks and Wildlife. "Catchable fishery" means any lake or reservoir which is annually stocked with hatchery reared trout averaging eight (8) to ten (10) inches in length.

3. No tagged or marked fish contest shall be permitted on any stream, river or other flowing water or any water designated as a Gold Medal or Wild Trout water.

4 Written approval shall be obtained from the person(s) or agency(s) who owns or controls the land and water area involved prior to making application to the Division

5. All statutes and regulations including license provisions, manner of taking, size restrictions and daily bag and possession limits for fish shall remain in effect during any contest.

6 Any public fishing area shall remain open to public fishing without charge, regardless of any special contest fee or changes, during a fishing contest.

7. All fish obtained for use in any contest shall be certified disease free in accordance with #009, prior to release.

8. Contest sponsor(s) shall provide a written report to the appropriate Parks and Wildlife office within twenty (20) days of the close of such contest. Said report shall include an estimate of the number of participants, the average time spent by participants in fishing and the estimated total fish catch by species.

#107 - STATEWIDE DAILY BAG AND POSSESSION LIMITS AND SPECIAL SEASONS

A. Daily Bag, Possession Limits and size limits:

1. Daily bag and possession limits **– except as otherwise provided in these regulations for certain waters,** the daily bag and possession limits will be as follows:

Species	Daily Bag and Possession Limit (except as otherwise noted)	Special Conditions
a. Trout (Brook, Brown, Cutbow, Cutthroat, Golden, Lake, Rainbow, Splake, and Tiger; Arctic Char, Salmon (except kokanee), and Grayling:	Daily Bag: 4 fish in the aggregate Possession Limit: 8 fish in the aggregate	Brook Trout - additional daily bag and possession limit: 10 fish, 8 inches or less in length
b. Kokanee salmon:	10 fish	
c. Walleye, Saugeye, Sauger:	5 fish in the aggregate	Arkansas and South Fork of the Republican River drainages - bag and possession limit: 10 fish in the aggregate
d. Largemouth Bass, Spotted Bass, and Smallmouth Bass:	5 fish in the aggregate	West of the Continental Divide- for Smallmouth Bass only: Unlimited bag and possession limit.
e. White Bass, Striped Bass, Wiper:	10 fish in the aggregate	Arkansas and South Fork of the Republican River drainages - bag and possession limit: 20 fish in the aggregate
f. Channel Catfish, Blue Catfish, Flathead Catfish:	10 fish in the aggregate	
g. White Crappie, Black Crappie:	20 fish in the aggregate	
h. Bluegill, Hybrid Bluegill, Green Sunfish, Redear Sunfish, Pumpkinseed Sunfish:	20 fish in the aggregate	
i. Yellow Perch:	20 fish	West of the Continental Divide: Unlimited
j. Tiger Muskie:	1 fish, at least 36 inches in length	
k. Northern Pike, Whitefish, Bullhead:	Unlimited	
l. Speckled Dace, and Sculpin:	Unlimited	West of the Continental Divide - bag and possession limit: 20 fish in the aggregate
m. Bullfrogs	Unlimited	
n. Crayfish (crawdads)	Unlimited	
o. Aquatic Tiger Salamander larvae (gilled form)	50, less than 5 inches in length	

2. Any fish caught and placed on a stringer, in a container or in a live well, or not returned to the water immediately, will be counted as part of the established daily bag or possession limit. Any fish taken and subsequently smoked, canned, frozen or otherwise preserved for consumption is considered part of the established possession limit until it is consumed.

3. There are no daily bag or possession limits for game species not specifically listed.

ARTICLE II - SPECIAL REGULATION WATERS

#108 – Special Daily Bag and Possession Limits, Size Restrictions, and Other Water-Specific Provisions

A. Various cutthroat waters, specifically those considered Cutthroat Conservation and Recreation waters, are protected throughout the state as listed below. In those waters:

1. Fishing is by artificial flies and lures only. All cutthroat trout must be returned to the water immediately upon catch.

   Note: This is to accommodate the growing number of cutthroat trout streams and lakes that are being included in conservation and recovery actions according to management plans.

B. In place of or in addition to regulations # 101, 103, 104, 105, 106, 107 (bag and possession limits, manner of take, fishing dates, fishing hours, special conditions and restrictions, or other fishing activities), and 108 A, the following regulations apply to the named waters:

Note: Additional conditions and restrictions for state wildlife areas are found in Chapter 9

1. <u>Abrams Creek - Eagle County</u>

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

2. <u>Adams County Fairgrounds Lakes (Public Works and Mann-Nyholt Lakes) - Adams County</u>

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

3. <u>Adobe Creek Reservoir (Blue Lake) - Bent and Kiowa Counties</u>

a. Trotlines and jugs are permitted.

4. <u>Agnes Lakes (Upper and Lower Lakes) - Jackson County</u>

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit for trout is two fish.

5. <u>Akron City Lake - Washington County</u>

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

6. <u>Alberta Park Reservoir - Mineral County</u>

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit for trout is two fish.

7. American Lakes (Snow and Michigan Lakes) - Jackson County.

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit for trout is two fish.

8. Animas River - La Plata County

a. From the confluence with Lightner Creek to the Rivera Crossing Bridge:
   1. Fishing is by artificial flies and lures only.
   2. The bag and possession limit and minimum size for trout is two fish, 16 inches in length.
b. From the confluence with Hermosa Creek downstream to the state line:
   1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

9. Antelope Creek, West - Gunnison County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

10. Antero Reservoir - Park County

a. Ice fishing shelters must be portable.
b. The bag and possession limit for trout is two fish.

11. Apache Creek, North and South Forks - Huerfano County

a. From the headwaters downstream to the US Forest Service boundary:
   1. Fishing is prohibited.

12. Arapahoe Bend Natural Area (Bass, Beaver, Cormorant, and Snapper Ponds) - Larimer County

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

13. Arapaho Creek - Grand County

a. From Monarch Lake downstream to USFS 125:
   1. Fishing is by artificial flies and lures only.
   2. The bag and possession limit for trout is two fish.

14. Archuleta Creek - Saguache County

a. On that portion within the Cochetopa State Wildlife Area (Snyder Ranch) downstream from Dome Lakes State Wildlife Area:
   1. Fishing is by artificial flies and lures only.
   2. All trout must be returned to the water immediately upon catch.

15. Arkansas River - Chaffee, Fremont, Lake and Pueblo Counties

a. From the US 24 river overpass downstream to the lower boundary of the Hayden Ranch, as posted:
   1. Fishing is by artificial flies and lures only.

2. The bag and possession limit and maximum size for trout is one fish, 12 inches in length.

b. From the Stockyard Bridge (Chaffee Co Rd 102) below Salida downstream 7 ½ miles to the confluence with Badger Creek:
   1. Fishing is by artificial flies and lures only.
   2. All rainbow trout and cutbows must be returned to the water immediately upon catch.

c. Within the Pueblo Reservoir State Wildlife Area:
   1. The bag and possession limit and minimum size for walleye and saugeye is five fish in the aggregate, 18 inches in length.
   2. No more than one walleye or saugeye in the aggregate greater than 21 inches in length may be taken per day.

d. From the bridge at Valco Ponds downstream to Pueblo Boulevard (except at the Pueblo Nature Center as posted):
   1. Fishing is by artificial flies and lures only.
   2. All trout 16 inches in length or greater must be returned to the water immediately upon catch.

16. Arkansas River, Middle Fork of the South Arkansas - Chaffee County

a. From the headwaters downstream to Boss Lake:
   1. Fishing is by artificial flies and lures only.
   2. All cutthroat trout must be returned to the water immediately upon catch.

17. Augustora Creek - Archuleta County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

18. Aurora (Senac) Reservoir - Arapahoe County

a. The bag and possession limit for trout is two fish.
b. The minimum size for largemouth and smallmouth bass is 15 inches in length.
c. The minimum size for walleye is 18 inches in length.
d. No more than one walleye or saugeye in the aggregate greater than 21 inches in length may be taken per day.

19. Bard Creek - Clear Creek County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

20. Barker Reservoir - Boulder County

a. Ice fishing is prohibited.
b. Snagging of kokanee salmon is permitted from October 1 through December 1.

21. Barr Lake - Adams County

a. The minimum size for walleye and saugeye is 15 inches in length.
b. No more than one walleye or saugeye in the aggregate greater than 21 inches in length may be taken per day.

22. Bear Creek - Conejos County

a. From the headwaters downstream to the confluence with the Conejos River:
    1. Fishing is by artificial flies and lures only.
    2. The bag and possession limit for trout is two fish.

23. Bear Creek - El Paso County

a. From the headwaters downstream to Gold Camp Road:
    1. Fishing is prohibited

24. Bear Creek - Jefferson County

a. From the base of Evergreen Lake dam downstream to Bear Creek Reservoir:
    1. Fishing is by artificial flies and lures only.
    2. The bag and possession limit for trout (except rainbow trout and cutbows) is two fish.
    3. All rainbow trout and cutbows must be returned to the water immediately upon catch.

25. Bear Creek - Montezuma County

a. From the headwaters downstream to the confluence with the Dolores River:
    1 Fishing is by artificial flies and lures only.
    2. The bag and possession limit for trout is two fish.

26. Bear Creek Reservoir - Jefferson County

a. The minimum size for walleye and saugeye is 15 inches in length.
b. No more than one walleye or saugeye in the aggregate greater than 21 inches in length may be taken per day.

27. Bear River - Garfield and Routt Counties

a. The bag limit for whitefish is four fish.
b. The possession limit for whitefish is eight fish.

28. Beaver Creek - Garfield County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

29. Beaver Creek - Gunnison County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

30. Beaver Creek - Mineral County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

31. Beaver Creek Reservoir - Rio Grande County

a. Snagging of kokanee salmon is permitted from October 1 through December 31.

32. Beaver Creek, West - Gunnison County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

33. Beswick Pond- Mesa County

a. Fishing is prohibited.

34. Big Bend Creek - La Plata County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

35. Big Creek Lake (Lower) - Jackson County

a. The bag and possession limit for lake trout and/or splake is three fish, only one of which may be greater than 26 inches in length.

36. Big Hole Creek - Eagle County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

37. Big Lake - Conejos County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

38. Big Thompson Ponds - Larimer County

a. The bag and possession limit and minimum size for largemouth and smallmouth bass is one fish in the aggregate, 15 inches in length.

39. Big Thompson River - Larimer County

a. From the base of Olympus Dam at Lake Estes downstream to the bridge at Waltonia:
    1. Fishing is by artificial flies and lures only.
    2. All trout must be returned to the water immediately upon catch.

40. Black Canyon - San Juan County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

41. Black Hollow Creek - Larimer County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

42. Blanca Wildlife Habitat Area (BLM Ponds) - Alamosa County

a. The minimum size for largemouth bass is 15 inches in length.
b. Fishing is prohibited from February 15 through July 15.

43. Blue Mesa Reservoir - Gunnison County

a. Ice fishing shelters must be portable.
b. There is no bag or possession limit for lake trout.
c. No more than one lake trout greater than 32 inches in length may be taken per day.
d. Snagging of kokanee salmon is permitted from November 1 through December 31.
e. The bag limit for kokanee salmon is 5 fish.
f. The possession limit for kokanee salmon is 10 fish.

44. Blue River - Grand and Summit Counties

a. From the north inlet at Summit Co Rd 3 (Coyne Valley Rd. 3 miles north of Breckenridge) downstream to Dillon Reservoir:
    1. Fishing is by artificial flies and lures only.
    2. The bag and possession limit and minimum size for trout is two fish, 16 inches in length.
b. From Dillon Dam downstream to the north city limits of the town of Silverthorne:
    1. Fishing is by artificial flies and lures only.
    2. All trout must be returned to the water immediately upon catch.
c. From the north city limits of the town of Silverthorne downstream to the Colo 9 bridge over the Blue River at Blue River State Wildlife Area:
    1. Fishing is by artificial flies and lures only.
    2. The bag and possession limit and minimum size for trout is two fish, 16 inches in length.
d. From the Colo 9 bridge over the Blue River at Blue River State Wildlife Area downstream to the Green Mountain Reservoir inlet:
    1. Snagging of kokanee salmon is permitted from September 1 through December 31.
e. From Green Mountain Reservoir dam downstream to the Colorado River:
    1. Fishing is by artificial flies and lures only.
    2. All trout must be returned to the water immediately upon catch.

45. Bobtail Creek - Grand County

a. From the headwaters downstream to the Denver Water Board Diversion:
    1. Fishing is by artificial flies and lures only.
    2. All cutthroat trout must be returned to the water immediately upon catch.

46. Bonny Reservoir - Yuma County

a. There is no bag or possession limit for any game fish species.
b. Trotlines and jugs are allowed.

47. Boss Lake - Chaffee County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

48. Boulder Creek - Boulder County

a. From the upper end of Eben Fine Park (within the City Limits of Boulder) downstream to 55th St:
    1. Fishing is by artificial flies and lures only.
    2. All trout must be returned to the water immediately upon catch.

49. Boyd Lake - Larimer County

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.
b. The minimum size for walleye and saugeye is 15 inches in length.
c. No more than one walleye or saugeye in the aggregate greater than 21 inches in length may be taken per day.

50. Brush Creek - Eagle County

a. From the confluence with the Eagle River upstream for 2.5 miles:
    1. The bag and possession limit for trout is two fish.

51. Brush Creek, West - Eagle County

a. In the Sylvan Lake inlet and upstream for ½ mile:
    1. Fishing is prohibited from September 1 through November 30.

52. Brush Hollow Reservoir - Fremont County

a. The minimum size for largemouth, smallmouth, and spotted bass is 15 inches in length.

53. Bull Basin Reservoir #1 - Mesa County

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit and minimum size for trout is two fish, 16 inches in length.

54. Bull Creek Reservoirs #1 and #2 and Connecting Channels - Mesa County

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit and minimum size for trout is two fish, 16 inches in length.

55. Burgess Creek - Garfield and Routt Counties

a. The bag limit for whitefish is four fish.
b. The possession limit for whitefish is eight fish.

56. Button Rock (Ralph Price) Reservoir - Boulder County

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit for trout is two fish.
c. Fishing is prohibited from November 1 through April 30.

57. Cabin Creek - Garfield County

a. From Trappers Lake upstream for ½ mile:

1. Fishing is prohibited.

58. Canyon Creek - Garfield County

a. From the north side of the I-70 Bridge downstream to the confluence with the Colorado River:
   1. Fishing is prohibited from March 15 through May 15 and from October 1 through November 30.

59. Carnero Creek, Middle - Saguache County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

60. Carnero Creek, North - Saguache County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

61. Carnero Creek, South - Saguache County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

62. Carter Creek - Grand County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

63. Carter Lake - Larimer County

a. The bag limit and maximum size for walleye is three fish 21 inches in length.
b. The possession limit for walleye is five fish.
c. It is unlawful to possess filleted or cleaned fish in a boat on the lake.

64. Cascade Creek - Conejos County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

65. Cascade Creek - Huerfano County

a. From the headwaters downstream to the US Forest Service boundary:
   1. Fishing is prohibited.

66. Castle Creek - La Plata County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

67. Cat Creek - Rio Grande and Conejos Counties

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

68. Cat Creek, North Fork - Rio Grande County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

69. Cat Creek, South Fork - Rio Grande County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

70. Cataract Creek - Summit County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

71. Cerro Summit (Montrose) Reservoir - Montrose County

a. Fishing is prohibited from December 1 to February 28.
b. Fishing access is restricted to the parking lot, the trail and up to 50 feet from the water line from March 1 through August 15.
c. Fishing is by artificial flies and lures only.
d. All fish must be returned to the water immediately upon catch.
e. Ice fishing is prohibited.

72. Chalk Creek - Chaffee County

a. Within Wright's Lake State Wildlife Area:
    1. Fishing is by artificial flies and lures only.

73. Chartier Pond - Morgan County

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

74. Chatfield Reservoir and Chatfield State Park - Jefferson and Douglas Counties

a. Within Chatfield State Park, including the South Platte River and all ponds within the park boundary:
    1. The bag limit and minimum size for walleye is three fish, 18 inches in length.
    2. No more than one walleye greater than 21 inches in length may be taken per day.
    3. The minimum size for largemouth and smallmouth bass is 15 inches in length.
    4. Fishing is prohibited from the dam and within 100 feet of the dam or walleye spawning operation nets, from March 15 through April 15, or until walleye spawning operations are completed.

75. Cheesman Reservoir - Douglas and Jefferson Counties

a. Fishing is prohibited from October 1 through April 30.
b. Fishing is prohibited from ½ hour after sunset until ½ hour before sunrise.
c. Fishing is prohibited on the dam and around the reservoir as posted.

d. Snagging of kokanee salmon is permitted from September 1 through September 30.
e. Ice fishing is prohibited.

76. Cherry Creek Reservoir - Arapahoe County

a. The bag limit and minimum size for walleye is three fish, 18 inches in length.
b. No more than one walleye greater than 21 inches in length may be taken per day.
c. The minimum size for largemouth and smallmouth bass is 15 inches in length.
d. Fishing is prohibited from the dam and within 100 feet of the dam or walleye spawning operation nets, from March 15 through April 15, or until walleye spawning operations are completed.

77. Cheyenne Creek, North - El Paso and Teller Counties

a. From the headwaters downstream to Gold Camp Rd:
   1. Fishing is prohibited.

78. Cimarron River - Montrose County

a. Snagging of kokanee salmon is permitted from November 1 through December 31.

79. Clear Creek - Chaffee County

a. From the gauging station (approximately ½ mile above Clear Creek Reservoir) downstream to Clear Creek Reservoir:
   1. Snagging of kokanee salmon is permitted from October 1 through December 31.

80. Clear Creek - La Plata County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

81. Clear Creek Holding Ponds - Adams County

a. Fishing is prohibited, except for youth participating in Division angler education activities.

82. Clear Creek Reservoir - Chaffee County

a. Snagging of kokanee salmon is permitted from October 1 through December 31.

83. Clear Lake - Jackson County

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit for trout is two fish.

84. Clinton Reservoir - Summit County

a. The bag and possession limit for trout is two fish.

85. Cochetopa Creek - Saguache County

a. On that portion within the Cochetopa State Wildlife Area (Snyder Ranch):
    1. Fishing is by artificial flies and lures only.
    2. All trout must be returned to the water immediately upon catch.

86. Colorado River - Garfield, Eagle, Grand, and Mesa Counties

a. From Lake Granby Dam downstream to the US 40 bridge approximately 3 miles west of Hot Sulphur Springs:
    1. The bag and possession limit for trout is two fish.
b. From the US 40 bridge, approximately three miles west of Hot Sulphur Springs downstream to the confluence with Troublesome Creek (approximately 5 miles east of Kremmling):
    1. Fishing is by artificial flies and lures only.
    2. All trout must be returned to the water immediately upon catch.
c. From the confluence of Williams Fork River downstream to the state line:
    1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.
d. From the confluence with Troublesome Creek downstream to the I-70 Exit 90 bridge at Rifle (excluding 50 yards upstream and downstream of the confluences with Canyon, Grizzly and No Name Creeks):
    1. The bag and possession limit for trout is two fish.
e. 50 yards upstream and downstream of the confluences with Canyon, Grizzly and No Name Creeks:
    1. The bag and possession limit for trout is two fish.
    2. Fishing is prohibited from March 15 through May 15 and from October 1 through November 30.

87. Colorado River, (North Fork) including Shadow Mountain Spillway - Grand County

a. From Shadow Mountain Dam spillway to Lake Granby, including Columbine Bay to the Twin Creek inlet:
    1. Fishing is prohibited from October 1 through December 31.

88. Como Creek - Boulder County

a. From the headwaters downstream to the confluence with North Boulder Creek:
    1. Fishing is prohibited.

89. Conejos River - Conejos County

a. From the lower bridge at the town of Platoro downstream to the confluence with the South Fork of the Conejos River:
    1. Fishing is by artificial flies and lures only.
    2. The bag and possession limit and minimum size for trout is two fish, 16 inches in length.
b. From Menkhaven Resort downstream to the upper boundary of Aspen Glade Campground:
    1. Fishing is by artificial flies only.
    2. The bag and possession limit and minimum size for trout is two fish, 16 inches in length.

90. Conejos River, Lake Fork - Conejos County

a. From the headwaters including Big Lake, downstream to and including Rock Lake and its outlet:
   1. Fishing is by artificial flies and lures only.
   2. All cutthroat trout must be returned to the water immediately upon catch.

91. Connected Lake - Mesa County

a. The bag and possession limit and minimum size for largemouth bass is two fish, 18 inches in length.

92. Cooper Lake - Hinsdale County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

93. Cornelius Creek - Larimer County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

94. Corral Creek - San Juan County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

95. Corral Creek - Summit County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

96. Cottonwood Creek, Little - Moffat County

a. From Freeman Reservoir upstream for ¼ mile:
   1. Fishing is prohibited from January 1 through July 31.

97. Crawford Reservoir - Delta County

a. The bag and possession limit and minimum size for largemouth bass is one fish, 18 inches in length.
b. There is no bag or possession limit on yellow perch.
c. From the fence on top of the Crawford Reservoir dam downstream to the north boundary fence:
   1. Fishing in the spillway, the stilling basin and the outlet canal is prohibited.

98. Crosho Reservoir - Rio Blanco County

a. The bag and possession limit and minimum size for grayling is two fish, 16 inches in length.

99. Crystal Lake - Lake County

a. Fishing is by artificial flies and lures only.

100. Crystal Reservoir - Montrose County

a. Snagging of kokanee salmon is permitted from September 1 through December 31.

101. Culebra Creek - Costilla County

a. From the Colo 159 bridge downstream approximately 3 miles to the Jaquez Bridge:
   1. Fishing is by artificial flies and lures only.
   2. All trout must be returned to the water immediately upon catch.

102. Cunningham Creek - Pitkin County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

103. Daigre Lake - Huerfano County

a. Fishing is by artificial flies and lures only.
b. Ice fishing is prohibited.

104. Deadman Gulch - Routt County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

105. Deep Creek - La Plata County

a. From the headwaters downstream to the USFS boundary:
   1. Fishing is by artificial flies and lures only.
   2. All cutthroat trout must be returned to the water immediately upon catch.

106. Deep Creek - San Miguel County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

107. Deer Beaver Creek - Saguache County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

108. Delaney Butte Lakes (North, South, and East) - Jackson County

a. Fishing is by artificial flies and lures only. Scented flies or scented lures may be used on this water if they are 1.5 inches or longer.
b. The bag and possession limit for trout is two fish.
c. All brown trout between 14 and 20 inches in length must be returned to the water immediately upon catch.
d. All rainbow trout, cutthroat trout and cutbows between 18 and 22 inches in length must be returned to the water immediately upon catch.
e. North Delaney Butte Lake:

1. Fishing is prohibited from the dam and within 100 feet of the dam from September 15 through November 15.
2. Fishing is prohibited in the inlet, upstream of the standing water line.

f. South Delaney Butte Lake:
1. Fishing is prohibited in the inlet, upstream of the standing water line.

109. DePoorter Lake - Sedgwick County

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

110. Dillon Reservoir - Summit County

a. All Arctic char under 20 inches in length must be returned to the water immediately upon catch.
b. The bag and possession limit and minimum size for Arctic char is one fish, 20 inches in length.

111. Divide Creek, West - Garfield County

a. From the headwaters downstream to the confluence with Brook Creek:
1. Fishing is by artificial flies and lures only.
2. All cutthroat trout must be returned to the water immediately upon catch.

112. Dixon Lake - Larimer County

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

113. Dolores River - Dolores, Montezuma, Montrose, Mesa and San Miguel Counties

a. From the confluence with the West Fork of the Dolores River downstream to the standing water line of McPhee Reservoir:
1. The taking of kokanee salmon is prohibited, except from November 15 through December 31, when snagging is permitted.

b. From McPhee Dam downstream approximately 11 miles to the Bradfield Bridge:
1. Fishing is by artificial flies and lures only.
2. All trout must be returned to the water immediately upon catch.

c. From the McPhee Dam downstream to the state line:
1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

d. From the Bradfield Bridge downstream to the Utah state line:
1. There is no bag or possession limit for brown trout.

114. Doty Park Lake - Morgan County

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

115. Doug Creek - Montrose County

a. Fishing is by artificial flies and lures only.

b. All cutthroat trout must be returned to the water immediately upon catch.

116. Duke Lake - Mesa County

a. The bag and possession limit and minimum size for largemouth bass is two fish, 18 inches in length.

117. Eagle River - Eagle County

a. From the confluence of the East Fork and the South Fork downstream to the confluence with the Colorado River:
   1. The bag and possession limit for trout is two fish.
b. From the I-70 Exit 147 bridge in the Town of Eagle downstream to the confluence with the Colorado River:
   1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

118. East Pass Creek - Saguache

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

119. East River - Gunnison County

a. From the upstream property boundary at the Roaring Judy Fish Hatchery downstream to the confluence with the Taylor River:
   1. Fishing is by artificial flies and lures only.
   2. The bag and possession limit and maximum size for trout is two fish, 12 inches in length.
   3. The taking of kokanee salmon is prohibited.
b. From the Roaring Judy Fish Hatchery outlet downstream to the Roaring Judy property boundary:
   1. Fishing is prohibited from August 1 through October 31.

120. Echo Canyon Reservoir - Archuleta County

a. All largemouth bass between 12 and 15 inches in length must be returned to the water immediately upon catch.

121. Elaine T. Valente Open Space Lakes, North Lake - Adams County

a. Fishing is by artificial flies and lures only. Scented flies or scented lures may be used on this water if they are 1.5 inches or longer.
b. All fish must be returned to the water immediately upon catch.

122. Eleven Mile Reservoir - Park County

a. Ice fishing shelters must be portable.
b. The bag and possession limit for trout is four fish, only two of which may be greater than 16 inches in length.
c. There is no bag or possession limit on yellow perch.

123. Elk Creek - San Miguel County

a. Fishing is by artificial flies and lures only.

b. All cutthroat trout must be returned to the water immediately upon catch.

124. Elk River - Routt County

a. The bag limit for whitefish is four fish.
b. The possession limit for whitefish is eight fish.

125. Elk River (North, South and Middle Forks) - Routt County

a. The bag limit for whitefish is four fish.
b. The possession limit for whitefish is eight fish.

126. Elkhead Reservoir - Moffat and Routt Counties

a. The bag and possession limit and minimum size for largemouth bass is two fish, 15 inches in length.
b. The bag and possession limit for crappie is ten fish.

127. Emerald Lakes (Big and Little) - Hinsdale County

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit and maximum size for trout is two fish, 14 inches in length.
c. In the Lake Creek inlet for ½ mile above Big Emerald Lake:
    1. Fishing is prohibited from January 1 through July 15.

128. Erie Lake – Boulder County

a. All largemouth and smallmouth bass must be returned to the water immediately upon catch.

129. Evans City Lake (Riverside Park) - Weld County

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

130. Fall Creek – Mineral County

a. From the headwaters downstream to Wolf Creek:
    1. Fishing is by artificial flies and lures only.
    2. All cutthroat trout must be returned to the water immediately upon catch.

131. Fall Creek - San Miguel County

a. From the headwaters downstream to Woods Lake:
    1. Fishing is by artificial flies and lures only.
    2. All cutthroat trout must be returned to the water immediately upon catch.

132. Fawn Creek - Rio Blanco County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

133. Fish Creek - Routt County

a. The bag limit for whitefish is four fish.
b. The possession limit for whitefish is eight fish.

134. Florida River - La Plata County

a. From the headwaters downstream to Lemon Reservoir:
   1. Snagging of kokanee salmon is permitted from September 1 through December 31.
b. From the US 160 bridge east of Durango downstream to the confluence with the Animas River:
   1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

135. Forbes Park Lake - Costilla County

a. Fishing is by artificial flies and lures only.
b. All trout must be returned to the water immediately upon catch.

136. Fort Morgan Ponds - Morgan County

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

137. Fourmile Creek - Garfield County

a. From the confluence with the Roaring Fork River upstream for ½ mile:
   1. Fishing is prohibited from March 15 through May 15 and from October 1 through November 30.

138. Frank Easement Ponds - Weld County

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

139. Fraser Creek - Garfield County

a. From Trappers Lake upstream for ½ mile:
   1. Fishing is prohibited.

140. Fraser River - Grand County

a. From the headwaters downstream to the confluence with St. Louis Creek:
   1. Fishing is by artificial flies and lures only.
   2. All rainbow trout must be returned to the water immediately upon catch.
b. From the confluence with St. Louis Creek downstream to the Colorado River:
   1. The bag and possession limit for trout is two fish.

141. Freeman Reservoir - Moffat County

a. Within 50 yards on either side of the inlet and upstream for ¼ mile:
   1. Fishing is prohibited from January 1 through July 31.

142. French Gulch - Summit County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

143. Frey Gulch - Summit County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

144. Fryingpan Lakes #2 and #3 - Pitkin County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

145. Fryingpan River - Eagle and Pitkin Counties

a. From Ruedi Dam downstream to the confluence with the Roaring Fork River, approximately 14 miles:
    1. Fishing is by artificial flies and lures only.
    2. All trout (except brown trout) must be returned to the water immediately upon catch.
    3. The bag and possession limit and maximum size for brown trout is two fish, 14 inches in length.

146. George Creek - Larimer County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

147. Goat Creek - San Miguel County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

148. Golden Park Ponds - Boulder County

a. On Golden Park Ponds #3:
    1. The bag and possession limit and minimum size for largemouth and smallmouth bass is one fish in the aggregate, 15 inches in length.
b. On Golden Park Ponds #1 and #2:
    1. Fishing is by artificial flies and lures only.
    2. Scented flies or lures must be 1.5 inches or longer.
    3. All largemouth and smallmouth bass must be returned to the water immediately upon catch.
    4. Possession of largemouth or smallmouth bass while fishing Golden Park Ponds #1 or #2 is prohibited.

149. Gore Creek - Eagle County

a. From the confluence with Red Sandstone Creek downstream to the confluence with the Eagle River:
    1. Fishing by artificial flies and lures only.
    2. The bag and possession limit and minimum size for trout is two fish, 16 inches in length.

150. Grand Lake - Grand County

a. The bag and possession limit for lake trout is four fish, only one of which may be greater than 36 inches in length. All lake trout between 26 and 36 inches in length must be released immediately upon catch.
b. Ice fishing shelters must be portable.
c. Gaffs and tail snares are prohibited.

151. Grandview Ponds - Adams County

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

152. Graneros Creek - Pueblo County

a. From the headwaters downstream to the US Forest Service Boundary:
   1. Fishing is prohibited.

153. Grassy Creek - San Juan County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

154. Green Creek, Little - Grand and Routt County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

155. Green Mountain Reservoir - Summit County

a. Snagging of kokanee salmon is permitted from September 1 through December 31.
b. The bag and possession limit for lake trout is eight fish.

156. Green River - Moffat County

a. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

157. Griffith Reservoir - Mesa County

a. Fishing by artificial flies and lures only.
b. The bag and possession limit and minimum size for trout is two fish, 16 inches in length.

158. Grimes Creek - La Plata County

a. From the Bureau of Reclamation property boundary downstream to the standing water line of Vallecito Reservoir:
   1. Fishing is prohibited from September 1 through November 14.
   2. Snagging of kokanee salmon is permitted from November 15 through December 31.

159. Grizzly Creek - Garfield County

a. From the confluence with the Colorado River upstream for ½ mile:
    1. Fishing is prohibited from March 15 through May 15 and from October 1 through November 30.

160. Gross Reservoir - Boulder County

a. Fishing is prohibited from sunset to sunrise.
b. Snagging of kokanee salmon is permitted from October 1 through December 1.

161. Groundhog Creek - Dolores County

a. From Groundhog Reservoir upstream for ½ mile:
    1. Fishing is prohibited from April 15 through July 15.

162. Groundhog Reservoir - Dolores County

a. In the Nash Creek and Groundhog Creek inlets upstream for ½ mile:
    1. Fishing is prohibited from April 15 through July 15.

163. Gunnison River - Delta, Gunnison and Montrose Counties

a. From the confluence of the East and Taylor rivers downstream to the US 50 bridge:
    1. Fishing is by artificial flies and lures only.
    2. The bag and possession limit and minimum size for brown trout is two fish, 16 inches in length.
    3. All rainbow trout must be returned to the water immediately upon catch.
b. From the confluence of the East and Taylor Rivers downstream to the standing water line of Blue Mesa Reservoir, including all tributary canals and diversions:
    1. The taking of kokanee salmon is prohibited from August 1 through October 31.
    2. Snagging of kokanee salmon is permitted November 1 through December 31.
c. From Blue Mesa Dam downstream for 225 yards:
    1. Fishing is prohibited, as posted.
d. From the closure signs below Blue Mesa Dam downstream to Morrow Point Reservoir Dam:
    1. Snagging of kokanee salmon is permitted from September 1 through December 31.
e. From Morrow Point Reservoir dam downstream for 130 yards:
    1. Fishing is prohibited, as posted.
f. From the closure sign below Morrow Point Reservoir dam downstream to Crystal Reservoir Dam:
    1. Snagging of kokanee salmon is permitted from September 1 through December 31.
g. From Crystal Reservoir dam downstream for 200 yards:
    1. Fishing is prohibited, as posted.
h. From 200 yards downstream of the Crystal Reservoir dam downstream to the Relief Ditch diversion (five miles above Austin Bridge):
    1. Fishing is by artificial flies and lures only.
    2. All rainbow trout must be returned to the water immediately upon catch.

i. From the confluence with the Smith Fork downstream to the confluence with the Colorado River:
    1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

164. Gunnison River, North Fork - Gunnison and Delta Counties

a. From the confluence with Anthracite Creek downstream to the confluence with the Gunnison River:
    1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

165. Gunnison River, Lake Fork - Gunnison and Hinsdale Counties

a. From the headwaters downstream to the waterfall at Sherman:
    1. Fishing is by artificial flies and lures only.
    2. All cutthroat trout must be returned to the water immediately upon catch.
b. From first bridge crossing above Lake San Cristobal downstream to Lake San Cristobal:
    1. Fishing is by artificial flies only.
c. From the confluence with High Bridge Gulch downstream to the BLM boundary below The Gate campground:
    1. Fishing is by artificial flies and lures only.
    2. The bag and possession limit and minimum size for brown trout is two fish, 16 inches in length.
    3. All rainbow trout must be returned to the water immediately upon catch.
d. From the BLM boundary below The Gate campground to the confluence with Cherry Creek:
    1. The bag and possession limit for trout is two fish.
e. From the confluence with Cherry Creek downstream to the upper Red Bridge campground boundary:
    1. Fishing is by artificial flies and lures only.
    2. The bag and possession limit and minimum size for brown trout is 2 fish, 16 inches in length.
    3. All rainbow trout must be returned to the water immediately upon catch.
f. From the upper Red Bridge campground boundary downstream to Blue Mesa Reservoir:
    1. Snagging of kokanee salmon is permitted from September 1 through December 31.

166. Gypsum Ponds SWA - Eagle County

a. The bag and possession limit for trout is two fish.

167. Hahn Creek - Rio Blanco County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

168. Hallenbeck (Purdy Mesa) Reservoir - Mesa County

a. Fishing is by artificial flies and lures only. Scented flies or scented lures may be used on this water if they are 1.5 inches or longer.
b. All largemouth bass between 12 and 15 inches in length must be returned to the water immediately upon catch. No more than two largemouth bass in any bag and possession limit may be greater than 15 inches in length.

169. Hamilton Creek - Grand County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

170. Hanging Lake - Garfield County

a. Fishing is prohibited.

171. Harvey Gap Reservoir - Garfield County

a. The minimum size for largemouth bass is 15 inches in length.
b. The bag and possession limit for channel catfish is two fish.
c. Use of spearfishing, archery, slingbows and gigs for the take of northern pike is prohibited.

172. Hat Creek - Eagle County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

173. Haxtun City Lake (Gun Club Lake) - Phillips County

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

174. Hayden Creek, South Prong - Fremont County

a. From the headwaters downstream to the confluence with Hayden Creek:
   1. Fishing is prohibited.

175. Headache Creek - Archuleta County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

176. Heberton Creek - Garfield County

a. From Trappers Lake upstream for ½ mile:
   1. Fishing is prohibited.

177. Henry Reservoir - Crowley County

a. Trotlines and jugs are permitted.

178. Herman Gulch - Clear Creek County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

179. Hermosa Creek - La Plata and San Juan Counties

a. From the headwaters downstream to the confluence with East Cross Creek:
   1. Fishing is by artificial flies and lures only.
   2. All cutthroat trout must be returned to the water immediately upon catch.

180. Hermosa Creek, East Fork - La Plata County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

181. Hidden Lakes - Lake County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

182. Highline Reservoir - Mesa County

a. The bag and possession limit and minimum size for largemouth bass is two fish, 15 inches in length.

183. Himes Creek - Mineral County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

184. Hine Lake - Jefferson County

a. The minimum size for largemouth bass is 18 inches in length.

185. Hohnholz Lake #3 - Larimer County

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit for trout is four fish.

186. Holyoke City Lake (Lions Club Fishing Hole) - Phillips County

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

187. Homestake Conveyance Channel (Spinney Mountain Reservoir inlet ditch) - Park County

a. Fishing is prohibited.

188. Horse Creek Reservoir (Timber Lake) - Bent and Otero Counties

a. Trotlines and jugs are permitted.

189. Horseshoe Reservoir - Huerfano County

a. The minimum size for largemouth, smallmouth, and spotted bass is 15 inches in length.

190. Horsetooth Reservoir - Larimer County

a. Fishing is prohibited in the inlet area as posted from March 15 through May 31.
b. The minimum size for smallmouth bass is 12 inches in length.

191. Hotel Draw - San Juan County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

192. Hudson Town Pond - Weld County

a. The bag and possession limit and minimum size for largemouth and smallmouth bass is one fish in the aggregate, 15 inches in length.

193. Huerfano River - Huerfano County

a. From the headwaters downstream to the US Forest Service boundary:
    1. Fishing is by artificial flies or artificial lures only.
    2. The bag and possession limit for trout is two fish.

194. Hunt Lake - Chaffee County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

195. Illinois River - Jackson County

a. Within the Diamond J and Yarmony Ranch State Wildlife Areas:
    1. Fishing is by artificial flies or artificial lures only.
    2. The bag and possession limit for trout is two fish.

196. Jackson Lake (Reservoir) - Morgan County

a. Ice fishing shelters must be portable.
b. The minimum size for walleye and saugeye is 15 inches in length.
c. No more than one walleye or saugeye in the aggregate greater than 21 inches in length may be taken per day.
d. The minimum size for wipers is 15 inches in length.
e. The minimum size for crappie is 10 inches in length.
f. Fishing in the outlet ditch immediately below the dam around the rotary screen structure is prohibited.

197. Jayhawker Ponds - Larimer County

a. All largemouth and smallmouth bass must be returned to the water immediately upon catch.
b. The bag and possession limit for yellow perch is 5 fish.

198. Jerry Creek Reservoirs #1 and #2 - Mesa County

a. Fishing is by artificial flies and lures only. Scented flies or scented lures may be used on this water if they are 1.5 inches or longer.
b. All fish must be returned to the water immediately upon catch.

c. Use of float tubes with chest-high waders is allowed.

199. Jim Creek - Conejos County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

200. Joe Wright Creek - Larimer County

a. From the confluence with Joe Wright Reservoir upstream to Colo 14:
   1. Fishing is prohibited from January 1 through July 31.
   2. Fishing is by artificial flies and lures only.

201. Joe Wright Reservoir - Larimer County

a. Fishing is by artificial flies and lures only.

202. John Martin Reservoir - Bent County

a. Trotlines and jugs are permitted.

203. Johnstown Reservoir - Weld County

a. The minimum size for walleye and saugeye is 15 inches in length.
b. No more than one walleye or saugeye in the aggregate greater than 21 inches in length may be taken per day.
c. The minimum size for largemouth and smallmouth bass is 15 inches in length.
d. The minimum size for crappie is 10 inches in length.

204. Jumbo (Julesburg) Reservoir - Logan and Sedgwick Counties

a. The minimum size for walleye and saugeye is 15 inches in length.
b. No more than one walleye or saugeye in the aggregate greater than 21 inches in length may be taken per day.
c. The minimum size for wipers is 15 inches in length.
d. The minimum size for crappie is 10 inches in length.

205. Juniata Reservoir - Mesa County

a. Fishing is by artificial flies and lures only. Scented flies or scented lures may be used on this water if they are 1.5 inches or longer.
b. All largemouth bass between 12 and 15 inches in length must be returned to the water immediately upon catch. No more than two largemouth bass in any bag and possession limit may be greater than 15 inches in length.

206. Kelly Lake - Jackson County

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit for trout is two fish.

207. Kelso Creek - Mesa County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

208. Kenney Reservoir - Rio Blanco County

a. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

209. Kerr Lake - Conejos County

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit for trout is two fish.

210. Ketner Lake - Jefferson County

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

211. Kingfisher Pond (Fort Collins Environmental Learning Center) - Larimer County

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

212. Kinney Creek (3 miles east of Hot Sulphur Springs) - Grand County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

213. KOA Lake - Boulder County

a. All largemouth and smallmouth bass must be returned to the water immediately upon catch.

214. La Plata River - La Plata County

a. From the US 160 bridge downstream to the state line:
   1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

215. Lagerman Reservoir - Boulder County

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

216. Lake Arbor - Jefferson County

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.
b. The minimum size for walleye and saugeye is 15 inches in length.
c. No more than one walleye or saugeye in the aggregate greater than 21 inches in length may be taken per day.

217. Lake Creek - Hinsdale County

a. From Big Emerald Lake inlet upstream for ½ mile:

1. Fishing prohibited from January 1 through July 15.

218. Lake Dorothey - Las Animas County

a. Within the Lake Dorothey State Wildlife Area, including Schwachheim Creek and all other drainages into the lake:
   1. Fishing is by artificial flies and lures only.

219. Lake Fork Creek - Lake County

a. From the headwaters downstream to the confluence with Glacier Creek:
   1. Fishing is by artificial flies and lures only.
   2. All cutthroat trout must be returned to the water immediately upon catch.

220. Lake Granby - Grand County

a. The bag and possession limit for lake trout is four fish.
b. From January 1 through August 31, the bag and possession limit for trout (except lake trout) and kokanee salmon is four fish, singly or in aggregate.
c. From September 1 through December 31, the bag and possession limit for trout (except lake trout) is four fish, singly or in aggregate.
d. From September 1 through December 31, the bag and possession limit for kokanee salmon is 10 fish.
e. Snagging of kokanee salmon is permitted in Lake Granby only from September 1 through December 31 except snagging is prohibited in Columbine Bay from the inlet of Twin Creek upstream.
f. Gaffs and tail snares are prohibited.
g. Ice fishing shelters must be portable.
h. In Columbine Bay from the inlet of Twin Creek upstream:
   1. Fishing is prohibited from October 1 through December 31.

221. Lake John - Jackson County

a. The bag and possession limit for trout is four fish.

222. Laramie River - Larimer County

a. Within the Hohnholz State Wildlife Area:
   1. Fishing is by artificial flies and lures only.
   2. The bag and possession limit for trout is two fish.

223. Laskey Gulch - Summit County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

224. Lester Creek - Routt County

a. For ¼ mile upstream and ¼ mile downstream from Pearl Lake:
   1. Fishing is by artificial flies and lures only.
   2. The bag and possession limit and minimum size for trout is two fish, 18 inches in length.

225. Lon Hagler Reservoir - Larimer County

a. All largemouth and smallmouth bass must be returned to the water immediately upon catch.
b. Only one channel catfish in bag or possession may be greater than 20 inches.

226. Lone Pine Creek - Larimer County

a. From Parvin Lake upstream to Larimer Co Rd 74E (Red Feather Lakes Rd):
    1. Fishing is prohibited, as posted.

227. Lonetree Reservoir - Larimer County

a. The bag and possession limit and minimum size for largemouth and smallmouth bass is one fish in the aggregate, 15 inches in length.
b. The minimum size for walleye and saugeye is 15 inches in length.
c. No more than one walleye or saugeye in the aggregate greater than 21 inches in length may be taken per day.

228. Long Draw Reservoir - Larimer County

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit for trout is two fish.

229. Los Pinos Creek - Saguache County

a. On that portion within the Cochetopa State Wildlife Area (Snyder Ranch):
    1. Fishing is by artificial flies and lures only.
    2. All fish must be returned to the water immediately upon catch.

230. Los Pinos River - Hinsdale and La Plata Counties

a. From the headwaters downstream to the Weminuche Wilderness boundary:
    1. Fishing is by artificial flies and lures only.
    2. The bag and possession limit for trout is two fish.
b. From the US 160 bridge in Bayfield downstream to Navajo Reservoir:
    1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

231. Lost Trail Creek - Gunnison County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

232. Lowell Ponds - Adams County

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

233. Mack Mesa Reservoir - Mesa County

a. The bag and possession limit and minimum size for largemouth bass is two fish, 15 inches in length.

234. Mad Creek - Routt County

a. The bag limit for whitefish is four fish.
b. The possession limit for whitefish is eight fish.

235. Mancos River - Montezuma County

a. From the US 160 bridge in Mancos downstream to the state line:
   1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

236. Martin Lake - Huerfano County

a. The minimum size for largemouth, smallmouth, and spotted bass is 15 inches in length.

237. May Creek - Larimer County

a. From the headwaters downstream to the confluence with the Poudre River:
   1. Fishing is by artificial flies and lures only.
   2. All trout must be returned to the water immediately upon catch.

238. Mead Ponds - Weld County

a. All largemouth and smallmouth bass must be returned to the water immediately upon catch.

239. McElmo Creek - Montezuma County

a. From the US 160 bridge east of Cortez downstream to the state line:
   1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

240. McKay Lake - Adams County

a. Fishing is by artificial flies and lures only. Scented flies or scented lures may be used on this water if they are 1.5 inches or longer.
b. All largemouth bass must be returned to the water immediately upon catch.

241. McMurry Ponds - Larimer County

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

242. McPhee Reservoir - Montezuma County

a. All largemouth and smallmouth bass between 10 and 15 inches in length must be returned to the water immediately upon catch.
b. Snagging of kokanee salmon is permitted from September 1 through December 31.
c. There is no bag or possession limit for walleye.

243. Meadow Creek - Eagle County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

244. Meadow Creek, East - Eagle County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

245. Medano Creek - Saguache and Alamosa Counties

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

246. Medano Creek, Hudson Branch - Saguache County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

247. Medano Creek, Little - Saguache County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

248. Meredith Reservoir - Crowley County

a. Trotlines and jugs are permitted.

249. Michigan River - Jackson County

a. Within the Brownlee, Murphy, and Diamond J State Wildlife Areas:
    1. Fishing is by artificial flies and lures only.
    2. The bag and possession limit for trout is two fish.

250. Middle Creek, East - Saguache County

a. From the headwaters downstream to the waterfall approximately 2.5 miles upstream from the confluence with Middle Creek:
    1. Fishing is by artificial flies and lures only.
    2. All cutthroat trout must be returned to the water immediately upon catch.

251. Miners Creek - Saguache County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

252. Mitchell Creek - Garfield County

a. From the headwaters downstream to the upper boundary of the Glenwood Springs Fish Hatchery:
    1. Fishing is by artificial flies and lures only.
    2. All cutthroat trout must be returned to the water immediately upon catch.

253. Montgomery Reservoir - Park County

a. Ice fishing is prohibited.
b. Fishing is prohibited from December 1 through May 31.
c. On the south side of the reservoir and from the west face of the dam:
    1. Fishing is prohibited, as posted.

254. Monument Reservoir - Las Animas County

a. Snagging of kokanee salmon is permitted from October 1 through December 31.

255. Morrison Creek - Routt County

a. The bag limit for whitefish is four fish.
b. The possession limit for whitefish is eight fish.

256. Morrow Point Reservoir - Gunnison and Montrose Counties

a. Snagging of kokanee salmon is permitted September 1 through December 31.

257. Mount Elbert Forebay Reservoir - Lake County

a. The bag and possession limit for lake trout is one fish. All lake trout between 22 and 34 inches in length must be returned to the water immediately upon catch.

258. Muddy Creek - San Miguel County

a. From the headwaters downstream to Woods Lake:
    1. Fishing is by artificial flies and lures only.
    2. All cutthroat trout must be returned to the water immediately upon catch.

259. Muddy Creek, Little - Grand County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

260. Nash Creek - Dolores County

a. From Groundhog Reservoir upstream for ½ mile:
    1. Fishing is prohibited from April 15 through July 15.

261. Nate Creek - Ouray County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

262. Native Lake - Lake County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

263. Navajo Lake - Dolores County

a. Fishing is by artificial flies and lures only.

264. Navajo Reservoir - Archuleta County

a. Trotlines are permitted.

265. Navajo River - Archuleta and Conejos Counties

a. From the headwaters downstream to Bridal Veil Falls:
   1. Fishing is by artificial flies and lures only.
   2. All cutthroat trout must be returned to the water immediately upon catch.
b. From the Oso Diversion Dam downstream to the state line:
   1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

266. Nee Gronda Reservoir - Kiowa County

a. Trotlines and jugs are permitted.

267. Nee Noshe Reservoir - Kiowa County

a. Trotlines and jugs are permitted.

268. Nee So Pah Reservoir (Sweetwater and Jet) - Kiowa County

a. Trotlines and jugs are permitted.

269. Newlin Creek - Custer and Fremont Counties

a. From the headwaters downstream to the US Forest Service boundary:
   1. Fishing is prohibited.

270. Nickelson Creek - Pitkin County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

271. No Name Creek - Garfield County

a. From the confluence with the Colorado River upstream for ½ mile:
   1. Fishing is prohibited from March 15 through May 15 and from October 1 through November 30.

272. Nolan Creek - Eagle County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

273. North Lake State Wildlife Area - Las Animas County

a. Fishing is by artificial flies and lures only.

274. North Platte River - Jackson County

a. Within the Brownlee II or Verner State Wildlife Areas:
   1. Fishing is by artificial flies and lures only.
   2. The bag and possession limit for trout is two fish.
b. From the southern boundary of the Routt National Forest downstream to the Wyoming state line (Northgate Canyon):
   1. Fishing is by artificial flies and lures only.
   2. The bag and possession limit for trout is two fish.

275. North Platte River, North Fork - Jackson County

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit for trout is two fish.

276. North Shields Ponds - Larimer County

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

277. North Sterling Reservoir - Logan County

a. The minimum size for walleye and saugeye is 15 inches in length.
b. No more than one walleye or saugeye in the aggregate greater than 21 inches in length may be taken per day.
c. The minimum size for wipers is 15 inches in length; only one wiper may be greater than 25 inches in length.
d. The minimum size for smallmouth bass is 12 inches in length.
e. The minimum size for largemouth bass is 15 inches in length.
f. The minimum size for crappie is 10 inches in length.

278. North Taylor Creek - Custer County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

279. Northwater Creek - Garfield County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

280. Old Dillon Reservoir - Summit County

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit and minimum size for golden trout is one fish, 16 inches in length.

281. Osier Creek - Conejos County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

282. Overland Trail Pond - Logan County

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

283. Paonia Reservoir (Muddy Creek) - Gunnison County

a. From the top of Paonia Dam downstream to the boundary fence below the stilling basin:
   1. Fishing is prohibited, as posted.

284. Parachute Creek, East Fork - Garfield County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

285. Parachute Creek, East Middle Fork - Garfield County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

286. Parvin Lake - Larimer County

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit for trout is two fish.
c. In the inlet stream (Lone Pine Creek) upstream to Larimer Co Rd 74E (Red Feather Lakes Rd):
   1. Fishing is prohibited, as posted.

287. Pass Creek - Mineral County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

288. Pasture Creek - La Plata and San Juan Counties

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

289. Pearl Lake - Routt County - Including the inlet stream for ¼ mile above the inlet and the outlet stream for ¼ mile below the outlet:

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit and minimum size for trout is two fish, 18 inches in length.

290. Pella Crossing Recreation Area Ponds (All Ponds) - Boulder County

a. Fishing is by artificial flies and lures only. Scented flies or scented lures may be used on this water if they are 1.5 inches or longer.
b. All largemouth and smallmouth bass must be returned to the water immediately upon catch.

291. Petty Creek - San Juan County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

292. Piedra River - Archuleta County

a. From the Piedra River bridge on USFS 631 (Piedra Road) downstream to the lower boundary of the Tres Piedra Ranch (1.5 miles above US 160):
    1. Fishing is by artificial flies and lures only.
    2. All trout must be returned to the water immediately upon catch.
b. From the US 160 bridge downstream to Navajo Reservoir:
    1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

293. Piedra River, East Fork - Hinsdale and Mineral Counties

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

294. Pikes Peak North Slope Recreation Area (Crystal, North Catamount and South Catamount Reservoirs) - El Paso and Teller Counties

a. The bag and possession limit for lake trout is two fish.
b. North Catamount Reservoir only:
    1. Fishing is by artificial flies and lures only.

295. Pikes Peak South Slope Recreation Area (Boehmer Reservoir, Boehmer Creek, Mason Reservoir and McReynolds Reservoir) - El Paso and Teller Counties

a. In Boehmer Reservoir and Boehmer Creek, from the headwaters to Mason Reservoir:
    1. Fishing is prohibited.
b. In Mason Reservoir:
    1. Fishing is by artificial flies and lures only.
    2. The bag and possession limit and maximum size for trout is one fish, 16 inches in length.
c. In McReynolds Reservoir:
    1. Fishing is by artificial flies and lures only.
    2. All trout must be returned to the water immediately upon catch.

296. Pit D Pond - Boulder County

a. The bag and possession limit and minimum size for largemouth and smallmouth bass is one fish in the aggregate, 15 inches in length.

297. Poage Lake - Rio Grande County

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit and maximum size for trout is two fish, 12 inches in length.

298. Poose Creek - Rio Blanco County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

299. Porcupine Lake - Routt County

a. Fishing is by artificial flies and lures only.

b. All cutthroat trout must be returned to the water immediately upon catch.

300. Poudre Ponds #1 - Weld County

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

301. Poudre River - Larimer County

a. From the Rocky Mountain National Park boundary downstream to the confluence with Joe Wright Creek:
   1. Fishing is by artificial flies and lures only.
   2. The bag and possession limit for trout is two fish.
b. From the upper boundary of the Big Bend campground downstream to the confluence with Black Hollow Creek:
   1. Fishing is by artificial flies and lures only.
   2. All trout must be returned to the water immediately upon catch.
c. From the west boundary of the Hombre Ranch (below Rustic) downstream to the Pingree Park Road/bridge:
   1. Fishing is by artificial flies and lures only.
   2. All trout must be returned to the water immediately upon catch.
d. From the upper boundary of Gateway Park (water diversion for Ft. Collins) downstream to the confluence with the North Fork of the Poudre River:
   1. Fishing is by artificial flies and lures only.
   2. All trout must be returned to the water immediately upon catch.

302. Poudre River, North Fork - Larimer County

a. From the confluence with Divide Creek downstream to Bull Creek (above Halligan Reservoir):
   1. Fishing is by artificial flies or artificial lures only.
   2. All trout must be returned to the water immediately upon catch.
b. From Milton Seaman Reservoir downstream to the confluence with the Poudre River:
   1. Fishing is by artificial flies and lures only.
   2. All trout must be returned to the water immediately upon catch.

303. Poudre River, South Fork - Larimer County

a. From the Rocky Mountain National Park boundary downstream for one mile:
   1. Fishing is by artificial flies and lures only.
   2. All trout must be returned to the water immediately upon catch.

304. Prewitt Reservoir - Logan and Washington counties

a. The minimum size limit for walleye and saugeye is 15 inches in length.
b. No more than one walleye or saugeye in the aggregate greater than 21 inches in length may be taken per day.
c. The minimum size for wipers is 15 inches in length.
d. The minimum size for crappie is 10 inches in length.

305. Pronger Pond - Logan County

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

306. Prospect Park Lakes - Jefferson County

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.
b. Bass Lake and West Prospect Lakes only:
   1. Fishing is by artificial flies and lures only. Scented flies or scented lures may be used on this water if they are 1.5 inches or longer.

307. Prospect Ponds #2 and #3 - Larimer County

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

308. Pueblo Reservoir - Pueblo County

a. The minimum size for largemouth, smallmouth, and spotted bass is 15 inches in length.
b. The bag and possession limit and minimum size for walleye and saugeye is five fish in the aggregate, 18 inches in length.
c. No more than one walleye or saugeye in the aggregate greater than 21 inches in length may be taken per day.
d. Underwater spearfishing is allowed for the take of channel, blue and flathead catfish with an aggregate bag and possession limit of five fish; and for wiper with a bag and possession limit of five fish.
e. Fishing is prohibited from the dam and within 100 feet of the dam, March 15 through April 15 between the hours of 4:00 p.m. and 9:00 a.m.
f. It is unlawful to possess filleted or cleaned fish in a boat on the lake.

309. Purgatoire River, Middle Fork - Las Animas County

a. Within the Bosque del Oso State Wildlife Area:
   1. Fishing is by artificial flies and lures only.
   2. All fish must be returned to the water immediately upon catch.

310. Purgatoire River, South Fork - Las Animas County

a. Within the Bosque del Oso State Wildlife Area:
   1. Fishing by artificial flies and lures only.
   2. All fish must be returned to the water immediately upon catch.

311. Queens Reservoir, North and South - Kiowa County

a. Trotlines and jugs are permitted.

312. Quincy Reservoir - Arapahoe County

a. Fishing by artificial flies and lures only. Scented flies or scented lures may be used on this water if they are 1.5 inches or longer.
b. The bag and possession limit for trout is two fish.
c. The minimum size for largemouth and smallmouth bass is 18 inches in length.
d. Fishing access is controlled by Aurora Parks and Recreation as posted.

313. Rampart Reservoir - El Paso County

a. Ice fishing is prohibited.
b. The bag and possession limit for lake trout is two fish.

314. Ranch Creek, North Fork - Grand County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

315. Red Lion State Wildlife Area - Logan County

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.
b. The minimum size for crappie is 10 inches in length.

316. Relay Creek - La Plata and San Juan Counties

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

317. Rhodes Gulch - Conejos County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

318. Ridgway Reservoir - Ouray County

a. Snagging of kokanee salmon is permitted from September 1 through December 31.
b. There is no bag or possession limit for smallmouth bass.

319. Rifle Gap Reservoir - Garfield County

a. The bag and possession limit and minimum size for walleye is one fish, 18 inches in length.
b. The bag and possession limit for yellow perch is twenty fish.

320. Rio Blanco Lake - Rio Blanco County

a. The minimum size for largemouth bass is 15 inches in length.

321. Rio Blanco River - Archuleta and Conejos Counties

a. From the headwaters downstream to the San Juan Wilderness boundary:
    1. Fishing is by artificial flies and lures only.
    2. All cutthroat trout must be returned to the water immediately upon catch.
b. From the Blanco Diversion Dam downstream to the confluence with the San Juan River:
    1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie

322. Rio de Los Pinos - Conejos County

a. From the headwaters downstream to the waterfall at the South San Juan Wilderness boundary:
    1. Fishing is by artificial flies and lures only.
    2. All cutthroat trout must be returned to the water immediately upon catch.

323. Rio Grande River - Hinsdale, Mineral and Rio Grande Counties

a. From the lower boundary of River Hill Campground downstream to the west fence of Masonic Park:
    1. Fishing is by artificial flies and lures only.
    2. The bag and possession limit and maximum size for brown trout is two fish, 12 inches in length.
    3. All rainbow trout must be returned to the water immediately upon catch.
b. From the Colo 149 bridge at South Fork downstream to the Rio Grande Canal diversion structure:
    1. Fishing is by artificial flies and lures only.
    2. The bag and possession limit and minimum size for brown trout is two fish, 16 inches in length.
    3. All rainbow trout must be returned to the water immediately upon catch.

324. Rio Lado Creek - Montezuma County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

325. Riverbend Ponds #1, #2, #3, #4 and #5 - Larimer County

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

326. River's Edge Natural Area Ponds (Bass, Dragonfly, Sandpiper) - Larimer County

a. All largemouth and smallmouth bass must be returned to the water immediately upon catch.
b. The bag and possession limit for yellow perch is 5 fish.

327. Road Beaver Creek - Gunnison County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

328. Roaring Creek - Larimer County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

329. Roaring Fork Creek - Grand County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

330. Roaring Fork of the North Platte - Jackson County

a. Within the Odd Fellows or Manville State Wildlife Areas:
    1. Fishing is by artificial flies and lures only.
    2. The bag and possession limit for trout is two fish.

331. Roaring Fork River - Pitkin and Garfield Counties

a. From the confluence with McFarlane Creek downstream to the upper Woody Creek bridge:
    1. Fishing is by artificial flies only.
    2. All trout must be returned to the water immediately upon catch.
b. From the upper Woody Creek bridge downstream to the confluence with the Colorado River (excluding 50 yards upstream and downstream from the confluences with Fourmile Creek and Threemile Creek):
    1. Fishing is by artificial flies and lures only.
    2. The bag and possession limit and minimum size for trout is two fish, 16 inches in length.
c. 50 yards upstream and downstream from the confluences with Fourmile Creek and Threemile Creek:
    1. Fishing is by artificial flies and lures only.
    2. The bag and possession limit and minimum size for trout is two fish, 16 inches in length.
    3. Fishing is prohibited from March 15 through May 15 and from October 1 through November 30.

332. Roaring Forks Creek - Montezuma County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

333. Rock Creek - Lake County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

334. Rock Creek, Little - Mesa County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

335. Rock Creek - Park County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

336. Rock Lake - Conejos County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

337. Rocky Fork Creek - Pitkin County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

338. Rocky Mountain Lake - Denver County

a. The minimum size for largemouth bass is 15 inches in length.

339. Rosemont Reservoir - Teller County

a. Fishing is by artificial flies and lures only.
b. Ice fishing is prohibited.

340. Rough Canyon - Conejos County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

341. Ruby Jewel Lake - Jackson County

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit for trout is two fish.

342. Runyon/Fountain Lakes State Wildlife Area - Pueblo County

a. Ice fishing is prohibited.

343. Saguache Creek - Saguache County

a. From the confluence of the Middle and South Forks downstream to the confluence with California Gulch:
   1. Fishing is by artificial flies and lures only.

344. Saguache Creek, Middle Fork - Saguache County

a. From the headwaters downstream to the confluence with the South Fork of Saguache Creek:
   1. Fishing is by artificial flies and lures only.

345. Saguache Creek, South Fork - Saguache County

a. From the headwaters downstream to the confluence with the Middle Fork of Saguache Creek:
   1. Fishing is by artificial flies and lures only.

346. Saint Vrain Creek (North and South) – Boulder County

a. Within the town limits of Lyons as posted:
   1. Fishing is by artificial flies and lures only.
   2. All trout must be returned to the water immediately upon catch.

347. Saint Vrain State Park - Weld County

a. Bald Eagle Lake:
   1. Fishing is by artificial flies and lures only. Scented flies or scented lures may be used on this water if they are 1.5 inches or longer.
   2. All largemouth and smallmouth bass must be returned to the water immediately upon catch.
b. Blue Heron Lake:
   1. All largemouth and smallmouth bass must be returned to the water immediately upon catch.

2. Only one channel catfish in bag or possession may be greater than 20 inches.

348. San Francisco Creek (Middle and West Forks) and West San Francisco Lake - Rio Grande County

a. That portion on US Forest Service lands including West San Francisco Lake:
   1. Fishing is by artificial flies and lures only.
   2. All trout must be returned to the water immediately upon catch.

349. San Juan River - Archuleta County

a. From the intersection of US 160 and US 84 downstream through Pagosa Springs to the intersection of Apache Street with the river, including River Center Ponds:
   1. The bag and possession limit for trout is two fish.
b. From the US 160 bridge in Pagosa Springs downstream to Navajo Reservoir:
   1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

350. San Miguel River - Montrose and San Miguel Counties

a. From the Colo 90 bridge at Pinon downstream to the confluence with the Dolores River:
   1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

351. Sarvis Creek - Grand and Routt Counties

a. The bag limit for whitefish is four fish.
b. The possession limit for whitefish is eight fish.

352. Scenery Pond (Colorow Mountain State Wildlife Area) - Rio Blanco County

a. The bag and possession limit for trout is two fish.

353. Schwachheim Creek - Las Animas County

a. Within the Lake Dorothey State Wildlife Area:
   1. Fishing is by artificial flies and lures only.

354. Second Creek - Delta County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

355. Severy Creek - El Paso County

a. From the headwaters downstream to the US Forest Service boundary:
   1. Fishing is prohibited.

356. Shadow Mountain Reservoir - Grand County

a. Ice fishing shelters must be portable.

357. Shadow Mountain Spillway - Grand County

a. From Shadow Mountain Reservoir downstream to Lake Granby including Columbine Bay to the Twin Creek inlet:
   1. Fishing is prohibited from October 1 through December 31.
   2. Snagging is prohibited.

358. Sheep Creek - Conejos County

a. From the headwaters downstream to the Conejos River:
   1. Fishing is by artificial flies and lures only.
   2. The bag and possession limit for trout is two fish.

359. Sheep Creek - Larimer County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

360. Sheep Creek, East and West Forks - Larimer County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

361. Sig Creek - La Plata and San Juan Counties

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

362. Sig Creek, East Fork - San Juan County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

363. Silver Lake - Mesa County

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit and minimum size for trout is two fish, 16 inches in length.

364. Slater Creek, South Fork and West Prong of the South Fork - Routt County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

365. Sloan Lake - Hinsdale County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

366. Snell Creek - Rio Blanco County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

367. Soda Creek - Routt County

a. The bag limit for whitefish is four fish.
b. The possession limit for whitefish is eight fish.

368. South Platte Park (Littleton) - Arapahoe County

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

369. South Platte River - Douglas, Jefferson, Park and Teller Counties

a. From the confluence of the Middle and South Forks downstream to Spinney Mountain Reservoir:
    1. Fishing is by artificial flies and lures only.
    2. All trout between 12 and 20 inches in length must be returned to the water immediately upon catch.
    3. The bag and possession limit for trout is two fish, only one of which may be greater than 20 inches in length.
b. From the outlet of Spinney Mountain Reservoir downstream to the inlet of Eleven Mile Reservoir:
    1. Fishing is by artificial flies and lures only.
    2. All fish caught must be returned to the water immediately upon catch.
    3. Some portions may be closed to fishing as posted from September 15 to December 31 for kokanee salmon spawning operations.
c. From immediately below Eleven Mile Dam downstream to the Wagon Tongue Gulch Road bridge at Springer Gulch (Eleven Mile Canyon):
    1. Fishing is by artificial flies and lures only.
    2. All trout must be returned to the water immediately upon catch.
d. From Cheesman Dam downstream to the upper Wigwam Club property line:
    1. Fishing by artificial flies and lures only.
    2. All trout must be returned to the water immediately upon catch.
e. From the lower boundary of the Wigwam Club downstream to Scraggy View Picnic Ground:
    1. Fishing is by artificial flies and lures only.
    2. The bag and possession limit and minimum size for trout is two fish, 16 inches in length.
f. From Strontia Springs Dam downstream to 300 yards upstream from the Denver Water Board's Marston Diversion structure:
    1. Fishing is by artificial flies and lures only.
    2. The bag and possession limit for trout is two fish.
g. Within Chatfield State Park:
    1. The bag limit and minimum size for walleye is three fish, 18 inches in length.
    2. No more than one walleye greater than 21 inches in length may be taken per day.
    3. The minimum size for largemouth and smallmouth bass is 15 inches in length.

370. South Platte River, Middle Fork - Park County

a. From the Colo 9 bridge (4.9 miles north of Garo) downstream to the confluence with the South Fork of the South Platte:
    1. Fishing is by artificial flies and lures only.
    2. All trout between 12 and 20 inches in length must be returned to the water immediately upon catch.
    3. The bag and possession limit for trout is two fish, only one of which may be greater than 20 inches in length.

371. South Platte River, South Fork - Park County

a. From US 285 downstream to Antero Reservoir:
    1. Fishing is by artificial flies and lures only.
    2. All trout between 12 and 20 inches in length must be returned to the water immediately upon catch.
    3. The bag and possession limit for trout is two fish, only one of which may be greater than 20 inches in length.
b. From Antero Reservoir downstream in the newly constructed channel to the confluence with the existing channel:
    1. Fishing is by artificial flies and lures only.
    2. All trout must be returned to the water immediately upon catch.
c. From the lower boundary fence of the Badger Basin State Wildlife Area downstream to the confluence with the Middle Fork of the South Platte:
    1. Fishing is by artificial flies and lures only.
    2. All trout between 12 and 20 inches in length must be returned to the water immediately upon catch.
    3. The bag and possession limit for trout is two fish, only one of which may be greater than 20 inches in length.

372. Spinney Mountain Reservoir - Park County

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit and minimum size for trout is one fish, 20 inches in length.
c. Fishing is prohibited from ½ hour after sunset until ½ hour before sunrise.
d. Ice fishing is prohibited.
e. There is no bag or possession limit for yellow perch.

373. Sprat-Platte Lake - Adams County

a. Fishing is by artificial flies and lures only. Scented flies or scented lures may be used on this water if they are 1.5 inches or longer.
b. The minimum size for largemouth bass is 18 inches in length.

374. Spring Creek - Dolores County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

375. Spring Gulch Pond - Douglas County

a. Fishing is by artificial flies and lures only.
b. All fish must be returned to the water immediately upon catch.

376. Spruce Creek (confluence with Blue River approximately 5 miles north of Green Mtn. Res.) - Grand and Summit Counties

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

377. Spruce Creek (confluence with Blue River approximately 2.5 miles south of Breckenridge) - Summit County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

378. Stagecoach Reservoir - Routt County

a. There is no bag or possession limit for walleye.

379. Stalker Lake - Yuma County

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

380. Standley Lake - Jefferson County

a. The minimum size for walleye and saugeye is 15 inches in length.
b. No more than one walleye or saugeye in the aggregate greater than 21 inches in length may be taken per day.

381. Stearns Lake - Boulder County

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

382. Steelman Creek - Grand County

a. From the headwaters downstream to the Denver Water Board Diversion:
   1. Fishing is by artificial flies and lures only.
   2. All cutthroat trout must be returned to the water immediately upon catch.

383. Stueben Creek, West Fork - Gunnison County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

384. Summit Reservoir - Montezuma County

a. The minimum size for largemouth bass is 15 inches in length.

385. Swamp Lakes - Lake County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

386. Swan River - Summit County

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit and minimum size for trout is 2 fish, 16 inches in length.

387. Swan River, North Fork - Summit County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

388. Sweitzer Lake - Delta County

a. All fish, except carp, must be returned to the water immediately upon catch.

389. Sylvan Lake - Eagle County

a. In the inlet and upstream for ½ mile:
   1. Fishing is prohibited from September 1 through November 30.

390. Tamarack Ranch Pond - Logan County

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

391. Tarryall Creek - Park County

a. For that portion of Tarryall Creek located on the Cline Ranch State Wildlife Area:
   1. Fishing is by artificial flies and lures only.
   2. The bag and possession limit for trout is two fish.
   3. Fishing is prohibited from October 1 through the end of February.
   4. Fishing access is restricted to designated fishing areas (beats) only. Access to each fishing beat is restricted to occupants of the vehicle parked in the parking stall assigned to that beat (determined by corresponding number). No more than four anglers are allowed per vehicle, and only one vehicle is allowed per stall.

392. Taylor Creek, Little - Montezuma County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

393. Taylor Park Reservoir - Gunnison County

a. The bag and possession limit for lake trout is three fish, only one of which may be greater than 26 inches in length.
b. Gaffs and tail snares are prohibited.
c. Snagging of kokanee salmon is permitted from September 1 through December 31.

394. Taylor River - Gunnison County

a. From the top of Taylor Dam and then from the dam downstream for 325 yards:
   1. Fishing is prohibited as posted.
b. From a point 325 yards below Taylor Dam downstream to the lower boundary of the Taylor State Wildlife Area (approximately 0.4 miles):
   1. Fishing is by artificial flies and lures only.
   2. All trout must be returned to the water immediately upon catch.

395. Terror Creek, East Fork - Delta County

a. From the headwaters downstream to the confluence with Terror Creek (including unnamed tributary below Terror Creek Reservoir);
   1. Fishing is by artificial flies and lures only.
   2. All cutthroat trout must be returned to the water immediately upon catch.

396. Thomas Reservoir - Boulder County

a. The bag and possession limit and minimum size for largemouth and smallmouth bass is one fish in the aggregate, 15 inches in length.

397. Three Lakes - Lowest and Middle Lakes - Lake County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

398. Three Licks Creek - Eagle County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

399. Threemile Creek - Garfield County

a. From the confluence with the Roaring Fork River upstream for ½ mile:
   1. Fishing is prohibited from March 15 through May 15 and from October 1 through November 30.

400. Thurston Reservoir - Prowers County

a. Trotlines and jugs are permitted.

401. Timberline Lake - Lake County

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit for trout is two fish.

402. Torsido Creek - Conejos County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

403. Totten Reservoir - Montezuma County

a. The minimum size for largemouth bass is 15 inches in length.

404. Trapper Creek - Garfield County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

405. Trappers Lake - Garfield County

a. Fishing is by artificial flies and lures only.

b. The bag and possession limit for cutthroat trout is two fish. All cutthroat trout greater than 11 inches in length must be returned to the water immediately upon catch.
c. Fishing is prohibited in all inlets and upstream for ½ mile.
d. Fishing is prohibited within 100 feet of either side of all inlet streams.
e. Fishing is prohibited within 100 feet of either side of the outlet and downstream to the first falls.
f. There is no bag or possession limit on brook trout.

406. Trinidad Reservoir - Las Animas County

a. The minimum size for largemouth, smallmouth, and spotted bass is 15 inches in length.
b. The bag and possession limit for walleye and saugeye is five fish in the aggregate.
c. No more than one walleye or saugeye in the aggregate greater than 18 inches in length may be taken per day.

407. Trout Creek - Rio Blanco and Routt Counties

a. From the headwaters downstream to, but not including Sheriff Reservoir:
    1. Fishing is by artificial flies and lures only.
    2. All cutthroat trout must be returned to the water immediately upon catch.
b. From Sheriff Reservoir dam downstream to the confluence with the Yampa River:
    1. The bag limit for whitefish is four fish.
    2. The possession limit for whitefish is eight fish.

408. Turquoise Reservoir - Lake County

a. The bag and possession limit for lake trout is two fish.

409. Tuttle Creek - Saguache County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

410. Twin Lakes - Lake County

a. The bag and possession limit for lake trout is one fish. All lake trout between 22 and 34 inches in length must be returned to the water immediately upon catch.

411. Two Buttes Reservoir - Baca County

a. Trotlines and jugs are permitted.

412. Two Ledge Reservoir - Jackson County

a. Fishing is by artificial flies and lures only.

413. Uncompahgre River - Ouray County

a. From the Ouray Co Rd 23 bridge downstream to Ridgway Reservoir:

1. Snagging of kokanee salmon is permitted from September 1 through December 31.

b. From Ridgway dam downstream to the fence just below the USGS Gauge Station:
   1. Fishing is prohibited, except as posted.

c. From the fence just below the USGS Gauge Station below Ridgway Dam downstream to the confluence with Cow Creek:
   1. Fishing is by artificial flies and lures only.
   2. All trout must be returned to the water immediately upon catch.

d. From the Ridgway Dam downstream to the confluence with the Gunnison River:
   1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

414. Union Reservoir (Calkins Lake) - Weld County

a. The minimum size for wipers is 15 inches in length.

415. Vallecito Creek - La Plata and San Juan Counties

a. From the headwaters downstream to the southern boundary of the Weminuche Wilderness:
   1. Fishing is by artificial flies and lures only.
   2. The bag and possession limit for trout is two fish.

b. From the southern boundary of the Weminuche Wilderness downstream to the La Plata Co Rd 501 bridge:
   1. All kokanee salmon must be returned to the water immediately upon catch from September 1 through November 14.
   2. Snagging of kokanee salmon is permitted from November 15 through December 31.

c. From the La Plata Co Rd 501 bridge downstream to the standing water line of Vallecito Reservoir:
   1. Fishing is prohibited from September 1 through November 14.
   2. Snagging of kokanee salmon is permitted from November 15 through December 31.

416. Vasquez Creek, Little - Grand County:

a. From the headwaters downstream to the Denver Water Board Diversion:
   1. Fishing is by artificial flies and lures only.
   2. All cutthroat trout must be returned to the water immediately upon catch.

417. Vasquez Creek, South Fork - Grand County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

418. Vaughn Reservoir - Rio Blanco County

a. The bag and possession limit for cutthroat trout is two fish.

419. Virginia Gulch Creek, West - La Plata County

a. Fishing is by artificial flies and lures only.

b. All cutthroat trout must be returned to the water immediately upon catch.

420. Virginia Lake - Lake County

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit for trout is two fish.

421. Wacker Ponds (formerly known as Hanson Bros. Ponds) - Morgan County

a. The minimum size for largemouth and smallmouth bass 15 inches in length.

422. Wahatoya State Wildlife Area - Huerfano County

a. Fishing is by artificial flies and lures only.
b. Ice fishing is prohibited.

423. Walden Ponds (except Wally Toevs Pond) - Boulder County

a. Fishing is by artificial flies and lures only. Scented flies or scented lures may be used on this water if they are 1.5 inches or longer.
b. All largemouth and smallmouth bass must be returned to the water immediately upon catch.

424. Walker Lake State Wildlife Area - Mesa County

a. Fishing is prohibited from October 1 through the last day of February.

425. Walton Creek - Routt County

a. The bag limit for whitefish is four fish.
b. The possession limit for whitefish is eight fish.

426. Waneka Lake (Lafayette) - Boulder County

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

427. Washington Park (Lily Pond) - Denver County

a. Fishing is restricted to youth 15 years of age or younger.

428. Watson Lake - Larimer County

a. The minimum size for smallmouth bass is 12 inches in length.

429. West Creek - Mesa County

a. From the Colo 141 Bridge downstream 5 miles to the confluence of Ute Creek:
    1. The bag and possession limit for trout is two fish.

430. West Cross Creek - Eagle County

a. Fishing is by artificial flies and lures only.

b. All cutthroat trout must be returned to the water immediately upon catch.

431. White River - Rio Blanco County

a. From the confluence of the North and South Forks of the White River downstream to the Colo 13 Bridge below Meeker (excluding the Sleepy Cat easement, Wakara lease, and the Meeker Pasture State Wildlife Area):
   1. The bag and possession limit for trout is two fish.
b. On the Sleepy Cat easement, Wakara Lease, and the Meeker Pasture State Wildlife Area east of Meeker:
   1. Fishing is by artificial flies and lures only.
   2. All trout must be returned to the water immediately upon catch.
c. From the confluence of the North and South Forks of the White River downstream to Kenney Reservoir:
   1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.
d. From Taylor Draw Dam downstream 400 yards:
   1. Fishing is prohibited, as posted, to protect native fish spawning.
e. From Taylor Draw Dam downstream to the state line:
   1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

432. White River, North Fork - Rio Blanco County

a. From the headwaters downstream to confluence with the South Fork of the White River:
   1. The bag and possession limit for trout is two fish.

433. White River, South Fork - Rio Blanco County

a. From the headwaters downstream to confluence with the North Fork of the White River:
   1. The bag and possession limit for trout is two fish.

434. Williams Fork Reservoir - Grand County

a. Snagging of kokanee salmon is permitted from September 1 through December 31.
b. All northern pike between 26 and 34 inches in length must be returned to the water immediately upon catch.
c. From the buoy line at the Williams Fork River inlet upstream to the first Grand Co Rd bridge:
   1. Fishing and snagging are prohibited from September 15 through November 30.
d. Use of spearfishing, archery, slingbows and gigs for the take of northern pike is prohibited.
e. The bag and possession limit for lake trout is eight fish, only one of which may be greater than 30 inches in length.

435. Williams Fork River - Grand County

a. From Williams Fork Dam downstream to the confluence with the Colorado River:

1. Fishing is by artificial flies and lures only.
2. All trout must be returned to the water immediately upon catch.

436. Williams Gulch - Larimer County

a. From the headwaters downstream to the confluence with the Poudre River:
   1. Fishing is prohibited.

437. Willow Creek (Little Snake drainage) - Moffat County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

438. Willow Creek Reservoir - Grand County

a. Ice fishing shelters must be portable.

439. Windsor Reservoir - Weld County

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

440. Wolf Creek - Conejos County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

441. Wolford Mountain Reservoir - Grand County

a. Public access, including fishing, is prohibited within 150 feet of any kokanee spawning trap or wing net from October 1- December 1.

442. Woods Lake State Wildlife Area - San Miguel County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

443. Wrights Lake - Chaffee County

a. Fishing is by artificial flies and lures only.

444. Yampa River - Routt County

a. From the headwaters to the confluence with Trout Creek (including tributaries):
   1. The bag limit for whitefish is four fish.
   2. The possession limit for whitefish is eight fish.
b. From Stagecoach Dam downstream for 0.6 mile:
   1. Fishing is by artificial flies and lures only.
   2. All trout must be returned to the water immediately upon catch.
c. From Stagecoach Dam downstream to Catamount Lake:
   1. Spawning areas (redds) are closed to fishing as posted to protect spawning fish.
d. From 0.6 miles below Stagecoach Dam downstream to the confluence with Walton Creek, excluding Catamount Lake:

1. Fishing is by artificial flies and lures only.
2. The bag and possession limit for trout is two fish.

e. From the confluence with Walton Creek downstream for 4.8 miles to the James Brown (Soul Center of the Universe) bridge, in Steamboat Springs:
   1. Fishing is by artificial flies and lures only.
   2. All trout must be returned to the water immediately upon catch.

f. From the James Brown (Soul Center of the Universe Bridge) downstream to the Colo 394 bridge near Craig:
   1. The bag and possession limit for trout is two fish.

g. From the headwaters of the Yampa River downstream to the confluence with the Green River:
   1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

445. Youngs Creek Reservoirs #1, #2, and #3 - Delta County

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

446. Yuma City Lake - Yuma County

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.
b. The bag and possession limit for channel catfish is five fish.

447. Zimmerman Lake - Larimer County

a. Fishing is by artificial flies and lures only.
b. All trout must be returned to the water immediately upon catch.
c. Fishing is prohibited in the inlet area as posted from January 1 through July 31.

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Tracking number: 2017-00478

Opinion of the Attorney General rendered in connection with the rules adopted by the

Colorado Parks and Wildlife (406 Series, Wildlife)

on 11/16/2017

2 CCR 406-1

CHAPTER W-1 - FISHING

The above-referenced rules were submitted to this office on 11/21/2017 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.

November 29, 2017 12:44:36

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Natural Resources

Agency

Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-2

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2 CCR 406-2 CHAPTER W-2 - BIG GAME 1 - eff 01/01/2018

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01/01/2018

FILING – 11/30/2017

FINAL REGULATIONS - CHAPTER W-2 - BIG GAME

ARTICLE I - GENERAL PROVISIONS

#201 - LICENSE FEES

A. Big Game License Fees

1. Nonresident Big Game Licenses

In accordance with the provisions of §33-4-102, C.R.S., nonresident big game fees for the year 2018 shall be as follows:

Nonresident License Type	2017 License Fee	2018Statutory Maximum License Fee*	2018 License Fee**
Pronghorn	$385	$398.16	$395
Deer	$385	$398.16	$395
Elk	$640	$663.61	$660
Bear	$640	$663.61	$660
Mountain lion	$640	$663.61	$660
Moose	$2,145	$2,212.02	$2,210
Mountain goat	$2,145	$2,212.02	$2,210
Rocky Mountain bighorn sheep	$2,145	$2,212.02	$2,210
Desert bighorn sheep	$1,430	$1,474.68	$1,470
*Based on cumulative Consumer Price Index increase since 2000. **Adjusted after application of Consumer Price Index by rounding down to the nearest $5.00 increment, in whole numbers.			

a. All licenses sold through March 2018 shall be sold at 2017 license fees.

2. Nonresident License Fee Reduction:

In accordance with the provisions of §33-4-102, C.R.S., the following nonresident big game license fees shall be reduced to the fee specified herein, from the level set forth in §33-4-102, C.R.S.:

Nonresident License Type	2017 License Fee	2018 License Fee
Nonresident Bear		
Nonresident Mountain Lion		
Nonresident Antlerless Elk		
*Nonresident Antlerless Elk license fee is set at 75% of Elk Nonresident License Fee rounded down to the		

nearest $5.00 increment, in whole numbers.

B. Combination Big Game/Annual Fishing Licenses for Nonresidents

1. Big game licenses issued to non-residents shall be issued as combination Big Game/Annual Fishing licenses, and for each such combination license purchased each year by a nonresident $10 of the above license fee shall be allocated to the fishing portion of such combination license.

ARTICLE VI – MOUNTAIN LION

#242 - RIFLE AND ASSOCIATED METHODS MOUNTAIN LION SEASONS

A. General and Extended Seasons

1. Dogs may be used to hunt mountain lion. However, the pack size shall be limited to no more than eight (8) dogs.

2. The hunter that takes a mountain lion shall be present at the time and place that any dogs are released on the track of a mountain lion and must continuously participate in the hunt until it ends. After a mountain lion has been pursued, treed, cornered or held at bay, a properly licensed person shall take or release the mountain lion immediately. No person shall in any manner restrict or hinder the mountain lion's ability to escape for the purpose of allowing a person who was not present at the time and place that any dogs were released, to arrive and take the mountain lion.

3. 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:

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), 14, 214, 441	5
6, 16, 17, 161, 171	4
7	1
8	4
9	3
10	10
11	12
12	18
13 (west of Hayden Divide Road)	12
13 (east of Hayden Divide Road), 131, 231	5
15	5
18, 27, 28, 37, 181, 371	12
19	5

Units	Lion Harvest Limit Quota
20	9
21	15
22	17
23	17
24	6
25, 26, 34	7
29	2
30	10
31	12
32	5
33	13
35, 36, 361	9
38	7
39, 391	7
40	7
41	5
42	10
43	7
44	6
45	1
46	6
47	1
48, 56, 481, 561	10
49, 57, 58, 581	24
50, 500, 501	10
51	7
52, 411	10
53, 63	10
54, 55, 551	7
59, 591	7
60	5
61	10
62	9
64	5
65	5
66, 67	8
68, 681, 682	6
69, 84, 86, 691, 861	15*
70 east of Colo 141	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

Units	Lion Harvest Limit Quota
85, 140, 851	24
87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 106, 107, 109, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 951	5
104, 105, 110	5
123, 124, 125, 126, 127, 128, 129, 130, 132, 133, 134, 135, 136, 137, 138, 139, 141, 142, 143, 144, 145, 146, 147	20
191	8
201	5
211	17
421	10
444	7
461	7
511	4
521	6
751, 771	5
TOTAL	**654**

* This reduction from 26 to 15 is contingent upon the Parks and Wildlife Commission approving the associated mountain lion research proposal to be submitted later in 2016. If the research is not approved the harvest limit quota will remain at 26 for the season ending March 31, 2017.

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
7	1
8	3
9	1
10	5
11	5
12	1
13 (west of Hayden Divide Road)	3
13 (east of Hayden Divide Road), 131, 231	3
19	2
20	6
21	2
23	1
24	1
29	2
30	1
31	5
32	2
33	4
38	4
39, 391	6
46	4
50, 500, 501	4
51	1
68, 681, 682	1

Units	Lion Harvest Limit Quota
70 east of Colo 141	4
70 west of Colo 141	2
71, 711	1
72	3
73	4
81	1
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	3
123, 124, 125, 126, 127, 128, 129, 130, 132, 133, 134, 135, 136, 137, 138, 139, 141, 142, 143, 144, 145, 146, 147	5
191	4
201	3
211	12
461	4
TOTAL	**121**

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.

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Tracking number: 2017-00477

Opinion of the Attorney General rendered in connection with the rules adopted by the

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on 11/16/2017

2 CCR 406-2

CHAPTER W-2 - BIG GAME

The above-referenced rules were submitted to this office on 11/21/2017 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.

November 29, 2017 12:43:28

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Natural Resources

Agency

Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-3

Rule title

2 CCR 406-3 CHAPTER W-3 - FURBEARERS AND SMALL GAME EXCEPT MIGRATORY BIRDS 1 - eff 01/01/2018

Effective date

01/01/2018

FINAL REGULATIONS - CHAPTER W-3 - FURBEARERS and SMALL GAME, EXCEPT MIGRATORY BIRDS

ARTICLE I - GENERAL PROVISIONS

#300 - Definitions

A. **"Canada Lynx Recovery Area"** means the area of the San Juan and Rio Grande National Forests and associated lands above 9,000 feet extending west from a north-south line passing through Del Norte and east from a north-south line passing through Dolores and from the New Mexico state line north to the Gunnison basin (including Taylor Park east to the Collegiate Range). The GMUs included in the area are: 55, 65, 66, 67, 68, 70, 71, 74, 75, 76, 77, 78, 79, 80, 81, 551, 681, 711 and 751.

B. **"Furbearers"** means those species with fur having commercial value and which provide opportunities for sport harvest including mink, pine marten, badger, red fox, gray fox, swift fox, striped skunk, western spotted skunk, beaver, muskrat, long-tailed weasel, short-tailed weasel, coyote, bobcat, opossum, ring-tailed cat and raccoon.

C. **“Live Trap (Cage or Box)”** means a mechanical device designed in such a manner that the animal enters the trap through a door that closes, preventing the animal from exiting.

D. **"Small game**, except migratory birds," means:

1. **Game birds**, including grouse, ptarmigan, pheasant, quail, partridge, Greater prairie-chicken and wild turkey; and

2. **Game mammals**, including cottontail rabbit, snowshoe hare, jackrabbit, fox squirrel, pine squirrel, and Abert's squirrel; and

3. **Other small game**, including prairie dogs, Wyoming (Richardson's) ground squirrel, prairie rattlesnake, and common snapping turtles.

NOTE: “Migratory Birds” is defined in regulation #500(A).

E. **“Traps specifically designed not to kill”** means padded, laminated, or off-set steel jawed foothold traps, enclosed foothold, box traps, and cage traps, as conditioned elsewhere in these regulations.

#301 - LICENSE FEES

A. **Furbearer License Fee**

1. **Furbearer License Fee Reduction:**
In accordance with the provisions of §33-4-102, C.R.S., the following furbearer license fees shall be reduced to the fee specified herein, from the level set forth in §33-4-102, C.R.S.:

License Type	License Fee
Resident Furbearer	$20.00
Nonresident Furbearer	$55.00

#302 - Hours

A. Hunting Hours:

1. Small Game - from one-half (1/2) hour before sunrise to sunset.

2. Furbearers - from one-half (1/2) hour before sunrise to one-half (1/2) hour after sunset. Additionally; beaver, bobcat, coyote, gray fox, raccoon, red fox, striped skunk, and swift fox may be hunted at night in accordance with Regulation #'s 303(E)(7) and (E)(8).

B. Trapping Hours:

1. Small game, except game birds; game reptiles, and furbearers - day or night.

2. All traps and snares must be visually checked on site at least once every day; except that traps and snares used in accordance with the provisions of 33-6-204, C.R.S. (General Exemptions); 33-6-205, C.R.S. (Exemption for Departments of Health); 33-6-206, C.R.S. (Nonlethal Methods Exemptions); or 33-6-207, C.R.S. (Exemptions for Protection of Crops and Livestock; all of which are exemptions authorized by Article XVIII, Section 12, of the Colorado Constitution); in the Canada lynx recovery area or on properties known to be occupied by Canada lynx must be checked every 24 hours.

    a. Visual lures, fresh meat baits, fish oil, and anise oil lures meant to attract felids are not permitted in the Canada lynx recovery area or on properties known to be occupied by Canada lynx.

#303 - Manner of Take:

The following are legal methods of take for game species listed in this chapter. Any method of take not listed herein shall be prohibited, except as otherwise provided by Statute or Commission regulation or by 35-40-100.2-115, C.R.S.

A. Special Conditions

1. Contests Involving Small Game or Furbearers are allowed, except:

    a. No person shall advertise, conduct, offer to conduct, promote or participate in any competitive event which involves:

        1. The taking of any small game or furbearer species for which the daily bag or possession is unlimited, including but not limited to coyotes and prairie dogs. Provided, however, that such events are allowed if no more than five (5) of each species are taken by each participant during the entire event.
        2. The taking of marked or tagged small game released as part of such contest and where money or other valuable prizes are awarded for the taking of such small game and game birds. “Valuable prizes” shall not include certificates or other similar tokens of recognition not having any significant monetary value.

    b. Commercial and noncommercial wildlife parks and field trials licensed by the Division are exempt from these provisions.

2. **Live Capture**

    a. Furbearers captured in live traps cannot be moved from the capture site and must be killed or released on site when the trap is checked.

3. **Accidental Capture** - Except for Canada lynx, which are subject to the provisions of Chapter 10, any person accidentally trapping any wildlife for which the trapping season is closed or for which trapping is not a legal manner of taking, shall, in the event of live capture of such wildlife, release such wildlife immediately, with or without the assistance of the Division. Nothing in this section permits the killing of such accidentally captured wildlife. In the event of mortality resulting from such accidental capture, the carcass of such wildlife shall be delivered to a Division Wildlife officer or office within five (5) days. Failure to deliver the carcass shall be prima facie evidence of unlawful possession of such wildlife. Provided further that any trapper who complies with this provision shall not be charged with illegal possession of such accidentally captured wildlife

4. **Non-toxic shot requirements**

   a. Arapaho National Wildlife Refuge (Jackson County).

      No person shall use or possess shot (either in shot-shells or as loose shot for muzzle-loading) other than non-toxic shot while taking or attempting to take any resident small game species with a shotgun. "Non-toxic shot" - means any shot type approved for use to take migratory game birds by the US Fish and Wildlife Service as set forth in #500 of these regulations.

5. **Labeling of traps** - All live traps (limited to cage or box traps) placed on public lands must be labeled permanently and legibly with the trapper's Customer Identification Number (CID) in a location that is visible without having to manipulate the live trap in any way. If the trapper does not have a CID, all live traps placed on public lands must be labeled with the trapper's name. Live traps not properly labeled may be confiscated by any Wildlife Officer.

B. Game Mammals

1. Any rifle or handgun.

2. Any shotgun not larger than 10 gauge, incapable of holding more than three (3) shells in magazine and chamber combined.

3. Handheld bows and crossbows.

4. Air guns and slingshots.

5. Hawking

C. Game Birds, except Migratory Birds

1. Any rifle or handgun for dusky (blue) grouse, ptarmigan or turkey during the fall and late seasons. Rifles and handguns used for the taking of turkeys shall use bullets of at least seventeen (17) grains in weight, with a manufacturer's energy rating of at least one-hundred ten (110) foot pounds at one-hundred (100) yards from the muzzle.

2. Shotguns not larger than 10 gauge not firing a single slug, and incapable of holding more than three (3) shells in the magazine and chamber combined. No shot (lead or steel) larger than size #2 shall be used to hunt turkey.

3. Handheld bows and crossbows.

4. Air guns and slingshots for dusky (blue) grouse and ptarmigan.

5. Hawking.

6. Artificial decoys and calls, except recorded or electrically amplified calls or sounds; for turkey.

D. Species listed in #300(D)(3).

1. Any method not otherwise prohibited.

E. Furbearers

1. Any rifle or handgun.

2. Any shotgun.

3. Handheld bows and crossbows.

4. Live traps, limited to cage or box traps.

5. Any air gun, except that for coyote or bobcat the air gun must be a pre-charged pneumatic air gun .25 caliber or larger.

6. **Electronic call devices,** during legal hunting hours.

7. **Artificial light** (private land) may be used at night to take beaver, bobcat, coyote, gray fox, raccoon, red fox, striped skunk and swift fox on private land with permission of the landowner or his designated agent.

8. **Artificial light** (public land) may be used at night to take beaver, bobcat, coyote, gray fox, raccoon, red fox, striped skunk and swift fox on public lands by permit only, as follows:

    a. Each permit shall be valid only for the time, species, and location specified on the permit. No permit will be valid during any deer, elk or pronghorn rifle season or during the 24-hour period prior to the opening weekend; nor during the opening weekend of any grouse, pheasant, quail, turkey or waterfowl season in those areas where such seasons are in progress.
    b. An artificial light which is permanently attached to, or projected from within a vehicle is prohibited.
    c. Taking shall not be permitted within 500 yards of a dwelling, building, or other structure, or in any area of public concentration where human safety would be jeopardized.
    d. Such permit shall be carried while hunting and available for inspection upon demand.
    e. Area wildlife managers and district wildlife managers may deny a permit where there is a potential that night hunting activities may result in significant adverse impact on wildlife resources by causing movement of large numbers of big game or otherwise. Provided further that night hunting permits for bobcat will not be issued on public lands in the Canada lynx recovery area where Canada lynx are known to be present. When one Canada lynx has been taken by a bobcat hunter during the current year's hunting season no night hunting permits for bobcat will be issued for the remainder of the calendar year in the Canada lynx recovery area or in the area outside the Canada lynx recovery area where the Canada lynx was taken. In such instance, any night hunting permits for bobcat already issued under this provision shall be terminated.
    f. A permit shall not be required of any person, member of the person's family, lessee, agent, designee, or any employee of the person when necessary to protect such person's property.

9. Baits

a. Furbearers may be taken with the aid of baiting. Where permitted, baits shall consist solely of material of animal or plant origin and shall not contain any materials of metal, glass, porcelain, plastic, cardboard or paper. Wildlife used as bait shall be the carcass, or parts thereof, of legally taken furbearers, carp, shad, white and longnose suckers, and nonedible portions of legally obtained game mammals, birds and game fish.

#304 - License Requirements

Except as provided in 33-6-107(9) C.R.S., the following license requirements shall apply:

A. A small game license is required to take those species defined in #300(D) as small game, except wild turkey.

B. A small game or a furbearer license is required to take those species defined in #300(A) as furbearers. Coyotes may be taken without a license during any big game season provided that the hunter has an unfilled big game license for that season and unit. Manner of take must be the same as that of the big game license.

C. A turkey license is required to take wild turkey.

D. Common snapping turtles may be taken with either a small game license or a fishing license.

E. Each hunter must call 1-866-COLOHIP (1-866-265-6447) or register online (www.colohip.com) prior to their first hunting trip of the season to register their intent to hunt small game or furbearers. For the purposes of this regulation, “season” means the period September 1 through March 15.

#305 - Evidence of Sex/Species

Refer to General Provisions #003.

ARTICLE II - SMALL GAME SEASON DATES, UNITS (AS DESCRIBED IN CHAPTER 0 OF THESE REGULATIONS), BAG AND POSSESSION LIMITS, LIMITED LICENSES AND PERMITS

#306 - Cottontail Rabbit, Snowshoe Hare, White-tailed & Black-tailed jackrabbit

A. Season Dates and Units

1. Statewide: October 1 - end of February annually.
2. Extended Falconry and Dog Pursuit Season - Statewide: September 1 - March 31 annually.

B. Daily Bag and Possession Limits

1. Daily Bag Limit - Ten (10) cottontail rabbits, ten (10) snowshoe hares, ten (10) jackrabbits.
2. Possession Limit: Twenty (20) cottontail rabbits, twenty (20) snowshoe hares, and twenty (20) jackrabbits.

#307 - Abert's Squirrels

A. Season Dates and Units

1. Statewide: November 15 - January 15 annually.

B. Daily Bag and Possession Limits

1. Daily Bag Limit - Two (2) squirrels.
2. Possession Limit - Four (4) squirrels.

#308 - Fox Squirrel and Pine Squirrels

A. Season Dates and Units

1. Statewide: October 1 - end of February annually.
2. Extended Falconry Season - Statewide: September 1 - March 31 annually.

B. Daily Bag and Possession Limits

1. Daily Bag Limit - Five (5) fox squirrels and five (5) pine squirrels.
2. Possession Limit - Ten (10) fox squirrels and ten (10) pine squirrels.

#309 - Wyoming (Richardson's) ground squirrel, and black-tailed, white-tailed, and Gunnison prairie dogs

A. Season Dates and Units

1. Wyoming ground squirrel:
   a. Statewide: January 1 - December 31 annually.
2. Black-tailed, white-tailed and Gunnison prairie dogs:
   a. Public Land: June 15 - end of February annually.
   b. Private Land: January 1 - December 31 annually.

#310 - Common Snapping Turtle

A. Season Dates and Units

1. Statewide: April 1 - October 31 annually.

B. Daily Bag and Possession Limits

1. There shall be no bag or possession limit.

#311 - Marmot

A. Season Dates and Units

1. Statewide: August 10 - October 15 annually.

B. Daily Bag and Possession limits

1. Daily Bag Limit - Two (2) marmots.
2. Possession limit - Four (4) marmots.

#312 - Prairie Rattlesnake

A. Season Dates and Units

1. Statewide: June 15 - August 15 annually.

B. Daily Bag and Possession Limits

1. Daily Bag Limit - Three (3) snakes.
2. Possession Limit - Six (6) snakes.

C. Nothing in this section is intended to interfere with or prohibit the lawful protection of life or property as provided for in Section 33-6-107(9), C.R.S.

#313 - Dusky (Blue) Grouse

A. Season Dates and Units

1. West of U.S. Interstate 25.
   a. September 1 - November 19, 2017.
   b. Extended Falconry Season: September 1 - March 31 annually.

B. Daily Bag and Possession Limits

1. Daily Bag Limit - Three (3) birds.
2. Possession Limit - Nine (9) birds.

#314 - White-tailed Ptarmigan

A. Season Dates and Units

1. Statewide except units 44, 45, 53, 54, 66, 67, 68, 70, 71, 74, 75, 76, 77, 78, 79, 80, 81, 444 and 751.
   a. September 9 - October 1, 2017.
   b. Extended Falconry Season: September 1 - March 31 annually.
2. Units 44, 45, 53, 54, 66, 67, 68, 70, 71, 74, 75, 76, 77, 78, 79, 80, 81, 444 and 751.
   a. September 9 - November 19, 2017.
   b. Extended Falconry Season: September 1 - March 31 annually.

B. Daily Bag and Possession Limits

1. Daily Bag Limit - Three (3) birds.
2. Possession Limit - Six (6) birds.

#315 - Greater Sage-grouse

A. Season Dates, Units and Limits, Except North Park

1. Units 2, 3, 4, 5, 10, 11, 13, 18 except that portion of unit 18 east of Colo 125 in Grand County, 27, 28 except that portion of GMU 28 north and east of Grand Co Rd 50 (Church Park Rd), 37, 181, 201, 211, 301 and 441.
   a. September 9 - September 15, 2017.
   b. Extended Falconry Season: September 1 - January 31 annually.
2. Daily Bag and Possession Limits
   a. Daily Bag Limit - Two (2) birds.
   b. Possession Limit - Four (4) birds.

B. Season Dates, Units and Limits, North Park

1. Units 6, 16, 17, 161, and 171.
   a. September 9 - September 10, 2017.
   b. Extended Falconry Season: September 1 - January 31 annually.

2. Daily Bag and Possession Limits
    a. Daily Bag Limit - Two (2) birds.
    b. Possession Limit - Two (2) birds.

#316 - Gunnison Sage-grouse

A. Season Dates and Units

1. None.

B. Daily Bag and Possession Limits

1. Daily Bag Limit - None.
2. Possession Limit - None.

#317 - Mountain Sharp-tailed Grouse

A. Season Dates and Units.

1. Closed statewide except: Units 4, 5, 12, 13, 14, 131, 211, 214, and 441.
    a. September 1 - September 17, 2017.
    b. Extended Falconry Season: September 1 - January 31 annually.

B. Daily Bag and Possession Limits

1. Daily Bag Limit - Two (2) birds.
2. Possession Limit - Four (4) birds.

#318 - Chukar Partridge

A. Season Dates and Units

1. Statewide: September 1 - November 30, 2017.
2. Extended Falconry Season - Statewide: September 1 - March 31 annually.

B. Daily Bag and Possession Limits

1. Daily Bag Limit - Four (4) birds.
2. Possession Limit - Twelve (12) birds.

#319 - Pheasant

A. Season Dates and Units

1. East of I-25: November 11, 2017 - January 31, 2018.
2. West of I-25: November 11, 2017 - January 7, 2018.
3. Extended Falconry Season - Statewide: September 1 - March 31 annually.

B. Daily Bag and Possession Limits

1. Daily Bag Limit - Three (3) cocks.
2. Possession Limit - Nine (9) cocks.

C. Extended Falconry Season Daily Bag and Possession Limits

1. Daily Bag Limit - Three (3) birds.
2. Possession Limit - Nine (9) birds.

#320 - Quail (Northern Bobwhite, Scaled, Gambel's)

A. Season Dates and Units

1. East of U.S. Interstate 25 and south of Interstate 70 from I-25 to Byers and U.S. Highway 36 from Byers to the Kansas line, and those portions of Pueblo, Fremont, Huerfano, El Paso and Las Animas counties lying west of I-25:
   November 11, 2017 - January 31, 2018.
2. East of U.S. Interstate 25 and north of Interstate 70 from I-25 east to Byers and U.S. Highway 36 from Byers to the Kansas line:
   November 11, 2017 - January 7, 2018.
3. West of U.S. Interstate I-25, except Pueblo, Fremont, Huerfano, El Paso and Las Animas counties:
   November 11, 2017 - January 7, 2018.
4. Extended Falconry Season - Statewide: September 1 through March 31 annually.

B. Daily Bag and Possession Limits

1. Daily Bag Limit - Eight (8) quail of each species.
2. Possession Limit - Twenty-four (24) quail of each species.

#321 - Greater Prairie-Chicken

A. Season Dates and Units.

1. Closed statewide except: Units 93, 97, 98, 100, 101 and 102.
   a. October 1, 2017 - January 7, 2018.

B. Annual Bag and Possession Limits

1. Annual Bag Limit - Two (2) birds.
2. Possession Limit - Two (2) birds.

#322 - Wild Turkey

A. Season Bag and Possession Limits

1. The bag and possession limit for each season annually shall be as provided below.
   a. Spring Season - The limit shall be two bearded turkeys in the spring for those persons who possess a limited spring license. One turkey must be harvested on the limited license and in the limited area. The additional bearded turkey must be harvested with an over-the-counter license.
   b. Fall Season - The limit shall be one turkey of either sex.
   c. Late Season - The limit shall be two beardless turkeys.
2. In addition to the above bag and possession limits, a hunter may obtain any number of nuisance turkey licenses as provided in #322(F).
3. In addition to the above bag and possession limits, a hunter may take one additional turkey with a Turn In Poachers (TIPS) license as provided in #002(H)(11)(b).

B. Applications for Limited Licenses

1. Application requirements
   a. No person shall submit more than one (1) application per season.
   b. Incomplete applications will not be accepted.
2. Drawing applications submittal

a. Applications will be accepted by phone or internet only through the Division's electronic licensing system.
b. Each drawing application shall include payment of a $3.00 non-refundable application fee. Individuals successful in the draw with be charged for the limited license as well as a $.25 fee designated for search and rescue operations and a $.75 Public Education Advisory Council (PEAC) surcharge.
c. Spring season
    1. Applications for limited licenses must be received by phone or online no later than midnight, on the second Thursday in February annually.
d. Fall season
    1. Applications for limited licenses must be received by phone or online no later than midnight, on the second Thursday in July annually.

3. Preference systems
    a. Preference Points: Preference will be given for correct applications for first choice hunt codes only and shall be subject to the following provisions:
        1. One preference point will be awarded to each person who qualifies for and fails to draw a limited license as a first choice in the drawing or who applies using a first choice hunt code established for the purpose of accumulating a preference point only. However, no applicant may accumulate more than two turkey preference points per calendar year.
        2. Preference points will be used in future drawings for the same species and will continue to accumulate until the applicant draws a license as a first choice. If an applicant both fails to apply for a turkey license and has not purchased a turkey license during any given 10-year period, all accumulated preference points for turkey become void.
        3. Applications receiving preference will be given priority over all applications with fewer points.
        4. Group applications will receive preference at the level of the group member with the fewest accumulated points.
        5. Unsuccessful and successful applicants in the drawing can check their current accumulated preference point totals online.
    b. Hunting Licenses for Hunters with Mobility Impairments - The Director may make licenses valid in certain GMU's available to qualified hunters with mobility impairments.
        1. Applicants for hunting licenses for hunters with mobility impairments must have a mobility impairment resulting from permanent medical conditions, which makes it physically impossible for them to hunt without the assistance of an attendant. Evidence of an impossibility to participate in the hunt without the assistance of an attendant may include, but is not limited to, prescribed use of a wheel chair; shoulder or arm crutches; walker; two canes; or other prescribed medical devices or equipment.
        2. Applications for hunting licenses for hunters with mobility impairments shall be made on the form, available from and submitted with the applicable license fee to, Colorado Parks and Wildlife, Limited License Office, 6060 Broadway, Denver, Colorado 80216. Hunters may apply from the Monday after the November Commission meeting through the last day of the spring season.
        3. Applications for hunting licenses for hunters with mobility impairments shall contain a statement from a licensed medical doctor or a certified physical, occupational, or recreational therapist describing the applicant's mobility impairment and the permanent medical condition which makes it impossible for the applicant to hunt without the assistance of an attendant. Additional documentation may be required, if necessary to establish the applicant's eligibility for a hunting license for hunters with mobility impairments. Once certified by the Division as mobility-impaired according to these regulations, applicants will not be required to submit the medical statement.
        4. Ten (10) hunting licenses for hunters with mobility impairments will be available for the spring season, valid only on private lands in units 91, 92, and 96. The

licenses will be valid for the season dates established for the authorized hunt code. Licenses for hunters with mobility impairments may not be issued for Ranching for Wildlife properties unless otherwise provided in the ranch contract.

c. Youth Outreach Hunting Licenses – The Director may make additional youth outreach program turkey licenses available to qualified organizations sponsoring youth hunting activities.
    1. Youth Outreach licenses will be available for private land only. There will be no more than 200 licenses issued annually under this subsection.
    2. Licenses will be approved by the applicable Regional Manager on a case-by-case basis.
    3. Licenses are issued on a first come, first served basis to qualified organizations.
    4. Organizations who wish to request a Youth Outreach license must submit the request in writing to Colorado Parks and Wildlife, State Hunter Outreach Coordinator, 6060 Broadway, Denver, Colorado 80216 no later than 60 days prior to the planned hunting event.
    5. Licenses are limited to youth hunters under 18 years of age.

C. Special Restrictions

1. Tagging Requirements
    a. When any person kills a turkey, that person must immediately detach, sign, and date the carcass tag. Such tags must be attached to the carcass of the bird while it is transported in any vehicle, while in camp, at a residence, or other place of storage.
    b. Such tags, when dated, signed and attached to the turkey lawfully taken or killed and lawfully in possession, authorizes the possession, use, storage, and transportation of the carcass, or any part thereof, within the state.
    c. If the carcass tag is inadvertently or accidentally detached from the license or is lost or destroyed, the licensee must obtain a duplicate carcass tag before he can lawfully hunt with such license. The duplicate carcass tag may be obtained upon furnishing satisfactory proof as to the inadvertent or accidental nature of the detachment, loss, or destruction to Colorado Parks and Wildlife.
2. Spanish Peaks SWA
    a. Hunting during the spring turkey season shall be permitted only on Saturdays, Sundays, Mondays and Tuesdays on the Spanish Peaks State Wildlife Area, except as provided in subparagraph b of this subsection.
    b. For hunters with mobility impairments, hunting during the spring turkey season shall be permitted after the second weekend of the season on Wednesdays, Thursdays and Fridays, by special access permit only. For the purposes of this subparagraph, the following restrictions shall apply:
        1. Applicants for access permits for hunters with mobility impairments must have a mobility impairment resulting from permanent medical conditions, which makes it physically impossible for them to hunt without the assistance of an attendant. Evidence of an impossibility to participate in the hunt without the assistance of an attendant may include, but is not limited to, prescribed use of a wheelchair; shoulder or arm crutches; walker; two canes; or other prescribed medical devices or equipment. Applications will be accepted until the last day of the spring turkey season. Permits will be issued on a first-come, first-served basis, and will be limited to two (2) individuals during each Wednesday through Friday time period during the spring season.
        2. Applications for access permits for hunters with mobility impairments shall be made on the form available from, and submitted to, Colorado Parks and Wildlife, Limited License Office, 6060 Broadway, Denver, Colorado 80216.
        3. Applications for access permits for mobility-impaired hunters shall contain a statement from a licensed medical doctor or a certified physical, occupational, or recreational therapist describing the applicant's mobility impairment and the permanent medical condition which makes it impossible for the applicant to hunt without the assistance of an attendant. Additional documentation may be

required if necessary to establish the applicant's eligibility for an access permit for hunters with mobility impairments. Once certified by the Division as mobility-impaired according to these regulations, applicants will not be required to submit the medical statement.

3. Higel and Rio Grande SWAs
   a. Turkey hunting access during the spring turkey season requires an access permit. Access permits will be issued for each property, from the Division Office in Monte Vista through a hand drawing. Permit applications may be obtained from CPW, 0722 S. Road 1E, Monte Vista, CO 81144. Group applications will be accepted. No more than two (2) applicants per group. Application deadline is January 31 of each year. Successful applicants will be notified by mail. The date, time and location of the drawing will be included on the application.
4. Horsethief Canyon State Wildlife Area
   a. Turkey hunting access is limited to the spring turkey season and is restricted to youth mentor turkey hunting only, by access permit only. Mentors are not allowed to hunt. Permit applications are available from Colorado Parks and Wildlife Northwest Region Service Center at 711 Independent Ave., Grand Junction, CO 81505, 970-255-6100. The application deadline is March 31. Successful applicants will be notified by mail.
5. Southwest Youth Turkey Extended Season

   Youths under 18 years of age may hunt turkey in GMUs 52, 54, 55, 60, 61, 62, 64, 65, 66, 67, 68, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 82, 83, 411, 521, 551, 681, 682, 711, 741, 751 and 771 from the Saturday before Thanksgiving through the Sunday after Thanksgiving, provided they possess an unfilled youth fall turkey license (including, but not limited to, hunt code TE000U3R), comply with applicable regulations for the hunt in which they participate, and are accompanied by a mentor. A mentor must be at least 18 years of age and comply with hunter education requirements. The mentor may not hunt.

D. Season Dates and Units - Unlimited Licenses.

1. Spring Seasons

Units	Hunt Code	Date Open	Date Closed	Licenses
001, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, 013, 014, 016, 017, 018, 019, 020, 022, 024, 028, 029, 031, 032, 033, 038, 039, 040, 041, 042, 046, 048, 049, 050, 051, 052, 053, 054, 055, 056, 057, 058, 059 except on the Beaver Creek SWA and the Table Mountain State Trust Land Lease, 060, 061, 062, 063, 064, 065, 066, 067, 068, 069, 070, 071, 072, 073, 074, 075, 076, 077, 078, 079, 082, 083, 084, 085, 086, 087, 088, 089, 090, 093, 094, 095, 097, 098, 099, 100, 104, 105, 106, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 126, 128, 130, 131, 133, 134, 135, 136, 137, 138, 140 except on James M. John and Lake Dorothey State Wildlife Areas, 141, 142, 143, 144, 145, 146, 147, 161, 171, 181, 191, 211, 214, 231, 301, 391, 411, 421, 441, 461, 481, 500, 501, 511, 512, 521, 551, 561, 581, 591, 681, 682, 691, 711, 741, 751, 771, 791, 851 except the Bosque del Oso SWA, 861, 951, and private land portions of 91, 92, 101, 102, 103, 107, 109, 124, 125, 127, 129, 132, 139.	TM000U1R	04/14/2018	05/27/2018	Unlimited

2. Fall Seasons

Unit	Hunt Code	Open Date	Close Date	Licenses
001, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, 013, 014, 016, 017, 018, 019, 020, 022, 024, 028, 029, 031, 032, 033, 038, 039, 040, 041, 042, 043, 046, 048, 049, 050, 051, 052, 053, 054, 055, 056, 057, 058, 059 except on the Beaver Creek SWA and the Table Mountain State Trust Land Lease, 060, 061, 062, 064, 065, 066, 067, 068, 069, 070, 071, 072, 073, 074, 075, 076, 077, 078, 079, 082, 083, 084, 085 except on the Spanish Peaks State Wildlife Area, 086, 087, 088, 094, 104, 105, 110, 112, 113, 114, 116, 117, 118, 119, 121, 122, 123, 128, 130, 131, 133, 134, 135, 136, 137, 138, 140 except on the James M. John and Lake Dorothey State Wildlife Areas, 141, 142, 143, 144, 145, 147, 161, 171, 181, 191, 211, 214, 231, 301, 391, 411, 421, 441, 461, 481, 500, 501, 511, 512, 521, 551, 561, 581, 591, 681, 682, 691, 711, 741, 751, 771, 791, 851 except on the Bosque del Oso SWA, 861, 951, and private land portions of 101, 102,.	TE000U2R	09/01/2018	10/07/2018 and 10/26/2018	Unlimited West of I-25 and GMU 140 and East of I-25 (excluding GMU 140)

3. Private Land Only Late Seasons

a. Private land only licenses are valid on all private land within the game management unit upon which the license holder has permission to hunt.

Unit	Hunt Code	Open Date	Close Date	Licenses
112, 113	TF000U2R	12/15/2018	01/15/2019	Unlimited

E. Season Dates and Units **-** Limited Licenses and Limited License Areas. Limited licenses shall be valid only for the time period and game management unit(s) or area(s) indicated on the license.

1. Spring Season.

Unit	Hunt Code	Date Opened	Date Closed	Licenses
				Bearded Turkey Only
2	TM002O1R	04/14/2018	05/27/2018	10
15, 27,37 and 361	TM015O1R	04/14/2018	05/27/2018	15
21	TM021O1R	04/14/2018	05/27/2018	15
23	TM023O1R	04/14/2018	05/27/2018	10
25	TM025O1R	04/14/2018	05/27/2018	30
30	TM030O1R	04/14/2018	05/27/2018	100
30 - youth only	TM030K1R	04/14/2018	05/27/2018	100
34	TM034O1R	04/14/2018	05/27/2018	20
35, 36	TM035O1R	04/14/2018	05/27/2018	10
43	TM043O1R	04/14/2018	05/27/2018	50
44	TM044O1R	04/14/2018	05/27/2018	30

1. Spring Season.				
Unit	Hunt Code	Date Opened	Date Closed	Licenses
				Bearded Turkey Only
47	TM047O1R	04/14/2018	05/27/2018	15
59 - Beaver Creek State Wildlife Area and Table Mountain State Trust Land Lease only	TM059O1R	04/14/2018	05/27/2018	25
80	TM080O1R	04/14/2018	05/27/2018	10
81	TM081O1R	04/14/2018	05/27/2018	10
91	TM091O1R	04/14/2018	05/04/2018	35
91, 92, 96, 101, 102-youth only	TM091K1R	04/14/2018	05/27/2018	175
91	TM091O2R	05/05/2018	05/27/2018	35
92	TM092O1R	04/14/2018	05/04/2018	35
92	TM092O2R	05/05/2018	05/27/2018	35
96	TM096O1R	04/14/2018	05/04/2018	75
96 - private land only	TM096P1R	04/14/2018	05/04/2018	150
96	TM096O2R	05/05/2018	05/27/2018	75
96 - private land only	TM096P2R	05/05/2018	05/27/2018	150
101, 102	TM101O1R	04/14/2018	05/04/2018	40
101, 102	TM101O2R	05/05/2018	05/27/2018	40
103, 107, and 109	TM103O1R	04/14/2018	05/04/2018	50
103,107, and 109	TM103O2R	05/05/2018	05/27/2018	50
103, 107, 109 - youth only	TM103K1R	04/14/2018	05/27/2018	40
124, 125, and 129	TM124O1R	04/14/2018	05/27/2018	15
124, 125, and 129 - youth only	TM124K1R	04/14/2018	05/27/2018	15
127, 132	TM127O1R	04/14/2018	05/27/2018	20
139	TM139O1R	04/14/2018	05/27/2018	15
140 - Lake Dorothey State Wildlife Area only	TM140O1R	04/14/2018	05/27/2018	55
140 - James John State Wildlife Area only	TM140O2R	04/14/2018	05/27/2018	20
444	TM444O1R	04/14/2018	05/27/2018	35
444 – Private Land Only	TM444P1R	04/14/2018	05/27/2018	20
851 - Bosque del Oso State Wildlife Area only	TM851O1R	04/14/2018	05/27/2018	35
Total				**1665**

2. Fall Season				
Unit	Hunt Code	Date Opened	Date Closed	Licenses
				Either Sex
15, 27, 37 and 361	TE015L1R	09/01/2018	10/07/2018	15

2. Fall Season				
Unit	**Hunt Code**	**Date Opened**	**Date Closed**	**Licenses**
				Either Sex
25	TE025L1R	09/01/2018	10/07/2018	10
34	TE034L1R	09/01/2018	10/07/2018	10
47	TE047L1R	09/01/2018	10/07/2018	25
59 - Beaver Creek State Wildlife Area and Table Mountain State Trust Land Lease only	TE059L1R	09/01/2018	10/07/2018	15
85 - Spanish Peaks State Wildlife Area - Oberosler Tract only	TE085L1R	09/01/2018	10/07/2018	30
85 - Spanish Peaks State Wildlife Area – Dochter Tract only	TE085L2R	09/01/2018	10/07/2018	30
85 -Spanish Peaks State Wildlife Area - Sakariason Tract	TE085L3R	09/01/2018	10/07/2018	30
91	TE091L1R	09/01/2018	10/26/2018	50
91, 92, 96, 101, and 102 – youth only	TE091K1R	09/01/2018	10/26/2018	50
92	TE092L1R	09/01/2018	10/26/2018	50
96	TE096L1R	09/01/2018	10/26/2018	125
101, 102	TE101L1R	09/01/2018	10/26/2018	50
103, 107, and 109	TE103L1R	09/01/2018	10/26/2018	80
103, 107, 109 - youth only	TE103K1R	09/01/2018	10/26/2018	40
124, 125 and 129	TE124L1R	09/01/2018	10/26/2018	15
124, 125 and 129 - youth only	TE124K1R	09/01/2018	10/26/2018	15
126, 146	TE126L1R	09/01/2018	10/26/2018	20
127, 132	TE127L1R	09/01/2018	10/26/2018	20
139	TE139L1R	09/01/2018	10/26/2018	15
140 - Lake Dorothey State Wildlife Area only	TE140L1R	09/01/2018	10/07/2018	35
140 - James John State Wildlife Area only	TE140L2R	09/01/2018	10/07/2018	10
444	TE444L1R	09/01/2018	10/07/2018	20
851 - Bosque del Oso State Wildlife Area only	TE851L1R	09/01/2018	10/07/2018	25
Total				**785**

F. Special Licenses for Nuisance Turkeys

1. The Director shall have the authority to establish special hunting seasons for turkeys, between December 1 and March 31 on an annual basis, when necessary to control nuisance turkeys. The Area Wildlife Manager will determine the type of license(s) (either-sex or hen only) most appropriate to control the conflict.

    a. Nuisance turkey hunts are limited to a maximum of 50 licenses per landowner, per year.

1. The Area Wildlife Manager shall provide the landowner with special application forms for distribution to individuals of their choice. Participants shall submit the completed application form with payment to the Division office indicated on the application. Nuisance turkey licenses shall be sold at the fall season license price.

b. Prior to approving the hunt, the Division shall:

1. Verify that conflicts are occurring.

2. Designate what area shall be open to hunting.

3. Determine the manner of hunting that will be permitted.

4. Determine the number of hunters allowed to hunt in each designated area.

c. Hunting will be done under the direction of a District Wildlife Manager, following approval by the owner of land where such conflict is occurring.

d. Hunters shall hunt in designated areas and on the dates indicated on the license.

1. A map or a written description of the designated area open to hunting (which would include, but would not be limited to landowner(s) name, game management unit, township, range and section(s) and/or identification of landmarks such as roads, rivers, or fence lines which coincide with boundaries), will be provided to each licensed hunter by the Division.

e. Any person who purchases a license for a nuisance turkey season shall be required to complete a Division harvest survey form and return it to the Area office that is nearest the location of the hunt no later than 5 days after the season ends.

#322.5 - RANCHING FOR WILDLIFE – TURKEY

A. Implementation Authority

1. The Director is authorized to implement the Ranching for Wildlife program, including the authority to determine ranch enrollment status, enter into cooperative agreements with ranches, establish and modify public and private season dates on each ranch, and establish and modify license allocations to each ranch including the subsequent distribution of licenses to the public and private share annually, and may establish additional Ranching for Wildlife operating guidelines subject to the following provisions.

B. Ranch Entry and Maintenance

1. Ranches must have a minimum of 10,000 acres of privately owned land in one contiguous unit. Ranches that meet this 10,000-acre minimum requirement may include privately owned non-contiguous parcels in the program if the Director determines that their inclusion will contribute to meeting the performance standards for the ranch.

2. Ranches must develop a Ranching for Wildlife Management Plan that includes goals, objectives, and strategies for achieving such goals and objectives for wildlife habitat management, species management, and public hunting management. The Management Plan must be approved by the Division prior to execution of a Cooperative Agreement for Ranching for Wildlife.

3. Ranches may not charge public hunters an access fee for hunting.

4. Except as agreed to in writing by the Division when necessary to meet the ranch performance standards or as mutually agreed and contained in the Management Plan, ranches must provide for equality of access in terms of geographical area and mode of transportation for both public and private hunters. No closure or restriction of land or roads shall apply to public hunters that do not also apply to private hunters.

5. Public hunts must be established at a time when the species to be hunted are present and available for harvest. No public seasons shall be established during times when normal winter conditions would prevent access to most of the ranch, nor when normal migration patterns of the species to be hunted result in the species having migrated off the ranch.

6. Ranches that establish coinciding or overlapping public and private hunts may not exclude public hunters from any portion of the ranch due to the presence of private hunters.

7. The ranch and the Division will mutually agree to ranch rules regarding access to and hunting on the ranch by public hunters. The ranch rules will be provided to hunters prior to seasons on the ranch in accordance with other provisions contained in this regulation.

C. Cooperative Agreements, Enrollment, Denial of Enrollment, Termination of Enrollment

1. The Division is authorized to enter into Cooperative Agreements with ranches.

2. Ranches may appeal enrollment decisions to the Parks and Wildlife Commission.

3. Cooperative Agreements shall incorporate approved Ranching for Wildlife Management Plans as part of the Cooperative Agreement.

4. The Division shall periodically evaluate ranches for enrollment and contract performance, and shall establish minimum performance standards for ranches enrolled in the program, including wildlife habitat management and improvement, public recreation opportunity and experience, and any factors intended to contribute to meeting turkey management objectives. Such performance standards shall be incorporated into the Cooperative Agreement with the ranch.

D. Turkey Season Structures

1. Public and private spring season opening and closing date parameters.
   a. Private seasons may not begin before April 1, nor extend beyond June 1.
   b. Public seasons may only be established within the opening and closing dates of the regularly established spring season.
   c. Public hunting seasons shall be a minimum of ten (10) consecutive days.

2. Public and private fall season opening and closing date parameters.
   a. Public and private seasons may not begin before September 1, nor extend beyond November 1.
   b. Public hunting seasons shall be a minimum of ten (10) consecutive days.

3. Manner of Take
   a. The manner of take for spring or fall RFW turkey seasons shall be the same as that for regularly established spring or fall seasons.

E. License Allocation

1. A maximum of 100 bearded turkey licenses in the spring season and 100 either-sex turkey licenses in the fall season may be allocated to each ranch annually, and subsequently distributed to the public and private share according to paragraph b of this regulation.

2. The public shall receive a minimum of forty percent (40%) of the total number of licenses allocated for each turkey season on each ranch.

3. License allocation for each ranch shall be approved by the Division and recommended to the Director, based upon harvest objectives for the ranch jointly determined by the Division and the ranch, hunter crowding, enhancement of hunter harvest, and relative densities of the species on the ranch.

4. Substitution of licenses of one species or sex for licenses of another species or sex shall not be permitted.

5. Landowner preference shall not be used for any public or private Ranching for Wildlife license.

F. Youth Licenses

1. The Division and the ranch may formulate and implement youth hunting opportunities on any ranch through Division approved youth hunting programs. The Division must approve the youth hunting program on the ranch prior to any season or license allocation for such youth hunts.

2. A maximum of 15% of the total number of turkey licenses allocated for a ranch may be allocated as youth hunting licenses on each ranch, over and above the total number of licenses allocated for a ranch.

3. Youth hunting seasons may occur at any time within the broad parameters for seasons within the Ranching for Wildlife program.

4. Youth licenses shall be distributed to individual youth hunters by mechanisms of the approved youth hunting program on the ranch. Youth licenses shall not count as either private or public licenses for purposes of calculating the relative share of other licenses allocated for the ranch.

G. License Distribution

1. Applications
   a. Applications for private hunter licenses stamped with the ranch name and season dates shall be available to the landowner for distribution.
   b. Public hunter licenses shall be available through application and selection from the Division during the annual limited license drawing process, except as provided in this regulation.

H. Special Restrictions

1. Unless otherwise provided in these Ranching for Wildlife regulations all hunters must comply with other applicable regulations, including, but not limited to, manner of take (except that private hunters may use any legal weapon during private seasons), hunting hours, application requirements and deadlines, bag limits, season participation, mandatory checks, OHV restrictions, and other generally applicable regulations for big game hunting.

2. A copy of the mutually agreed upon ranch rules will be provided to all public hunters prior to their hunting season. All public hunters will be required to sign a statement acknowledging that they have read, understand, and agree to comply with all ranch rules, before the hunter is allowed access to the ranch.
    a. Compliance with ranch rules is a specific condition of the Ranching for Wildlife public licenses and subsequent access to the ranch. In addition to criminal penalties, non-compliance with ranch rules constitutes grounds for suspension and revocation of the license and/or being prohibited from further participation in hunting on the ranch, and/or in the Ranching for Wildlife program as a public hunter.
    b. Final determination on any legal action taken towards hunters found in non-compliance with ranch rules shall be made solely by officers of the Division. This includes any citation that may be issued for non-compliance with the provisions of a license, or directing a hunter to leave a ranch. Ranch personnel may not direct a hunter to leave a ranch without specific authorization of a Division officer.

#323 - Mink, pine marten, badger, gray fox, red fox, swift fox, raccoon, ring-tailed cat, striped skunk, western spotted skunk, long-tailed weasel, short-tailed weasel, opossum, and muskrat

A. Season Dates and Units

1. Statewide: November 1 - end of February annually.

B. Daily Bag and Possession Limits

1. Unlimited bag and possession.

#324 - Bobcat

A. Season Dates and Units

1. Statewide: December 1 - end of February annually.

B. Daily Bag and Possession Limits

1. Unlimited bag and possession.
2. Special Restrictions.
    a. All bobcat, or their pelts, shall be personally presented by the licensee for inspection and must be sealed within 30 days after take, or within 5 days after the close of the season, whichever is sooner, with a seal provided by the Division. Any bobcat hide/pelt not having a seal within 5 days after the close of the season shall be illegal and become property of the State. Seals will only be placed on bobcat legally taken in Colorado. No fee shall be required for the inspection and issuance of a legal possession seal, which shall remain attached to the hide until processed. Bobcat hides/pelts shall not be transported, shipped or otherwise taken out of Colorado until the hide(s)/pelt(s) are inspected and sealed. The legal possession seal, when attached to the bobcat or the pelt, shall authorize possession, transportation, and sale thereof. For the purposes of this regulation it is illegal to buy, sell, trade, or barter an untanned bobcat hide/pelt unless a permanent seal is affixed thereto. Only one legal possession seal shall be provided for each hide/pelt.

#325 - Coyote

A. Season Dates and Units

1. Statewide: January 1 - December 31 annually.

B. Daily Bag and Possession Limits

1. Unlimited bag and possession.

#326 - Beaver

A. Season Dates and Units

1. Statewide, October 1 - April 30 annually.

B. Daily Bag and Possession Limits

1. Unlimited bag and possession.

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Tracking number: 2017-00479

Opinion of the Attorney General rendered in connection with the rules adopted by the

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on 11/16/2017

2 CCR 406-3

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

The above-referenced rules were submitted to this office on 11/21/2017 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.

November 29, 2017 12:44:54

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
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Permanent Rules Adopted

Department

Department of Natural Resources

Agency

Colorado Parks and Wildlife (406 Series, Wildlife)

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2 CCR 406-5

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2 CCR 406-5 CHAPTER W-5 - SMALL GAME - MIGRATORY BIRDS 1 - eff 01/01/2018

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FINAL REGULATIONS – CHAPTER W-5 – MIGRATORY BIRDS

ARTICLE I – GENERAL PROVISIONS

#504 - SPECIAL CLOSURES AND RESTRICTIONS

ARTICLE V – VACANT

#517 – VACANT

ARTICLE VI – FALCONRY

#518 – SPECIAL FALCONRY REGULATIONS

A. Falconry is a permitted means of taking migratory game birds during regular or extended seasons.

1. Regular Seasons
   a. General hunting regulations prescribed in this chapter, including seasons and hunting hours, apply to falconry. General season bag and possession limits do not apply to falconry.
   b. Daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 9 birds, respectively, singly or in the aggregate. The falconry bag limit is not in addition to gun limits.
2. Extended Seasons
   a. There are no extended seasons.

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CHAPTER W-5 - SMALL GAME - MIGRATORY BIRDS

The above-referenced rules were submitted to this office on 11/21/2017 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.

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Frederick R. Yarger

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Permanent Rules Adopted

Department

Department of Natural Resources

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2 CCR 406-8 CHAPTER W-8 - FIELD TRIALS AND TRAINING OF DOGS 1 - eff 01/01/2018

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01/01/2018

FILING – 11/30/2017

FINAL REGULATIONS - CHAPTER W-8 - FIELD TRIALS AND TRAINING OF HUNTING DOGS

ARTICLE I - GENERAL PROVISIONS

#800 - DEFINITIONS

See also 24-4-104 CRS, relative to public records and due process; importation, exportation, and release restrictions in Chapter 0 of these regulations; bird holding and release for hunting regulations and commercial wildlife park license regulations in Chapter W-11; and property specific regulations in Chapter W-9.

A. "Field Trial" means any hunting dog trial held under the rules of a dog or kennel club for the purpose of gaining points toward a hunting dog championship, including any sanctioned practice or training trial where there is organized competition; and any hunt test or other performance event in which hunting dogs compete against an accepted standard.

B. "Training" means the noncommercial act of a person(s) instructing a hunting dog(s) to follow scent, point or flush birds, retrieve and respond to related verbal and nonverbal commands to improve the dog's performance in hunting wildlife or for field trials. Merely exercising or conditioning a dog is not training. "Group training" means training involving 10 or more people and their associated hunting dogs.

#801 - LICENSE AND NOTIFICATION REQUIREMENTS

A. Division Properties

1. A field trial license must be obtained prior to holding any field trial or group training on any Division property. Participants in field trials may be charged a nominal fee by the licensee to cover the costs associated with the field trial. Field trials and group training of hunting dogs on Division properties may be held only as specified in Chapter W-9 of these regulations.
2. An annual dog training permit, valid from April 1 through March 31 must be obtained by each individual intending to release and shoot privately-owned game birds during training on Division properties where such release is authorized in Chapter W-9 of these regulations. A maximum of two dogs may be trained by an individual at any time. No permit is required for individual dog training by nine or fewer people who are not releasing privately-owned game birds during training. Horses cannot be used during individual dog training.

B. Private Lands and Other Public Lands

1. No license is required to hold any field trial on private land, or on public lands managed by agencies other than Colorado Parks and Wildlife. However, the person sponsoring the event is required to notify Colorado Parks and Wildlife on forms provided by the Division at least 30 days in advance of the trial, providing the date, location, species and number of birds to be released. Such field trials may be held anywhere in the state, year-round, provided permission to hold such trial has been obtained from the owner of the property, person in charge, or land managing agency.

ARTICLE II - APPLICATION REQUIREMENTS AND PROCEDURES

#802 - FIELD TRIAL PERMIT APPLICATION REQUIREMENTS AND PROCESSING

A. Application Requirements

1. Prior to the processing of any license application, the applicant is required to submit the following:
    a. A completed application on forms provided by the Division, which shall include, at a minimum:
        1) information about the dates and type of trial, location, and name of property.
        2) acreage needs and specific portion of property to be used, if known.
        3) estimated minimum and maximum number of participants, dogs and horses.
        4) species and number of game birds to be released.
        5) anticipated impact to wildlife resources and habitat, including any actions proposed to avoid or remediate such impact, if any.
        6) anticipated conflict with other wildlife-related recreational activities, including actions proposed to avoid or reduce such conflict, if any.
    b. Such application shall be accompanied by the statutory license fee.
    c. Nothing in this chapter shall preclude application for a field trial permit which may authorize a field trial to be held during a closed season.
2. Applications to hold a field trial must be submitted to the Division at least sixty (60) days but not more than 11 months prior to the date of the field trial.

B. Criteria for Approval or Denial

1. Applications will be evaluated and approved, conditioned, or denied based on the following criteria:
    a. Significant adverse impact to wildlife resources or wildlife habitat.
    b. Irresolvable conflict with other wildlife-related recreational activities, including established hunting or fishing seasons.
    c. Compliance with application requirements and other applicable regulations.
    d. Applicant's failure to comply with previous field trial license conditions, including, but not limited to, post-field trial habitat rehabilitation requirements.

2. Conditions may include, but are not limited to:
    a. maximum number of participants and dogs.
    b. maximum number, use, and picketing of horses.
    c. type and scope of infrastructures specific to the field trials that would be required or allowed.
    d. type and scope of vegetation management for the field trials that would be allowed, including any rehabilitation requirements.
    e. the approach for dealing with time and space conflicts between field trials and hunting seasons and other public uses.
    f. any other condition intended to avoid or reduce impact to wildlife resources or wildlife habitat or avoid or reduce conflict with other wildlife-related recreational activities.

3. Previously issued licenses may be modified, suspended, or revoked based on the following criteria:
    a. impact to wildlife resources or wildlife habitat beyond that identified and considered as part of the application and license approval process.
    b. conflict with other wildlife-related recreational activities beyond that identified and considered as part of the application and license approval process.
    c. failure to comply with any of the terms and conditions of the field trial license.

#803 - INDIVIDUAL DOG TRAINING PERMIT APPLICATION REQUIREMENTS AND PROCESSING

A. Application Requirements

1. Prior to the processing of any license application, the applicant is required to submit the following:
    a. A completed application on forms provided by the Division, which shall include, at a minimum:
        1) the applicant's name and the name of the Division property to be used.
        2) specific portion of property to be used, if known.
        3) species of privately-owned game birds to be released.
    b. Such application shall be accompanied by a nonrefundable $20 permit fee.

2. Applications must be submitted at least 30 days prior to the first anticipated training date of the year.

B. Criteria for Approval or Denial

1. Applications will be evaluated and approved, conditioned, or denied based on the following criteria:
    a. irresolvable conflict with other wildlife-related recreational activities, including established hunting or fishing seasons.
    b. compliance with application requirements and other applicable regulations.
    c. applicant's failure to comply with previous dog training permit conditions.

2. Conditions may include, but are not limited to:
    a. specific portion of the property to be used.
    b. any other condition intended to avoid or reduce conflict with other wildlife-related recreational activities.

3. Previously issued licenses may be modified, suspended, or revoked based on the following criteria:
    a. failure to comply with restrictions on the maximum number of participants and dogs.
    b. conflict with other wildlife-related recreational activities beyond that identified and considered as part of the application and license approval process.
    c. failure to comply with any of the terms and conditions of the dog training permit.

#804 - RELEASE AND TAKING OF WILDLIFE

A. The only wildlife which may be released for field trials or hunting dog training are privately-owned game birds. All releases must be done in accordance with the provisions of this chapter and other applicable regulations, including, but not limited to, #007, #008, and #009 of these regulations.

B. The person in charge of any field trial or dog training is authorized to designate official gunners to kill, take, or attempt to kill or take game birds released during the field trial or training activity. A valid small game license is required for all designated gunners participating in dog training activities pursuant to this section.

C. The taking of any wildlife not authorized in accordance with this chapter shall immediately be reported to the Division.

ARTICLE III - TRAINING OF HUNTING DOGS FOR HUNTING

#805 - TRAINING ON WILDLIFE

A. Individuals may train hunting dogs on wild game birds from August 1st through April 15.

B. Only firearms shooting blank cartridges or shells shall be used while training hunting dogs on wild game when a hunting season is not in progress for such wildlife.

C. The training of dogs on coyotes is permitted except from April 16 through July 15 of each calendar year.

D. The training of dogs on raccoons is permitted except from May 1 through June 30 of each calendar year.

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CHAPTER W-8 - FIELD TRIALS AND TRAINING OF DOGS

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Cynthia H. Coffman
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Permanent Rules Adopted

Department

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FINAL REGULATIONS CHAPTER W-15 - DIVISION AGENTS

ARTICLE VI - AGENT COMMISSION RATES

#1510 - Agent Commission Rates

See also §33-4-101 C.R.S. relative to Division agents and §33-4-102(1.6)(b) C.R.S. for price indexing information for nonresident big game licenses.

A. Commission Rates for Retail Agents:

1. Division agents shall be paid a 4.75% commission for each license sold electronically, except for those licenses with fixed commissions as shown below.
2. Division agents shall be paid a 5% commission for each pass sold electronically.
3. Division agents who sell registrations shall be paid a flat rate of $1.00 per registration issued.
4. Fixed Commissions:

Division Product Type	2017 License Fee	2017 Commission	2018 License Fee	2018 Commission
Second Rod Stamp	$5.00	$.31	$5.00	$.31
Fishing - 1 day	$8.00	$.62	$8.00	$.62
Fishing - 5 day	$20.00	$1.23	$20.00	$1.23
Small Game - 1 day	$10.00	$.62	$10.00	$.62
Nonresident Deer	$385.00	$13.50	$395.00	$13.90
Nonresident Pronghorn	$385.00	$13.50	$395.00	$13.90
Nonresident Bear	$350.00	$12.95	$350.00	$12.95
Nonresident Mountain Lion	$350.00	$12.95	$350.00	$12.95
Nonresident Antlerless Elk	$480.00	$13.50	$495.00	$17.55
Nonresident Either-sex Elk	$640.00	$22.70	$660.00	$23.40
Nonresident Antlered Elk	$640.00	$22.70	$660.00	$23.40
Nonresident Rocky Mtn Bighorn Sheep	$2,145.00	$74.95	$2,210.00	$77.25
Nonresident Desert Bighorn Sheep	$1,430.00	$50.05	$1,470.00	$51.60
Nonresident Goat	$2,145.00	$74.95	$2,210.00	$77.25
Nonresident Moose	$2,145.00	$74.95	$2,210.00	$77.25

All 2017 licenses sold through March 2018 shall be sold at the 2017 license fee and commission rates.

B. Commission Rates for the System Agent: The system agent shall be paid the commissions shown in the table below for each license sold through the system:

1. Fixed Commissions:

Division Product Sale Type	Commission			
	07/01/2008 - 06/30/2010	07/01/2010 - 06/30/2011	07/01/2011 - 06/30/2012	07/01/2012 -12/31/2016*
Division products sold through point of sale terminals	$1.29	$1.32	$1.34	$1.35
Division products sold through the Internet	$2.00	$2.00	$2.00	$2.00
Division products sold by telephone	$2.37	$2.37	$2.37	$2.37
Limited Licenses fulfillment	$1.00	$1.00	$1.00	$1.00

*The Commission rates for 2018 will remain as listed until the new IPAWS system goes live.

a. For Internet and telephone sales, the system agent shall receive an additional 2.2 percent of the cost of any wildlife product.

The Commission rates for the licensing system agent after the IPAWS system goes live will be:

2. Commission pricing for any CPW Commissionable Product sold through IPAWS

Commission Rates	**Wildlife Products**
a. Contractor Commission Fee percent commission rate to cover AWO System operation and maintenance cost for those products less than $100 and not listed below in c.	3.7%
b. Contractor Commission Fee flat fee commission rate to cover AWO System operation and maintenance cost for those products $100 or greater and not listed below in c.	$4.25
c.1. All Wildlife Applications, regardless of Product Cost.	$4.25
c.2. Parks variable cost products, regardless of actual Product Cost.	n/a
Breakout Costs	
Contractor credit card fee	2.2%
Contractor fulfillment fee	$1.45

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Tracking number: 2017-00481

Opinion of the Attorney General rendered in connection with the rules adopted by the

Colorado Parks and Wildlife (406 Series, Wildlife)

on 11/16/2017

2 CCR 406-15

CHAPTER W-15 - DIVISION AGENTS

The above-referenced rules were submitted to this office on 11/21/2017 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.

November 29, 2017 12:45:33

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Natural Resources

Agency

Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-17

Rule title

2 CCR 406-17 CHAPTER 17 - GAME DAMAGE 1 - eff 01/01/2018

Effective date

01/01/2018

FILING – 11/30/2017

FINAL REGULATIONS - CHAPTER W-17 – DAMAGE CAUSED BY WILDLIFE

ARTICLE I – GENERAL PROVISIONS

#1700- DEFINITIONS FOR ARTICLES I - XI

A. "Aftermath" means the usable livestock forage left from an alfalfa crop after the last annual harvesting or after the first killing fall frost. The "first killing frost" is the time the temperature drops below 25°F after September 1 each year. This date/temperature shall be determined by negotiation with the claimant based upon weather station data for the local area.

B. "Alfalfa" means land on which alfalfa has been seeded and has become established to the extent that fifty (50) percent or more of the useable livestock forage is alfalfa.

C. "Artificially seeded rangelands" means land on which grasses or legumes have been seeded, and have become established to the extent that 50 percent or more of the useable livestock forage production is from the seeded species and whose primary use is grazing by livestock.

D. "Big game being moved or under direct control of Division personnel" includes, but is not limited to the following:

1. If they are being driven or through-herded.

2. If they are intentionally moved as a result of actions of Division personnel.

E. "Claimant" means a person who has filed a big game damage claim with the Division and in the case of commercial orchards, shall be the legal owner of said orchard.

F. "Commercial Market Garden" means a tract of land not less than one acre in size farmed by an individual or entity for the production of agricultural products, including, but not limited to, fruits, vegetables, or flowers, for commercial sale; provided further the person or entity can demonstrate the commercial nature of the operation through possession of an established commercial sales location, or by producing associated documents, which may include a valid business license, a defined business plan, commercial sales receipts, income tax forms, or contractual sales agreement(s).

G. "Crops under cultivation" means all products of the soil that are planted, managed, grown, severed and saved by manual labor and/or mechanical means on an annual basis, including grasses and legumes maturing for harvest, small grains, row crops and vegetables, but not grasses or other forage on lands used primarily for pasturage, windbreaks, gardens (except commercial market gardens) or ornamental trees and shrubs.

H. "Damage" means any change in the quality or quantity of any property which reduces its value. Damage shall include all costs necessary to restore property to its condition immediately prior to

damage, to replace it with property of equal value or to compensate for restoration or replacement.

I. **"Damage to fences"** means any damage in excess of ten (10) percent of the value of any specific fence just prior to damage. A "specific fence" means that portion of any fence between corner posts; in a situation where corner posts are greater than one-quarter (1/4) mile apart, "specific fence" shall mean a one-quarter (1/4) mile section of fence.

J. **"Damage prevention materials damaged or destroyed by wildlife"** means materials which have been damaged by big game to the extent that such materials have been rendered unusable for the purpose intended.

K. **"Division"** means the Division of Colorado Parks and Wildlife.

L. **"Grazing land"** means land used primarily for production of native forage plants for livestock grazing as differentiated from lands where a crop is harvested.

M. **"Grazing land which is deferred for seasonal use"** means grazing land that is designated for a postponement of grazing by livestock for a specific season(s) with the purpose of reserving forage available for grazing by livestock during a later season.

N. **"Harvested crops"** means any crops that have been reaped, severed, gathered and appropriately saved, stored for subsequent use. Saving or storage will not be considered as appropriate unless done by a method representing accepted agriculture practices.

O. **"Hay meadows"** means land that is used primarily for production of hay but may also be used for grazing by livestock prior to and following cutting for hay. Production is from a long term stand of grasses or legumes and is irrigated or is classified by the Soil Conservation Service as wet meadow, salt meadow, sandy meadow or mountain meadow range sites.

P. **"Historic levels"** means the average number of a species of big game that occurred on the property in question during the 20-year period of January 1, 1953 through December 31, 1972.

Q. **"Normal life"** means the period of time that panels and permanent fencing reasonably can be maintained by the person to whom they were issued specifically:

1. Panels are presumed to have a normal life of 5 years or as agreed upon by the property owner and the Division through written agreement when constructed according to Division specifications.

2. Permanent fencing materials are presumed to have a normal life of 20-30 years or as agreed upon by the property owner and the Division through written agreement when constructed according to Division specifications.

R. "Nurseries" means a group of trees and/or shrubs propagated for sale, transplant, or for use as stock for budding and grafting for commercial purposes.

S. "Orchard" means a planting of fruit trees cultivated for commercial purposes. Such orchards may be subdivided for game damage claim purposes into one of the following groups:

1. Commercial producing orchard shall be defined as a planting of fruit trees that for 1 of the last 3 years has produced fruit for sale in amounts of no less than one thousand (1,000) 40-lb.-boxes of apples or pears; or no less than two hundred and fifty (250) 40-lb. boxes of peaches or other stone fruit; or one ton (2,000 lbs.) of cherries or any combination of the above so long as the size of the orchard exceeds one acre.

2. "Commercial non-producing orchards" shall be defined as an orchard planting of no less than one (1) acre of non-producing fruit trees planted at no less than one hundred (100) trees per acre for all species except that sweet cherry trees shall be planted at no less than sixty (60) trees per acre.

U. "Pasture meadows" means land is used primarily for the production of grasses or legumes grazed by livestock and is irrigated or is classified by the Soil Conservation Service as wet meadow, salt meadow, sandy meadow or mountain meadow range sites.

V. "Personal property" means everything that is subject to ownership, other than real estate. Personal property includes moveable and tangible things, such as animals, furniture, merchandise.

W. "Real property" means land and generally whatever is erected or growing upon or affixed to land.

X. "Season" for hunting means any period of time established by the Wildlife Commission for the taking of big game. When investigating a big game damage claim, the Division shall consider all big game hunting seasons established during the 12-month period immediately preceding the date when the first notice of loss was made.

#1701 – VACANT

#1702 – PERMIT TO TAKE BIG GAME CAUSING DAMAGE

A. No hunting license is required for any person authorized to take big game under any permit issued under provisions of 33-3-106 C.R.S. Big game killed under this permit remain the property of the state.

B. All bear and mountain lion taken or destroyed under this subsection or 33-3-106 (3) C.R.S. shall remain the property of the state and will be delivered to an officer of the Division within 5 days. In addition, a report shall be given to an officer of the Division within 5 days of the killing. Such report shall contain:

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.

C. Without regard to harvest limit quotas, unit boundaries or season dates, the Director or his designee may authorize the taking of any problem lion or bear by any lawful means designated, including but not limited to methods permitted under Article XVIII, Section 12b, of the Colorado Constitution, when such lion or bear is 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 or bear 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 bear and mountain lion. (Reference 8 CCR 1201-12 of Colorado Department of Agriculture regulations regarding control of depredating animals).

D. The Director shall establish a statewide list of hunters, houndsmen, and trappers to take problem bears or 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.

E. When any permit to take a big game causing excessive damage to private, real or personal property, is issued to members of the public other than the landowner or his designee, any hunting under such permit shall be directed by the Division in cooperation with the landowner.

#1703 – DAMAGE CAUSED BY BIG GAME UNDER CONTROL OF THE DIVISION OR BY PREVENTION MATERIAL BEING USED BY THE DIVISION.

A. When big game are being moved or are under the direct control of Division personnel and cause damage to real or personal property, the following provisions shall apply:

1. When damage is noticed by Division personnel, such damage shall be reported to the property owner, lessee or person in charge immediately and confirmed in writing within 5 days.

2. The amount of the claim shall be determined by the actual value of property at the time of damage.

3. The Division may require the owner or his authorized agent, when reasonable, to assist the Division in locating alleged damage.

#1704 - VACANT

#1705 – UNREASONABLE RESTRICTION ON HUNTING

A. No claim for big game damage will be approved where the claimant or other person who controls the land where damage occurred has unreasonably restricted hunting for the species causing damage unless the claimant shows that he or she have not unreasonably restricted hunting for the specific group of animals causing damage. Whether or not an unreasonable restriction of hunting has occurred will be determined by the following procedure:

1. The percentage and number of big game animals to be harvested in each Management area (DAU) will be established annually by the Wildlife Commission.

2. Upon request by the landowner, the Division shall provide to such landowner the number of big game, by species, anticipated on his property, property under his control and private and public property to which he controls access during the hunting season and the percent and number of such big game to be harvested. Such notice shall be in writing and shall be a basis for establishing a reduction in a necessary harvest of wildlife.

3. The claimant shall be responsible to prove that the percentage of big game harvested, during the big game hunting seasons in the twelve (12) months previous to his filing of a damage claim, was not substantially lower than the percentage described in (1) or (2) above. Proof provided pursuant to this subsection by the claimant may include any one of the following: (such proof shall be required only for lands in the same management area (Data Analysis Unit) where the damage occurred and only for the species causing damage):

    a. A statement that big game hunting access was not prohibited to any person on or across lands under his control or the control of the owner of the private land where damage has occurred except where hunting would create an obvious or immediate risk of injury or death to persons, damage or death to livestock congregated in a concentrated area, or other significant property damage.

    b. Actual counts of big game animals during each hunting season for all areas to which he or the owner of the private lands where damage has occurred, controlled access and documentation of big game taken by hunters, including a list of numbers and species of big game and indicating that the percentage described in (1) is substantially met on such areas.

    c. Documentation sufficient to establish that the failure to achieve the necessary harvest was due to factors outside the control of the claimant (or the lessor).

    d. Evidence that the number of big game harvested on lands to which he, or the owner of the private lands where damage has occurred, controlled access was not substantially less than the value established pursuant to #1705(a)(2).

#1706 – HUNTING ACCESS FEE LIMITATION

A. A damage claim will be denied when a fee in excess of five hundred ($500.00) per season has been charged any person for big game hunting access onto or through any lands owned, leased or otherwise controlled by the claimant, or the landowner if the claimant is the lessee. Access is defined as ingress into or through any property for the purpose of big game hunting.

This provision applies only to the species causing damage; but even then, not if the claimant shows that he or she have not unreasonably restricted hunting for the specific group of animals that was causing damage by charging a fee in excess of $500 for access on or to lands which the animals causing damage inhabit or migrate across. In the case of a lease or other agreement by two or more persons, the fee charged shall be determined by dividing the total fee paid for the lease by the number of individual big game hunters who actually hunted under terms of the lease or agreement for one or more days. The number of big game hunters who actually hunted shall include any persons who were individually authorized to hunt but were unable to do so for reasons outside the control of the claimant.

B. A statement of the maximum fee actually charged, if any, shall accompany any claim for game damage. The amount of this maximum fee shall be determined in accordance with provisions of #1706(a).

#1707 – CLAIMANT STATEMENT ON USE OF MATERIALS

A. Any person who submits a claim for damage shall provide a certified statement that damage prevention materials provided by the Division, if any, were used in an effort to prevent or reduce the extent of damage and were not used for any other purpose.

#1708 – CLAIMANT STATEMENT ON INSURANCE

A. Any person who submits a claim for damage shall provide a certified statement on his Proof-of-Loss form that the damages for which he is submitting a claim are, or are not, covered under an insurance policy and that he does or does not contemplate receiving insurance compensation for damages claimed. If the claimant is in possession of a crop insurance policy or any other insurance policy covering the real or personal property for which a big game damage claim is made to the Division, he shall provide on his Proof-of-Loss form the name, address and phone number of the insurance company(s) providing coverage; the name, address and phone number of the insurance company's agent; the amount and type of coverage provided; and the amounts of insurance reimbursement requested and received.

B. The claimant shall also submit with his Proof-of-Loss form written permission authorizing the Division to make inquiries to and receive information from the claimant's insurance company(s) and its agent(s) concerning any insurance coverage of or claims submitted under the policy for damages for which claims have also been submitted to the Division.

The claimant shall also agree in writing to notify the Division of all claims later submitted to any insurance company for game damage already paid by the Division and of any amounts paid to the claimant for such claims.

C. In the event a claim is paid by the Division to any person and such person later receives additional compensation for such damage under an insurance policy, he shall immediately repay to the Division any moneys he has previously received from the State for those damages.

D. Refusal to provide accurate insurance information as herein required shall be cause for denial of the claim.

#1709 – ARBITRATION

A. If the Division cannot agree with the claimant on normal historic levels of big game or any element of a settlement (such as the extent of damage, the numbers or species of big game involved) such disagreement may be decided by the arbitration process provided for in Section 33-3-104 (1)(d) or 33-3-203 (2), C.R.S. Arbitration of non-forage damage claims pursuant to Section 33-3-104(1)(d) must be requested prior to review of the claim by the Commission. Subject to the provisions of Article 3 of Title 33, C.R.S., and the following, arbitration proceedings shall be conducted pursuant to the "Uniform Arbitration Act of 1975," part 2 of Article 22 of Title 13, C.R.S.

B. The arbitrator chosen by the claimant and the arbitrator chosen by the Division shall be non-neutral members of the arbitration panel; and the third arbitrator chosen by these two arbitrators (or by the court as the case may be) shall be a neutral member of the panel.

C. The claimant and the division shall enter into a written arbitration agreement for submission to the arbitration panel. Said agreement shall include:

1. A statement of the parties setting forth all facts relevant to the damage claim upon which the parties agree.

2. A statement of the parties identifying statutes, regulations, and other law which the parties agree are applicable to the claim.

3. A statement of the issues of fact upon which there is disagreement between the parties, including a list of witnesses and other evidence which each intends to introduce to the panel in support of their positions.

4. A statement of the legal issues upon which there is disagreement between the parties. Each party shall submit a brief written legal argument, including citation to statutes, regulations, court decisions and other appropriate law, supporting their position.

5. A statement setting forth the procedures the parties have agreed upon for presentation of the claimant's and division's factual evidence and legal argument. Generally, the panel shall proceed in accordance with these regulations. Any agreement to proceed in a manner inconsistent with these regulations shall be subject to approval of the arbitration panel.

6. The panels authority to render decisions deciding issues of fact and law shall be limited to those matters upon which the parties have agreed in the written agreement are in dispute and any issues incidental to those matters.

D. The panel shall render its decision in accordance with the provisions of article 3 of title 33 of the Colorado Revised Statutes and Chapter 17 of the Commission's wildlife regulations.

E. Except as may otherwise be approved or required by the arbitration panel, the arbitration hearing shall be conducted as follows.

1. The hearing shall be conducted by all three arbitrators who shall act by majority vote.

2. The Division shall be responsible to make a recording of the arbitration hearing and maintain a copy of all exhibits presented to the panel for consideration.

3. The claimant shall have the burden of proving all elements of the claim for damages pursuant to the provisions of Article 3 of Title 33, C.R.S., and of this Chapter 17 of the Commission's regulations. The Division shall have the burden of proving any affirmative defenses.

4. Evidence

a. Testimonial and evidentiary rulings shall favor the reception of any and all evidence which may be probative and relevant to the decision; but unduly repetitious, irrelevant, or incompetent evidence may be limited or excluded. The arbitrators shall not give undue weight to hearsay or other improper or unsubstantial evidence.

b. The panel may take notice of general, technical or scientific facts within its knowledge, but only if the fact so noticed is brought to the attention of the parties before final decision and each party is afforded an opportunity to controvert the fact so noticed.

c. At the conclusion of each witness' testimony, the other party may then cross-examine such witness or witnesses. The arbitrators may cross-examine any witness called.

d. Unless otherwise ordered by the panel, five (5) copies of each exhibit shall be submitted (one for each panel member's use, one for the record to be maintained by the Division, and one for the opposing party's use).

5. The hearing shall proceed in the following order:

a. Call to order, introductory remarks by arbitrators.

b. Presentation by the Division of all documents that have been filed with the Division by the claimant in making his claim and any prepared by the Division in response to the claim. They shall include, to the extent they exist, but are not limited to all 10-day notices of damages, the claimant's proof of loss form with supporting documentation, investigator's report, the Division's recommendation to the Wildlife Commission. The Division shall also report how far the claim has progressed through the administrative claims process and the status of the claim in that process at the time arbitration was requested.

c. Presentation of any stipulation or agreements of the parties.

d. Opening statement by the claimant, including a brief statement of what it will prove and the relief requested.

e. Opening statement by the Division, including a brief statement of what it will prove and of defenses to be presented to claim.

f. Presentation of evidence in support of the claim by the claimant.

g. Presentation of the Division's evidence contesting the claim, including defenses.

h. Rebuttal by the claimant.

i. Closing statements by the parties.

j. Adjournment.

6. Proved further, however, that the panel may at any time consider any motion or make any ruling in the interest of fairness, completeness and economy of the proceedings which ruling will not result in substantial prejudice to a party's right to present its case.

7. The panel shall issue its written decision within ten (10) days after adjournment of hearing. Each decision issued pursuant to an arbitration hearing shall include a statement of findings and conclusions upon all the material issues of fact, law or discretion considered and state the sanction or relief granted or denied.

8. No exparte communication with or by the neutral arbitrator may occur during the pendency of a hearing.

F. The Division shall designate a Division employee to act as the case administrator, who shall arrange for meeting place for the arbitration hearing and recording of the hearing, issue subpoenas for witnesses at the request of the panel, and otherwise assist the panel in the performance of its duties.

#1710 – DUTY TO MITIGATE DAMAGE

The doctrine of avoidable consequences applies to wildlife damage claims, and claimants have a duty to mitigate damages. A claim shall be denied or limited, as is appropriate under the doctrine, where the claimant fails to exercise reasonable care and diligence to avoid the loss or to minimize or lessen resulting damage. The burden of proving a failure to mitigate damages shall be on the Division.

#1711-#1718 - VACANT

ARTICLE II – DAMAGE PREVENTION MATERIALS

#1719 – ELIGIBILITY FOR TEMPORARY DAMAGE PREVENTION MATERIALS

A. With respect to temporary game damage prevention materials, "landowner" is defined as a person who owns land that is, directly or through the lessee of such land, used for the production of agricultural products, or uses personal property for which the state would generally have liability for game damage under 33-3-104, C.R.S., even if the landowner or lessee is specifically not otherwise eligible for such game damage payments or permanent game damage prevention materials due to the unreasonable restrictions on hunting or availability of access or because of the fee charged by the landowner or the lessee for the purpose of big game hunting access to or across the property.

#1720 – REQUEST FOR DAMAGE PREVENTION MATERIALS

A. Landowners or lessees who qualify for damage payments and who desire to obtain materials to prevent damage caused by big game shall make a written request to the Division for such materials on a form furnished by the Division.

B. If the landowner does not erect permanent game damage prevention materials within a reasonable time period after receipt of materials, not to exceed 270 days, to prevent the anticipated damage, or if the materials are not erected in such a manner as to reasonably prevent damage, the Division shall not be responsible for any subsequent damage caused by the failure to use such materials. When materials have been provided for temporary game damage prevention materials or electric fencing surrounding apiaries this time period shall not exceed 15 days from date of receipt of materials. Damage prevention materials may be delivered by the Division to any person if his request is the result of game damage occurring in any area where it has not normally occurred.

C. If the Division offers, in writing, to furnish fencing to a landowner and the offer is refused or he does not respond within 30 days, the Division shall not be responsible for any subsequent damage until such time as the landowner makes a written request for fencing materials at which time the provision of #1720(b) shall apply.

#1721 – DELIVERY OF DAMAGE PREVENTION MATERIALS

A. The Division will furnish materials for, or construct, permanent stackyards or orchard fencing only under terms of a written cooperative agreement which is binding on heirs, assignees, and successors in title and which is filed with the clerk and recorder in the county in which the fence is

erected. The Division will provide materials within the limitations of the special purpose funds appropriated for game damage materials.

B. The Division will furnish temporary protective fencing only when the landowner, lessee, property owner or person in charge acknowledges by his signature receipt of such material.

#1722 – MAINTENANCE OF DAMAGE PREVENTION MATERIALS

A. All permanent stackyards or fences or panels furnished or constructed by the Division shall be maintained and repaired for their normal life by the landowner unless damaged or destroyed by wildlife. Materials for repairing damages done by wildlife to permanent fencing or panels in excess of $100 shall be furnished by the Division and shall remain the property of the Division.

B. All persons furnished panels or other fencing materials shall be responsible for maintaining such materials in a current state of repair to prevent access by big game.

C. In the event that damage prevention materials are destroyed or made unusable through negligence or abuse or if they are used for any purposes other than the prevention of game damage the Division may take one or more of the following actions:

1. After written notice to the landowner the Division may remove the materials from the landowner's owned or leased land.

2. The Division may require payment for any damaged or misused materials or may refuse to issue any additional prevention materials until the landowner has paid for the damaged or misused materials. The amount of payment shall be the cost of new materials of similar construction, reduced by a depreciation factor based on the normal life of these materials.

3. The Division may deny all or part of a big game damage claim where proper use and maintenance of damage prevention materials would have prevented or reduced the damage.

D. All voluntary workers who assist the Division in erecting damage prevention materials shall provide their name, address, and telephone number in writing to the Division 10 days prior to such work being performed. The Division will provide this information to the landowner upon his request.

E. In the case of land ownership change the former owner shall notify the Division when such change occurs. The Division may require a written ratification of the existing agreement by the new owners.

F. All permanent and temporary damage prevention materials furnished or constructed by the Division shall remain the property of the state.

#1723-#1729 – VACANT

ARTICLE III – DAMAGE CLAIM PROCEDURES

#1730 – GENERAL PROVISIONS

A. Initial notification of damage may be verbal, but must be followed by written notice to the District Wildlife Manager or Area Wildlife Manager within ten (10) days of the discovery thereof. Said ten (10) day period may be extended for good cause shown provided, however, that verbal notice has been given within ten (10) days of discovery. Failure to submit written notice within ten (10) days of discovery: (a) because of failure of Division personnel to supply claim forms in time to allow timely filing; or (b) because of other reasons not due to the claimant's lack of diligence shall all be considered "good cause."

B. Notifications must include:

1. date or dates damage occurred.

2. number and species of big game causing damage;

3. date damage discovered;

4. estimated extent of damage;

5. location of damage; and

6. If the Division receives the first written notice of damage more than ten (10) days after the date of discovery, the claimant shall provide an explanation for the delay. Failure to provide timely notification as herein required shall be cause for denial of the claim.

C.

1. If the same type of damage caused by the same species of big game is ongoing at a single site, additional notices every ten days after the initial written notification shall be required unless the DWM or AWM concerned is advised by the claimant by some means of the ongoing damage activity and an additional written notice is submitted when the damage ends. Said notice shall include an estimate of the total extent of damage; specify beginning and ending dates that the damage occurred and provide the other information required in #1730(a)(1) through (7) of these regulations. Proof of Loss forms shall be filed within 90 days after claimant submits this last written notice. Damage is not considered as ongoing if more than 30 days have elapsed between instances where damage occurred.

2. A single site is a complete orchard, adjoining fields of growing crops, haystacks under the same contiguous ownership or control, or a single herd of cattle or band of sheep, under one ownership and continuous control between spring and winter range. If damage

occurs at different sites or is of a different type (e.g., harvested alfalfa instead of growing alfalfa), separate claims and separate investigation reports shall be required, even if the claimant is the same and the species of big game causing damage is the same.

D. A Division representative accompanied by the complainant shall in cases of claims in excess of $1,000.00 and may in cases of claims of $1,000.00 or less as is appropriate and necessary to determine the facts underlying the claim make an on-site inspection and investigation within ten (10) days of the receipt of the initial notification or as soon thereafter as practicable.

#1731 – PROOF OF LOSS

A. The proof of loss forms shall be submitted within 90 days of the last notification of damage to the District Wildlife Manager or Area Wildlife Manager. Forms shall be provided by the Division and the claimant shall complete and return only those forms designated for the type of damage which occurred. Incomplete or incorrect forms may be returned to the claimant by the Division; however, the time period for filing Proof of Loss forms shall not be altered thereby. Such forms shall be signed and be accompanied by the written documentation required by these regulations to meet the burden of proof required under provisions of 33-3-104 (3), C.R.S., and other statutes pertaining to damage by big game.

B. The Area Wildlife Manager or his designee will investigate as necessary and shall in cases of claims in excess of $1,000.00 and may in cases of claims of $1,000.00 or less as is appropriate and necessary to determine the facts underlying the claim meet with the claimant, within 30 days of the receipt of the proof-of-loss form where practicable, and at a time and place mutually agreed upon to attempt to reach a settlement.

#1732 – CLAIM SETTLEMENT

A. Any claim up to $5,000 may be approved by the Area Wildlife Manager. Claims in the amount of $5,001 to $20,000 may be approved by the Regional Manager. Claims exceeding $20,000 which are recommended for payment by the Division must be approved by the Commission.

1. In cases where the Division and the claimant are unable to reach settlement, the claimant may seek review by the Commission, by an arbitration panel, or in the state courts, all as provided in Article 3 of Title 33, C.R.S. A claim of any amount, which is recommended for denial of payment by the Director shall require a final decision by the Wildlife Commission; provided, however, if the claim is for other than livestock forage damage and is for $7,500 or less, the claimant may waive review by the Commission and commence an action in the small claims division of the county court of the county of which the damage was alleged to have occurred. Provided, further, that in the case of claims for livestock forage in hay meadows, pasture, artificially seeded rangelands and grazing land which has been deferred for seasonal use, a claimant who wants Commission review of his claim must give written notice of his intent to waive arbitration. Either type of waiver shall be in writing and shall be mailed to the Commission within ten (10) days after such claimant receives notification from the Division of the denial of his

claim, or within ten (10) days after the claimant receives from the Division an offer of settlement unacceptable to such claimant.

B. When a claim for big game damage is recommended for denial of payment by the Division, the claimant will be notified of such recommendation by certified mail at least 30 days prior to the regularly scheduled Wildlife Commission meeting when his claim will or could be considered.

C. Any claimant who cashes a state warrant issued for the purpose of claim settlement thereby acknowledges receipt of payment in full satisfaction of damages claimed and thereby waives any and all further claim against the state for such damages.

#1733- #1739 – VACANT

ARTICLE IV - DAMAGE TO LIVESTOCK OR PERSONAL PROPERTY USED IN THE PRDUCTION OF RAW AGRICULTURAL PRODUCTS CAUSED BY BIG GAME

#1740 – PROOF OF LOSS REQUIREMENTS

A. The claimant shall be responsible to prove by a preponderance of evidence that he suffered damage to livestock or personal property used in the production of raw agricultural products and that such damage was caused by big game to the extent claimed.

#1741- DOCUMENTATION OF CLAIMS

A. Documentation by the claimant necessary to support a claim for damage by big game shall include but is not necessarily limited to:

1. Tangible evidence that big game was present in the area. Evidence may include, but is not necessarily limited to photographs or records of torn logs, scat, tracks or direct observation.

2. Demonstrate that such animals were responsible for the damage, and in the case of livestock, the actual cause of injury or death. Evidence may include, but is not necessarily limited to type and location of wounds, physical description of the carcass, for example: hide peeled or rolled back, measured distance between canine wounds, claw marks, hemorrhage, or buried carcasses.

#1742 – EVALUATION AND SETTLEMENT PROCEDURE

A. Payment of all claims involving personal property used in the production of raw agricultural products, other than livestock, will be based on the actual value of the property at the time and place of loss.

B. Payment of all claims for livestock losses will be based on sales receipts or sale contracts when copies of such receipts or contracts are furnished with the claim and exclude such expenses as

transportation, yardage, feed costs at sales yards and sales commissions. Where such receipts or contracts are not submitted to the Division, the following methods shall be used:

1. Payment of adult range sheep claims for each age class, other than running age ewes, will be based on the prices as derived from the USDA Agricultural Marketing Service reports from the September preceding the date of the loss or damage.

   Payment for running-age ewes (ewes between the ages of 2 and 5 years old) will be determined by the following formula: The value shall equal the price received for lambs based on contracts or the average weekly sale price from the USDA Agricultural Marketing Service report from the last week of September plus 50% of the above value. (Example: Fall lambs at $90 Plus 50% = $90 + $45 or $135, total value of each running-age ewe.)

2. Payment of lamb claims will be based on the average sale price shown in the weekly USDA Agricultural Marketing Service report for the last week of the September preceding the date of the loss or damage.

3. Payment of calf claims will be based on the average sale price shown in the monthly update published by the USDA Agricultural Marketing Service for the month of the October preceding the date of the loss.

4. For good cause shown, a claimant may establish the value of any livestock lost by reliable means other than those shown above. Such claimant shall be required to establish by a preponderance of evidence that the valuation methods listed above are inappropriate for the claim submitted and that the method of valuation requested represents the fair market value of the lost livestock.

5. Payment of all other livestock loss claims will be based on the fair market value at the time of the loss for the type, age and weight of the animal involved.

#1743 – SPECIAL PROVISIONS

A. The livestock owner or his authorized agent is required to assist in locating and investigating alleged damage.

#1744-#1749 – VACANT

ARTICLE V – DAMAGE TO ORCHARDS

#1750 – PROOF OF LOSS REQUIREMENTS

A. At the time of the investigation or upon submission of the proof-of-loss form, the claimant shall be responsible to prove by a preponderance of evidence:

1. Date that big game were present in the orchard.

2. That big game did damage to the orchard to the extent that future production will be affected.

3. A map of the entire orchard showing the location of plantings, each tree within the damaged planting, tree and row spacing and the location of each damaged tree.

4. Each damaged tree shall be identified by number on the map and in a listing of damaged trees which reports the species, variety, age, nature of the damage (bark or browse damage), extent of damage and the anticipated number of years for recovery.

B. The claimant shall also furnish:

1. Crop production records for each block and variety of damaged trees for the past five (5) years. When such records are not available due to change in orchard ownership or tree age, records from orchards with comparable plantings and management shall be provided.

2. Records of income to the orchard for the past five (5) years and cost of harvesting and handling the fruit for each block and variety of damaged trees. When such records are not available, records from orchards with comparable plantings and management shall be provided.

#1751 – DOCUMENTATION OF CLAIM

A. Investigation of damage claims for any trees shall be conducted jointly by the claimant and the Division. Documentation prepared by the claimant shall be conducted according to the following procedures:

1. Determination of Physical Damage by Type and Percentage.

a. Damage will be designated in the following manner:

(1) Bark Damage shall be considered only when it has penetrated the bark and cambium layer to the inner wood. Injury of each damaged limb or tree shall be determined on the basis of the width of the exposed wood in relation to the circumference of the damaged limbs or trunk. Damage which does not expose more than 33% of the wood around the limb or trunk will not be considered as serious damage resulting in significant loss of production. Damage that exposes 60% or more of the inner wood shall be considered serious enough to cause total loss of commercial fruit production from the damaged limb or tree in the case of trunk injury. All areas damaged by big game shall be treated with a wood sealing compound, such as “Greencap” or its equivalent, which shall be provided by the Division. Bark damage shall be assessed as:

0-33% = none

34-49% = 33% loss

50-59% = 65% loss

60 and over = 100% loss

and calculated pursuant to the formulas set forth in #1752.

(2) Browse damage results from loss of shoots, spurs and blossom buds. Damage shall be determined for each damaged side branch (branch), scaffold limb (limb) and tree with the extent of damage assessed as:

(a) Short term when damage affects only the terminal and blossom buds, resulting in loss of fruit production on apple and pear for two (2) years and on stone fruits (cherry, apricot, peach and plum) for one (1) year.

(b) Long term when damage affects the growth of limbs and development of the tree structure. Such damage has a longer lasting effect which requires determining the number of years for the limb or tree to achieve the size and productivity of comparable undamaged limbs and trees.

(c) Permanent damage can be caused by either severe barking or browsing. Such damage can result in the loss of limbs or trees. Where tree replacement is required, both the cost of removal and replacement of trees shall be paid. When 85% of the trees in the planting sustain 60% or more damage, the entire planting shall be considered as 100% loss, requiring replacement.

2. Determination of Percentage Lost of Production:

Damage shall be defined as a loss of production potential. Production is proportional to the number and physical size of all the branches, limbs and trees in the planting. This physical size increases as branches and limbs develop and as the tree enlarges to fill the amount of space allotted by planting distance. When the trees have completed this growth or development period, they are considered full size and reaching full production potential. After a few years at this maximum level of production, tree vigor, fruit size and market quality begin to decline. This results in reduced productivity and income. Using the above concept, assess any loss as a percent reduction in production potential during the years required for the damaged limbs and/or trees to redevelop the production potential of comparable undamaged trees.

a. Short Term browsing damage will be proportional to the percent of damage. For stone fruits this will be for one (1) year. For apple and pear, the percentage loss will be reduced by 50% the second year before regaining full potential in the third year.

b. Long Term damage can result from either browsing or barking. Damage shall be assessed as a percent loss of production potential over a period of years. Loss in the first year will be proportional to the percent of damage but this percentage of loss will decrease each year at a rate proportional to the anticipated recovery period. The percentage of loss will be assessed in relation to comparable undamaged branches, limbs or trees, preferably in the same planting. With developing trees, the number of years to recover will be the number of years remaining to reach full size and full production. Developing apple and pear should close the spacing between trees at an average rate per 5 ft per year while with stone fruits the average rate will be 2.0 feet per year. Damage to mature trees should be assessed as either short term damage as outlined above in (a) or as permanent damage as outlined below in (c).

c. Permanent damage caused by either a loss of limbs or trees should be assessed as a percent of production over the remaining commercial life of the planting. For trees which need to be replaced as a result of permanent damage, the number of years of lost production shall equal the number of years required to regain the production level of undamaged trees. When tree replacement is required, the damage assessment shall include the cost of removing and replanting. When a group of trees are replaced which can be managed separately, the amount of savings resulting from reduced operating costs shall be determined and deducted from the damage claim.

3. Conversion from Percentage to Numerical Crop Loss:

Many factors cause changes in crop production from year to year as well as between trees and plantings. Therefore, it is necessary to assess damages as a percentage of the production potential of the orchard. The percentage crop loss must then be converted to a numerical crop loss for each year of the recovery period. This requires determining the proportion of the planting which is damaged. Such can be determined either by planting distance and number of trees per acre or by the percentage of damaged trees to the total number of trees in the planting.

a. Numerical crop loss shall be based on a percentage of the production over the previous five (5) years or from comparable plantings of the same variety, tree spacing, age and level of management when actual production records are not available.

b. For trees which are not in production or did not reach full production during the previous five years, estimates must be based on comparable plantings which have recently reached full production.

c. Numerical lost production shall be tabulated for each year of the recovery period and for each planting, crop and variety damaged.

4. Determination of Annual Loss of Income:

Income to the orchard depends on the amount of fruit produced and its market value. This differs from season to season, between crops and varieties, between growers and even between plantings. Therefore, the value of any crop must be determined based on records of the average income over the previous five (5) years. Where such records are not available, estimates must be based on income to comparable plantings and level of management. This income assumes that all charges have been deducted such as storage, packing, and sales. This income must be further reduced by an amount equal to the cost of harvesting and hauling the lost production since such costs would not be incurred.

The orchard income (less cost of harvest and handling) when divided by the total number of units of production represents the value of each unit of lost production. This unit value is then multiplied by the number of units of lost production to determine the annual loss of orchard income over the recovery period.

5. Determination of Costs Due to Tree Replacement

When damage is sufficient to require tree replacement, adjustments shall be made not only for the loss of income but also for any added costs of replacement and savings due to reduced annual production costs on the following basis:

a. Replacing occasional trees in a planting requires the determination of added costs of removal, purchase of trees and planting. Other possible added costs and savings shall not be considered.

b. Replanting sufficient numbers of trees in a block permits management as a separate planting. Reduced are such operational costs as pruning, bee rental, fruit thinning, fertilizer and insect, mite and disease control during the re-establishment period. The claimant should provide sufficient cost records to verify those cost savings for each of the re-establishment years. Such determinations shall be made before receiving any compensation for lost income and added costs of removing, purchase of trees and replanting.

6. Determination of Present Value of Orchard Losses

Income received today, in payment for lost future production, must be discounted according to the appropriate rate of interest on that money and the number of years of advanced payment for future lost production. The appropriate discount rate from Table B in regulation No. 1754 must be applied for all but the first year of lost production.

Different discount rates shall be used depending on the number of years for the orchard to recover lost production.

#1752 – FORMULAS FOR CALCULATION OF BARK DAMAGE

A. Short term bark damage (0-33%/limb or trunk) = no loss

B. Long term bark damage

1. (34-49%/limb or trunk) = 33% loss

$ Loss = (# of trees) (Bu/Tree) (33%) (ORV Equivalent) (2.0) (87%)

Where,

ORV Equivalent =	(ORV/Bu) – (Harvest + Haul Cost/Bu)
2.0 Factor =	Recovery Loss Adjustment for 4-year recovery period.
87% =	Present value percentage factor from column 3 of Table B of #1754.

2. (50-59%/limb or trunk) = 65% Loss

$ Loss =	(# of Trees) (Bu/Tree) (65%) (ORV Equivalent) (3.5) (80%)
Where,	
ORV Equivalent =	(Orchard Run $/Bu) – (Harvest + Haul Cost/Bu)
3.5 Factor =	Recovery Loss Adjustment for 6- year recovery period.
80% =	Present value percentage factor from column3 of Table B of #1754.

C. Permanent Bark Damage (60+%/Limb or trunk) = 100% Loss

Trees which have a limb and/or truck-limb damage in excess of 60%.

1. Limb loss without 100% tree loss.

$ Loss/Tree =	(Bu/Tree) (# 100%-loss limbs/Total # Limbs) (ORV Equivalent) (Years) (P.V.1) + (Bu/Tree) (# 33%-loss limbs/Total #limbs) (33%) (ORV Equivalent) (2.0) (87%) + (Bu/Tree) (# 65%-loss limbs/total # limbs) (65%) (ORV Equivalent) (3.5) (80%)
Where	
ORV Equivalent =	(ORV/Bu) – (Harvest + Haul Cost/Bu)
Years =	Remaining Commercial Life
P.V.1 =	Present value percentage factor from Column 3 of Table B of #1754 based on # of years of remaining commercial life.
2.0 and 3.5 factors =	recovery loss adjustment for 4 and 6 year recovery periods respectively.
87% and 80% =	present value percentage factors from column 3 of Table B of

	#1754 for 4 and 6 year recovery periods.
	(Recovery period for 33% damaged tree is deemed to be 4 years and for 65% damaged tree it is deemed to be 6 years.)
Total Block $ Loss =	sum of losses calculated for individual trees.

2. Total tree loss (individual or block)

Production $ loss =	(# of trees) (Bu/tree) (ORV equivalent) (Years) (P.V.)
Replacement $ Cost =	(# of trees) (Cost of removal/tree + replacement cost/tree + replant cost/tree – operational cost savings)
Total $ loss =	Production $ loss + replacement $ cost
Where,	
ORV equivalent =	(ORV/Bu) – (Harvest + haul cost/Bu)
Years =	# years of remaining commercial life, but not greater than 10 years for apple, 8 years for peach/apricot, 15 years for sweet cherry, 10 years for sour cherry.
P.V. =	Present value percentage factor from column 3 of Table B of #1754 based on # years of remaining commercial life.

#1753 – FORMULAS FOR CALCULATION OF BROWSE DAMAGE

A. Short term damage

1. Production trees – removal of terminal and blossom buds

a. Full production trees

$ Loss =	(# of trees) (Bu/tree) (% buds browsed) (ORV equivalent) (factor)
Where,	
ORV equivalent =	(ORV/Bu) – (Harvest + haul cost/Bu)
Factor =	(1.5) (95%) for apple and pear
Factor =	(1.0) for stone fruits
95% =	present value percentage factor from column 3 of Table B of #1754.

b. Developing young production trees

$ Loss =	(# of trees) (Ave exp bu/tree) (% buds browsed) (ORV equivalent) (factor)
Where for apple types:	
Ave exp bu/tree =	ave exp bu production for next 2 years
Factor =	(1.5) (95%)
Where for stone types:	
Ave exp bu/tree =	next year's ave exp bu production
Factor =	(1.0)

3. Pre-production trees – Removal of terminal buds

$ loss =	(# of trees) (Ave exp bu/mature tree) (% buds browsed) (ORV equivalent) (P.V.)
Where	
P.V. =	Present value percentage factor from column 3 of Table B of #1754 based on # years = (midproduction age – age of tree)

B. Long term damage

1. Production trees – Removal of terminal and blossom buds and substantial damage into past year(s) wood. (Would primarily affect young production trees prior to closure and full development.)

a. Full production trees

$ loss =	(# of trees) (Bu/tree) (Years) (ORV equivalent) (P.V.)
Where,	
Years =	Number of years setback
P.V. =	present value percentage factor from column 3 of Table B of #1754 based on number of years setback.

b. Developing young production trees

$ loss/year =	(# of trees) (Ave exp bu/tree) (% branches browsed) (ORV equivalent) (P.V.)
Total block $ loss =	sum of $ losses for each 1 year setback calculated separately
Where,	
Ave exp bu/tree =	Bu/tree adjusted for each year's calculation depending on projected production by multiplying Bu/tree times the percent of full production normally realized for that type tree based on its age in the year for which the loss is calculated (from column 7 of Table A of #1754).
% branches browsed:	
For first year of loss Calculation =	% of branches actually browsed. For subsequent years this factor has to be reduced to reflect recovery. The value by which the factor is reduced for each subsequent year = % branches browsed/# years setback.
ORV equivalent =	(ORV/bu) – (Harvest + haul cost/bu)
P.V. =	present value factor from column 2 of Table B of # 1754 based on the particular year of recovery (1st, 2nd, etc.)

2. Pre-production trees – Damage into past year(s) wood through browsing or rubbing, setting tree back by years.

$ Loss =	(# of trees) (Ave exp bu/tree) (Years) (ORV equivalent) (P.V.)

Where,	
Years =	Number of years setback
ORV equivalent =	(ORV/bu) – (Harvest + haul cost/bu)
P.V. =	Present value percentage factor from column 3 of Table B of # 1754 based on # years=(Midproduction age – age of tree)
Ave exp bu/tree =	Average expected bushel production/mature tree

C. Permanent damage

1. Developing young production trees

Production $ loss =	(# of trees) (Ave exp bu/tree) (ORV equivalent) (Years) (P.V.)
Replacement $ loss =	(# of trees) (Cost removal/tree)+ Replacement cost/tree + replant cost/tree – Operation cost savings/tree
Total $ loss =	Production $ loss + replacement $ loss
Where,	
Ave exp bu/tree =	Average expected bushel production/mature tree
ORV equivalent =	(Orchard run $/bu) – (Harvest + haul cost/bu)
Years =	Age of tree
P.V. =	Present value percentage factor from column 3 of Table B of #1754 based on age of tree in years.

2. Pre-production trees

Production $ loss =	(# of trees) (Ave exp bu/tree) (Years) (ORV equivalent) (P.V.)
Replacement $ loss =	(# of trees) (cost removal/tree+ replacement cost/tree + replant cost/tree – Operation cost savings/tree)
Total $ loss =	Production $ loss + replacement $ loss
Where,	
ave exp bu/tree =	Average expected bushel production/mature tree
ORV equivalent =	(ORV/bu) – (Harvest + haul cost/bu)
Years =	Age of tree
P.V. =	Present value percentage factor from column 3 of Table B of #1754 based on # years = (Midproduction age – age of tree)

3. Full production trees – total tree loss

$ loss shall be calculated pursuant to formula set forth in #1752©(2).

#1754 - PRODUCTION, RECOVERY AND PRESENT VALUE TABLES

TABLE A: Projected Production and Production Ages						
Tree Type	Plant Density	Full Production Per acre	Start Mid Production	Age	Obtain High Production	% Full Production Realized in Successive Production Years
Apple	200+	1,000 Bu	6 yrs	(8)	10 Years	5, 15, 40, 70, 100

	-200	1,000 Bu	6 yrs	(9)	12 Years	5, 10, 15, 30, 50, 70, 100
Peach	All	400 Bu	4 yrs	(6)	8 Years	5, 15, 20, 40, 100
Sweet Cherry	All	10,000 lbs	8 yrs	(12)	15 Years	5, 10, 15, 20, 30, 50, 70, 100
Sour Cherry	All	10,000 lbs	4 yrs	(7)	10 Years	5, 10, 15, 30, 50, 70, 100

TABLE B: PRESENT VALUES FACTORS		
Years	P.V.	% Applied
1	1.0000	100%
2	.9091	95%
3	.8264	91%
4	.7513	87%
5	.6830	83%
6	.6209	80%
7	.5645	76%
8	.5132	73%
9	.4665	70%
10	.4241	67%
11	.3855	67%
12	.3505	62%
13	.3186	60%
14	.2897	58%
15	.2633	56%

TABLE C: MINIMUM VALUES

(Used when claimant cannot present evidence of actual values)

Bottom production would be 1 bu/tree

Bottom ORV would be juice at $1.25/bu

TABLE D: ABBREVIATIONS

Bu =	bushel; but if other unit of measurement is appropriate (e.g., box, pound, etc.) substitute appropriate units.
Bu/tree =	Annual production in bushels (or other appropriate units) of undamaged mature trees, taking into consideration growing practices and conditions.
Ave exp bu/tree =	Average expected annual production in bushels (or other appropriate units) for undamaged trees, taking into consideration growing practices and conditions, the normal % of full production for age of the tree, and other factors as may be specified for a particular formula. (Note: (“Bu/tree” and “Ave exp” bu/mature tree” do not necessarily imply different

	factors.)
ORV =	Orchard run value in dollars.

#1755-#1759-VACANT

ARTICLE VI – DAMAGE TO CROPS UNDER CULTIVATION

#1760 – PROOF OF LOSS REQUIREMENTS

A. At the time of the investigation or upon submission of the proof-of-loss form the claimant shall be responsible to prove by a preponderance of evidence:

1. Big game were present in the field prior to the time of harvest.

2. Big game did damage to his crop(s) in the amount set forth on his claim.

#1761 – DOCUMENTATION OF CLAIM

A. Documentation by the claimant which is necessary to support a claim for damage to crops under cultivation shall include but not need be limited to:

1. Data indicating that big game caused the damage which may be in the form of counts of big game in the field made initially at the time the damage is first discovered and at least once every ten (10) days thereafter so long as damage continues.

2. Data indicating the extent of damage in commonly accepted units – for example, pounds, bushels, bales, tons, hundred weight – and the value per unit measurement in dollars. Data acceptable for determining value include:

a. Sales receipt for harvested crops from the same field;

b. Current market value obtained from local sales, market reports or other sales value sources.

#1762 – EVALUATION AND SETTLEMENT PROCEDURE

A. Damage to a growing hay crop shall be evaluated by one of the following three methods or any other method agreed upon in writing by the claimant and the Division.

1. If comparable undamaged areas are available, the method of comparing harvest yield on damaged versus undamaged areas, and adjusting for difference in production, if any, not due to big game use.

Or:

2. Where comparable, undamaged areas are available the selection of comparative sample plots of the damaged and undamaged crop, and clipping, air drying, and weighing vegetation within each plot to determine the quantity and quality of forage removed by wildlife may be used as an option to the method described under #1762 a. 1.

Or:

3. Where comparable damaged and undamaged areas are not available from which to obtain samples, damage shall be evaluated on a cured or air dried forage basis of 2.2 pounds per deer day use, 2.5 pounds per sheep day use, 8.8 pounds per elk day use, 1.6 pounds per pronghorn day use, 2.1 pounds per mountain goat day use, and 15.3 pounds per moose day use, or under conditions existing at the time or place of damage. If this method is used big game counts must be made at least once every ten days and no claim for damage by loss of livestock forage caused by big game shall be submitted for the same time period.

B. Damage to a growing small grain crop shall be evaluated by comparing the harvest yield on damaged versus the most comparable undamaged areas in the vicinity, and adjusting for differences in production, if any, not due to big game use. Such damage may be evaluated by any other method agreed upon in writing by the claimant and the Division.

C. Damage to a row crop, shall be determined by one of the following methods, whichever is most appropriate for the crops, type of damage, size of the area and other pertinent factors:

1. Selecting comparative sample areas from the damaged field and measuring the percentage of plants which have been damaged by big game and the estimated average percent of crop loss per damaged plant within each sampled area.

2. Comparing harvest yield on damaged versus undamaged areas, and adjusting for differences in production, if any, not due to big game use.

3. Any other method agreed upon in writing by the claimant and the Division.

D. The value of alfalfa aftermath damaged by big game shall be based on the local market value of nearby comparable alfalfa fields, e.g. amounts paid for leasing nearby comparable alfalfa fields for grazing.

E. Value of any crop under cultivation shall be the market value at the time and place of harvest less any normal harvesting costs that were not incurred.

F. Where the Division has determined that consulting with a crop adjuster would facilitate resolution of issues raised as part of any claim for damage to crops under cultivation, including settlement of such claim, it may contract with a crop adjuster to evaluate and report on suspected damage to such crops. If the estimated amount of damage claimed reasonably exceeds $10,000, the Division shall contract with a crop adjuster for an evaluation and report on the suspected damage.

In all cases, the report prepared by the crop adjuster will be provided to the claimant for their review and information.

#1763-#1769 – VACANT

ARTICLE VII – DAMAGE TO HARVESTED CROPS

#1770 – PROOF OF LOSS REQUIREMENTS

A. At the time of the investigation or upon submission of the proof-of-loss form, the claimant shall be responsible to prove by a preponderance of evidence:

1. That big game caused damage to his harvested crop in the amount set forth on his claim.

#1771 – DOCUMENTATION OF CLAIM

A. Documentation by the claimant which is necessary to support a claim for damage to harvested crops shall include but need not be limited to:

1. Evidence sufficient to establish that the alleged damage was caused by big game. Such evidence may include actual counts, photographs and data on concentration of tracks and/or fecal pellets or any other reasonable evidence.

2. Data indicating the extent of damage in commonly accepted units such as pounds, bushels, bales or tons and the value per unit. Data acceptable for use in determining value include:

a. Sales receipts for crops of similar quality during the period when the damage occurred.

b. Evidence or documents showing the actual cost for replacement if the damaged crops were replaced.

#1772 – EVALUATION AND SETTLEMENT PROCEDURE

A. Damage to a harvested crop shall be evaluated as follows or by any other method agreed upon in writing by the claimant and the Division.

1. Damage to stacked hay shall be evaluated by calculating the pounds of hay which have been damaged by big game through:

a. calculation of the volume of hay removed or damaged;

b. determining the number of bales damaged based on bailing wires or strings remaining or number of bales originally in the stack.

2. Damage to harvested crops, other than haystacks, and crops being fed to livestock shall be evaluated on a cured or air dried forage basis of 2.2 pounds per deer day use, 2.5 pounds per sheep day use, 8.8 pounds per elk day use, 1.6 pounds per pronghorn day use, 2.1 pounds per mountain goat day use, and 15.3 pounds per moose day use, or under conditions existing at the time and place of damage.

B. Value of any crop shall be the market value at the time and place of damage.

#1773-#1779 – VACANT

ARTICLE VIII – DAMAGE TO LAWFUL FENCES

#1780 – PROOF OF LOSS REQUIREMENT

A. At the time of the investigation or upon submission of the proof-of-loss form, the claimant shall be responsible to prove by a preponderance of evidence:

1. That big game caused damage to the specific lawful fence in the amount set forth on his claim.

#1781 – DOCUMENTATION OF CLAIM

A. Documentation by the claimant which is necessary to support a claim for damage to fences shall include but need not be limited to:

1. A statement that damaged fence was a “lawful fence” as defined in Section 35-46-101(1), C.R.S., and that it was in good repair prior to being damaged.

2. Tangible evidence that big game animals caused the damage (i.e. game counts, tracks, droppings, hair, game trails).

3. Agreement between the claimant and Division investigating officer, where possible, that incurred damage was caused by big game animals.

4. A statement setting forth the amount of fence destroyed including the amount of material by type (i.e. posts, wire, gates and labor) that is needed to repair the fence to its condition immediately prior to the occurrence of damage or destruction.

#1782 – EVALUATION AND SETTLEMENT PROCEDURE

A. Settlement with the claimant shall be based on repair/replacement costs if the damage is in excess of ten (10) percent of the value of the specific fence involved; provided however, that if the value of the repaired fence is greater than the value of the fence before damage, the amount of payment shall be reduced by the amount of increased value, or the Division may offer to replace damaged materials on an in-kind basis provided this is agreed to by both parties.

#1783 – SPECIAL PROVISIONS

A. In the event that fence repairs are needed prior to the time that notification of damage can be given and/or investigation made, the claimant shall provide sufficient evidence (photos, etc.) to the Division so that the extent of damage that occurred and that was caused by big game can be determined.

B. The state shall not be liable for damages to any fence on Federal lands except where the claimant can prove ownership and title to such fence.

C. The Division may require the fence owner or his authorized agent, when reasonable, to assist in locating and investigating alleged damage.

#1784-#1789 - VACANT

ARTICLE IX – DAMAGE TO LIVESTOCK FORAGE IN HAY MEADOWS, PASTURE AND ARTIFICIALLY SEEDED RANGELANDS.

#1790 – PROOF OF LOSS REQUIREMENTS

A. At the time of the investigation or upon submission of the proof-of-loss form, the claimant shall be responsible to prove by a preponderance of evidence:

1. That damage occurred and it was more than ten (10) percent in excess of normal historic wildlife use levels.

2. That damage occurred and that the claimant was unable to graze the damaged area at the rate or time which would normally be expected by the claimant for this area under similar growing conditions in the absence of big game grazing.

3. That damage was caused by big game and not adverse weather, insects, rodents, or some other cause.

4. That the claimant owns the land or leases it from a private owner.

5. That the meadow, pasture or artificially seeded range land was fenced and that the fence was adequate to exclude any livestock present on adjoining lands.

#1791 – DOCUMENTATION OF CLAIM

A. Documentation by the claimant which is necessary to support a claim for damage to livestock forage in hay meadows, pasture meadows and artificially seeded rangelands shall include but not necessarily be limited to:

1. A statement of the actual beginning and ending dates that the area was grazed.

2. A statement of the numbers of livestock animal units grazed by species.

3. A proof-of-loss form prepared jointly by the claimant and a Division investigator after the livestock grazing period has been completed. Such form shall include an estimate of the amount of grazing which was still available, if any, at the time of investigation. If disagreements exist these will be separately noted on the proof-of-loss form.

4.

a. The landowner shall provide the Division with written documentation of when (including time and dates) and where (including specific locations) the damage is occurring.

b. Head counts of the wildlife causing damage made by the claimant shall be made in accordance with Section 33-3-202, C.R.S. to include timely notice to the Division. The required 24-hour notice to the Division shall be given either in person or by direct telephone contact to the nearest regional or area office.

c. The claimant shall provide the Division with the results of their counts with the proof of loss forms. Nothing herein shall prevent the Division from making additional head counts.

5. A statement characterizing the nature of the growing season in one of three categories and a statement as to the basis for such characterization: favorable, normal, or unfavorable. Such statement may include data on normal and current year dates of last killing frost and amount of rainfall by week from the nearest weather station or by other records or evidence where such records are kept.

6. An estimate by a professional range conservationist or other similarly qualified person, acceptable to the Division and claimant, of the normal grazing capacity of the damaged area considering the actual growing conditions, range condition and type of livestock grazed or the normal grazing capacity can be determined by an arbitration panel composed of one arbitrator chosen by the landowner, one chosen by the Division and a third arbitrator chosen by the other two arbitrators as stated in 33-3-104 (d). The panel shall provide an estimate within ninety (90) days of the claim submitted.

7. If the damaged area is a hay meadow, a certified statement of the date of last hay cutting.

8. A statement designating the historic average number(s) of big game, by species, present on the property in question.

#1792 – EVALUATION AND SETTLEMENT PROCEDURE

A. The amount of damage shall be the difference between the grazing capacity of the area and the amount of grazing actually realized by the claimant, provided that the amount of damage

calculated in this way could have been caused by the number and kind of big game animals documented to have used the designated area or damage can be determined strictly on the basis of the number of big game animals counted on the property during the damage period. The amount of damage that could have been caused by big game shall be based on the following annual average livestock animal unit month (AUM) equivalents:

13.6 pronghorn months = 1 AUM

8.7 bighorn months = 1 AUM

9.9 deer months = 1 AUM

2.5 elk months = 1 AUM

1.4 moose months = 1 AUM

10.3 mountain goat months = 1 AUM

Each AUM equivalent represents the average total amount of forage that could have been eaten by big game. Actual consumption is determined by establishing the proportion of the big game animals' daily forage intake that occurred on the damaged area and dividing the wildlife UM's by this fraction. In the event that these average equivalents are not applicable to the circumstances of an individual case either party may come before the Commission to request a change in regulation in that instance.

1. The Division may compensate landowners or lessees with the comparable amount of hay or feed or equivalent thereof in lieu of AUM equivalents of the wildlife causing damage where the loss of livestock forage required supplemental feeding.

B. Grazing capacity shall be determined by forage measurement procedures which meet U.S. Soil Conservation Service standards, contained in the National Range Handbook published by the U.S. Soil Conservation Service (July 13, 1976).(note: later amendments to these standards are not hereby incorporated). Copies of the SCS handbook may be obtained at cost by writing: Director, Colorado Parks and Wildlife, 6060 Broadway, Denver, CO 80216.

C. The amount of grazing actually realized by the claimant shall be determined by taking the actual number of animal unit months of livestock grazing which occurred on the area and adding the estimated amount of grazeable forage remaining after termination of grazing or subtracting the amount by which the area was overgrazed.

D. Liability is limited to that proportion of the damage in excess of the historic big game use levels, and the state shall be liable for such damages only if they are more than ten (10) percent in excess of normal historic wildlife use levels. This proportion is obtained by subtracting the 1953 to 1973 average population from the current population for the species causing damage and dividing this difference by the current population. If the Division does not agree with the claimant on the historic levels of any species, or this proportion, it may be determined by arbitration. If a

satisfactory solution cannot be established by arbitration then the proportion shall be determined by the legal process described in 33-3-104(1)(d) and 33-3-108, C.R.S.

E. Value of grazing shall be the current market value at the time and place of the forage loss.

#1793-#1799 - VACANT

ARTICLE X - DAMAGE TO LIVESTOCK FORAGE ON GRAZING LAND WHICH IS DEFERRED FOR SEASONAL USE

#17100 – NOTICE OF INTENT TO DEFER GRAZING

A. Any person who designates all or part of his grazing land as "grazing land which is deferred for seasonal use" shall provide written notice thereof to the Division no later than fifteen (15) days prior to the beginning date of intended deferral period. Such notice shall include:

1. A map and legal description of the grazing land which is deferred for seasonal use.

2. A statement from a professional range conservationist or similarly qualified person, stating the range site(s) included within the area to be designated and the range condition class(es) of the area, and the resulting initial stocking rate recommended for the designated area in a normal year, a favorable production year and an unfavorable production year. If more than one range site and/or condition class is represented on the area designated, the area in each site and condition class shall be outlined on the map described in 1, and the percentage of the total area in each site and condition class shall be recorded. Methods used to determine range site and condition class shall be described. Copies of all data collected shall be included. If the professional range conservationist or other qualified person is not available, the range site classification maps and data may be used provided that the range site classification maps and data have been developed within the last five years.

3. A signed statement on forms provided by the Division from the owner or grazing lessee of the lands to be designated certifying;

    a. That the area to be designated is surrounded by a fence adequate to exclude livestock which may be present on adjacent lands.

    b. Beginning and ending dates of the intended deferral period (period of no livestock grazing).

    c. Beginning and ending dates of the intended grazing period.

    d. Numbers of livestock animal units by species which are intended to be grazed.

#17101 – PROOF OF LOSS REQUIREMENTS

A. At the time of the investigation or upon submission of the proof-of-loss form, the claimant, shall be responsible to prove by a preponderance of evidence:

1. That he met the requirements concerning notice of intent to defer grazing on the lands where the damage is alleged to have occurred.

2. That damage occurred and it was more than ten (10) percent in excess of normal historic use levels.

3. That livestock were unable to graze the area at the rate planned and normally expected under similar growing conditions in the absence of big game grazing; and that the damage was caused by big game and not adverse weather, insects, rodents or some other cause.

4. That he owns the land or leases it from a private owner.

5. That the land was adequately fenced to exclude any livestock present on adjoining lands.

#17102 – DOCUMENTATION OF CLAIM

A. Documentation by the claimant which is necessary to support a claim for damage to livestock forage on grazing land deferred to seasonal use shall include but is not necessarily limited to:

1. A statement of the actual beginning and ending dates that the area was grazed.

2. A statement of the numbers of livestock animal units grazed by species.

3. A proof-of-loss form prepared jointly by the claimant and the Area Wildlife Manager or his designee after the grazing period has been completed. Such form shall include an estimate of the amount of grazing which was still available, if any, at the time of investigation. If the claimant and the Division representative do not agree on the amount of remaining grazing capacity, sufficient evidence which may include but is not limited to appropriate photographs and range condition data shall be provided by the claimant to document the actual condition of the area, and if disagreements exist these will be separately noted on the proof-of-loss form.

4. A statement of the number and kind of big game using the designated area including data from all counts made by date and time of day and a list of all known witnesses who participated in these counts. Head counts of the wildlife causing damage shall be made in accordance with Section 33-3-202, C.R.S. to include timely notice to the Division. The required 24-hour notice to the Division shall be given either in person or by direct telephone contact to the nearest regional or area officer. Numbers of big game shall be expressed in terms of the average daily number of animals present and shall include an estimate of the percentage of their daily food consumed or damaged on the designated area. Counting procedure shall be described. Nothing herein shall preclude the Division from making additional head counts.

5. A statement describing the quality of the growing season as favorable, normal or unfavorable. Based on weather and related environmental conditions, a growing season shall be considered favorable if, on the average, more favorable conditions occur 1 year in 4 or less frequently. A growing season shall be considered unfavorable if, on the average, less favorable conditions occur 1 year in 4 or less frequently. Such statement shall include data on normal and current year dates of the last killing frost and the amount of rainfall by week from the nearest weather station or by other records or evidence where such records are kept.

6. A statement designating the historic average number(s) of big game, by species, present on the property in question.

#17103 – EVALUATION AND SETTLEMENT PROCEDURE

A. The amount of damage shall be the difference between the grazing capacity of the area and the amount of grazing actually realized by the claimant, provided that the amount of damage calculated in this way could have been caused by the number and kind of big game animals documented to have used the designated area during the deferral period. The amount of damage that could have been caused by big game shall be based on the following annual average livestock animal unit month (AUM) equivalents:

13.6 pronghorn months = 1 AUM

8.7 bighorn months = 1 AUM

9.9 deer months = 1 AUM

2.5 elk months = 1 AUM

1.4 moose months = 1 AUM

10.3 mountain goat months = 1 AUM

If the deferred grazing land contains a substantial amount of herbage other than grasses and legumes, the AUM equivalents must be adjusted for the amount of herbage consumed by wildlife which is not livestock forage. This is accomplished by dividing the appropriate AUM equivalent from the list above, by the proportion of dietary overlap for the species of wildlife and livestock involved. This proportion shall be obtained from the following table unless some other figure can be shown to reflect more accurately the actual situation.

DEGREE OF DIETARY OVERLAP BETWEEN VARIOUS BIG GAME SPECIES AND DOMESTIC CATTLE AND SHEEP.

	COW	SHEEP
ELK	.91	.96

DEER	.50	.80
PRONGHORN	.80	.80

Each AUM, as adjusted if necessary, represents the average total amount of forage that could have been eaten by big game. Actual consumption is determined by establishing the proportion of the big game animals' daily forage intake that occurred on the damaged area and dividing the wildlife UM's by this fraction. In the event that these average equivalents are not applicable to the circumstances of an individual case either party may come before the Commission to request a change of regulations in this instance.

B. Grazing capacity shall be determined by forage or measurement procedures which meet U.S. Soil Conservation standards as set forth in #1792(b) of these regulations or as designated for the forage growth favorable class most representative of the actual growing conditions when forage was produced.

C. The amount of grazing actually realized by the claimant shall be determined by taking the actual number of animal unit months of livestock grazing which occurred on the deferred area and adding the estimated amount of grazable forage remaining after termination of grazing or subtracting the amount of which the area was overgrazed.

D. Liability is limited to the proportion of the damage in excess of the historic big game use levels and the state shall be liable for such damages only if they are more than ten (10) percent in excess of normal historic wildlife use levels. This proportion is obtained by subtracting the 1953 to 1973 average population from the current population for the species causing damage and dividing this difference by the current population. If the claimant and the Division cannot agree on this proportion it may be determined by arbitration. If a satisfactory solution cannot be established by arbitration then the proportion shall be determined by the legal process described in 33-3-104(1)(d) and 33-3-108, C.R.S. (amended, 1984 by HB 1376).

E. Value of grazing shall be the current market value at the time and place of the forage loss. Values computed for loss of dry standing forage shall be reduced by the amount which should have been required for purchase of necessary protein, and/or energy supplements if the forage had been used for grazing.

#17104 – SPECIAL PROVISIONS

If any person who has designated deferred grazing land turns livestock into the designated area at any time or at any rate other than that specified in the notice of designation, he shall notify the Division in writing on the date, type and number of livestock within 10 days of the actual beginning date of livestock grazing. If any such change substantially modified the expected grazing capacity of the designated area, any claim for damage shall be based on the modified grazing capacity.

#17105-#17109 – VACANT

ARTICLE XI – DAMAGE TO NURSERIES

#17110 – PROOF OF LOSS REQUIREMENTS

A. At the time of the investigation or upon submission of the proof-of-loss form, the claimant shall be responsible to prove by a preponderance of evidence.

1. That big game were present in the nursery.

2. That big game did damage to the nursery to the extent that future production will be affected.

B. The claimant shall also furnish:

1. The age of each damaged tree or shrub.

2. The species and variety of each damaged tree or shrub.

3. Production records for the last 5 years, or for the number of years the claimant has owned the nursery, whichever is less.

4. Average operating expenses for 5 years, or for the number of years the claimant has owned the nursery, whichever is less, immediately preceding the date of claim. Such expenses include all costs for spraying, pruning, irrigation water, harvesting, cultivating and any other cultivation practice required for production of the crop.

#17111 – DOCUMENTATION OF CLAIM

A. Investigation of damage claims for nursery damage shall be conducted jointly by the claimant and the Division's investigator. Documentation which is necessary to support a claim for damage to nurseries shall be prepared by the claimant and shall include but need not be limited to:

1. A map of the entire nursery area showing the location of trees and shrubs within the nursery that have been damaged by big game.

2. The species, variety, age and extent of damage for each tree and shrub.

3. The percent of each tree that has been damaged by barking, browsing or rubbing which shall be determined as follows:

a. Bark damage – will be determined by estimating the percent of bark removed down to the cambium layer on the circumference of the trunk and branches of each tree or shrub and its relative affect on the life and productivity of the trees and shrubs in question. This percent permanent damage will be applied to the appropriate tree and shrub values to arrive at the amount of reimbursement to the claimant. Light barking which doesn't expose the cambium will not be considered as permanent damage.

b. Browse damage – will be determined for each tree or shrub by first estimating the percent of total twigs that have been damaged. This percent will be applied to the appropriate tree or shrub value to arrive at the dollar amount of damage.

c. Barking and browse damage to the same tree or shrub will be determined by first estimating bark damage then estimating browse damage to only the unbarked percent of each tree or shrub.

d. Antler rubbing damage, which characteristically occurs to younger trees, will be determined by estimating the percent of permanent damage to each tree including bark removal and stem breakage, and applying this percent to the appropriate tree value.

4. A statement as to the overall health and vigor of each damaged tree in relation to the undamaged trees. The overall condition of each damage tree shall be considered in relation to trees which have been maintained in a reasonably good condition. Sales receipts will be reviewed to assist in determining the value of the trees. Field inspection and production records where applicable shall be used as a basis for this statement.

5. The dollar value loss for the entire claim shall be a summation of dollar value losses derived from the total of individual tree or shrub damage values. If the damaged stock happens to be fruit trees the values listed for them in Article V may be used. Leaf browsing during the growing season is usually not damaging since it is not permanent. Removal of fruit and berry buds can be damaging to future production.

#17112 – SPECIAL PROVISIONS

A. Where more than one claim for damage is made for the same trees or shrubs damaged in different years, cumulative payments to the claimant shall not exceed 100 percent of the highest value of the trees or shrubs involved.

B. Where 100% damage has been paid on a tree or shrub it becomes the property of the state and may be disposed as the Division directs.

ARTICLE XII- DAMAGE CAUSED BY SMALL GAME AND FURBEARERS

#17121- DEFINITIONS FOR ARTICLES XII - XV

A. "Body Grip Device" means a mechanical device designed to kill an animal quickly upon capture.

B. "Bona fide scientific research" means any research project conducted by the Division or authorized by a scientific collection permit issued by the Division.

C. "Cable Device Trap" means any powered or non-powered device made of stranded steel cable set in a manner that a loop of cable encircles the animal's body or limb.

D. "Canada Lynx Recovery Area" means the area of the San Juan and Rio Grande National Forests and associated lands above 9,000 feet extending west from a north-south line passing through Del Norte and east from a north-south line passing through Dolores and from the New Mexico state line north to the Gunnison basin (including Taylor Park east to the Collegiate Range). The GMUs included in the area are: 55, 65, 66, 67, 68, 70, 71, 74, 75, 76, 77, 78, 79, 80, 81, 551, 681, 711 and 751.

E. "Designated and marked trails" means any trail on public property or a public trail easement across private lands that has signs to indicate that it is a public trail; is maintained; and has a trail number or designation on a map or brochure published by the government entity who has jurisdiction over the trail.

F. "Drag" means an object attached to a trap to retard the movement of a trap and to detain an animal.

G. "Enclosed Foothold Trap" means any mechanical device designed to encapsulate and hold the animal's foot. These foot encapsulating devices are highly species-selective by design.

H. "Foothold Trap" means any mechanical device with jaws designed to catch an animal by the foot.

I. "Lethal cable device trap" means a cable device trap designed to kill an animal upon capture.

J. "Nonlethal cable device trap" means a cable device trap with a stopping device designed to prevent strangulation of the species for which the cable device trap is set, or a mechanical or spring powered cable device trap designed to catch the animal by the foot or leg.

K. "Relocation" means movement of live wildlife captured by a person to another site which is not contiguous to the capture site.

L. "Traps specifically designed not to kill" means padded, laminated, or off-set steel jawed foothold traps, enclosed foothold, box traps, and cage traps, as conditioned elsewhere in these regulations.

#17122 – MANNER OF TAKE

A. The following are legal methods of take for all small game and furbearers listed in this chapter, except as otherwise noted. Any method of take not listed herein shall be prohibited, except as provided by statute or these regulations.

1. Any rifle or handgun.
2. Any shotgun.
3. Handheld bows and crossbows.
4. Any air gun, except that for coyote or bobcat the air gun must be a pre-charged pneumatic air gun .25 caliber or larger.
5. Slingshots only for small game mammals listed herein.
6. Live traps (limited to cage or box traps) for live capture and relocation.

B. Live Capture and Relocation

1. Unless relocation has been authorized, small game and furbearers captured in live traps (limited to cage or box traps) cannot be moved from the capture site and must be killed or released on site when the trap is checked.

2. Except as provided herein, a relocation permit is required to relocate all small game and furbearers.

    a. Tree squirrels, cottontail rabbits, and raccoons trapped in cage or box traps may be relocated without a permit provided the Division has been notified in advance; the relocation site is appropriate habitat for the species; permission has been obtained from the private landowner; and relocation occurs within 10 miles of the capture site for squirrels and rabbits, and within two miles of the capture site for raccoons.

    b. Relocation permit applications must be submitted to and approved by the Division prior to relocation. Permit approval or denial shall be based on the following: size of the relocation site; proximity of the site to public lands; habitat suitability and potential to support the relocated species; escape control, including buffer zones and active control if necessary; wildlife health and zoonotic disease concerns, and any other appropriate wildlife management concerns. In addition, applications must be submitted for all requests to move prairie dogs including modifications and extensions for wild to wild relocation permits. Permits authorizing movement of prairie dogs shall cost forty dollars ($40.00). Original applications shall also include a management plan specifically addressing the applicant's long term plans for the maintenance or control of the prairie dog population on the property. For any species which, in accordance with the provisions of § 35-7-203, C.R.S., requires approval of the county commissioners, the applicant shall also submit a copy of the resolution as approved by the county commissioners.

    c. Labeling of traps – All live traps (limited to cage or box traps) placed on public lands must be labeled permanently and legibly with the trapper's Customer Identification Number (CID) in a location that is visible without having to manipulate the live trap in any way. If the trapper does not have a CID, all live traps placed on public lands must be labeled with the trapper's name. Live traps not properly labeled may be confiscated by any Wildlife Officer.

C. Except as prohibited by federal, state, and local statutes or regulations, toxicants or handheld devices designed to deliver into burrows and then ignite a mixture of propane and oxygen, or similar combination of explosive gases, may be used by a person, or a person's agent, to take Richardson's ground squirrel, rock squirrel, thirteen-lined ground squirrel, pocket gopher, marmots, black-tailed, white-tailed, and Gunnison prairie dogs where necessary to control damage on land owned by them.

D. Furbearers may be taken using foothold traps, any body-grip device, and cable device traps, when trapping is done in accordance with the provisions of 33-6-204, C.R.S. (General Exemptions); 33-6-205, C.R.S. (Exemption for Departments of Health); 33-6-206, C.R.S. (Nonlethal Methods Exemptions); or 33-6-207, C.R.S. (Exemptions for Protection of Crops and Livestock); all of which are exemptions authorized by Article XVIII, Section 12, of the Colorado Constitution; conditioned as follows:

1. All foothold traps set on land must be equipped with: a) padded, laminated or offset jaws; b) anchor chains attached to the center of the base plate of the trap; such chain shall have a double swivel mechanism to prevent tangling of the chain; c) a spring device

which serves as a shock absorber; d) when anchored by a stake, a chain of 30 inches or less must be utilized; e) when anchored by a drag, a chain of six feet or less must be utilized.

2. All enclosed foothold traps set on land must be equipped with: a) a chain or cable of 15 inches or less when anchored by a stake; b) a center mounted anchor; c) such chain or cable shall have a double swivel mechanism to prevent entanglement; d) when anchored by a drag, a chain or cable of six feet or less must be utilized.

3. All foothold traps with an inside jaw spread of 5 ½ inches or greater and set on land must be equipped with a pan-tension device set to a minimum release pressure of 3 ½ pounds as tested at the center of the pan.

4. All pads on padded jaw traps must be maintained in good condition so as to effectively minimize injury to the trapped animal.

5. Any foothold trap, enclosed foothold trap, or any colony trap designed to be a drowning set, may be used as a drowning set when trapping is done in accordance with the provisions of the Departments of Health Exemption or the Exemptions for the Protection of Crops and Livestock.

6. Nonlethal cable device traps: powered and non-powered cable device traps set on land must be equipped with a stop designed to restrain furbearers without suffocation, and must be equipped with an in line swivel, placed at least one (1) foot from the stake, to prevent the cable device trap from closing to a circumference of not less than 10.5 inches, except stops may be set at a circumference of not less than 8.0 inches in areas and at times when red fox are causing damage to livestock. All cable device traps must break away at a maximum of 350 pounds of pull.

7. Lethal cable device traps: passive or non-mechanical foot cable device traps are prohibited, except when trapping is done in accordance with the provisions of the Departments of Health Exemption or the Exemptions for the Protection of Crops and Livestock. Mechanical or spring-powered foot cable device traps are permitted. All cable device traps must break away at a maximum of 350 pounds of pull.

8. Body grip devices with a maximum jaw spread of 8.5 X 8.5 inches or greater may not be used, except in water set, and only when trapping is done in accordance with the provisions of the Departments of Health Exemption or the Exemptions for the Protection of Crops and Livestock.

9. Body grip devices with a maximum jaw spread between 7.0 X 7.0 and 8.5 X 8.5 inches may not be used, except in water sets, when set at least 5 feet above the ground, or when set in devices designed to exclude dogs; and only when trapping is done in accordance with the provisions of the Departments of Health Exemption or the Exemptions for the Protection of Crops and Livestock.

10. Body grip devices used to take muskrat on land must be a double-spring design and have a maximum jaw spread no greater than 4.5 X 4.5 inches. A single-spring design with a maximum jaw spread no greater than 4.5 X 4.5 inches is permitted for muskrat in submersion sets. Provided further that any such use of body grip devices must be in accordance with the provisions of the Departments of Health Exemption or the Exemption for the Protection of Crops and Livestock.

11. Trapping in the following areas is prohibited except with: a) padded, laminated, or off-set jaw traps; b) body grip devices with a maximum jaw spread less than 7 X 7 inches in size; or c) land or water set cable device traps with a closure size of 16- inch circumference or larger. Provided further that padded, laminated, or off-set jaw traps and cable device traps may not be used in drowning sets, that padded, laminated, or off-set jaw traps and land set cable device traps may only be set in accordance with the provisions of the Departments of Health Exemption, Nonlethal Methods Exemption, or the Exemption for the Protection of Crops and Livestock; and that water set cable device traps and body grip devices may only be set in accordance with the provisions of the Departments of Health Exemption or the Exemption for the Protection of Crops and Livestock.
    a. That portion of the Gunnison River and five (5) miles upstream along each of its tributaries in Montrose and Delta Counties from the Black Canyon of the Gunnison National Park downstream to that point where the river meets Highway 92; and all lands within 100 yards of the high water line of this portion of the Gunnison River and all tributaries thereof.
    b. That portion of the Piedra River upstream from Navajo Reservoir to the headwaters including East Fork and Middle Fork of the Piedra River in Hinsdale and Archuleta counties and 9 miles upstream on the First Fork. This restriction includes the following tributaries: Sand Creek, Weminuche Creek, Little Sand Creek, Williams Creek and all lands within 100 yards of the high water line of the above waters.
    c. The Dolores River from McPhee Reservoir downstream to Bed Rock is closed within 100 yards of the high water line.
    d. The San Juan River from Pagosa Springs downstream to the New Mexico state line is closed within 100 yards of the high water line.

12. On all public land the use of foothold traps is prohibited on or within 30 feet of either side of officially designated and marked trails unless such traps are placed in water or off the ground. Provided further that such traps may only be set in accordance with the provisions of the Departments of Health Exemption or the Nonlethal Methods Exemption.

13. The use of ground set foothold traps and cable device traps are prohibited within 30 feet of the exposed carcass of any game wildlife or domestic animal. Provided further that such traps may only be set in accordance with the provisions of the Departments of Health Exemption, the Nonlethal Methods Exemption, or the Exemptions for the Protection of Crops and Livestock.

    a. For the purpose of regulation #17122.D(13) only, “carcass” means the meat and internal organs of game wildlife and domestic animals and does not include bones, hides or other nonedible parts.

14. No foothold trap, enclosed foothold trap, body grip device, or cable device trap, except for those lawfully placed on private property, may be set within 50 feet of either side of the traveled portion of any state highway, U.S. or Interstate highway, or any county road.

15. All foothold traps used within the area designated below must be set with a pan tension device that requires a minimum of 3 ½ pounds of force to activate the trap. Except for water or tree sets, body grip devices are prohibited within the following area: That portion of Delta, Mesa and Montrose counties bounded on the north by the Mesa-Garfield county line from the Utah state line east to U.S. Interstate 70; bounded on the east by U.S. Interstate Highway 70 from the Mesa-Garfield county line to Colorado State Highway 65; from Colorado State Highway 65 to its junction with the northern boundary of the Grand

Mesa Forest and following the boundary line west, south and then east to its junction with Colorado State Highway 65, from Colorado State Highway 65 to its junction with the Gunnison River, from the Gunnison River to Colorado State Highway 347, from Colorado State Highway 347 to its junction with U.S. Highway 50; bounded on the south by U.S. Highway 50 from its junction with Colorado State Highway 347 to the Gunnison River, from the Gunnison River to its junction with the Colorado River, from the Colorado River to the Utah state line; and bounded on the west by the Utah state line. Provided further that any such trapping must be done in accordance with the provisions of the Departments of Health Exemption, the Exemptions for the Protection of Crops and Livestock and the Nonlethal Methods Exemption.

E. Thirty (30) Day Trapping Period for Livestock and Crop Protection

1. Landowners and others authorized by statute who are trapping pursuant to 33-6-207, C.R.S. must notify the Division in accordance with 33-6-208, C.R.S. All definitions and other provisions will be in accordance with 33-6-208, C.R.S, and 35-40-100.2-115, C.R.S.

F. Baits

1. Furbearers may be taken with the aid of baiting. Where permitted, baits shall consist solely of material of animal or plant origin and shall not contain any materials of metal, glass, porcelain, plastic, cardboard or paper. Wildlife used as bait shall be the carcass, or parts thereof, of legally taken furbearers, carp, shad, white and longnose suckers, and nonedible portions of legally obtained game mammals, birds and game fish.

G. Checking Frequencies

1. All live traps (limited to cage or box traps) must be visually checked on site at least once every day, except under the provisions of #17122.G(3) below.
2. All foothold traps, non-lethal cable device traps, lethal cable device traps, body grip devices and drowning sets when used in accordance with the provisions of the General Exemptions, Departments of Health Exemption or the Nonlethal Methods Exemptions must be visually checked on site at least once every day. In the Canada lynx recovery area or on properties known to be occupied by Canada lynx the checking frequency is at least every 24 hours.
3. All live traps (limited to cage or box traps), foothold traps and non-lethal cable device traps set in accordance within the provisions of the Exemptions for Protection of Crops and Livestock, must be visually checked on site at least three times per week; twice, 2 days apart and once, 3 days apart in any seven-day period (any combination of 2-2-3).
4. All lethal cable device traps, body grip devices, and drowning sets set in accordance with the provisions of the Exemptions for Protection of Crops and Livestock must be visually checked on site at least once every 7 days.

#17123 - SPECIAL CONDITIONS

A. Exemption for wildlife in conflict with people

1. In addition to the authority granted in subsection 33-6-107(9) C.R.S. to take wildlife causing damage to real or personal property; any person, members of their family, or their agents may year-round, without securing licenses to do so, take:

    a. Cottontail rabbits, tree squirrels or opossums on property owned or administered by them, whenever such wildlife is causing damage on such property.

Methods of take used must be in accordance with federal, state, and local law.

ARTICLE XIII – DAMAGE CAUSED BY MIGRATORY BIRDS

#17131 – RESTRICTIONS

A. Landowners or their designee may use dogs to haze geese off of their property in order to prevent or alleviate damage, except from March 1 through July 31, provided that the dog is controlled such that no geese are injured or killed.

B. Crows and magpies may be taken without Federal or State permit at any time of the year or at any time of the day or night when found committing or about to commit depredation upon ornamental or shade trees, agricultural crops, livestock or wildlife, or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance.

C, Resident Canada Goose Nest and Egg Depredation Permit. The United States Fish and Wildlife Service (USFWS) requires a person to register with them online, prior to destroying any resident Canada goose nests or eggs.

ARTICLE XIV – DAMAGE CAUSED BY NONGAME WILDLIFE

#17141 – RESTRICTIONS

A. Bats, mice (except those federally listed mouse species), voles, rats, porcupines, and ground squirrels may be captured or killed when creating a nuisance or causing property damage.

B. Take of Threatened and Endangered Species

1. Any person may take threatened or endangered wildlife in defense of his life or the life of others.

2. All threatened or endangered fish taken by any means shall be returned unharmed to the water immediately.

3. While conducting an otherwise lawful activity, including, but not limited to, live trapping or hunting bobcat, taking action pursuant to 33-6-207, C.R.S., to protect livestock, protection of livestock through the use of guard dogs, or taking action pursuant to 33-3-106, C.R.S., to prevent death or injury to human life or livestock, a Canada lynx is:

    a. accidentally captured, but not injured, it shall be released immediately and the capture shall be reported to the Division within 24 hours;
    b. accidentally injured, but not in the possession of the person, the injury shall be reported to the Division within 24 hours;
    c. accidentally injured and in the possession of the person, the Canada lynx shall be immediately delivered to the Division or taken to a licensed veterinarian for appropriate care and reported to the Division within 24 hours;
    d. accidentally killed, then it shall be reported to the Division within 24 hours and the carcass shall be delivered to the Division within 3 (three) days of the report.

Any failure to provide the required notice to the Division or to deliver the injured or dead Canada lynx to the Division within the time periods allowed shall be prima facie evidence of unlawful take and possession of Canada lynx.

For the purposes of this subsection, "accidental" specifically excludes any intentional, knowing or negligent action on behalf of any person or a person's agent or employee.

ARTICLE XV – DAMAGE CAUSED BY WILDLIFE

#17151 – RESTRICTIONS

A. Motor Vehicles, by permit only.

1. The Division may issue permits to licensed and/or commercial operators, which shall be free of charge, for the taking of nuisance wildlife from within or on a motor vehicle when it is determined by an Area Wildlife Manager or District Wildlife Manager that such a permit is necessary for the protection of property including crops or livestock. Applicants shall fill out applications furnished by the Division and shall give such information thereon as may be required by the Division; including, if requested, a map of the area where control of animal damage is needed.
2. Permits shall not be issued for longer than a sixty (60) day period. A permit may, however, be renewed without submitting a new application unless deemed necessary by the Regional Wildlife Manager. Any such permit may be revoked by the Regional Wildlife Manager at any time. Permittees shall abide by restrictions and conditions set forth on the permit.
3. "**Nuisance Wildlife**" means those wildlife species specifically listed in §33-6-107(9), C.R.S. as well as tree squirrels, cottontail rabbits, marmots, opossums, bats, mice (except federally listed mouse species), voles, rats, and ground squirrels, which are an inconvenience or annoyance by causing damage to real or personal property.

CYNTHIA H. COFFMAN
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Office of the Attorney General

Tracking number: 2017-00482

Opinion of the Attorney General rendered in connection with the rules adopted by the

Colorado Parks and Wildlife (406 Series, Wildlife)

on 11/16/2017

2 CCR 406-17

CHAPTER 17 - GAME DAMAGE

The above-referenced rules were submitted to this office on 11/21/2017 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.

November 29, 2017 12:45:52

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Colorado Medical Board

CCR number

3 CCR 713-18

Rule title

3 CCR 713-18 RULE 280 - SUSPENSIONS 1 - eff 12/30/2017

Effective date

12/30/2017

RULES AND REGULATIONS REGARDING SUSPENSIONS

Basis: The authority for the promulgation of these rules and regulations by the Colorado Medical Board ("Board") is set forth in Sections 24-4-103, 12-36-104(1)(a), and 12-36-118, C.R.S.

Purpose: The purpose of these rules and regulations is to provide a procedural safeguard for licensees whose licenses are suspended by the Board pursuant to sections 24-4-104(4), 24-60-3602(10), 12-36-118(5)(g)(IV), 12-36-118(8), or 12-36-118(9)(a), C.R.S. These rules are not intended to apply to the case of suspensions pursuant to Section 12-36-118(5)(g)(III), C.R.S. The procedures set forth in this rule are in addition to those provided by the Medical Practice Act and the Administrative Procedure Act.

I. SUSPENSIONS PURSUANT TO SECTION 24-4-104(4), C.R.S.

When an Inquiry Panel determines that the suspension of a license is appropriate pursuant to section 24-4-104(4), C.R.S., it shall offer the licensee an opportunity to appear before the Inquiry Panel to offer evidence supporting why the licensee should not be suspended. This hearing does not substitute for the hearing afforded by section 24-4-104(4), C.R.S., but is in addition to such hearing. The Inquiry Panel shall determine whether the opportunity for a hearing may occur before the Inquiry Panel's consideration of whether to suspend, or whether the opportunity for hearing shall occur after the entry of an order suspending a license. The determination of whether to offer a licensee notice of the right to a pre-suspension hearing or to offer a post-suspension hearing shall be in the sole discretion of the Inquiry Panel and shall not be subject to review.

A. Pre-Suspension Notice

In the event that the Inquiry Panel believes that suspension may be indicated, the Inquiry Panel shall:

1. Provide notice to the licensee of the suspension. Board staff shall give notice to the licensee by first class mail and shall send notice to the licensee's address of record pursuant to Board Rule 270;

2. Issue the notice within 72 hours of the suspension, excluding interim weekends and state holidays from the calculation; and,

3. Include the following information:

    a. A statement of the general nature of the issues that may warrant suspension. Such statement of the general nature of the issues that may warrant suspension need not be as comprehensive or detailed as

a formal charging document in a hearing conducted pursuant to the Administrative Procedure Act;

b. A statement instructing that the Inquiry Panel may suspend the licensee's license at its next meeting;

c. A statement that the licensee may request a hearing before the Inquiry Panel at its next meeting, but must do so prior to the Panel's next agenda deadline;

d. A statement informing the licensee of the next regularly scheduled agenda deadline and the date and time of the next regularly scheduled meeting;

e. A statement informing the licensee that written material, up to a limit of 30 pages, may be submitted by the same deadline; and,

f. A statement that written material submitted by this deadline will be provided to the Inquiry Panel members prior to the meeting;

g. A statement that written material not submitted by the agenda deadline may be presented during the hearing at the Inquiry Panel Chair's discretion.

B. Suspension After Pre-Suspension Notice

In the event that the licensee chooses not to request a pre-suspension hearing and is subsequently suspended, the Inquiry Panel shall:

1. Provide notice to the licensee of the suspension. Board staff shall give notice to the licensee by first class mail and shall send notice to the licensee's address of record pursuant to Board Rule 270;

2. Issue the notice within 72 hours of the suspension, excluding interim weekends and state holidays from the calculation; and,

3. Include within the notice a statement of the general nature of the issues that led to suspension. Such statement of the general nature of the issues that led to suspension need not be as comprehensive or detailed as a formal charging document in a hearing conducted pursuant to the Administrative Procedure Act.

C. Post-Suspension Notice

In the event that the Inquiry Panel determines that suspension without pre-suspension notice and hearing is warranted, the Inquiry Panel shall:

1. Provide notice to the licensee of the suspension. Board staff shall give notice to the licensee by first class mail and shall send notice to the licensee's address of record pursuant to Board Rule 270;

2. Issue the notice within 72 hours of the suspension, excluding interim weekends and state holidays from the calculation; and,

3. Include the following information:

    a. A statement of the general nature of the issues that led to suspension. Such statement of the general nature of the issues that led to suspension need not be as comprehensive or detailed as a formal charging document in a hearing conducted pursuant to the Administrative Procedure Act;

    b. A statement instructing that the licensee may request a hearing before the Inquiry Panel at its next meeting for the purpose of requesting that the suspension be set aside, but the licensee must make such a request prior to the Panel's next agenda deadline;

    c. A statement informing the licensee of the next regularly scheduled agenda deadline and the date and time of the next regularly scheduled meeting;

    d. A statement informing the licensee that written material, up to a limit of 30 pages, may be submitted by the same deadline;

    e. A statement that written material submitted by this deadline will be provided to the Inquiry Panel members prior to the meeting; and,

    f. A statement that written material not submitted by the agenda deadline may be presented during the hearing at the Inquiry Panel Chair's discretion.

II. SUSPENSIONS PURSUANT TO SECTION 12-36-118(5)(g)(IV), C.R.S.

In the event that the board determines that the suspension of a license is appropriate pursuant to section 12-36-118(5)(g)(IV), C.R.S., the Board may order suspension of the licensee's license until such time as the licensee complies with all conditions of the Final Agency Order.

In making the determination to suspend a license, the Board may take into consideration the licensee's prior disciplinary record. If the Board does take into consideration any prior discipline of the licensee, its findings and recommendations shall so indicate.

In the event that the Board orders suspension of a license pursuant to section 12-36-118(5)(g)(IV), C.R.S., the Board shall:

1. Provide notice to the licensee of the suspension. Board staff shall give notice to the licensee by first class mail and shall send notice to the licensee's address of record pursuant to Board Rule 270;

2. Issue the notice within 72 hours of the suspension, excluding interim weekends and state holidays from the calculation; and

3. Include the following information:

   a. A statement of the general nature of the issues that led to suspension. Such statement of the general nature of the issues that led to suspension need not be as comprehensive or detailed as a formal charging document in a hearing conducted pursuant to the Administrative Procedure Act;

   b. A statement instructing that the licensee may request a hearing before the Board for the limited purpose of showing that his or her failure to comply with the Stipulation and Final Agency Order was due to circumstances beyond his or her control, and that therefore his or her license should not be suspended. The licensee must make the request for hearing prior to the Panel's next agenda deadline;

   c. A statement informing the licensee of the next regularly scheduled agenda deadline and the date and time of the next regularly scheduled meeting;

   d. A statement informing the licensee that written material, up to a limit of 30 pages, may be submitted by the same deadline;

   e. A statement that written material submitted by this deadline will be provided to the Board prior to the meeting; and,

   f. A statement that written material not submitted by the agenda deadline may be presented during the hearing at the Inquiry Panel Chair's discretion.

III. SUSPENSIONS PURSUANT TO SECTION 12-36-118(8), C.R.S.

In the event that any licensee is determined to be mentally incompetent or insane by a court of competent jurisdiction and a court enters an Order making findings of such a degree that a licensee is incapable of continuing to practice, the Board shall automatically suspend the licensee's license pursuant to section 12-36-118(8), C.R.S.

Any suspension shall continue until the licensee is found by such court to be competent to practice.

A. When the Board orders suspension of a license pursuant to section 12-36-118(8), C.R.S., the Board shall:

   1. Provide notice to the licensee of the suspension. Board staff shall give notice to the licensee by first class mail and shall send notice to the licensee's address of record pursuant to Board Rule 270;

   2. Issue the notice within 72 hours of the suspension, excluding interim weekends and state holidays from the calculation; and,

3. Include the following information:

    a. A statement of the general nature of the issues that led to suspension. Such statement of the general nature of the issues that led to suspension need not be as comprehensive or detailed as a formal charging document in a hearing conducted pursuant to the Administrative Procedure Act;

    b. A statement instructing that the licensee may request a post-suspension hearing before the Inquiry Panel at its next meeting for the limited purpose of providing evidence that the licensee either has not been determined or is no longer determined to be incompetent or insane by a court and to request that the Suspension Order be set aside;

    c. A statement informing the licensee of the next regularly scheduled agenda deadline and the date and time of the next regularly scheduled meeting;

    d. A statement informing the licensee that written material, up to a limit of 30 pages, may be submitted by the same deadline;

    e. A statement that written material submitted by this deadline will be provided to the Inquiry Panel members prior to the meeting;

    f. A statement that written material not submitted by the agenda deadline may be presented during the hearing at the Inquiry Panel Chair's discretion; and,

    g. A statement that the licensee may make a request for a hearing at any time after the court makes a determination that the licensee is no longer determined by the court to be incompetent or insane. Such request, with any accompanying documents, shall be placed onto the agenda for the next regularly scheduled agenda deadline.

IV. SUSPENSIONS PURSUANT TO SECTION 12-36-118(9)(a), C.R.S.

In the event that an Inquiry Panel issues an Order to a licensee for the reasons articulated in section 12-36-118(9)(a), C.R.S., the licensee must submit to mental or physical examinations as determined by the Board.

When a licensee fails to comply with the Order for examination pursuant to section 12-36-118(9)(a), C.R.S., the Inquiry Panel may suspend the licensee's license until such time as the licensee complies with such conditions.

A. When the Inquiry Panel orders suspension of a license pursuant to section 12-36-118(9)(a), C.R.S., the Inquiry Panel shall:

    1. Provide notice to the licensee of the suspension. Board staff shall give notice to the licensee by first class mail and shall send notice to the licensee's address of record pursuant to Board Rule 270;

2. Issue the notice within 72 hours of the suspension, excluding interim weekends and state holidays from the calculation; and,

3. Include the following information:

   a. A statement of the general nature of the issues that led to suspension. Such statement of the general nature of the issues that led to suspension need not be as comprehensive or detailed as a formal charging document in a hearing conducted pursuant to the Administrative Procedure Act;

   b. A statement instructing that the licensee may request a post-suspension hearing before the Inquiry Panel at its next meeting for the purpose of requesting that the suspension be set aside, but the licensee must make such a request prior to the Panel's next agenda deadline;

   c. A statement informing the licensee of the next regularly scheduled agenda deadline and the date and time of the next regularly scheduled meeting;

   d. A statement informing the licensee that written material, up to a limit of 30 pages, may be submitted by the same deadline;

   e. A statement that written material submitted by this deadline will be provided to the Inquiry Panel members prior to the meeting; and,

   f. A statement that written material not submitted by the agenda deadline may be presented during the hearing at the Inquiry Panel Chair's discretion.

V. SUSPENSIONS PURSUANT TO SECTION 24-60-3602, C.R.S.

A. Section 24-60-3601, C.R.S. *et seq*. applies to licensees who have obtained expedited licensure through the Interstate Medical Licensure Compact.

B. Where Colorado is the licensee's state of principal license, as that term is identified in Section 24-60-3602, C.R.S., any suspension proceeding shall follow the procedures identified within this Rule 280 for the statutory basis on which the suspension action issued.

C. In the event that another state is the licensee's state of principal license, and that principal state suspends the license of a Colorado licensee, then the licensee's Colorado license shall be automatically placed on suspended status, without further action necessary by an Inquiry Panel, pursuant to Section 24-60-3602(10)(b), C.R.S.

   1. In the event that the state of principal license terminates the suspension of the license or otherwise reinstates the license issued by the principal state, an Inquiry Panel will review the matter at its next regularly-scheduled panel meeting to determine whether to terminate the suspension of the license or to

reinstate the license.

2. In the event that the Inquiry Panel does not terminate the suspension of the Colorado license following its review, the Inquiry Panel shall follow the procedures identified within this Rule 280 for the statutory basis on which the ongoing suspension action is based.

D. Where another member state, as that term is identified in Section 24-60-3602, C.R.S., acts to suspend the license of a licensee, the licensee's Colorado license shall be automatically placed on suspended status, without further action necessary by an Inquiry Panel, pursuant to Section 24-60-3602(10)(d), C.R.S.

1. The Inquiry Panel may maintain its suspension of the licensee's Colorado license for ninety (90) days in order to investigate the basis for the action.

2. The Inquiry Panel shall follow the procedures identified within this Rule 280 for the statutory basis on which the suspension action issued.

3. The Inquiry Panel may terminate the suspension of the licensee's Colorado license prior to the conclusion of the ninety (90) day period.

VI. GENERAL RULES APPLICABLE TO ALL HEARINGS

A. Licensee's Right To Hearing

Except as otherwise limited by Section V of this Rule, a licensee may request a hearing after any Suspension Order enters. The licensee shall make his or her request for a hearing in conformance with the scope and process described within this rule, based on the statutory basis for the suspension which has entered against the licensee.

B. Notice Of Time And Place Of Hearing

Upon timely receipt of a request for a hearing, whether before or after a suspension, Board staff shall notify the licensee of the time and place for the hearing. No licensee shall be permitted a hearing at any Board meeting absent written notice to do so from Board staff.

C. The Nature Of The Hearing

The hearing, whether before or after a suspension, shall be conducted by the Chair of the Inquiry Panel and shall be entirely informal. The hearing need not conform to the requirements of section 24-4-105, C.R.S. The hearing shall not be transcribed or recorded either by the Inquiry Panel or the licensee. The licensee may appear with counsel. Both the licensee and counsel may present argument and may comment on the previously submitted written material. The licensee may offer evidence through witnesses. Such testimony may be written or in person (including testimony by telephone) and need not be sworn. If the licensee intends to present testimony by telephone, it shall be coordinated with Board staff prior to the date of the hearing. Cross examination of the witnesses by the Panel members or counsel for the Panel may be permitted in the discretion of the Inquiry Panel's Chair. No hearing shall exceed 30 minutes, unless, in the discretion of the Inquiry Panel's Chair, additional time is necessary in the interests of a

fair hearing. Following the presentation of evidence and argument, the licensee, counsel to the licensee, and any witnesses or persons associated with the licensee shall depart the meeting room. The Inquiry Panel shall then deliberate. Following its deliberations, the Inquiry Panel shall instruct its counsel to communicate the Inquiry Panel's decision to the licensee in writing within 72 hours of the decision (excluding interim weekends and state holidays from the calculation).

The hearing conducted pursuant to these rules shall be a "hearing" as set forth in section 12-36-118(10), C.R.S. Nothing in these rules shall waive or limit the Inquiry Panel's ability to communicate with its counsel, orally or in writing, at any time, in confidence. Nothing in these rules or in the hearing called for by these rules shall waive any privilege on the part of the Board, Hearings Panel or Inquiry Panel. Specifically, but not by way of limitation, the Board, Hearings Panel or Inquiry Panel shall not be deemed to have waived its attorney-client or deliberative process privileges. The decision of the Inquiry Panel is not subject to appeal and shall not constitute "final agency action" as set out in section 24-4-102(1), C.R.S.

Effective: 04/01/99; Revised: 9/30/00; Revised: 8/15/02; Effective: 10/30/02; Revised 8/19/10; Effective 10/15/10; Revised 11/19/15, Effective 1/14/16; Revised 5/18/17, Effective 7/15/17; Revised 11/16/17, Effective

RULES AND REGULATIONS REGARDING SUSPENSIONS

Basis: The authority for the promulgation of these rules and regulations by the Colorado Medical Board ("Board") is set forth in Sections 24-4-103, 12-36-104(1)(a), and 12-36-118, C.R.S.

Purpose: The purpose of these rules and regulations is to provide a procedural safeguard for licensees whose licenses are suspended by the Board pursuant to sections 24-4-104(4), 24-60-3602(10), 12-36-118(5)(g)(IV), 12-36-118(8), or 12-36-118(9)(a), C.R.S. These rules are not intended to apply to the case of suspensions pursuant to Section 12-36-118(5)(g)(III), C.R.S. The procedures set forth in this rule are in addition to those provided by the Medical Practice Act and the Administrative Procedure Act.

I. SUSPENSIONS PURSUANT TO SECTION 24-4-104(4), C.R.S.

When an Inquiry Panel determines that the suspension of a license is appropriate pursuant to section 24-4-104(4), C.R.S., it shall offer the licensee an opportunity to appear before the Inquiry Panel to offer evidence supporting why the licensee should not be suspended. This hearing does not substitute for the hearing afforded by section 24-4-104(4), C.R.S., but is in addition to such hearing. The Inquiry Panel shall determine whether the opportunity for a hearing may occur before the Inquiry Panel's consideration of whether to suspend, or whether the opportunity for hearing shall occur after the entry of an order suspending a license. The determination of whether to offer a licensee notice of the right to a pre-suspension hearing or to offer a post-suspension hearing shall be in the sole discretion of the Inquiry Panel and shall not be subject to review.

A. Pre-Suspension Notice

In the event that the Inquiry Panel believes that suspension may be indicated, the Inquiry Panel shall:

1. Provide notice to the licensee of the suspension. Board staff shall give notice to the licensee by first class mail and shall send notice to the licensee's address of record pursuant to Board Rule 270;

2. Issue the notice within 72 hours of the suspension, excluding interim weekends and state holidays from the calculation; and,

3. Include the following information:

    a. A statement of the general nature of the issues that may warrant suspension. Such statement of the general nature of the issues that may warrant suspension need not be as comprehensive or detailed as

a formal charging document in a hearing conducted pursuant to the Administrative Procedure Act;

b. A statement instructing that the Inquiry Panel may suspend the licensee's license at its next meeting;

c. A statement that the licensee may request a hearing before the Inquiry Panel at its next meeting, but must do so prior to the Panel's next agenda deadline;

d. A statement informing the licensee of the next regularly scheduled agenda deadline and the date and time of the next regularly scheduled meeting;

e. A statement informing the licensee that written material, up to a limit of 30 pages, may be submitted by the same deadline; and,

f. A statement that written material submitted by this deadline will be provided to the Inquiry Panel members prior to the meeting;

g. A statement that written material not submitted by the agenda deadline may be presented during the hearing at the Inquiry Panel Chair's discretion.

B. Suspension After Pre-Suspension Notice

In the event that the licensee chooses not to request a pre-suspension hearing and is subsequently suspended, the Inquiry Panel shall:

1. Provide notice to the licensee of the suspension. Board staff shall give notice to the licensee by first class mail and shall send notice to the licensee's address of record pursuant to Board Rule 270;

2. Issue the notice within 72 hours of the suspension, excluding interim weekends and state holidays from the calculation; and,

3. Include within the notice a statement of the general nature of the issues that led to suspension. Such statement of the general nature of the issues that led to suspension need not be as comprehensive or detailed as a formal charging document in a hearing conducted pursuant to the Administrative Procedure Act.

C. Post-Suspension Notice

In the event that the Inquiry Panel determines that suspension without pre-suspension notice and hearing is warranted, the Inquiry Panel shall:

1. Provide notice to the licensee of the suspension. Board staff shall give notice to the licensee by first class mail and shall send notice to the licensee's address of record pursuant to Board Rule 270;

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    b. A statement instructing that the licensee may request a hearing before the Inquiry Panel at its next meeting for the purpose of requesting that the suspension be set aside, but the licensee must make such a request prior to the Panel's next agenda deadline;

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    e. A statement that written material submitted by this deadline will be provided to the Inquiry Panel members prior to the meeting; and,

    f. A statement that written material not submitted by the agenda deadline may be presented during the hearing at the Inquiry Panel Chair's discretion.

II. SUSPENSIONS PURSUANT TO SECTION 12-36-118(5)(g)(IV), C.R.S.

In the event that the board determines that the suspension of a license is appropriate pursuant to section 12-36-118(5)(g)(IV), C.R.S., the Board may order suspension of the licensee's license until such time as the licensee complies with all conditions of the Final Agency Order.

In making the determination to suspend a license, the Board may take into consideration the licensee's prior disciplinary record. If the Board does take into consideration any prior discipline of the licensee, its findings and recommendations shall so indicate.

In the event that the Board orders suspension of a license pursuant to section 12-36-118(5)(g)(IV), C.R.S., the Board shall:

1. Provide notice to the licensee of the suspension. Board staff shall give notice to the licensee by first class mail and shall send notice to the licensee's address of record pursuant to Board Rule 270;

2. Issue the notice within 72 hours of the suspension, excluding interim weekends and state holidays from the calculation; and

3. Include the following information:

   a. A statement of the general nature of the issues that led to suspension. Such statement of the general nature of the issues that led to suspension need not be as comprehensive or detailed as a formal charging document in a hearing conducted pursuant to the Administrative Procedure Act;

   b. A statement instructing that the licensee may request a hearing before the Board for the limited purpose of showing that his or her failure to comply with the Stipulation and Final Agency Order was due to circumstances beyond his or her control, and that therefore his or her license should not be suspended. The licensee must make the request for hearing prior to the Panel's next agenda deadline;

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III. SUSPENSIONS PURSUANT TO SECTION 12-36-118(8), C.R.S.

In the event that any licensee is determined to be mentally incompetent or insane by a court of competent jurisdiction and a court enters an Order making findings of such a degree that a licensee is incapable of continuing to practice, the Board shall automatically suspend the licensee's license pursuant to section 12-36-118(8), C.R.S.

Any suspension shall continue until the licensee is found by such court to be competent to practice.

A. When the Board orders suspension of a license pursuant to section 12-36-118(8), C.R.S., the Board shall:

   1. Provide notice to the licensee of the suspension. Board staff shall give notice to the licensee by first class mail and shall send notice to the licensee's address of record pursuant to Board Rule 270;

   2. Issue the notice within 72 hours of the suspension, excluding interim weekends and state holidays from the calculation; and,

3. Include the following information:

    a. A statement of the general nature of the issues that led to suspension. Such statement of the general nature of the issues that led to suspension need not be as comprehensive or detailed as a formal charging document in a hearing conducted pursuant to the Administrative Procedure Act;

    b. A statement instructing that the licensee may request a post-suspension hearing before the Inquiry Panel at its next meeting for the limited purpose of providing evidence that the licensee either has not been determined or is no longer determined to be incompetent or insane by a court and to request that the Suspension Order be set aside;

    c. A statement informing the licensee of the next regularly scheduled agenda deadline and the date and time of the next regularly scheduled meeting;

    d. A statement informing the licensee that written material, up to a limit of 30 pages, may be submitted by the same deadline;

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    f. A statement that written material not submitted by the agenda deadline may be presented during the hearing at the Inquiry Panel Chair's discretion; and,

    g. A statement that the licensee may make a request for a hearing at any time after the court makes a determination that the licensee is no longer determined by the court to be incompetent or insane. Such request, with any accompanying documents, shall be placed onto the agenda for the next regularly scheduled agenda deadline.

IV. SUSPENSIONS PURSUANT TO SECTION 12-36-118(9)(a), C.R.S.

In the event that an Inquiry Panel issues an Order to a licensee for the reasons articulated in section 12-36-118(9)(a), C.R.S., the licensee must submit to mental or physical examinations as determined by the Board.

When a licensee fails to comply with the Order for examination pursuant to section 12-36-118(9)(a), C.R.S., the Inquiry Panel may suspend the licensee's license until such time as the licensee complies with such conditions.

A. When the Inquiry Panel orders suspension of a license pursuant to section 12-36-118(9)(a), C.R.S., the Inquiry Panel shall:

    1. Provide notice to the licensee of the suspension. Board staff shall give notice to the licensee by first class mail and shall send notice to the licensee's address of record pursuant to Board Rule 270;

2. Issue the notice within 72 hours of the suspension, excluding interim weekends and state holidays from the calculation; and,

3. Include the following information:

   a. A statement of the general nature of the issues that led to suspension. Such statement of the general nature of the issues that led to suspension need not be as comprehensive or detailed as a formal charging document in a hearing conducted pursuant to the Administrative Procedure Act;

   b. A statement instructing that the licensee may request a post-suspension hearing before the Inquiry Panel at its next meeting for the purpose of requesting that the suspension be set aside, but the licensee must make such a request prior to the Panel's next agenda deadline;

   c. A statement informing the licensee of the next regularly scheduled agenda deadline and the date and time of the next regularly scheduled meeting;

   d. A statement informing the licensee that written material, up to a limit of 30 pages, may be submitted by the same deadline;

   e. A statement that written material submitted by this deadline will be provided to the Inquiry Panel members prior to the meeting; and,

   f. A statement that written material not submitted by the agenda deadline may be presented during the hearing at the Inquiry Panel Chair's discretion.

V. SUSPENSIONS PURSUANT TO SECTION 24-60-3602, C.R.S.

A. Section 24-60-3601, C.R.S. *et seq*. applies to licensees who have obtained expedited licensure through the Interstate Medical Licensure Compact.

B. Where Colorado is the licensee's state of principal license, as that term is identified in Section 24-60-3602, C.R.S., any suspension proceeding shall follow the procedures identified within this Rule 280 for the statutory basis on which the suspension action issued.

C. In the event that another state is the licensee's state of principal license, and that principal state suspends the license of a Colorado licensee, then the licensee's Colorado license shall be automatically placed on suspended status, without further action necessary by an Inquiry Panel, pursuant to Section 24-60-3602(10)(b), C.R.S.

   1. In the event that the state of principal license terminates the suspension of the license or otherwise reinstates the license issued by the principal state, an Inquiry Panel will review the matter at its next regularly-scheduled panel meeting to determine whether to terminate the suspension of the license or to

reinstate the license.

2. In the event that the Inquiry Panel does not terminate the suspension of the Colorado license following its review, the Inquiry Panel shall follow the procedures identified within this Rule 280 for the statutory basis on which the ongoing suspension action is based.

D. Where another member state, as that term is identified in Section 24-60-3602, C.R.S., acts to suspend the license of a licensee, the licensee's Colorado license shall be automatically placed on suspended status, without further action necessary by an Inquiry Panel, pursuant to Section 24-60-3602(10)(d), C.R.S.

1. The Inquiry Panel may maintain its suspension of the licensee's Colorado license for ninety (90) days in order to investigate the basis for the action.

2. The Inquiry Panel shall follow the procedures identified within this Rule 280 for the statutory basis on which the suspension action issued.

3. The Inquiry Panel may terminate the suspension of the licensee's Colorado license prior to the conclusion of the ninety (90) day period.

VI. GENERAL RULES APPLICABLE TO ALL HEARINGS

A. Licensee's Right To Hearing

Except as otherwise limited by Section V of this Rule, a licensee may request a hearing after any Suspension Order enters. The licensee shall make his or her request for a hearing in conformance with the scope and process described within this rule, based on the statutory basis for the suspension which has entered against the licensee.

B. Notice Of Time And Place Of Hearing

Upon timely receipt of a request for a hearing, whether before or after a suspension, Board staff shall notify the licensee of the time and place for the hearing. No licensee shall be permitted a hearing at any Board meeting absent written notice to do so from Board staff.

C. The Nature Of The Hearing

The hearing, whether before or after a suspension, shall be conducted by the Chair of the Inquiry Panel and shall be entirely informal. The hearing need not conform to the requirements of section 24-4-105, C.R.S. The hearing shall not be transcribed or recorded either by the Inquiry Panel or the licensee. The licensee may appear with counsel. Both the licensee and counsel may present argument and may comment on the previously submitted written material. The licensee may offer evidence through witnesses. Such testimony may be written or in person (including testimony by telephone) and need not be sworn. If the licensee intends to present testimony by telephone, it shall be coordinated with Board staff prior to the date of the hearing. Cross examination of the witnesses by the Panel members or counsel for the Panel may be permitted in the discretion of the Inquiry Panel's Chair. No hearing shall exceed 30 minutes, unless, in the discretion of the Inquiry Panel's Chair, additional time is necessary in the interests of a

fair hearing. Following the presentation of evidence and argument, the licensee, counsel to the licensee, and any witnesses or persons associated with the licensee shall depart the meeting room. The Inquiry Panel shall then deliberate. Following its deliberations, the Inquiry Panel shall instruct its counsel to communicate the Inquiry Panel's decision to the licensee in writing within 72 hours of the decision (excluding interim weekends and state holidays from the calculation).

The hearing conducted pursuant to these rules shall be a "hearing" as set forth in section 12-36-118(10), C.R.S. Nothing in these rules shall waive or limit the Inquiry Panel's ability to communicate with its counsel, orally or in writing, at any time, in confidence. Nothing in these rules or in the hearing called for by these rules shall waive any privilege on the part of the Board, Hearings Panel or Inquiry Panel. Specifically, but not by way of limitation, the Board, Hearings Panel or Inquiry Panel shall not be deemed to have waived its attorney-client or deliberative process privileges. The decision of the Inquiry Panel is not subject to appeal and shall not constitute "final agency action" as set out in section 24-4-102(1), C.R.S.

Effective: 04/01/99; Revised: 9/30/00; Revised: 8/15/02; Effective: 10/30/02; Revised 8/19/10; Effective 10/15/10; Revised 11/19/15, Effective 1/14/16; Revised 5/18/17, Effective 7/15/17; Revised 11/16/17, Effective

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Office of the Attorney General

Tracking number: 2017-00448

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - Colorado Medical Board

on 11/16/2017

3 CCR 713-18

RULE 280 - SUSPENSIONS

The above-referenced rules were submitted to this office on 11/17/2017 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.

November 29, 2017 12:51:19

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Real Estate

CCR number

4 CCR 725-2

Rule title

4 CCR 725-2 RULES OF THE COLORADO BOARD OF REAL ESTATE APPRAISERS 1 - eff 01/01/2018

Effective date

01/01/2018

DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
BOARD OF REAL ESTATE APPRAISERS
4 CCR 725-2

CHAPTER 11: STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE

11.1 The USPAP was adopted and incorporated by reference in Board Rule 1.10. The 2016-2017 edition of the USPAP, incorporating the amendments made through February 6, 2015 will remain in effect through December 31, 2017. Beginning January 1, 2018, the 2018-2019 edition of the USPAP will be in effect.

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Tracking number: 2017-00443

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Real Estate

on 11/02/2017

4 CCR 725-2

RULES OF THE COLORADO BOARD OF REAL ESTATE APPRAISERS

The above-referenced rules were submitted to this office on 11/02/2017 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.

November 17, 2017 10:55:40

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Real Estate

CCR number

4 CCR 725-2

Rule title

4 CCR 725-2 RULES OF THE COLORADO BOARD OF REAL ESTATE APPRAISERS 1 - eff 01/01/2018

Effective date

01/01/2018

DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
BOARD OF REAL ESTATE APPRAISERS
4 CCR 725-2

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CHAPTER 1: DEFINITIONS

1.10 Uniform Standards of Professional Appraisal Practice (USPAP): Those standards of professional practice promulgated by the ASB of TAF. Pursuant to section 12-61-713(1)(g), C.R.S. as amended, the Board adopts, and incorporates by reference in compliance with section 24-4-103(12.5), C.R.S., as the generally accepted standards of professional appraisal practice the Definitions, Preamble, Rules, Standards, and Standards Rules of the USPAP as promulgated by the ASB of TAF on January 30, 1989 and amended through February 3, 2017 and known as the 2018-2019 edition. Amendments to the USPAP subsequent to February 3, 2017 are not included in this Board Rule 1.10. A certified copy of the USPAP is on file and available for public inspection at the Office of the Board at 1560 Broadway, Suite 925, Denver, Colorado 80202. Copies of the USPAP adopted under this Rule may be examined at any state publications depository library. The 2018-2019 edition of the USPAP may be examined at the Internet website of TAF at www.appraisalfoundation.org, and copies may be ordered through that mechanism. TAF may also be contacted at 1155 15th Street, NW, Suite 1111, Washington, DC 20005, or by telephone at (202) 347-7722 or by telefax at (202) 347-7727.

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Office of the Attorney General

Tracking number: 2017-00442

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Real Estate

on 11/02/2017

4 CCR 725-2

RULES OF THE COLORADO BOARD OF REAL ESTATE APPRAISERS

The above-referenced rules were submitted to this office on 11/02/2017 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.

November 17, 2017 10:54:12

Cynthia H. Coffman
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by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Personnel and Administration

Agency

State Personnel Board and State Personnel Director

CCR number

4 CCR 801-1

Rule title

4 CCR 801-1 STATE PERSONNEL BOARD RULES AND PERSONNEL DIRECTOR'S ADMINISTRATIVE PROCEDURES 1 - eff 01/01/2018

Effective date

01/01/2018

Preamble

Unless otherwise noted in a specific provision, the State Personnel Director's Administrative Procedures were adopted by the State Personnel Director on May 2005, pursuant to a Statement of Basis & Purpose dated May 5, 2005. Such rules and procedures were effective July 1, 2005. This version reflects rulemaking by the State Personnel Director as follows: To modify Procedures 2-10, 3-6, 3-7, 3-8, 3-9, 3-11, 3-14, 3-18, 3-19, 3-32, 3-33, 3-43, 3-44, 3-45, 3-50, 3-52, 7-6, 7-11, 7-14 and to repeal Procedures 3-47 and 3-53 effective January 1, 2018.

Chapter 2 Jobs

Authority for rules promulgated in this chapter is found in §24-50-101(3)(d), 24-50-104(1)(b), 24-50- 104(5)(c), 24-50-104(6)(a) and (b), 24-50-104(9)(b), 24-50-109.5, and 24-50-135(2), C.R.S. Board rules are identified by cites beginning with "Board Rule".

Job Evaluation System

2-1. The Director shall establish standards regarding the creation and maintenance of the job evaluation system(s) and allocation of positions, including subsequent allocation appeals, based on generally accepted techniques and standards in the profession which are uniformly applied to similarly situated employees.

2-2. System maintenance studies create, amend, or abolish classes and/or include pay grade assignments. A study may include the review of all affected positions for placement in the proper new class. No allocation or appointment may be made to a proposed class until it is approved as final on a date determined by the Director. The results are not subject to appeal but are subject to "meet and confer" if requested.

2-3. Changes from system maintenance studies shall be published as proposed. Appointing authorities are responsible for the timely distribution of this information.

Board Rule 2-4. Examination ("Employment and Status" chapter) and layoff ("Separation" chapter) rules do not apply to class placement as part of system maintenance studies.

Individual Position Review

2-5. New positions must be allocated to the proper class before any further personnel action is taken.

2-6. The Director, or a delegated authority, may request a job description and evaluate a position at any time to determine the proper class.

2-7. Each position shall have an accurate official (signed by the appointing authority) job description. Appointing authorities are responsible for providing an accurate official job description for each position to the department's human resources office and a copy to the employee. Only an accurate official job description is used to allocate a position to the proper class by the department's human resources office. (5/1/10)

A. An appointing authority must submit the accurate official job description and any evaluation request to the department's human resources office within six months when permanent changes are made to a position's assignment.

1. An employee may request an evaluation of his or her position if permanent changes are made and the job description has not been evaluated or updated within the previous 12 months.

2. The employee's request must be made to the appointing authority who shall submit the request, along with the accurate official job description, to the department's human resources office.

2-8. Positions shall be reviewed as expeditiously as possible according to the department's established procedures and practices. If the evaluation takes longer than 12 months from receipt by the proper evaluator and the position is allocated upward, the department must pay the difference in base pay for the period beyond the 12 months.

2-9. If a filled position is allocated to a lower pay grade, the affected employee in the position may appeal to the Director in accordance with the "Dispute Resolution" chapter. If the employee's appeal is successful, the effective date is the date of the original allocation decision.

2-10. The effective date of an allocation for a filled position shall be after completion of the selection process. Vacant positions are effective when the allocation decision is made.

A. If a filled position is allocated upward, an appointment shall be made in accordance with selection provisions. If the incumbent does not qualify or is not appointed, refer to the reallocation section of the "Separation" chapter. (1/1/18)

B. If a filled position is allocated downward, the following applies:

1. a qualified certified or probationary employee is permitted to voluntarily demote to the position. The certified employee will be offered, in writing, the choice of the voluntary demotion or retention rights, as applicable pursuant to 24-50-124(1)(a). If there is no response by the specified date in the written offer, the employee is deemed to have accepted the demotion and waived retention rights. Only after the election is made to exercise retention rights will the certified employee be processed under the "Separation" chapter, including notice of specific retention rights; (3/30/13)

2. a conditional employee may revert to a position in a class in which certified. If not certified in another class, but qualified for the new class and no eligible list exists, the employee may be conditionally appointed to the position;

3. a provisional employee may be appointed to the position if qualified and no employment list exists.

C. If a position is allocated to a different class with the same grade maximum, the employee who is qualified shall be transferred. If the incumbent is not qualified, refer to the reallocation section of the “Separation” chapter. (1/1/18)

Chapter 3 - Compensation

Authority for rules promulgated in this chapter is found in one or more of the following: the State of Colorado Constitution Article XII, Section 13, State of Colorado Revised Statutes (C.R.S.) §24-50-104 (1)(a), (b), (c), (e), (f), (4), (5), (6), (9), and 24-50-104.5(1), 109.5, 136, 137, and 208, C.R.S. Board rules are identified by cites beginning with “Board Rule”.

General Principles

3-1. The Department of Personnel shall establish rules governing compensation for the state personnel system. Compensation practices shall provide for equitable treatment of similarly situated employees.

3-2. Pay grades shall reflect prevailing labor market compensation and any other pertinent considerations. No individual employee’s base pay shall be less than the minimum of the grade or exceed a statutory lid. In the case of disciplinary action, base pay may be less than the minimum of the grade for a period not to exceed 12 months, subject to FLSA requirements.

Annual Compensation Survey

3-3. The Department of Personnel shall conduct the annual compensation survey. The Director shall establish and publish the distribution of annual compensation changes among salaries, including establishment of statewide priority groups and group benefit contributions, which shall be effective as provided by law. (9/1/12)

3-4. When upward pay grade changes are implemented, the grade minimum and maximum shall be adjusted and no employee shall be paid outside of the new grade, except in disciplinary actions resulting in salary temporarily below the new minimum and continuation of saved pay above the new maximum. (7/1/07)

3-5. If pay grade changes are downward, employees’ base pay shall remain unchanged, subject to the statutory three-year limitation on saved pay.

Pay Rates

3-6. The Department of Personnel shall publish the annual pay plan. Departments shall use an hourly rate based on an annual salary to compensate employees who do not work a predetermined or full schedule. (1/1/18)

3-7. Saved pay applies to downward movements due to individual allocation, system maintenance studies, and the annual compensation survey to maintain an employee’s current base pay when it falls above the new grade maximum. It may also apply when

retention rights are exercised pursuant to the “Separation” chapter. In no case shall the employee’s base pay remain above the grade maximum after three years from the action, even if it results in a loss in pay. (1/1/18)

3-8. Unless authorized by the Director, the rate resulting from multiple actions effective on the same date shall be computed in the following order. The Director may withhold salary adjustments for any employee with a final overall rating of needs improvement, except as provided in 3-4. (7/1/07)

1. System maintenance studies.

2. Upward, downward, or lateral movements.

3. Repealed. (8/1/08)

4. Changes in pay grade minimums and maximums to implement approved annual compensation changes to the pay structure.

5. Across-the-board increases authorized by the General Assembly. (1/1/18)

6. Adjustments to the base pay of employees due to merit pay in approved annual compensation changes, subject to the new grade maximum and 3-19(C)(1)(a). (1/1/18)

7. Bring salaries to the new grade minimum as a result of compensation survey pay grade changes, except in disciplinary actions. (1/1/18)

8. Non-base merit payments (based on new annual salary). (1/1/18)

3-9. The appointing authority shall determine the hiring salary within the pay grade for a new employee, including one returning after resignation, which is typically the grade minimum unless recruitment difficulty or other unusual conditions exist. (7/1/06)

A. Recruitment difficulty means difficulty in obtaining qualified applicants or an inadequate number of candidates to promote competition despite recruitment efforts.

B. Unusual conditions exist when the position requires experience and competencies beyond the entry level or the best candidate cannot be obtained by hiring at the minimum of the pay grade. (1/1/18)

C. The appointing authority’s determination shall consider such factors as, but not limited to, labor market supply, recruitment efforts, nature of the assignment and required competencies, qualifications and salary requirements of the best candidate, salaries of current and recently hired employees in similar positions in the department, available funds and the long-term impact on personal services budgets of hiring above the minimum of the pay grade.

3-10. In the case of fiscal emergency or other budget reasons, an employee may agree to voluntarily reduce current base pay, which shall be approved in writing by the appointing authority and employee. If funds become available at a later date, the department may restore base pay to any rate up to, and including, the former base pay. This policy shall not be used to substitute for other provisions in this chapter.

3-11. When an unclassified position is brought into the state personnel system, the base pay for an employee appointed to the position shall be computed in accordance with the Department of Personnel's directives that shall ensure that total compensation is preserved to the greatest extent possible, except that base pay shall not exceed the grade maximum. (1/1/18)

Downward Adjustments

3-12. Downward movement is a change to a different class with a lower range maximum (e.g., non-disciplinary or disciplinary demotions, individual allocations, system maintenance studies including class placement, or the annual compensation survey).

3-13. In the case of system maintenance studies and individual allocations of positions, the employee's base pay shall remain the same, including saved pay.

A. A department head has sole discretion to grant saved pay when employees exercise retention rights and the decision must be applied consistently throughout the retention area. If saved pay is granted, the employee's name shall not be placed on a reemployment list. (7/1/07)

3-14. In the case of other downward movements, the base pay shall not be above the maximum in the new grade.

A. Upon reversion of a trial service employee to the previously certified class, base pay shall be the amount the employee would be making had the promotion or reinstatement not occurred. (1/1/14)

Upward Adjustments

3-15. Upward movement is a change to a different class with a higher range maximum (e.g., promotions, individual allocations, system maintenance studies including class placement, or the annual compensation survey).

3-16. In the case of system maintenance studies, employees' base pay shall remain the same. If the Director finds that severe and immediate recruitment and retention problems make it imperative to increase pay to maintain critical services, the Director may order that base pay be increased up to the percentage increase for the new class.

3-17. In the case of other upward movements, the employee's base pay may increase or remain the same, in which case the employee would receive the economic opportunity by moving to the new grade. In no case shall the new base rate be lower than the minimum, except in disciplinary actions, or higher than the maximum of the new grade. Continuation of a salary increase is subject to satisfactory completion of the trial service period.

A. When conditional employees move upward, the base pay shall be computed based on the certified class.

Lateral Adjustments

3-18. Lateral movement is a change to a different class or position with the same range maximum (e.g., transfers, individual allocations, system maintenance studies including class placement), or an in-range salary movement in the same class and position. Base pay can be offered at a rate that falls within the pay range of the class and does not exceed the grade maximum. In addition, in-range salary movements are subject to the provisions below. (1/1/14)

In-Range Salary Movements. A department may use these discretionary movements to increase base salaries of permanent employees who remain in their current classes and positions when there is a critical need not addressed by any other pay mechanism. The use of in-range salary movements is not guaranteed and shall be funded within existing budgets. These movements shall not be retroactive and unless specifically noted in these rules, frequency is limited to one in-range salary movement in a 12-month period. No aspect of granting these movements is subject to grievance or appeal, except for alleged discrimination; however, an alleged violation of the department's plan can be disputed. A department's decision in the dispute is final and no further recourse is available. Once granted, a reduction in base salary is subject to appeal. Departments must develop a written plan addressing appropriate criteria for the use of any movement based on sound business practice and needs, e.g., eligibility, funding sources, approval requirements, measures to ensure consistent use. The plan must be communicated within the department and a copy provided to the Director prior to implementation. If granted, there must be an individual written agreement between the employee and the appointing authority that stipulates the terms and conditions of the movement. Records of any aspect of these movements shall be provided to the Director when requested. (02/2017)

A. Salary Range Compression. Used as a salary leveling increase where longer-term or more experienced employees are paid lower in the range for the class than new hires or less experienced employees over a period of time resulting in documented retention difficulties. Thus, there is a valid need to increase one or more employee's base salary in the class to recognize contributions equal to or greater than the newly hired or less experienced employees. Justification shall be required based on facts. To be eligible, an employee must be performing satisfactorily as evidenced by the most recent final overall performance rating. The increase may be up to 10 percent or the maximum permitted by the department's policy on hiring salaries, whichever is greater, and subject to the pay grade maximum. (9/1/12)

B. Counteroffer. Used when an employee with critical, strategic skills receives a higher salary offer from another department or outside employer and the appointing authority needs to increase the employee's base salary for retention purposes. To be eligible, an employee must be performing satisfactorily as evidenced by the most recent final overall performance rating. Written confirmation of the other entity's salary offer is required. The increase may be up

to 10 percent or the maximum permitted by the department's policy on promotional pay, whichever is greater, and subject to the pay grade maximum.

C. Delayed Transfer or Promotional Pay Increase. Used when a transfer or promotion is made with no salary increase or partial salary increase because performance expectations are unproven and/or funds may be unavailable at the time of transfer or promotion. This is a one-time base salary increase within 12 months of the date of transfer or promotion when funds become available and the employee's contributions are fulfilled. The intent to provide a later salary increase must be documented at the time of the transfer or promotion. To be eligible, an employee must be performing satisfactorily as evidenced by the most recent final overall performance rating. The increase may be up to 10 percent or the maximum amount permitted in the department's policy on transfer or promotional pay increases, whichever is greater, and subject to the pay grade maximum. Transfer, promotion, demotion, or separation of the employee will negate the delayed increase. (1/1/18)

D. New Hires. Used at the time an employee is hired when performance expectations are unproven and/or funds may be unavailable. This is a one-time base salary increase within 12 months of hire. The intent to provide a later salary increase must be documented at the time of hire. To be eligible, early satisfactory completion of specified training objectives must be documented. This is limited to a one-time increase up to 10 percent or the maximum permitted by the department's policy on promotional pay increases, whichever is greater, and subject to the pay grade maximum. Transfer, promotion, demotion, or separation of the employee will negate the delayed increase. (02/2017)

E. Competency-Based Increase. Used when an employee applies the complete set, or a subset, of competencies required to successfully perform the work of a specific position. Required competencies must be specifically defined with deadlines and evaluation criteria for achievement, and must be communicated in writing to the employee prior to granting an increase. Competencies that are the basis for this increase must be required to perform permanent, essential functions assigned to the position. The intent of this increase is to promote career development by aligning pay increases with achieving all required competencies to fully perform the job. Increases are limited to no more than two per 12-month period. This type of increase shall not be applied as a substitute for Merit Pay. To be eligible, an employee must demonstrate required competencies as evidenced by a written evaluation by the appointing authority. The increase may be up to 10 percent or the maximum permitted by the department's policy, whichever is greater, and subject to the pay grade maximum. (02/2017)

Merit Pay (9/1/12)

3-19. Merit pay consists of both base and non-base building adjustments. Any permanent employee is eligible for merit pay, except as provided below and as otherwise provided in this chapter. Prior to the payment of merit pay, the Director shall specify and publish the percentage for any merit pay increase for applicable priority groups. Adjustments are effective on July 1. The employee must be employed on July 1 to receive payment. The

employee's current department as of July 1 is responsible for payment, unless arrangements are made whereas the transferring department will provide full payment of a portion of any non-base building merit pay increase. (1/1/18)

A. If the final overall rating is needs improvement, the employee is ineligible for any merit pay. Merit pay shall not be denied because of a corrective or disciplinary action issued for an incident after the close of the previous performance cycle. (9/1/12)

B. Employees hired into the state personnel system during the performance evaluation cycle shall receive a prorated portion of any base or non-base building merit pay. The proration shall be based on the number of calendar months worked. (1/1/18)

C. Base building merit pay shall be based on final performance evaluation and salary position within the pay range on June 1. (1/1/18)

1. Payment of base building merit pay shall not cause an employee's base pay to exceed the grade maximum, and is paid as regular salary. (9/1/12)

a. The payment of any remaining portion of base building merit pay that would cause base pay to exceed grade maximum shall be paid as a onetime, non-base building lump sum in the July payroll. The statutory salary lid does not apply to such a payment. (1/1/14)

2. Payment of base building market pay shall be a comparison of state personnel system salaries to market salaries for the purpose of measuring competitiveness. Market shall result in base building increases to pay, only when an employee's salary is below a newly adjusted pay range minimum. (9/1/12)

D. Non-base building merit pay shall be a non-base building or one-time lump sum payment and shall be calculated after any annual compensation adjustments, including base building merit pay. (1/1/18)

1. Non-base building merit pay must be earned each year and shall be paid as a one-time lump sum in the July payroll. The grade maximum and statutory lid do not apply to non-base building merit pay. (9/1/12)

a. An employee must be employed on the date of the payment in order to be eligible to receive a non-base building merit payment. (9/1/12)

E. Base building or non-base building merit pay may be provided to employees, at a department's discretion if approved by the Governor's Office of State Planning and Budgeting, when funded from a department's state employee reserve fund using department reversions. These discretionary merit payments shall only be

paid to certified employees, in order of priority grouping established by the Director. (1/1/18)

1. Base building merit pay increases funded from a department's state employee reserve fund shall be provided only if the department can justify sustainability as determined by the Governor's Office of State Planning and Budgeting. (9/1/12)

2. Merit pay increases funded from a department's state employee reserve fund shall not be provided more than once in a 12-month period per employee. 9/1/12)

3. Repealed. (1/1/18)

F. Repealed. (1/1/18)

Incentives

3-20. Departments are strongly encouraged to use incentives. (7/1/06)

3-21. An appointing authority may grant an immediate non-base cash or non-cash incentive award to an employee in recognition of special accomplishments or contributions throughout the year or to augment merit pay, e.g., on-the-spot cash awards, work-life options, or administrative leave, in accordance with a department's established incentive plan. Other than augmenting merit pay, incentives shall not be used to supplement or substitute for annual compensation adjustments or other base pay movements. The statutory salary lid does not apply to these incentives. (9/1/12)

A. Departments must have an incentive plan prior to the use of incentives. Such plans shall include eligibility criteria, the types of incentives allowed, cash amounts or limits and payment methods, and a communication plan. Such plans shall be developed with the input of employees and managers.

1. If a department uses a type of incentive that shares cost savings from innovations, the following applies.

a. Employees are ineligible if they are wholly responsible for control and operation of a division (or equivalent), the primary assignment includes responsibility for identifying efficiencies and cost reductions, or the position has statewide program or budget authority.

b. Savings are the result of innovative ideas that increase productivity and service levels while decreasing costs. Savings are not the result of normal progressive business evolution, obvious solutions to mandated budget cuts, cost avoidance or revenue enhancement, nor do they have adverse cost impact on other departments.

c. Savings are the difference between anticipated expenditures prior to implementation and actual expenditures following implementation for a full 12-month period. The complete award amount shall be no more than 10 percent of the first year's savings, not to exceed a total of $1,000 per employee.

3-22. Repealed. (8/1/08)

3-23. Repealed. (8/1/08)

Medical Plan

3-24. Employees in the medical pay plan shall be compensated based solely on performance as established in the required annual contract to be negotiated by July 1 of the contract year, or within 30 days of hire or movement within the medical pay plan for the remainder of the contract year. Employees are not eligible for any pay adjustments, such as merit pay. Current performance contracts may be modified during the contract year but not compensation. Change in compensation shall only occur at the end of a contract period, unless an employee moves to another position, and may increase, decrease, or remain unchanged from the previous year. In the case of upward or downward movement in the medical pay plan, compensation must be no lower than the minimum or higher than the maximum rates of the new grade and a new contract must be negotiated for the remainder of the contract year. (9/1/12)

A. If no contract is negotiated, the existing contract continues and base pay stays the same until a new contract is negotiated. Employees in the medical pay plan may grieve the rate unless it is lower, which is then subject to appeal. If the employee moves into or out of the medical pay plan into another open-range class, the base pay shall be negotiated subject to the grade maximum of the new class.

FLSA and Overtime

3-25. All employees are covered by the Fair Labor Standards Act (FLSA). Under FLSA, the state is considered to be a single employer. Employees cannot waive their rights under FLSA.

3-26. All full-time employees work a minimum of 40 hours during a standard workweek (168 consecutive hours in seven consecutive days). Appointing authorities may adopt different work periods for law enforcement and health care employees as permitted by federal law. (8/1/08) 3-27. Overtime is the time a non-exempt employee works in excess of the 40 hours during a standard workweek or in excess of established work hours in adopted work periods for law enforcement and health care employees. Such excess hours are paid at 1½ times the employee's regular hourly base pay rate, including applicable premium pay. Monetary payment must be made by the next regularly scheduled payday following the pay period in which it was worked. (8/1/08)

3-27. Overtime is the time a non-exempt employee works in excess of the 40 hours during a standard workweek or in excess of established work hours in adopted work periods for

law enforcement and health care employees. Such excess hours are paid at 1½ times the employee's regular hourly base pay rate, including applicable premium pay. Monetary payment must be made by the next regularly scheduled payday following the pay period in which it was worked. (8/1/08)

A. Overtime for non-exempt employees shall be approved in accordance with a department's procedure. A department head shall establish a policy to address unauthorized overtime work; however, prohibition of unauthorized overtime does not avoid the requirement to pay if it is actually worked.

B. Compensatory time in lieu of monetary payment is allowed if there is a written agreement between the department and any employee hired after April 15, 1986. Written agreements for those hired prior to April 15, 1986, are unnecessary provided that the department had a regular practice in place for granting compensatory time. Acceptance of compensatory time may be a condition of employment for new employees. Appointing authorities must ensure that compensatory time is scheduled as soon as practical. Compensatory time shall not exceed 240 hours (or 480 hours for law enforcement) and any additional overtime must be paid at the next regular pay period. If a department wants to place limits on the accrual or payment of compensatory time, a policy must be developed and communicated prior to use and on an ongoing basis. Unused compensatory time at termination or transfer to another department must be paid at that time.

Eligibility

3-28. Department heads are responsible for determining if each position is exempt or non-exempt based on the actual duties performed regardless of class. Determinations must be entered into the payroll system and a record kept on file.

3-29. An exempt employee's pay is not subject to reduction except as follows. Deductions in increments of one day are allowed for a major workplace rule violation. Deductions are allowed for any amount of time if a leave of absence was not requested or was denied and accrued leave is not used; or is covered by the Family and Medical Leave Act (FMLA); or accrued leave is exhausted; or for voluntary furlough. In the case of mandatory furloughs for budgetary reasons, exempt status is not changed, except for the workweek in which the furlough occurs and pay is reduced. Improper reductions make the employee non-exempt. (7/1/06)

3-30. Exempt employees shall not be granted extra pay for hours worked in excess of 40 hours in a workweek. An appointing authority may grant discretionary administrative leave or other incentives but such awards shall not be tied to hours worked. (7/1/06)

3-31. An employee may request a review of a decision regarding eligibility, calculation of overtime hours, and payment to the Director in accordance with the "Dispute Resolution" chapter.

Dual Employment

3-32. In a properly authorized dual employment arrangement, the written agreement shall include the exemption status designation based on the combined duties, the department responsible for paying any overtime, and the overtime hourly rate. The overtime rate, if applicable, is either the regular rate from one of the jobs or a weighted rate from both jobs. Work time from both jobs is combined to calculate overtime. (1/1/18)

Work Hours

3-33. In order to minimize overtime liability, appointing authorities may deny, delay, or cancel leave before it is taken. Appointing authorities may require the use of accrued compensatory time but cannot schedule compensatory time if that will make an employee forfeit annual leave at the end of the fiscal year. (1/1/18)

3-34. Compensatory time is not leave, but a form of compensation. Therefore, it is not included in the calculation of work hours for overtime purposes.

3-35. Overtime does not accrue until a non-exempt employee works more than the maximum hours allowed in a workweek or designated work period. All time worked must be recorded on a daily basis. Overtime is calculated based on the total time worked in the workweek or designated work period, rounded to the nearest quarter hour. If operational needs require an employee to regularly report to work early or leave late, that time is counted as work hours for weekly overtime purposes.

3-36. Essential, non-exempt positions, as designated by a department head, shall have paid leave counted as work time. Essential positions perform law enforcement, highway maintenance, and support services directly responsible for the health, safety, and welfare of patients, residents, students, and inmates.

3-37. Scheduled meal periods are discretionary. Scheduled meal periods are not work time and must be at least 20 minutes. However, if the employee is materially interrupted or not completely free from duties, the meal period is counted as work time.

3-38. Work breaks are discretionary. If granted, breaks of up to 20 minutes are work time. Breaks shall not offset other work time or substitute for paid leave, not be taken at the beginning or end of the workday, nor be used to extend meal periods.

3-39. Ordinary travel to and from work is not work time. Travel from work site to work site is work time. When an employee is required to travel a substantial distance to perform a job away from the regular work site, the travel is work time.

3-40. Mandatory training or meetings are work time. Voluntary training during work hours, as approved by the appointing authority, which is directly related to an employee's job and is designed to enhance performance, is work time. Voluntary training after hours to gain additional skill or knowledge is not work time, even if it is job related.

Recordkeeping

3-41. FLSA requires that certain basic records be maintained for both exempt and non-exempt employees. Each department is accountable for maintaining those records. (7/1/07)

3-42. Time records must be certified by both the employee and the supervisor and are the basis for overtime calculation and compensation.

Other Premium Pay

3-43. Shift Differential is additional pay beyond base pay for employees working shifts. Eligible classes are published in the annual pay plan. Department heads may designate eligibility for individual positions in classes not published and shall maintain records for such cases. Shift differential does not apply to any periods of paid leave. Second shift rate applies when half or more of the scheduled work hours fall between 4:00 p.m. and 11:00 p.m. Third shift rate applies when half or more of the scheduled work hours fall between 11:00 p.m. and 6:00 a.m. If hours are evenly split between shifts, the higher shift differential rate applies to all hours worked during the shift. (1/1/18)

3-44. Call Back applies when an eligible employee is required to report to work before the start or after the end of a scheduled shift. If there is no release from work between the call back hours and regular shift, it is considered a continuation of the shift and call back does not apply. When call back applies, a minimum of two hours of the employee's regular base pay is guaranteed. Eligible employees are those who are eligible for overtime, and any call back time is counted as work time. Employees exempt from overtime are also eligible when approved by a department head. (1/1/18)

3-45. On Call is additional pay beyond base pay for employees specifically assigned, in advance, to be accessible outside of normal work hours and where freedom of movement and use of personal time is significantly restricted. Eligible classes and the rate are published in the annual pay plan. A department head may designate eligibility for individual positions in classes not published and maintain records of such on-call designations. Only time while actually on call shall be paid at the special rate. In call back situations, employees eligible for both on call and call back pay shall receive call back pay only. (1/1/18)

3-46. Second Domicile is additional discretionary pay up to 10 percent of base pay for employees who are required to maintain a second domicile for more than 10 consecutive calendar days while working out-of-state on official state business. The department head must authorize such payments.

3-47. Repealed. (1/1/18)

3-48. Housing Premium is a stipend granted by a department head to designated employees living and working in high housing cost areas with demonstrated recruitment and retention problems. It is not part of the base rate and may begin or end at any time. Records on any aspect of this premium must be provided to the Director when requested.

3-49. Discretionary Pay Differentials. A department may use non-base building discretionary pay differentials on a temporary basis, which shall be funded within existing budgets. Use of these pay differentials is at the discretion of the appointing authority and shall not be used as a substitute for annual compensation adjustments, other pay policies, or promotions. No differential is guaranteed and, if granted, may be discontinued at any time. No aspect of any discretionary pay differential is subject to grievance or appeal,

except for discrimination; however, an alleged violation of the department's plan can be disputed. A department's decision in the dispute is final and no further recourse is available. Departments must develop and communicate a written plan addressing appropriate criteria for the use of any differential based on sound business practice and needs. If granted, there must be an individual written agreement between the employee and appointing authority that stipulates the terms and conditions of the differential, including the dates the differential will begin and end. Records of any aspect of these differentials must be provided to the Director when requested. (8/1/08)

A. Counteroffer to a verifiable job offer may be used when an employee with critical strategic skills receives a higher salary offer from another department or outside employer and the appointing authority needs to retain the employee. The sum of a non-base building differential and current base pay cannot exceed a statutory lid in any given month and may be paid in one or more payments. (8/1/08)

B. Signing bonus is a non-base building lump sum that may be used to attract new permanent employees into the state personnel system. It may be paid in one or several payments; however, the sum of the bonus and current base pay cannot exceed a statutory lid in any given month. Signing bonuses may be used for the following reasons:

    1. to fill positions in critical occupations where there is a documented shortage in the labor market and recruitment or retention difficulty in the department that jeopardizes its mission; or,

    2. when the applicant possesses a unique, critical skill in relation to the job market.

C. Referral award is a non-base building lump sum that may be granted to a current employee for the referral and subsequent hire of a new employee into the state personnel system where the position requires a unique, specialized skill and there is a documented shortage in the labor market and recruitment or retention difficulty in the department. This award is to be used for permanent employees unless the Director grants an exception. Employees who influence or are responsible for hiring and those performing recruitment as part of their regular assignments are ineligible. The sum of the award and current base pay cannot exceed a statutory lid in any given month.

D. Temporary pay differential is a non-base building award that may be granted to a current permanent employee in the same position. The sum of the temporary award and current base pay shall not exceed a statutory lid in any given month and is paid through regular payroll. This differential shall not be used as a substitute for the promotional or allocation process. Temporary pay differentials may be used for the following reasons:

    1. acting assignment where the employee assumes the full set of duties (not "in absence of") of a higher-level position that is vacant or the incumbent is on extended leave for a period longer than 30 days but less

than nine months. The differential shall not exceed nine months for any given acting assignment;

2. long-term project assignment that is not an expected or customary part of the regular assignment and is critical to the mission and operations of the department as defined by the purpose of the project, its time frame, and the critical nature and expected results; or,

3. retain a unique, specialized set of skills or knowledge that is critical to the mission and productivity of the department. The loss would result in documented severe adverse effect on the department's mission and productivity.

3-50. Hazardous Duty is a non-base building premium that may be granted to positions working in occupations where exposure to physical hazards is not a customary part or expectation of the occupation and its preparation for entry. Such positions work for a majority of their time in settings that involve clear, direct, and unavoidable exposure to risk of major injury or loss of life even after making allowances for safety. This premium is not guaranteed and, if granted, may be discontinued at any time. No aspect of this premium pay can be grieved or appealed, except for alleged discrimination. Departments must develop appropriate criteria for the use of hazard pay based on sound business practice and need, and communicate these criteria prior to use of this premium. The premium rate will be published in the annual pay plan and, in combination with current base pay and other premium pay, cannot exceed a statutory lid in any given month. (1/1/18)

Postemployment Compensation (9/1/12)

3-51. Postemployment compensation, which includes voluntary separation incentives or severance pay, are discretionary financial payments that may be offered to certified employees when a layoff has happened or may happen based upon documented lack of funds, lack of work, or reorganization. Post employment compensation may include, but is not limited to, a hiring preference, payment towards the continuation of health benefits, tuition or educational training vouchers, portion of salary, placement on a reemployment list. Postemployment compensation may be contingent upon an employee's waiver of retention and reemployment rights, but waiving those rights does not affect the employee's eligibility for reinstatement. A department head must establish a postemployment compensation plan before a department makes any postemployment compensation offers. (1/1/14)

3-52. Any total post employment compensation payment and other benefits shall not exceed an amount equal to one week of an employee's salary for every year of his or her service, up to 18 weeks. Any additional limitations shall be established and published by the director, taking into consideration prevailing market practice and other factors. (1/1/18)

3-53. Repealed. (1/1/18)

3-54. The employee and department must execute a written contract before payment of any post employment compensation. The contract must include the following provisions. (1/1/14)

1. A statement that the employee is required to pay all applicable taxes on the payment;

2. The employee's acknowledgement that the state will withhold taxes according to law before payment;

3. The employee's agreement to waive retention and reemployment rights, if applicable, along with a statement that the contract is voluntary and not coerced or obtained through means other than the terms of the contract; (9/1/12)

4. The date of the employee's last day of work;

5. An acknowledgement that no payment will be made until after the last day of work and compliance with other provisions of the contract; and,

6. Upon signature, a copy of each contract must be provided to the state personnel director. (9/1/12)

7. The employee's agreement to waive any and all claims they may have or assert against the employer, relative to their employment prior to the execution of this agreement. (9/1/12)

Chapter 7 Separation

Authority for rules promulgated in this chapter is found in Colo. Const. art. XII, Sections 13, 14 and 15; § 24-50-109.5, 124, 126 and 136, C.R.S. Board rules are identified by cites beginning with "Board Rule".

General Principles

Board Rule 7-1. The appointing authority must communicate, or make a good-faith effort to communicate, with an employee before conducting any involuntary separation. The communication may be oral or written, and must provide an opportunity for the appointing authority and employee to exchange information about the separation. (3/30/13)

Board Rule 7-2. The State of Colorado seeks to promote progressive employment practices. As such, the Board strongly encourages the Governor, Director, and all appointing authorities to consider alternatives to minimize or avoid the need for layoffs of employees in the state personnel system including, but not limited to, placement into vacant positions for which the laid off or displaced employees are qualified but for which they do not have retention rights, retraining, voluntary reduction in hours or pay, job-sharing, voluntary unpaid leave, voluntary furloughs, and voluntary separation incentives. (3/30/13)

Board Rule 7-3. Department heads shall administer the layoff process for any affected employee in accordance with this chapter. Appointing authorities cannot use the layoff process as a substitute for disciplinary or corrective action. The layoff process should not prevent or interfere with other personnel actions. (3/30/13)

Resignation

Board Rule 7-4. An employee must give notice of resignation directly to the appointing authority at least 10 working days before its effective date, unless the employee and appointing authority mutually agree to less time. Failure to provide written notice, as required by § 24-50-126(1), C.R.S., may result in a delay in payout of leave and forfeiture of reinstatement privileges. If the notice is oral, the appointing authority shall provide written confirmation as soon as possible. If the employee reasonably believes the resignation was coerced or forced, the employee has 10 days from the date of the resignation to appeal to the Board, except that an employee cannot appeal a resignation that is tendered in lieu of disciplinary action. Upon receipt of any written notice of resignation or upon an appointing authority providing a written confirmation of an oral resignation, an employee must be notified, in writing, of the right to appeal a coerced or forced resignation, including the time for such an appeal, and the Board address and telephone and facsimile numbers for filing the appeal. The 10 days for an employee to appeal to the Board an alleged coerced or forced resignation shall be from the date of receipt by the employee of the notification of appeal rights. If an employee tenders a resignation in lieu of disciplinary action, the employee shall be notified in writing that he or she has waived his or her right to appeal the resignation to the Board. (3/30/13)

Board Rule 7-5. If an employee is absent without notice for three scheduled consecutive working days, the appointing authority may construe that absence as job abandonment and therefore an automatic resignation. The appointing authority shall give the employee written notice, by certified mail, of the effective date of the employee's resignation. The employee is ineligible for reinstatement. (3/30/13)

Layoff Principles

7-6. The only reasons for layoff are lack of funds, lack of work, or reorganization. These rules apply to any reduction in force that results in the elimination of one or more occupied positions regardless of the reason for layoff. (1/1/14)

A. For any and all layoffs, department heads have the discretion initially to make the business decisions as to how their department will continue to meet its mission after engaging in the layoff process. These decisions include determining which classes or class series will best help the department meet its mission, the level of staffing by various classifications and/or class series and the agency functions to be staffed, either by facility location or department-wide, and must meet any constitutional or statutory mandates. A department head may delegate this authority to make any of the business decisions to subordinate appointing authorities within the department. Such delegation must be in writing and describe the parameters of the business decisions to be made by the subordinate appointing authority.

B. Layoff Plan: For any and all layoffs, after making its business decisions and ten days prior to issuing the first layoff notice, the department shall post a Layoff Plan, signed by the Executive Director, head of a principal department or designee, both in a conspicuous place where all impacted parties have access to view the posting and on the department's internet or intranet websites. The

purpose of the Layoff Plan is to facilitate strategic planning prior to the abolishment of any positions and to provide an open and transparent explanation for the elimination of positions and/or services. The Layoff Plan shall include the following: a description of the planned changes in the fundamental structure, positions, or functions accountable to one or more appointing authorities; a list of the ranking factors and their relative weights; if applicable, an organizational chart setting out the planned changes in the fundamental structure, positions, or functions accountable to one or more appointing authorities; the reasons for the change; the anticipated benefits and results, including any cost savings; a general description of the expected changes and their effects on employees; a description of how the work performed by the eliminated positions will be absorbed by the department; a listing of the classes in which positions will be abolished as contemplated in the Layoff Plan; and, if there have been any modifications to the special qualifications for positions affected by the Layoff Plan within sixty days or less prior to publication of the Layoff Plan, a list of such positions. (1/1/18)

1. When a function and position are transferred to another department, the employee occupying the position transfers.

Board Rule 7-7. After an appointing authority has made the initial business decisions and posted the department's Layoff Plan, the layoff of individual employees and the subsequent calculation of their retention rights, if any, must be made in accordance with the rules setting forth the priorities for determining layoff and retention rights. (3/30/13)

7-8. The layoff of certified employees whose age plus years of service credit equal 75 on or before January 1, 2013, is to be in accordance with the rules within this chapter. Layoff decisions for all other certified employees, after September 1, 2012, are to be in accordance with this chapter, except as in Board Rule 7-15, Board Rule 7-16, Board Rule 7-17, Board Rule 7-18, and Board Rule 7-19, and as set forth below. (3/30/13)

Determining Priorities for Layoff and Retention Rights

7-9. In making both layoff and retention rights decisions, rank employees based upon seniority, performance and applicable veterans preference. A department should consider weighting these three factors according to its layoff plan. (3/30/13)

Board Rule 7-10. Seniority in State Service: Seniority is the calendar year in which total state service began, plus up to 10 additional years (rounded to the next whole year for partial ears) of military service for those eligible for veteran's preference. State service includes permanent status and state employment outside the state personnel system. (3/30/13)

7-11. Layoff Ranking: If applicable, the department head must establish the ranking formula for the affected area(s). The formula must be consistently applied to any employee affected by the layoff process. The formula must be communicated to all employees within the layoff plan. Employees with lower rankings must be displaced before employees with higher rankings, except, as set forth in art. XII, Section 15 of the Colorado Constitution, no veteran can be displaced before a non-veteran regardless of rank. (1/1/18)

A. If there is a tie under the department's formula, then the employee with the earliest start date of employment with the State of Colorado shall be the higher ranked employee. If the employees are still tied, then the decision shall be made by taking into account the affirmative action program established by the State Personnel Director pursuant to § 24- 50-101(3)(e), C.R.S. (3/30/13)

7-12. When a person is separated from state service based upon documented lack of funds, lack of work or reorganization, an appointing authority shall consider placing the displaced person into a vacant funded position for which they qualify. An appointing authority should consider prior experience, past performance and tenure in making such decision. (3/30/13)

Board Rule 7-13. Trial service employees are treated as if certified in the trial service class during the layoff process. Conditional employees will be considered according to their previously certified class. (3/30/13)

Notice Requirements

7-14. The department must publish the layoff plan at least 55 calendar days before the layoff is effective. These 55 days will incorporate at least 45 days notice to a certified employee that their position is being eliminated. The layoff notice must include appeal rights and give eligible employees at least three working days from the date of delivery to state whether they want the department to determine their retention rights and then give the employees an additional three working days to accept or reject the offer. The layoff notice shall be delivered in person at the workplace, whenever possible. In the event the agency or department is not able to provide it in person, it should be delivered by email and/or delivered to the employee's last known address. The notice is deemed delivered when it is actually received or five days after the mailing, whichever is earlier. (1/1/18)

A. The department must provide written notice to certified employees who are being displaced by another employee at least 10 business days before the displacement. A displaced certified employee who is separated shall be paid for at least 22 working days after receipt of the notice of displacement.

B. The department must provide written notice to non-certified employees who are to be laid off at least 10 business days before the layoff is effective. (3/30/13)

Retention Areas

Board Rule 7-15.

A. An eligible certified employee may exercise retention rights within the principal department in which the certified employee is employed. (3/30/13)

B. Institutions of higher education have the following separate retention areas: each state college, each community college, each university, each campus of the University of Colorado, University of Colorado system administration, each junior college, Auraria Higher Education Center, and central staff of Community Colleges of Colorado. (3/30/13)

C. The Department of Higher Education shall be a separate retention area in which certified employees in central staff and Colorado Student Loan Program shall have retention rights. (3/30/13)

D. History Colorado shall be a separate retention area in which certified employees employed therein shall have retention rights. (3/30/13)

E. For purposes of these layoff rules, the Governor's Office, and any units or offices created within the Governor's office, shall be considered a retention area. (3/30/13)

Board Rule 7-16. A department, upon approval of the Board, may limit retention rights to major divisions of the department only if its department head requests the limitation and the Board approves that request at least thirty days in advance of the posting of the Layoff Plan required by Board Rule 7-7. Any request to limit retention rights must set forth a reasonable basis for the request. (3/30/13)

Board Rule 7-17. Any request to limit retention areas must be submitted in writing on or before the twelfth day before the monthly Board meeting at which the request will be considered. A copy of the request to limit retention areas shall be provided to all affected employees by mail to their home addresses and by email to their state email address, if any, on or before submittal of the request to the Board. Any parties opposing such a request may either submit a written opposition prior to the Board meeting or testify before the Board at the time of the Board meeting. The requestor may either submit a written response to the opposition or testify before the Board at the time of the Board meeting. (3/30/13)

Retention Rights

Board Rule 7-18. An eligible employee must meet the minimum qualifications and any bona fide special qualifications in order to have retention rights to a position. Departments may not modify special qualifications of any position in a class series impacted by a layoff after the publication of the Layoff Plan, unless the modified special qualifications are directly related to the job duties and qualifications. (3/30/13)

A. The department shall offer retention rights in the following priority to eligible employees:

1. First, to any funded vacant position in the current certified class. If there are no funded vacant positions, then positions occupied by the following types of employees are offered in the following order: provisional, probationary, conditional, certified. If there are multiple occupied positions in the current certified class and the occupants of those positions are certified, then the lowest ranked employee shall be displaced first.

2. If there are no available funded vacant or occupied positions in the current certified class, then a funded vacant position in a previously certified class occupied within the last two years and at the same maximum pay rate. If there are no funded vacant positions, then

positions occupied by the following types of employees shall be offered in the following order: provisional, probationary, conditional, certified. If there are multiple occupied positions in a previously certified class at the same maximum pay rate and the occupants of those positions are certified, then the lowest ranked employee within the most junior ranking shall be displaced first.

3. If there are no available funded vacant or occupied positions in the current or a previously certified class at the same maximum pay rate, then the highest level demotion in a vacant position in the current or a previously certified class series occupied within the last two years. If there are no vacant positions, positions occupied by the following types of employees shall be offered in the current or a previously certified class series in the following order: provisional, probationary, conditional, certified. If there are multiple occupied positions in the highest level demotion in the current or a previously certified class series and the occupants of those positions are certified, then the lowest ranked employee shall be displaced first. An employee can displace another employee only if the displacing employee has been certified in the class. (3/30/13)

B. For those departments with multiple work locations throughout the state, the department shall offer retention rights in the following order:

1. Within a 75-mile radius of the employee's current work location, funded vacant positions in the current certified class.

2. If there are no funded vacant positions in the current certified class, positions occupied by the following types of employees in the current certified class within a 75-mile radius are offered in the following order: provisional, probationary, conditional, certified. If there are multiple occupied positions in the current certified class within the 75-mile radius, and the occupants of those positions are certified, then the lowest ranked employee shall be displaced first.

3. If there are no available funded vacant or occupied positions in the current certified class within a 75-mile radius, then a funded vacant position in a previously certified class occupied within the last two years at the same maximum pay rate. If there are no funded vacant positions, then positions occupied by the following types of employees shall be offered in the following order: provisional, probationary, conditional, certified. If there are multiple occupied positions in a previously certified class at the same maximum pay rate and the occupants of those positions are certified, then the lowest ranked employee shall be displaced first.

4. If there are no available funded vacant or occupied positions in the current or a previously certified class at the same maximum pay rate within a 75-mile radius, then the highest level demotion within a 75-mile radius in a vacant position in the current or a previously certified class series occupied within the last two years. If there are no vacant positions,

positions occupied by the following types of employees shall be offered in the current or a previously certified class series in the following order: provisional, probationary, conditional, certified. If there are multiple occupied positions in the current or a previously certified class series within the 75-mile radius, and the occupants of those positions are certified, then the lowest ranked employee shall be displaced first. An employee can displace another employee only if the displacing employee has been certified in the class.

5. If the only retention opportunity within a 75-mile radius is a demotion, then in addition to the offer of that demotion, the employee may be given retention rights outside of the 75-mile radius to a position in the current certified class. (3/30/13)

Board Rule 7-19. If the employee accepts an offer outside the 75-mile radius, that employee can claim moving expenses as prescribed in fiscal rule. (3/30/13)

Reallocation

7-20. If a position is allocated downward and the employee elects not to remain in the position or if a position is allocated upward and the employee does not qualify, is not appointed or elects not to remain in the position, the employee will be laid off or, if eligible, given retention rights pursuant to the provisions of this chapter. If a certified employee is laid off or demoted due to an upward or downward allocation or layoff, the employee is placed on a departmental reemployment list. If an employee refuses a retention offer, the employee is laid off and placed on the departmental reemployment list. (3/30/13)

Appeals

Board Rule 7-21. All employees whose positions have been eliminated or who have been upwardly or downwardly allocated to a different class in the course of a layoff shall have a mandatory right to a hearing before the State Personnel Board. Acceptance of retention rights to another position does not eliminate the employee's appeal rights. (3/30/13)

Recordkeeping

Board Rule 7-22. Department heads must provide any required or requested information to the Director or Board in a timely manner. (3/30/13)

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Opinion of the Attorney General rendered in connection with the rules adopted by the

State Personnel Board and State Personnel Director

on 11/08/2017

4 CCR 801-1

STATE PERSONNEL BOARD RULES AND PERSONNEL DIRECTOR'S ADMINISTRATIVE PROCEDURES

The above-referenced rules were submitted to this office on 11/09/2017 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

November 27, 2017 17:00:53

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Air Quality Control Commission

CCR number

5 CCR 1001-9

Rule title

5 CCR 1001-9 REGULATION NUMBER 7 CONTROL OF OZONE VIA OZONE PRECURSORS AND CONTROL OF HYDROCARBONS VIA OIL AND GAS EMISSIONS 1 - eff 12/30/2017

Effective date

12/30/2017

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Air Quality Control Commission

REGULATION NUMBER 7

Control of Ozone via Ozone Precursors and Control of Hydrocarbons via Oil and Gas Emissions

(Emissions of Volatile Organic Compounds and Nitrogen Oxides)

5 CCR 1001-9

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

Outline of Regulation

XVII. (State Only, except Section XVII.E.3.a. which was submitted as part of the Regional Haze SIP) Statewide Controls for Oil and Gas Operations and Natural Gas-Fired Reciprocating Internal Combustion Engines

XVIII. (State Only) Natural Gas-Actuated Pneumatic Controllers Associated with Oil and Gas Operations

XIX. Control of Emissions from Specific Major Sources of VOC and/or NOx in the 8-Hour Ozone Control Area

XX. Statements of Basis, Specific Statutory Authority and Purpose

Appendix A Colorado Ozone Nonattainment or Attainment Maintenance Areas

Appendix B Criteria for Control of Vapors from Gasoline Transfer to Storage Tanks

Appendix C Criteria for Control of Vapors from Gasoline Transfer at Bulk Plants (Vapor Balance System)

Appendix D Minimum Cooling Capacities for Refrigerated Freeboard Chillers on Vapor Degreasers

Appendix E Test Procedures for Annual Pressure/Vacuum Testing of Gasoline Transport Tanks

Appendix F Emission Limit Conversion Procedure

Pursuant to Colorado Revised Statutes Section 24-4-103 (12.5), materials incorporated by reference are available for public inspection during normal business hours, or copies may be obtained at a reasonable cost from the Air Quality Control Commission (the Commission), 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530. The material incorporated by reference is also available through the United States Government Printing Office, online at www.gpo.gov/fdsys. Materials incorporated by reference are those editions in existence as of the date indicated and do not include any later amendments.

I. Applicability

I.A.

I.A.1. The provisions of this regulation shall apply as follows:

I.A.1.a. All provisions of this regulation apply to the Denver 1-hour ozone attainment/maintenance area, to any nonattainment area for the 1-hour ozone standard, and to the 8-hour Ozone Control Area.

I.A.1.b. (State Only) All provisions of this regulation apply to any ozone nonattainment area, which includes areas designated nonattainment for either the 1-hour or 8-hour ozone standard, unless otherwise specified in Section I.A.1.c. Colorado's ozone nonattainment or attainment maintenance area maps and chronologies of attainment status are identified in Appendix A of this regulation.

I.A.1.c. The provisions of Sections V., VI.B.1. and 2., VII.C., XVII., and XVIII. apply statewide. The provisions of Sections XVII., XVIII., and any other sections marked by (State Only) are not federally enforceable, unless otherwise identified.

I.A.2. REPEALED

I.A.3. REPEALED

I.B. Sources

I.B.1. New Sources

I.B.1.a. New sources, defined as any sources which either (1) submit a complete permit application on or after October 30, 1989, or (2) if no permit is required, commence operation on or after October 30, 1989, must comply with the provisions of this regulation upon commencement of operation.

I.B.1.b. (State Only) New sources are any sources which commenced construction on or after the date on which the area is first designated as being in nonattainment for ozone and are located in that area, or, if located in the 1-hour ozone nonattainment or attainment maintenance area, by October 30, 1989. New sources shall comply with the requirements of this regulation by whichever date comes later:

I.B.1.b.(i) (State Only) October 30, 1989, if they are located in what was previously designated as a 1-hour ozone nonattainment or attainment maintenance area;

I.B.1.b.(ii) (State Only) February 1, 2009, if they are located in an 8-Hour Ozone Control Area and outside of the 1-hour ozone nonattainment or attainment maintenance area; or

I.B.1.b.(iii) (State Only) Upon commencement of operation, if located within an ozone nonattainment or attainment maintenance area.

I.B.1.c. This Section I.B.1. does not apply to oil and gas operations subject to Section XII., stationary and portable engines subject to Section XVI., or natural gas actuated pneumatic controllers subject to Section XVIII.

I.B.2. Existing Sources

I.B.2.a. Existing sources are (1) those sources for which a complete permit application was submitted prior to October 30, 1989, or (2) those sources, which commenced operation prior to October 30, 1989.

I.B.2.b. (State Only) Existing sources are those sources which commenced construction prior to the date on which the area is first designated as being in nonattainment for ozone and are located in that area, or, if located in the 1-hour ozone nonattainment or attainment maintenance area, by October 30, 1989.

I.B.2.c. Existing sources shall not be required to comply with requirements of this regulation until on and after October 30, 1991. All existing sources shall comply with the requirements set forth in Exhibit A until October 30, 1991.

I.B.2.d. (State Only) Existing sources shall be required to comply with requirements of this regulation by whichever date comes later:

I.B.2.d.(i) (State Only) October 30, 1989, if they are located in what was previously designated as a 1-hour ozone nonattainment or attainment maintenance area;

I.B.2.d.(ii) (State Only) February 1, 2009, if they are located in an 8-hour Ozone Control Area and outside of the Denver 1-hour ozone nonattainment or attainment maintenance area; or

I.B.2.d.(iii) (State Only) the date on which the area is first designated as being in nonattainment for ozone, if located within that ozone nonattainment or attainment maintenance area.

I.B.2.e. On and after October 30, 1991, all existing sources shall comply with the requirements of this regulation, and Exhibit A shall no longer be applicable.

I.B.2.f. On or before October 30, 1990, all existing sources located in what was previously designated as the 1-hour ozone nonattainment or attainment maintenance area shall submit to the Division a report containing the following:

I.B.2.f.(i) A list of sources of volatile organic compound emissions located at the stationary source. The list shall include a description, potential emissions, and actual emissions of each source.

I.B.2.f.(ii) Identification of each source subject to a Division Reasonably Available Control Technology (RACT) determination, and when a request for that determination will be made.

I.B.2.f.(iii) The owner or operator's expected RACT for each source and a description of how compliance will be achieved. If a source is subject to RACT requirements as stated in previous versions of this regulation, the report need only specify how compliance will be achieved for any revised provisions of the regulation.

I.B.2.g. On or before October 30, 1991, all existing sources shall update and submit the report required under Section I.B.2.f.. The updated report shall describe in detail all actions taken to comply with the RACT requirements, and when those actions were taken.

I.B.2.h. This Section I.B.2. does not apply to oil and gas operations subject to Section XII., or stationary and portable engines subject to Section XVI.

I.C. Once a source subject to this regulation exceeds an applicable threshold limit, the requirements of this regulation are irrevocably effective unless the source obtains a federally enforceable permit limiting emissions to levels below the threshold limit by restricting production capacity or hours of operation.

I.D. The owner or operator of a source not required to obtain a permit by provisions of law other than this section may apply for and shall be required to accept a permit as a condition of avoiding RACT requirements. Such permits shall contain only those conditions necessary to ensure the enforcement of the production capacity or hours of operation.

I.E. Materials incorporated by reference in this regulation are available for public inspection during regular business hours at the Commission's Office at 4300 Cherry Creek Drive South, Denver, Colorado. The regulation incorporates the materials as they exist at the date of the promulgation of this regulation and does not include later amendments to or editions of the incorporated materials.

II. General Provisions

II.A. Definitions

II.A.1. “8-Hour Ozone Control Area” means the Counties of Adams, Arapahoe, Boulder (includes part of Rocky Mountain National Park), Douglas, and Jefferson; the Cities and Counties of Denver and Broomfield; and the following portions of the Counties of Larimer and Weld:

II.A.1.a. For Larimer County (includes part of Rocky Mountain National Park), that portion of the county that lies south of a line described as follows: Beginning at a point on Larimer County’s eastern boundary and Weld County’s western boundary intersected by 40 degrees, 42 minutes, and 47.1 seconds north latitude, proceed west to a point defined by the intersection of 40 degrees, 42 minutes, 47.1 seconds north latitude and 105 degrees, 29 minutes, and 40.0 seconds west longitude, thence proceed south on 105 degrees, 29 minutes, 40.0 seconds west longitude to the intersection with 40 degrees, 33 minutes and 17.4 seconds north latitude, thence proceed west on 40 degrees, 33 minutes, 17.4 seconds north latitude until this line intersects Larimer County’s western boundary and Grand County’s eastern boundary.

II.A.1.b. For Weld County, that portion of the county that lies south of a line described as follows: Beginning at a point on Weld County’s eastern boundary and Logan County’s western boundary intersected by 40 degrees, 42 minutes, 47.1 seconds north latitude, proceed west on 40 degrees, 42 minutes, 47.1 seconds north latitude until this line intersects Weld County’s western boundary and Larimer County’s eastern boundary.

II.A.2. “Denver 1-Hour Ozone Attainment/Maintenance Area” means the Counties of Jefferson and Douglas, the Cities and Counties of Denver and Broomfield, Boulder County (excluding Rocky Mountain National Park), Adams County west of Kiowa Creek, and Arapahoe County west of Kiowa Creek.

II.A.3. "Capture System" means the equipment used to contain, capture, or transport a pollutant to a control device.

II.A.4. "Capture System Efficiency (vapor gathering system efficiency)" means the percent by weight of VOC emitted by an operation subject to this regulation, which is captured by the capture system and sent to the control device; i.e., (mass flow of VOC captured)/(mass flow of VOC emitted by the operation) x 100%.

II.A.5. "Carbon Adsorption System" means a device containing adsorbent material, an inlet and outlet for exhaust gases and a system to regenerate the saturated adsorbent.

II.A.6. "Condenser" means any heat transfer device used to liquefy vapors by removing their latent heats of vaporization. Such devices include, but are not limited to, shell and tube, coil, surface, or contact condensers.

II.A.7. "Control Device" means a carbon adsorber, refrigeration system, condenser, flare, firebox or other device, which will reduce the concentration of VOC in a gas stream by adsorption, combustion, condensation, or other means of removal.

II.A.8. "Control Device Efficiency" means the percent removal by weight of VOC by a control device; i.e., (mass flow of VOC into control device - mass flow of VOC out of control device)/(mass flow of VOC into control device) x 100%.

II.A.9. "Gasoline" means a petroleum distillate having a Reid vapor pressure between 208 and 1040 torr (4-20 psi), which is used as fuel for internal combustion engines.

II.A.10. "Highly Volatile Organic Compound" is defined as a Volatile Organic Compound or mixture of such compounds with a true vapor pressure in excess of 570 torr (11 psia) at 20 C.

II.A.11. "Organic Material" means a chemical compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate.

II.A.12. (State Only) “Ozone Nonattainment Area” means any area designated as not in attainment with the ozone National Ambient Air Quality Standard as determined by the Environmental Protection Agency.

II.A.13. "Petroleum Refinery" means any facility engaged in producing gasoline, aromatics, kerosene, distillate fuel oils, residual fuel oils, lubricants, asphalt, or other products through distillation of petroleum or through redistillation, cracking, rearrangement or reforming of unfinished petroleum derivatives.

II.A.14. "Reid Vapor Pressure" means the absolute vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids except liquefied petroleum gases as determined by the American Society for Testing and Materials, Part 17, 1973, D-323-72 (Reapproved 1977).

II.A.15. "True Vapor Pressure" means the equilibrium partial pressure exerted by petroleum (or other) liquid. This may be determined by the methods described in American Petroleum Institute Bulletin 2517, "Evaporation Loss from Floating Roof Tanks," 1962.

II.A.16. "Vapor Recovery System" means a system that prevents release to the atmosphere of organic compounds emitted during the operation of any transfer, storage, or processing equipment.

II.A.17. "Volatile Organic Compound (VOC)" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions, except those listed in Section II.B. as having negligible photochemical reactivity. VOC may be measured by a reference method, an equivalent method, an alternative method, or by procedures specified under 40 CFR Part 60. A reference method, an equivalent method, or an alternative method, however, may also measure nonreactive organic compounds. In such cases, an owner or operator may exclude the compounds listed in Section II.B. when determining compliance with a standard if the amount of such compounds is accurately quantified, and such exclusion is approved by the Division. As a precondition to excluding such compounds as VOC, or at any time thereafter, the Division may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the Division, the amount of negligible-reactive compounds in the source's emissions.

II.B. Exemptions

Emissions of the organic compounds listed as having negligible photochemical reactivity in the common provisions definition of Negligibly Reactive Volatile Organic Compound are exempt from the provisions of this regulation. However, the hydrocarbon threshold in Section XII.L. and natural gas emissions standards in Sections XVIII.C.1. and XVIII.C.2. are used as indicators for the volatile organic compound

emission reduction measures in Sections XII.L., XVIII.C.1., and XVIII.C.2., and are enforceable provisions of this regulation.

(State Only) Notwithstanding the foregoing exemption, hydrocarbon emissions from oil and gas operations, including methane and ethane, are subject to this regulation as set forth in Sections XVII. and XVIII.

II.C. General Emission Limitation

II.C.1. Existing Sources (State Only: Located in any Ozone Nonattainment Area or Attainment Maintenance Area)

II.C.1.a. All existing sources shall comply with the requirements set forth in this regulation.

II.C.1.a.(i) Existing sources of VOC which are not subject to specific emission limitations set forth in this regulation, and which have the potential to emit 100 tons per year or more of VOC, shall utilize Reasonably Available Control Technology (RACT).

II.C.1.a.(ii) The potential to emit of such sources shall be based on design capacity or maximum production rate, whichever is greater, 8760 hours/year operation, and before add-on controls.

II.C.1.a.(iii) Owners or operators of such sources with potential emissions of 100 tons per year or more, but with actual emissions less than 100 tons per year may obtain a federally enforceable permit limiting emissions to actual rates by restricting production capacity or hours of operation, thus avoiding RACT requirements.

The owner or operator of a source not required to obtain a permit by provisions of law other than this section may apply for and shall be required to accept a permit as a condition of avoiding RACT requirements. Such permits shall contain only those conditions necessary to ensure the enforcement of the production capacity or hours of operation.

II.C.1.a.(iv) Such sources with potential emissions of 100 tons per year or more but with actual emissions of less than 50 tons per year, on a rolling 12-month total, may avoid RACT and permit requirements if the following requirements are met:

II.C.1.a.(iv)(A) The owner or operator shall submit revised Air Pollutant Emission Notices (APENs) by April 1 of each year, which demonstrate that the 50 tons per year threshold has not been exceeded.

II.C.1.a.(iv)(B) The owner or operator shall maintain records on site which include monthly VOC use and monthly VOC emissions. The records shall include calculation of total emissions for each rolling 12-month period. The records shall be made available to the Division for inspection upon request.

II.C.1.a.(v) (State Only) Existing sources that are modified – undergo any physical change, or changed in the method of operation of a stationary source which increase VOC or NOx emissions – on or after March 30,

2008, shall utilize RACT control technologies pursuant to Regulation Number 7 and Regulation Number 3, Part B, Section III.D.2. upon recommencing operation.

II.C.1.b. Provided however, that no existing source of VOC emissions employing emission controls on or within the six-month period preceding the effective date of this regulation may reduce its level of control of VOC emissions below that level of control actually achieved, even though such source may otherwise be subject to less stringent control requirements, except that no existing source shall be required to control emissions to an extent greater than that level of control which RACT would achieve.

II.C.1.c. (State Only) Existing sources with potential emissions equal to or greater than 100 tons per year of volatile organic compound emissions shall submit a permit modification application that includes a revised APEN (or APENs) and a RACT analysis, to the Division, as follows:

II.C.1.c.(i) (State Only) By October 30, 1991 if located in what was previously designated as the Denver 1-hour ozone nonattainment or attainment maintenance area; or

II.C.1.c.(ii) (State Only) By April 30, 2009 or within one year after the date on which the area is first designated as being in nonattainment for ozone, whichever comes later, if they are located in the 8-hour Ozone Control Area and outside of the Denver 1-hour ozone nonattainment or attainment maintenance area.

II.C.1.d. (State Only) Existing sources shall utilize RACT pursuant to Regulation Number 7 and Regulation Number 3, Part B, Section III.D.2.,by whichever date comes later:

II.C.1.d.(i) (State Only) October 30, 1991, if they are located in what was previously designated as the Denver 1-hour ozone nonattainment or attainment maintenance area;

II.C.1.d.(ii) (State Only) November 21, 2011, if they are located in the 8-hour Ozone Control Area, and outside of the Denver 1-hour ozone nonattainment or attainment maintenance area;

IIC.1.d.(iii) (State Only) Three years after the date on which the area is first designated as being in nonattainment for ozone; or

II.C.1.d.(iv) (State Only) Two years after Division determination of case-by-case RACT pursuant to this Section II.C.1. The Division shall be deemed to have approved the RACT analysis for purposes of this Section II.C.1.d.(iv) if it does not object after eighteen months from having received a complete permit application.

II.C.2. New Sources

All new sources shall utilize controls representing RACT, pursuant to Regulation Number 7 and Regulation Number 3, Part B, Section III.D., upon commencement of operation.

II.D. Alternative Control Plans and Test Methods

II.D.1. Sources subject to specific requirements of this regulation shall submit for approval as a revision to the State Implementation Plan:

II.D.1.a. Any alternative emission control plan or compliance method other than control options specifically allowed in the applicable regulation. Such alternative control plans shall provide control equal to or greater than the emission control or reduction required by the regulation, unless the source contends that the control level required by the regulation does not represent RACT for their specific source.

II.D.1.b. Any alternative test method or procedure not specifically allowed in the applicable regulation.

II.D.2. No alternative submitted pursuant to this Section II.D. is effective until the alternative is approved as a revision to the State Implementation Plan.

II.E. REPEALED

II.F. Provisions for Specific Processes

II.F.1. The Gates Rubber Company Provision - REPEALED

III. General Requirements for Storage and Transfer of Volatile Organic Compounds

III.A. Maintenance and Operation of Storage Tanks and Related Equipment

All storage tank gauging devices, anti-rotation devices, accesses, seals, hatches, roof drainage systems, support structures, and pressure relief valves shall be maintained and operated to prevent detectable vapor loss except when opened, actuated, or used for necessary and proper activities (e.g. maintenance). Such opening, actuation, or use shall be limited so as to minimize vapor loss.

Detectable vapor loss shall be determined visually, by touch, by presence of odor, or using a portable hydrocarbon analyzer. When an analyzer is used, detectable vapor loss means a VOC concentration exceeding 10,000 ppm. Testing and monitoring shall be conducted as in Section VIII.C.3.

III.B. Transfer (excluding Petroleum Liquids)

Except as otherwise provided in this regulation, all volatile organic compounds transferred to any tank, container, or vehicle compartment with a capacity exceeding 212 liters (56 gallons), shall be transferred using submerged or bottom filling equipment. For top loading, the fill tube shall reach within six inches of the bottom of the tank compartment. For bottom-fill operations, the inlet shall be flush with the tank bottom.

III.C. Beer production and associated beer container storage and transfer operations involving volatile organic compounds with a true vapor pressure of less than 1.5 psia actual conditions are exempt from the provisions of Section III.B.

IV. Storage of Highly Volatile Organic Compounds

IV.A. Highly volatile organic compounds shall be stored:

IV.A.1. In a pressure tank which is at all times capable of maintaining working pressures sufficient to prevent vapor loss to the ambient air; or

IV.A.2. With methods and/or equipment approved by the Division in writing pursuant to the request of the person owning or operating the storage facility.

IV.B. Vapor loss shall be determined visually, by presence of frost or condensation at the point of leakage, or using a portable hydrocarbon analyzer. When an analyzer is used, vapor loss means a VOC concentration exceeding 10,000 ppm and testing and monitoring procedures shall be conducted as in Section VIII.C.3.

V. Disposal of Volatile Organic Compounds

V.A. No person shall dispose of volatile organic compounds by evaporation or spillage unless RACT is utilized.

V.B. No owner or operator of a bulk gasoline terminal, bulk gasoline plant, or gasoline dispensing facility as defined in Sections VI.C.2., VI.C.3. and XV.A.3., shall permit gasoline to be intentionally spilled, discarded in sewers, stored in open containers, or disposed of in any other manner that would result in evaporation.

VI. Storage and Transfer of Petroleum Liquid

VI.A. General Requirements

VI.A.1. No person shall build, install, or permit the building or installation of any rotating pump or compressor handling any type of petroleum liquid unless said pump or compressor is equipped with mechanical seals or other equipment of equal efficiency. If reciprocating-type pumps and compressors are used, they shall be equipped with packing glands properly installed, in good working order, and properly maintained so that no detectable emissions occur from the drain recovery systems.

VI.A.2. Definitions

For the purpose of this section, the following definitions apply:

VI.A.2.a. Repealed.

VI.A.2.b. "Crude Oil" means a naturally occurring mixture which consists of hydrocarbons, sulfur, nitrogen or oxygen derivatives of hydrocarbons, and which is a liquid at standard conditions.

VI.A.2.c. "Custody Transfer" means the transfer of produced crude oil and/or condensate, after processing and/or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.

VI.A.2.d. "EFR Tank" means a storage vessel having an external floating roof.

VI.A.2.e. "External Floating Roof" means a storage vessel cover in an open top tank consisting of a double deck or pontoon single deck which rests upon and is supported by the petroleum liquid being contained and is equipped with a closure seal or seals to close the space between the roof edge and tank wall.

VI.A.2.f.”Liquid-Mounted Seal" means a primary seal mounted in continuous contact with the contained liquid and which occupies an annular space between the inner tank wall and the perimeter of the floating roof.

VI.A.2.g. "Petroleum Liquid" means crude oil, condensate and any finished or intermediate product manufactured or extracted in a petroleum refinery.

VI.A.2.h. "Shoe Seal" means a primary seal employing a metallic band (called a shoe) which is held against the vertical inner-wall of the tank, concentric with the perimeter of the floating roof.

VI.A.2.i. "Vapor Balance System" means a combination of pipes or hoses that create a closed system between the vapor spaces of an unloading tank and a receiving tank such that vapors displaced from the receiving tank are transferred to the tank being unloaded.

VI.A.2.j. "Vapor-Mounted Seal" means a primary seal mounted so there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the liquid surface, the floating roof, and the tank wall (thus excluding shoe seals).

VI.A.2.k. "Waxy, Heavy Pour Crude Oil" means a crude oil with a pour point of 10°C (50°F) or higher as determined by the American Society for Testing and Materials Standard D97-66, "Test for Pour Point of Petroleum Oils."

VI.B. Storage of Petroleum Liquid

VI.B.1. Exemptions

VI.B.1.a. Tanks or other containers used to store the following liquids are exempt from the provisions of Sections VI.B.2. and VI.B.3.:

VI.B.1.a.(i) Diesel Fuels 1-D, 2-D, and 4-D as defined in ASTM D975-78.

VI.B.1.a.(ii) Fuel Oils #1, #2, #3, #4, and #5, as defined in ASTM D396-78.

VI.B.1.a.(iii) Gas Turbine Fuels 1-GT through 4-GT as defined in ASTM D2880-78.

VI.B.1.b. The following underground storage facilities are exempt from Section VI.B.2.:

VI.B.1.b.(i) Underground tanks if the annual sum total of the volume of liquid removed from the tank plus the sum of the volume of liquid added to it does not exceed twice the operational volume of the tank (i.e., a maximum of one turnover per year is allowed).

VI.B.1.b.(ii) Subsurface caverns or porous rock reservoirs.

VI.B.1.b.(iii) Horizontal underground tanks storing JP-4 Jet Fuel.

VI.B.2. Storage of petroleum liquid in tanks greater than 151,412 liters (40,000 gallons)

VI.B.2.a. Storage of petroleum liquid in fixed-roof tanks.

VI.B.2.a.(i) The owner or operator of a fixed-roof tank used for storage of petroleum liquids which have a true vapor pressure greater than 33.6 torr (0.65 psia) at 20°C (or, alternatively, a Reid vapor pressure greater than 1.30 pounds - (67.2 torr) but not greater than 570 torr (11.0 psia) at 20°C,

and which are stored in any tank or other container of more than 151,412 liters (40,000 gallons) shall ensure that the tank at all times meets the following conditions:

VI.B.2.a.(i)(A) The tank has been equipped with a pontoon-type, or double-deck type, floating roof or an internal floating cover which rests on the surface of the liquid contents and which is equipped with a closure seal or seals to close the space between the edge of the floating roof (or cover) and tank walls; or

VI.B.2.a.(i)(B) The tank has been equipped with a vapor gathering system capable of collecting the petroleum liquid vapors discharged, together with a vapor recovery or disposal system capable of processing such vapors so as to prevent their emission into the atmosphere.

VI.B.2.a.(i)(C) Control devices shall meet the applicable requirements, including recordkeeping, of Sections IX.A.3.a., b., c., and e., and IX.A.8.a. and b.

VI.B.2.a.(i)(D) The applicable EPA reference methods 1 through 4, and 25, of 40 CFR Part 60 shall be used to determine the efficiency of control devices.

VI.B.2.a.(i)(E) The owner or operator shall maintain records for at least two years of the type, average monthly storage temperature, and true vapor pressure of all petroleum liquids stored in tanks not equipped with an internal floating roof or cover or other control pursuant to Regulation Number 7, Sections VI.B.2.a.(i)(A) or VI.B.2.a.(i)(B) or Section II.D.

VI.B.2.a.(ii) No owner or operator of a fixed-roof tank equipped with an internal floating roof or cover shall permit the use of such tank unless:

VI.B.2.a.(ii)(A) The tank is maintained such that there are no visible holes, tears, or other openings in the seal or any seal fabric or materials; and

VI.B.2.a.(ii)(B) All openings, except stub drains, are equipped with covers, lids, or seals such that:

VI.B.2.a.(ii)(B)(1) The cover, lid, or seal is in the closed position at all times except when in actual use;

VI.B.2.a.(ii)(B)(2) Automatic bleeder vents are closed at all times except when the roof is floated off or landed on the roof leg supports;

VI.B.2.a.(ii)(B)(3) and Rim vents, if provided, are set to open when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting.

VI.B.2.a.(iii) The operator of a fixed-roof tank equipped with an internal floating roof shall:

VI.B.2.a.(iii)(A) Perform a routine inspection through the tank roof hatches at least once every six months;

VI.B.2.a.(iii)(A)(1) During the routine inspection, the operator shall measure for detectable vapor loss inside the hatch. Detectable vapor loss means a VOC concentration exceeding 10,000 ppm, using a portable hydrocarbon analyzer.

VI.B.2.a.(iii)(B) Perform a complete inspection of the cover and seal whenever the tank is out of service, whenever the routine inspection required in Section VI.B.2.a.(iii)(A) reveals detectable vapor loss, and at least once every ten years, and shall notify the Division in writing before such an inspection.

VI.B.2.a.(iii)(C) Ensure during inspections that there are no visible holes, tears, or other openings in the seal or any seal fabric or materials; that the cover is floating uniformly on or above the liquid surface; that there are no visible defects in the surface of the cover or liquid accumulated on the cover; and that the seal is uniformly in place around the circumference of the cover between the cover and the tank wall. If these items are not met, the owner or operator shall repair the items or empty and remove the storage vessel from service within 45 days. If a failure that is detected during inspections required in this section cannot be repaired within 45 days and if the vessel cannot be emptied within 45 days, a 30-day extension may be requested from the Division in writing. Such a request must document that alternative storage capacity is unavailable and specify a schedule of actions the owner or operator will take that will assure that the items will be repaired or the vessel will be emptied as soon as possible;

VI.B.2.a.(iii)(D) Maintain records for at least two years of the results of all inspections.

VI.B.2.b. Above ground storage tanks used for the storage of petroleum liquid shall have all external surfaces coated with a material which has a reflectivity for solar radiation of 0.7 or more. Methods A or B of ASTM E424 shall be used to determine reflectivity. Alternatively, any untinted white paint may be used which is specified by the manufacturer for such use.

This provision shall not apply to written symbols or logograms applied to the external surface of the container for purposes of identification provided such symbols do not cover more than 20% of the exposed top and side surface area of the container or more than 18.6 square meters (200 square feet), whichever is less.

VI.B.2.c. Seals on External Floating Roof Tanks

VI.B.2.c.(i) General Provisions

VI.B.2.c.(i)(A) Applicability

This section applies to all petroleum liquid storage vessels equipped with external floating roofs, having capacities greater than 150,000 liters (40,000 gallons) that are located in ozone nonattainment areas.

VI.B.2.c.(i)(B) Exemptions

VI.B.2.c.(i)(B)(1) Total Exemption

The following categories of EFR tanks are exempt from the requirement of Section VI.B.2.c., except for the applicable recordkeeping requirements of Section VI.B.2.c.(ii)(C).

VI.B.2.c.(i)(B)(1)(a) EFR tanks which store any material whose true vapor pressure as stored never exceeds 67 torr (1.3 psia).

VI.B.2.c.(i)(B)(1)(b) Tanks less than 1,600,000 liters (10,000 barrels) which are used to store crude oil and condensate prior to custody transfer.

VI.B.2.c.(i)(B)(2) Limited Exemptions
The following are exempt from both secondary seal and secondary seal inspection requirements but shall meet the equipment/procedure provisions in Section VI.B.2.c.(ii)(A)(1), the semi-annual inspection provisions of Section VI.B.2.c.(ii)(B), and the record keeping provisions of Section VI.B.2.c.(ii)(C).

VI.B.2.c.(i)(B)(2)(a) Those tanks storing petroleum liquid between 67 and 207 torr (1.3 to 4.0 psia) maximum true vapor pressure (as stored) which are of welded construction and which have one of the following primary seals:

VI.B.2.c.(i)(B)(2)(a)(I) metallic shoe seal

VI.B.2.c.(i)(B)(2)(a)(II) liquid mounted, resilient seal

VI.B.2.c.(i)(B)(2)(a)(III) liquid mounted, liquid filled seal

VI.B.2.c.(i)(B)(2)(b) Any tank storing waxy, heavy-pour crude oil.

VI.B.2.c.(ii) General Requirements

VI.B.2.c.(ii)(A) An operator of an EFR tank storing petroleum liquids with true vapor pressure (as stored) above 67 torr (1.3 psia) shall equip the tank as follows and observe the following procedures:

VI.B.2.c.(ii)(A)(1) Equipment

VI.B.2.c.(ii)(A)(1)(a) Drains: roof drains which are designed to empty directly into the stored product shall be provided with slotted-membrane fabric covers or equivalent covers which cover at least 90 percent of the area of the opening.

VI.B.2.c.(ii)(A)(1)(b) Openings: except for automatic bleeder vents, rim space vents, and leg sleeves, all openings shall be equipped with:

VI.B.2.c.(ii)(A)(1)(b)(I) Projections into the tank which remain below the liquid surface at all times; and

VI.B.2.c.(ii)(A)(1)(b)(II) Covers, seals, or lids.

VI.B.2.c.(ii)(A)(2) Procedures

VI.B.2.c.(ii)(A)(2)(a) Covers, seals and lids shall be kept closed except when the openings are in actual use.

VI.B.2.c.(ii)(A)(2)(b) Automatic bleeder vents shall be kept closed at all times except when the roof is floated off or landed on roof leg supports.

VI.B.2.c.(ii)(A)(2)(c) Rim vents shall be set to open at the manufacturer's recommended setting or, alternatively, only when the roof is being floated off the leg supports.

VI.B.2.c.(ii)(B) Inspections

The operator of an EFR tank subject to this Section VI.B.2.c. shall:

VI.B.2.c.(ii)(B)(1) Perform routine inspections at least once every six months in order to ensure compliance with Section VI.B.2.c.(ii)(B)(2). The inspections shall include a visual inspection of the secondary seal gap if equipped with a secondary seal.

VI.B.2.c.(ii)(B)(2) Ensure that all seal closure devices meet the following requirements:

VI.B.2.c.(ii)(B)(2)(a) There are no visible holes, tears, or other openings in the seal(s) or seal fabric; and

VI.B.2.c.(ii)(B)(2)(b) The seal(s) are intact and uniformly in place around the circumference of the floating roof and the tank wall.

VI.B.2.c.(ii)(C) Records

VI.B.2.c.(ii)(C)(1) Operators shall:

VI.B.2.c.(ii)(C)(1)(a) Maintain records of the average monthly storage temperature, the Reid vapor pressure of the liquid and the type of liquid stored for all EFR tanks lacking secondary seals and receiving petroleum liquids with a true vapor pressure of 1.0 psi (7.0kPa) or greater; and

VI.B.2.c.(ii)(C)(1)(b) Maintain records of the results of the inspections required herein.

VI.B.2.c.(ii)(C)(2) Copies of all records specified by this Section VI.B.2.c.(ii)(C) shall be retained by the operator for a minimum of two years after the date on which the record was made.

VI.B.2.c.(iii) Secondary Seal Requirements

VI.B.2.c.(iii)(A) General

No owner or operator of an EFR tank (storing petroleum liquids) not specifically exempted in Section VI.B.2.c.(i)(B) shall store that petroleum liquid unless such vessel is equipped with a continuous secondary seal extending from the rim of the floating roof to the tank wall (i.e., a rim-mounted secondary seal).

VI.B.2.c.(iii)(B) Vapor-Mounted Seals

For EFR tanks required to have a secondary seal and which have a vapor-mounted primary seal:

VI.B.2.c.(iii)(B)(1) An annual inspection shall be made of the total gap area between the secondary seal and the wall of the tank in accordance with the method in VI.B.2.c.(iii)(B)(3).

VI.B.2.c.(iii)(B)(2) This total gap area shall not exceed 21.2 cm2/meter diameter (1.0 in2/ft. diameter).

VI.B.2.c.(iii)(B)(3) Method to determine gap area:

VI.B.2.c.(iii)(B)(3)(a) Physically measure the length and width of all gaps around the entire circumference of the secondary seal in each place where a 0.32 cm (1/8 in.) uniform diameter probe passes freely (without forcing or binding against the seal) between the seal and the tank wall; and,

VI.B.2.c.(iii)(B)(3)(b) Sum the area of the individual gaps.

VI.B.3. Storage of petroleum liquid in tanks of or less than 151,412 liters (40,000 gallons) capacity

VI.B.3.a. Tanks or containers used to store liquids with true vapor pressure at 20°C of less than 78 torr (1.5 psia) or greater than 570 torr (11.0 psia) at 20°C are exempt from the provisions of this Section VI.B.3.

VI.B.3.b. The owner or operator of storage tanks at a gasoline dispensing facility (service station) or other facility not addressed in Sections VI.C.2. or VI.C.3., which receives and stores petroleum liquid, shall not allow the transfer of petroleum liquid from any delivery vessel into any tank unless the tank is equipped with a submerged fill pipe and the vapors displaced from the storage tank during filling are processed by a vapor control system, if the tank:

VI.B.3.b.(i) Has a rated manufacturer's capacity of 2,082 liters (550 gallons) or more and was installed after November 7, 1973, (except for storage

tanks below 550 gallon capacity used exclusively for agricultural use; however, these must have a submerged fill pipe), or

VI.B.3.b.(ii) Has a rated manufacturer's capacity of 7,571 liters (2,000 gallons) or more and was installed before November 7, 1973.

VI.B.3.b.(iii) A vapor balance system shall be deemed "approved" if its design and operation are in accordance with the applicable provisions of Appendices A and B.

VI.B.3.c. Tanks equipped with a submerged fill pipe shall meet the specifications of Appendix B.

VI.B.3.d. The vapor control system shall include one or more of the following:

VI.B.3.d.(i) A vapor-tight line from the storage tank to delivery vessel (i.e. an approved control system).

VI.B.3.d.(ii) A refrigerator-condensation system or equivalent designed to recover at least 90 percent by weight of the organic compounds in the displaced vapor.

VI.B.3.e. The owner or operator shall ensure that operating procedures are used so that gasoline cannot be transferred into the tank unless the vapor control system is in use.

VI.B.3.f. The vapor balance system shall meet the specifications of Appendix B.

VI.B.3.g. The vapor balance system and the vapor control system shall meet the requirements of Section XV.

VI.B.3.h. Control devices shall meet the applicable requirements, including recordkeeping, of Sections IX.A.3.a., b., c., and e., and IX.A.8.a. and b.

VI.B.3.i. The applicable EPA reference methods 1 through 4, and 25, of 40 CFR Part 60 shall be used to determine the efficiency of control devices.

VI.C. Transfer of Petroleum Liquid

VI.C.1. Exemptions

Transfer operations involving petroleum liquid with true vapor pressures at 20°C of less than 78 torr (1.5 psia) or greater than 570 torr (11.0 psia) shall be exempt from the provisions of this Section VI.C.

VI.C.2. Loading Facilities Classified as Terminals

VI.C.2.a. A terminal is defined as a petroleum liquid storage and distribution facility that has an average daily throughput of more than 76,000 liters of gasoline (20,000 gallons), which is loaded directly into transport vehicles. A rolling, 30-day average of throughput shall be used to determine the applicability of this Section VI.C.2.

VI.C.2.b. The owner or operator of a terminal subject to this section shall equip the terminal with proper loading equipment and shall follow the loading procedures listed:

VI.C.2.b.(i) Install dry-break loading couplings to prevent petroleum liquid loss during uncoupling from vehicles.

VI.C.2.b.(ii) Install a vapor collection and disposal system which gathers vapor transferred from vehicles being loaded. The system shall include devices to prevent the release of vapor from vapor recovery hoses not in use.

VI.C.2.b.(iii) Use operating procedures to ensure that petroleum liquid cannot be transferred unless the vapor collection equipment is in use.

VI.C.2.b.(iv) Provide for the prevention of overfilling of transport vehicles with loading pump shut-offs, set stop meters, or comparable equipment.

VI.C.2.b.(v) Operate all recovery and disposal equipment at a back pressure less than the pressure relief valve setting of transport vehicles.

VI.C.2.b.(vi) Prevent the release of petroleum liquid on the ground from transport vehicles. Provision shall be made to remove any undelivered petroleum liquid with closed drainage devices.

VI.C.2.b.(vii) Maintain and operate final recovery and disposal equipment or devices in the vapor control system (i.e., control devices) so as to emit no more than 80 milligrams of volatile organic compounds per liter of gasoline being loaded. Such disposal devices shall be approved by the Division.

VI.C.2.b.(viii) Prevent loading of petroleum liquid into transport vehicles which do not have valid leak-tight certification as required in Section VI.D. No truck shall be loaded unless a valid certification sticker is displayed, or a certification letter is carried in the truck.

VI.C.2.b.(ix) Follow all control procedures to prevent leaks as specified in Section XV.

VI.C.2.c. Control devices shall meet the applicable requirements, including recordkeeping of Sections IX.A.3.a., b., c., and e., and IX.A.8.a. and b.

VI.C.2.d. The applicable methods of 40 CFR 60. 503, or EPA reference methods 1 through 4, 25A, and 25B of 40 CFR Part 60 shall be used to determine the efficiency of control devices.

VI.C.2.e. The method set forth in Appendix A of EPA-450/2-77-026, "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals" shall be used to test emission points other than control devices.

VI.C.3. Loading Facilities Classified as Bulk Plants

VI.C.3.a. A bulk plant is defined as a petroleum liquid storage and distribution facility that has an average daily throughput of 76,000 liters of gasoline (20,000 gallons) or less, which is loaded directly into transport trucks. (As used herein,

"bulk plant" does not include service stations nor separate operations within petroleum liquid distribution facilities which pump only into fuel tanks fueling motor vehicles. Both such operations are regulated by Section VI.B.3.). A rolling 30-day average of throughput shall be used to determine the applicability of this regulation.

VI.C.3.b. The owner or operator of a bulk storage plant subject to this section shall install an approved vapor balance system to return vapors to the incoming transport trucks during the filling of tanks controlled under Section VI.B.3. (A vapor balance system shall be deemed "approved" if its design and operation is in accord with the provisions of Appendix C.)

VI.C.3.c. The owner or operator of a bulk plant which serves storage tanks which are required to collect and recover vapor as prescribed in Section VI.B.3. shall:

VI.C.3.c.(i) Install and operate vapor collection and return equipment on any transport vehicles used to deliver to controlled tanks, and

VI.C.3.c.(ii) Install and operate vapor collection and return equipment at loading facilities to collect vapors during loading of tank compartments of outbound transport trucks and return these vapors to the bulk plant storage tanks, using an approved vapor balance system.

VI.C.3.c.(iii) Assure that transport trucks and loading facilities conform to the applicable provisions of Sections VI.C.2. and VI.C.4.

VI.C.3.d. The owner or operator of a bulk plant which serves only storage tanks exempted from the provisions of Section VI.B.3.b. by reason of their small size or location in an attainment area shall load outbound transport trucks using equipment that provides for top loading of the petroleum liquid into the vehicle tank compartments through an extended fill tube which reaches within 15.24 cm (6 in.) of the bottom of the tank compartment.

VI.C.3.e. The owner or operator of a bulk plant subject to this section shall ensure that petroleum liquid cannot be transferred unless the vapor collection equipment is in use.

VI.C.3.f. The owner or operator of a bulk plant subject to this section shall follow all procedures to prevent leaks as specified in Section XV.

VI.C.4. Transport Vehicles

VI.C.4.a. Rail cars shall be loaded only at facilities which allow for the following:

VI.C.4.a.(i) A submerged fill pipe which reaches within 15.24 cm (6 in.) of the bottom of the tank.

VI.C.4.a.(ii) Vapor collection and/or disposal equipment designated and operated to recover vapors displaced during the loading of the rail car.

VI.C.4.a.(iii) A vapor-tight seal around the tank car hatch and the loading equipment.

VI.C.4.b. The owner or operator of petroleum transport trucks which serve locations required to be equipped with vapor recovery equipment shall load only

at facilities capable of disposing of collected vapors. The owner or operator shall assure that such vehicles possess the proper equipment and that work practices are followed so that:

VI.C.4.b.(i) Dry-break loading and unloading nozzles are used and are compatible with those required at loading facilities.

VI.C.4.b.(ii) Vapor recovery hoses are connected at all times during unloading or loading of petroleum distillate.

VI.C.4.b.(iii) Transport trailers and vehicle tanks are operated and maintained to prevent detectable hydrocarbon vapor loss during loading, transport and delivery.

VI.C.4.b.(iv) Compartment dome lids are closed and locked during transfers of petroleum liquid. Such lids may be opened for the purpose of certifying the accuracy of a delivery only prior to and after such delivery.

VI.C.4.b.(v) Hoses, couplings, and valves are maintained to prevent dripping, leaking, or other liquid or vapor loss during loading or unloading.

VI.D. Control of Volatile Organic Compound Leaks from Gasoline Transport Trucks

VI.D.1. General Provisions

VI.D.1.a. Applicability

This section is applicable to all gasoline transport trucks equipped for gasoline vapor collection which receive or dispense gasoline at terminals, bulk plants, or gasoline dispensing facilities located in the nonattainment areas.

VI.D.1.b. Definitions

For the purpose of this section, the following definitions apply:

VI.D.1.b.(i) "Gasoline Transport Truck" means a tank truck or tank trailer equipped with a storage tank and used for the transport of gasoline from sources of supply to stationary storage tanks of gasoline dispensing facilities (e.g., service stations), bulk gasoline plants, or gasoline terminals.

VI.D.1.b.(ii) "Vapor Collection System" means a vapor transport system which uses direct displacement by the gasoline being transferred to force vapors from the vessel being loaded into a vessel being unloaded or into a vapor control system or vapor holding tank.

VI.D.1.b.(iii) "Vapor Control System" means a system that is designed to control the release of volatile organic compounds displaced from a vessel during transfer of gasoline.

VI.D.2. Provisions for Specific Processes

VI.D.2.a. No terminal operator, when monitoring the gasoline loading operation and no owner or operator of a gasoline transport truck shall allow a gasoline

transport truck subject to this Section VI.D. to be filled with a VOC with Reid Vapor Pressure of 4.0 or greater unless the gasoline tank truck:

VI.D.2.a.(i) Is tested annually according to the test procedure referenced in Appendix E. Testing shall be completed prior to the onset of the summer ozone season (test October through April). In addition, the visual inspection detailed in Appendix E, paragraph B, shall be performed at least once every six months. Trucks which have not been previously certified (new gasoline transport trucks) may be tested May through September as set forth in Section VI.D.4.d.(iv).

VI.D.2.a.(ii) Sustains a combined absolute pressure change of no more than 5.6 torr (3 inches of H2O) in five-minute test periods when pressurized to a gauge pressure of 33.6 torr (18 inches of H2O), then evacuated to a gauge pressure of minus 11.2 torr (minus 6 inches of H2O), during the testing required in Section VI.D.2.a.(i) (i.e., the sum of the absolute pressure change determined by the pressure test plus the absolute pressure change determined by the vacuum test shall not exceed 3 inches of water); and

VI.D.2.a.(ii)(A) Sustains a leak rate of no more than 5.6 torr (3 inches H2O) in five minutes when the internal vapor valves are tested according to procedures in Appendix E, paragraph E.

VI.D.2.a.(ii)(B) Passes a retest within twenty (20) days if it does not meet the criteria of Section VI.D.2.a.(ii) and Section VI.D.2.a.(ii)(A).

VI.D.2.a.(ii)(C) At all times carries an unexpired certification sticker (pursuant to Sections VI.D.4.c. and VI.D.4.d.).

VI.D.2.b. Monitoring

VI.D.2.b.(i) The Division may, at any time, monitor a gasoline tank truck vapor collection system, or vapor control system, by the method referenced in Section VI.D.3.c to confirm continued compliance with Section VI.D.2.a..

VI.D.2.b.(ii) Within fifteen (15) days after an exceedance is detected a tank shall pass:

VI.D.2.b.(ii)(A) A pressure/vacuum test per Appendix E; or

VI.D.2.b.(ii)(B) A test with combustible gas detector using procedures referenced in Section VI.D.3.c. such that no leak over 60% of the propane lower explosive limit (LEL) exists.

VI.D.3. Testing and Monitoring

VI.D.3.a. The owner or operator of a gasoline transport truck shall at their own expense, demonstrate compliance with Section VI.D.2, by methods of Appendix E. All tests shall be made by, or under the direction of, a person qualified by training and/or experience in the field of air pollution testing or gasoline transport truck maintenance.

VI.D.3.b. The owner or operator of a gasoline transport truck subject to this regulation must notify the Division of the date and location of a certification test at least forty-eight (48) hours before an anticipated test date, except that for the first truck tested by a given transport company and for the first test by a given testing facility, five (5) days' notice must be given the Division: or alternatively, a designated individual within the Division may orally waive the notice requirements and allow a shorter notice period before the test.

VI.D.3.c. Monitoring to confirm the continuing existence of leak tight conditions shall be consistent with the procedures described in Appendix B. of "Control of Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems," EPA-450/2-78-051.

VI.D.4. Recordkeeping and Reporting

VI.D.4.a. The owner or operator of a gasoline transport truck subject to this Section VI.D. shall maintain records of all certification testing and repairs. The records shall identify the gasoline transport truck, the date of the test or repairs and, if applicable, the type of repair and the date of retest. The written record shall include entries of any pre-test repairs, adjustments, or modifications. These shall also include the part name, number, and vendor name of any part removed and of any part installed. The records shall be maintained in legible, readily available form for at least two (2) years after the date the testing or repair was completed and shall be made available to the Division for inspection upon request.

VI.D.4.b. The records of certification tests required by Section VI.D.2.a. shall, as a minimum, contain all of the following entries:

VI.D.4.b.(i) The gasoline transport truck/tank identification number;

VI.D.4.b.(ii) The following data for each test trial:

VI.D.4.b.(ii)(A) The initial test pressure and the time of the reading.

VI.D.4.b.(ii)(B) The final test pressure and the time of the reading.

VI.D.4.b.(ii)(C) The initial test vacuum and the time of the reading.

VI.D.4.b.(ii)(D) The final test vacuum and the time of the reading.

VI.D.4.b.(ii)(E) For the vapor valve test, the initial test-pressure and time of reading; and

VI.D.4.b.(ii)(F) The final test-pressure and the time of the reading.

VI.D.4.b.(iii) The size of each of the compartments within the tank and whether such compartment was manifolded or was tested separately during pressure and vacuum tests.

VI.D.4.b.(iv) At the top of each report page shall be the company name and the date and location of the test results recorded on that page; and

VI.D.4.b.(v) Name and title of the person conducting the test.

VI.D.4.c. The owner or operator of a gasoline transport truck subject to this regulation must annually certify to the Division that the gasoline transport truck has been tested by an applicable method referenced in Section VI.D.3. The application for certification shall include:

VI.D.4.c.(i) The name and address of the company and the name and telephone number of responsible company representative over whose signature the certification is submitted; and,

VI.D.4.c.(ii) A copy of the information recorded to comply with Section VI.D.4.b.

VI.D.4.d. Certification

VI.D.4.d.(i) Except as stated in Sections VI.D.4.d.(ii), (iii), and (iv), upon receipt of an application for certification that meets the requirements, the Division shall issue a sticker and a letter of certification to be valid for 380 days after the most recent, successfully completed pressure/vacuum test, except that the expiration date shall not fall within the months of May through September. The certification shall be valid for less than 380 days if necessary to remain within the allowable test period of October through April.

VI.D.4.d.(ii) Owners or operators of gasoline transport trucks with certificates that expire May 1, 1990 (1991) through July 31, 1990 (1991) shall renew their certificates in March or April, 1990 (1991).

VI.D.4.d.(iii) Owners or operators of gasoline transport trucks with certificates that expire August 1, 1990 (1991) through September 30, 1990 (1991) shall renew their certificates in October or November 1990 (1991). Certificates which expire August 1, 1990 (1991) through September 30, 1990 (1991) shall be valid until November 30, 1990 (1991).

VI.D.4.d.(iv) Owners or operators of previously uncertified trucks (new gasoline transport trucks) subject to this section may obtain initial certification May 1 through September 30, if necessary. Certification for such trucks certified May 1 through July 31 shall be valid for 270 days. Certification for such trucks certified August 1 through September 30 shall be valid for 430 days. All expiration dates for such certificates shall fall within the allowable testing period of October through April.

VI.D.4.d.(v) This certification shall be revoked if monitoring detects an exceedance which is not corrected within fifteen (15) days of initial detection, or if the exceedence is judged so severe as to warrant immediate revocation (i.e., no seal is maintained during transfer).

VI.D.4.e. The certification letter shall be kept with the tank or at the transport company office at all times and shall be shown to Division personnel upon their request. Copies of all records and reports required by the provisions of this Section VI.D. shall be made available to the Division upon oral or written request. The tank shall at all times prominently display a valid sticker when containing gasoline in the ozone nonattainment area.

VII. Crude Oil

VII.A. General Exemptions

VII.A.1. Storage tanks of 151,412 liters (40,000 gallons) or less used to store crude oil is exempt from the provisions of this section.

VII.A.2. Storage tanks with capacities of less than 1,590 cubic meters (10,000 barrels) used to store crude oil and condensate prior to lease custody transfer are exempt from the provisions of this Regulation Number 7 other than Sections XII. and XVII.

VII.B. Equipment

Pumps and compressors handling crude oil shall be subject to the provisions of Section VI.A.

VII.C. Storage

Except as provided in Section VII.A.2., crude oil stored in tanks greater than 151,412 liters (40,000 gallons) shall be subject to the provisions of Sections VI.B.1.b. and VI.B.2.

VIII. Petroleum Processing and Refining

VIII.A. Wastewater (Oil/Water) Separators

VIII.A.1. Definitions

VIII.A.1.a. "Forebays" mean the primary sections of a wastewater separator.

VIII.A.1.b. "Wastewater (oil/water) separator" means any device or piece of equipment which utilizes the difference in density between oil and water to remove oil and associated chemicals from water, or any device, such as a flocculation tank, clarifier, etc., which removes petroleum derived compounds from wastewater.

VIII.A.2. The owner or operator of any wastewater (oil/water) separators at a petroleum refinery shall:

VIII.A.2.a. Equip the forebays and separator sections of the wastewater separators with one or more of the following emission control devices, ensuring that such device is properly installed, in good working order and properly maintained:

VIII.A.2.a.(i) A solid cover with all openings sealed and the liquid contents totally enclosed.

VIII.A.2.a.(ii) A pontoon-type or double-deck type floating roof, or internal floating cover. The floating roof or cover must rest on the surface of the liquid contents and be equipped with a closure seal or seals to close the space between the edge of the floating roof (or cover) and the wall(s) of the compartment.

VIII.A.2.a.(iii) A vapor recovery system consisting of a vapor gathering device capable of collecting the volatile organic compound vapors discharged and a vapor disposal device capable of processing such volatile organic vapors so as to prevent their emission into the atmosphere.

VIII.A.2.a.(iii)(A) Control devices shall meet the applicable requirements, including recordkeeping, of Sections IX.A.3.a., b., c., and e., and IX.A.8.a. and b.

VIII.A.2.a.(iii)(B) The applicable EPA reference methods 1 through 4, and 25, of 40 CFR Part 60 shall be used to determine the efficiency of control devices.

VIII.A.2.b. Equip all openings in covers, separators, and forebays with lids or seals such that the lids or seals are in the closed position at all times except when in actual use. Access for gauging and sampling shall be minimized.

VIII.B. Emissions from Petroleum Refineries

VIII.B.1. Definitions

VIII.B.1.a. "Firebox" means the chamber or compartment of a boiler or furnace in which materials are burned but does not mean the combustion chamber of an incinerator.

VIII.B.1.b. "Turnaround" means the procedure of shutting a refinery unit down after a run to do necessary maintenance and repair work and then putting the unit back on stream.

VIII.B.2. Process unit turnarounds

The owner or operator of a petroleum refinery shall develop and submit to the Division for approval a detailed procedure for minimization of volatile organic compound emissions during process unit turnaround. As a minimum, the procedure shall provide for:

VIII.B.2.a. Depressurization venting of the process unit or vessel to a vapor recovery system, or to a flare or firebox which assures at least 90% combustion efficiency;

VIII.B.2.b. No emission of volatile organic compounds from a process unit or vessel until its internal pressure is 17.2 psia or less; and

VIII.B.2.c. Recordkeeping of the following items. Records shall be kept for at least two years and shall be made available to the Division for review upon request.

VIII.B.2.c.(i) Every date that each process unit is shut down,

VIII.B.2.c.(ii) The approximate vessel volatile organic compound concentration when the volatile organic compounds were first discharged to the atmosphere, and

VIII.B.2.c.(iii) The approximate total quantity of volatile organic compounds emitted to the atmosphere.

VIII.B.3. Venting of blowdown systems and safety pressure relief valves

All blowdown systems, process equipment vents, and pressure relief valves shall be vented to a vapor recovery system, or to a flare or firebox which assures at least 90% combustion efficiency.

VIII.B.4. Vacuum-Producing Systems

VIII.B.4.a. The owner or operator of any vacuum-producing system at a petroleum refinery shall not permit the emission of any noncondensible volatile organic compounds from the condensers, hot wells or accumulators of the system. This emission limit shall be achieved by:

VIII.B.4.a.(i) Venting the noncondensible vapors to a flare or other combustion device, or,

VIII.B.4.a.(ii) Compressing the vapors and adding them to the refinery fuel gas.

VIII.B.5. All sampling, testing, and measuring ports, hatches, and access openings shall be kept in a closed sealed position except during actual sampling or access.

VIII.B.6. Control devices shall meet the applicable requirements, including recordkeeping, of Sections IX.A.3.a., b., c., and e., and IX.A.8.a. and b.

VIII.B.7. The applicable EPA reference methods 1 through 4, and 25, of 40 CFR Part 60, shall be used to determine the efficiency of control devices.

VIII.C. Petroleum Refinery Equipment Leaks

VIII.C.1. Definitions

For the purpose of this section, the following definitions apply:

VIII.C.1.a. "Accessible Component" means a component which can be reached, if necessary, by safe and proper use of portable ladders such as are acceptable to OSHA, as well as by built-in ladders and walkways. "Accessible" also includes components which can be reached by the safe use of an extension on the monitoring probe.

VIII.C.1.b. "Component" means any piece of equipment, which has the potential to leak volatile organic compounds when tested in the manner described in Section VIII.C.3. These sources include, but are not limited to, pumping seals, compressor seals, seal oil degassing vents, pipeline valves, flanges and other connections, pressure relief devices, process drains, and open ended pipes. Excluded from these sources are valves which are not externally regulated.

VIII.C.1.c. "Gaseous Service" means equipment which processes, transfers or contains a volatile organic compound or mixture of volatile organic compounds in the gaseous phase.

VIII.C.1.d. "In Heavy VOC Liquid Service" means that the piece of equipment is not in gaseous service or in light VOC liquid service.

VIII.C.1.e. "In Light Liquid VOC Service" Equipment is in light liquid service if the following conditions apply:

VIII.C.1.e.(i) the true vapor pressure of one or more of the components is greater than 0.3 kPa at 20°C. True vapor pressures may be obtained from standard reference texts or may be determined by ASTM D-2879.

VIII.C.1.e.(ii) the total concentration of the pure components have a true vapor pressure greater than 0.3 kPa at 20°C, is equal to or greater than 20 percent by weight; and

VIII.C.1.e.(iii) the fluid is a liquid at operating conditions.

VIII.C.1.f. "Refinery Unit" means a set of components which are a part of a basic process operation, such as, distillation, hydrotreating, cracking, or reforming of hydrocarbons.

VIII.C.1.g. "Water Draw" means a routinely used valve or system employing a valve which allows non-VOC material (usually water) to be separated from VOC.

VIII.C.2. Provisions for Specific Processes

VIII.C.2.a. The owner or operator of a petroleum refinery complex subject to this regulation shall:

VIII.C.2.a.(i) Develop a monitoring program consistent with the provisions in Section VIII.C.3.

VIII.C.2.a.(ii) Conduct a monitoring program consistent with the provisions in Section VIII.C.4.a.

VIII.C.2.a.(iii) Record all leaking components which have a VOC concentration exceeding 10,000 ppm when tested according to Section VIII.C.3., and place an identifying tag on each component consistent with the provisions in Section VIII.C.4.a.(iii).

VIII.C.2.a.(iv) Repair and retest leaking components, as defined in Section VIII.C.2.a.(iii), as soon as possible, but no later than fifteen (15) days after the leak is found, excepting those specified in Sections VIII.C.2.a.(v) and VIII.C.2.a.(vi).

VIII.C.2.a.(v) Identify all leaking components as defined in Section VIII.C.2.a. (iii), which cannot be repaired until the unit is shut down for turnaround, and repair and retest as in Section VIII.C.2.a.(iv) when the unit is back on stream.

VIII.C.2.a.(vi) When a component leak cannot be fixed within fifteen (15) working days solely because parts are not available, the following shall be noted in an "awaiting parts log:"

VIII.C.2.a.(vi)(A) component identification and tag number

VIII.C.2.a.(vi)(B) date part was ordered

VIII.C.2.a.(vi)(C) date part was received

VIII.C.2.a.(vi)(D) date repair was made

VIII.C.2.b. Except for safety pressure relief valves, no owner or operator of a petroleum refinery shall install or operate a valve at the end of a pipe or line containing volatile organic compounds unless the pipe or line is sealed with a second valve, a blind flange, a plug, or a cap. The sealing device may be

removed only when a sample is being taken or when the valve is otherwise in use.

VIII.C.2.c. The Division, at its discretion, may require early unit turnaround based on the number and severity of tagged leaks awaiting turnaround provided:

VIII.C.2.c.(i) The requirement does not exceed reasonable available control technology due to cost per ton of emissions reduction achieved by the early turnaround or other reasonable analysis.

VIII.C.2.c.(ii) The Division provides the owner or operator of a petroleum refinery with written notification at least 180 days before requiring an early turnaround. The owner or operator will have 30 days from the date of the Division's notification to contest the requirement by submitting a demonstration that the requirement is beyond reasonable available control technology. If no demonstration is made, it will be assumed the requirement is reasonable. If a demonstration is submitted by the owner or operator, the Division will either approve the demonstration or disapprove the demonstration with a justification regarding the disapproval within 30 days of the date the demonstration is submitted to the Division.

VIII.C.2.c.(iii) The requirement is not contested by the owner or operator. Should the requirement be contested, the requirement for early unit turnaround will be delayed until 180 days after the demonstration discussed in Section VIII.C.2.c.(ii) is disapproved by the Division.

VIII.C.2.d. Piping valves and pressure relief valves in gaseous VOC service shall be marked in some manner that will be readily obvious to both refinery personnel performing monitoring and the Division, to identify them as components which are monitored quarterly.

VIII.C.3. Testing and Monitoring Procedures

Testing and calibration procedures to determine compliance with this regulation shall be consistent with EPA reference method 21 of 40 CFR Part 60. The reference compound may be methane or hexane. A leak is defined as a reading of 10,000 ppmv of the reference compound.

VIII.C.4. Monitoring, Recordkeeping, Reporting

VIII.C.4.a. Monitoring

VIII.C.4.a.(i) The owner or operator of a petroleum refinery subject to this regulation shall conduct a monitoring program consistent with the following provisions:

VIII.C.4.a.(i)(A) Monitor yearly by the method referenced in Section VIII.C.3., all:

VIII.C.4.a.(i)(A)(1) Pump seals; and

VIII.C.4.a.(i)(A)(2) Piping valves in light liquid VOC service; and

VIII.C.4.a.(i)(A)(3) Process drains; and

VIII.C.4.a.(i)(A)(4) Heat-exchanger body flanges; and

VIII.C.4.a.(i)(A)(5) Other accessible flanges in VOC service.

VIII.C.4.a.(i)(A)(6) Components in heavy liquid VOC service are exempt from requirements of this Section VIII.C.4.a.(i)(A).

VIII.C.4.a.(i)(B) Monitor quarterly by the method referenced in Section VIII.C.3., all:

VIII.C.4.a.(i)(B)(1) Compressor seals; and

VIII.C.4.a.(i)(B)(2) Piping valves in gaseous service; and

VIII.C.4.a.(i)(B)(3) Pressure relief valves in gaseous service.

VIII.C.4.a.(i)(C) Monitor at least weekly by visual methods all pump seals.

VIII.C.4.a.(i)(D) Monitor within 24 hours with a VOC detector and make record of any component from which VOC liquids are observed leaking.

VIII.C.4.a.(i)(E) Components in heavy liquid VOC service shall be monitored by the method referenced in Section VIII.C.3. within five days if evidence of a potential leak is found by visual, audible, olfactory, or any other detectable method.

VIII.C.4.a.(ii) Inaccessible valves and flanges shall be monitored annually or, as a minimum, at unit shutdown using the procedures of VIII.C.2.a.(v). Pressure relief devices which are connected to an operating flare header or vapor recovery device, storage tank valves, and valves that are not externally regulated are exempt from the monitoring requirements in Section VIII.C.4.a.(i).

VIII.C.4.a.(iii) The owner or operator of a petroleum refinery, upon the detection of a leaking component as defined in Section VIII.C.2.a.(iii), shall affix a weatherproof and readily visible tag, bearing an identification number and the date the leak is located, to the leaking component. This tag shall remain in place until the leaking component is repaired. In addition, the owner or operator shall log the leak (including those leaks immediately repaired), per the requirements of Sections VIII.C.4.b.(i) through (iii).

VIII.C.4.b. Recordkeeping

VIII.C.4.b.(i) The owner or operator of a petroleum refinery shall maintain a leaking components monitoring log which shall contain at a minimum, the following data:

VIII.C.4.b.(i)(A) The name of the process unit where the component is located.

VIII.C.4.b.(i)(B) The type of component (e.g., valve, seal).

VIII.C.4.b.(i)(C) The tag number of the component.

VIII.C.4.b.(i)(D) The date on which a leaking component is discovered.

VIII.C.4.b.(i)(E) The date on which a leaking component is repaired.

VIII.C.4.b.(i)(F) The date and instrument reading found during the recheck procedure subsequent to repairing a leaking component.

VIII.C.4.b.(i)(G) A record of the calibration of the monitoring instrument.

VIII.C.4.b.(i)(H) Those leaks that cannot be repaired until turnaround.

VIII.C.4.b.(i)(I) The total number of components checked and the total number of components found leaking.

VIII.C.4.b.(i)(J) The total number of components subject to Section VIII.C.2.a.(v) which upon retest were still leaking as defined in Section VIII.C.3.

VIII.C.4.b.(ii) Copies of the monitoring log shall be retained by the owner or operator for a minimum of two (2) years after the date on which the record was made or report prepared.

VIII.C.4.b.(iii) Copies of the monitoring log shall be made available to the Division upon oral or written request.

VIII.C.4.c. Reporting

The owner or operator of a petroleum refinery, upon the completion of each yearly and/or quarterly monitoring procedure, shall:

VIII.C.4.c.(i) Submit a report to the Division by the 15th day of February, May, August, and November that lists all leaking components that were located during the previous three (3) calendar months (quarter), but not repaired within fifteen (15) working days, all leaking components awaiting unit turnaround, the total number of components inspected, and the total number of components found leaking.

VIII.C.4.c.(ii) Submit a signed statement with the report attesting to the fact that, with the exception to those leaking components listed in Section VIII.C.4.b.(i)(H), all monitoring and repairs were performed as stipulated in the monitoring program.

IX. Surface Coating Operations

IX.A. General Provisions

IX.A.1. Definitions

IX.A.1.a. "Coating" means a protective, functional or decorative film applied in a thin layer to a surface. This term often applies to paints such as lacquers or enamels, but is also used to refer to films applied to paper, plastics, or foils.

IX.A.1.b. "Coating Applicator" means an apparatus used to apply a surface coating.

IX.A.1.c. "Coating Line" means an operation which includes both (1) a coating applicator and (2) device(s) and/or area(s) to accomplish one or more of the following processes: flash-off, drying, curing, heat-setting and/or polymerization.

IX.A.1.d. "Coating Solids" means that portion of a surface coating, which remains after volatile components have escaped.

IX.A.1.e. "Final Repair Application" means that application of surface coating specifically intended to repair damage and imperfections in existing surface coats.

IX.A.1.f. "Finished Coating Solids" means those coating-solids that remain on a coated substance after completion of all production processes.

IX.A.1.g. "Flash-off Area" means the space between the application area and the oven.

IX.A.1.h. "Prime Coat" (also termed "primer") means the first film of coating applied in a multiple-coat operation.

IX.A.1.i. "Single Coat" means a single film of coating applied directly to the metal substrate, omitting the primer application.

IX.A.1.j. "Surface Coating" means a liquid, liquefiable, or mastic composition which is converted to a solid (or semi-solid) protective, decorative, or adherent film or deposit after application as a thin layer or by impregnation.

In a machine which has both coating and printing units, all units shall be considered as performing a printing operation. Such a machine is subject to the standards governing graphic arts, and thus is not covered by coating standards.

IX.A.1.k. "Surface Coating Oven" means a chamber within which heat is used to bake, cure, polymerize, and/or dry a surface coating.

IX.A.1.l. "Topcoat" means the final film of coating applied in a multiple-coat operation.

IX.A.2. Abbreviations

IX.A.2.a. Kg/lc shall be the abbreviation for: kilograms of solvent VOC per liter of coating (minus water and "exempt" solvents, as defined in Section II.B.).

IX.A.2.b. Lb/gc shall be the abbreviation for: (avoirdupois) pounds of solvent VOC per gallon of coating (minus water and "exempt" solvents, as defined in Section II.B.).

IX.A.3. Test Methods and Procedures

IX.A.3.a. The owner or operator of any VOC source required to comply with this section shall, at their own expense, demonstrate compliance using EPA reference method 24 of 40 CFR Part 60 for surface coatings, and reference method 25 and reference methods l through 4 for add-on controls.

IX.A.3.b. The test protocol should be in accordance with the requirements of the Air Pollution Control Division Compliance Test Manual and shall be submitted to the Division for review and approval at least thirty (30) days prior to testing. No test shall be conducted without prior approval from the Division.

IX.A.3.c. The Division may use independent tests to verify test data submitted by the source operator or owner. The test methods shall be those listed in Section IX.A.3.a. and the Division test results shall take precedence.

IX.A.3.d. The Division may accept, instead of the testing required in this section, a certification by the manufacturer of the composition of the coatings if supported by actual batch formulation records. The owner or operator of the VOC source required to comply with this section shall obtain certification from the coating manufacturer(s) that the test method(s) used for determination of VOC content meet the requirements specified in Section IX.A.3.a. The owner or operator shall have this certification readily available to Division personnel, in order to allow the results to be used in the daily compliance calculations specified in Section IX.A.10.

IX.A.3.e. The performance of add-on control device equipment shall be established with the required test methods of IX.A.3.a. at equipment startup, and after major modification to the control equipment. Baseline operating parameters shall be established during the satisfactory (i.e. in-compliance) operation of the control equipment, including operation during all anticipated ranges of process throughput. During subsequent process operation, the owner or operator shall maintain the operating conditions of the add-on controls as close to these baseline conditions as possible. If serious operational problems with an add-on control system are evidenced from the daily monitoring required by Section IX.A.8.b. (such problems may be indicated by changes from baseline conditions), repeat performance tests may be required by the Division, as necessary.

IX.A.4. Sampling

To determine compliance with applicable surface coating standards, samples shall be taken from the coating as freshly delivered to the reservoir of the coating applicator.

IX.A.5. Alternative compliance methods for processes and operations

For each process specified in Sections IX.B. through IX.N. the emission limits designated for that process shall be achieved by:

IX.A.5.a. Use of coatings with proportions of VOC less than or equal to the maximums specified by the applicable section of this regulation; or

IX.A.5.b. Use of the specified equipment and procedures prescribed by the applicable section of this regulation; or

IX.A.5.c. Use of an alternative means of control which satisfies the requirements of Section IX.A.5.e., IX.A.5.f., and Section II.D.; or

IX.A.5.d. Use of crossline averaging. The emission trading requirements of Regulation Number 3, Part A, Section V. shall be met. In addition, the following requirements apply:

IX.A.5.d.(i) The actual reduction shall be equivalent to the actual reduction that would be achieved on a line-by-line basis.

IX.A.5.d.(ii) Credit shall not be received for downtime, however, credit is allowed for enforceable production limits.

IX.A.5.d.(iii) Crossline averaging shall be used only across lines in the same control technique guidance group.

IX.A.5.d.(iv) The emission trading policy shall be met on a daily weighted average.

IX.A.5.d.(v) Sources subject to best available control technology (BACT) and lowest achievable emission rate (LAER) requirements shall not use cross line averaging.

IX.A.5.d.(vi) VOC emissions shall be expressed as lbs/gallons solids to determine reduction over baseline (lb VOC/lb solids for graphic arts).

IX.A.5.d.(vii) Organisol and plastisol coatings shall not be used to bubble emissions from vinyl surface or automobile topcoating operations.

IX.A.5.d.(viii) Before crossline averaging may be used, the control methodology shall be approved as a revision to the State Implementation Plan.

IX.A.5.e. The design, operation and efficiency of any capture system used in conjunction with any emission control system shall be certified in writing by the source owner or operator and approved by the Division. Unless the capture system meets the requirements for a total enclosure as specified in the New Source Performance Standard for the Magnetic Tape Manufacturing Industry, 53FR38892, October 3, 1988, or unless Division approved material balance techniques are used to adequately determine overall VOC capture and destruction/recovery efficiency, the efficiency of the capture system shall be determined by test methods approved as a revision to the State Implementation Plan. Testing for capture efficiency shall be performed on a case-by-case basis as required by the Division. The requirements of Sections IX.A.3.e. and IX.A.8.b. shall apply to the capture and control device system. When capture and control device efficiency must be independently determined, the overall VOC emission reduction rate equals the (percent capture efficiency X percent control device efficiency)/100.

IX.A.5.f. Sources which use add-on controls, crossline averaging, or an approved alternative control strategy instead of low solvent technology to meet the applicable emission limit shall meet the equivalent VOC emission limit, on the basis of solids applied (lb VOC/gal solids applied, or lb VOC/lb solids applied, for graphic arts sources). Appendix F sets forth the procedure for converting emission limits and lists equivalent limits for various coating operations.

IX.A.5.g. Owners or operators of sources which use a carbon adsorption system shall provide for the proper disposal or reuse of all VOC recovered.

IX.A.6. Exemptions

IX.A.6.a. The requirements of this Section IX. do not apply to sources used exclusively for chemical or physical analysis or determination of product quality and commercial acceptance, provided;

IX.A.6.a.(i) the operation of the source is not an integral part of the production process; and

IX.A.6.a.(ii) the emissions from the source do not exceed 363 kilograms (800 lbs.) in any calendar month; and

IX.A.6.a.(iii) the exemption is approved in writing by the Division.

IX.A.6.b. The requirements of Sections IX.C., D., E., F., G., H., I., L. and M. are not applicable to sources whose actual emissions, including fugitive emissions, before add-on controls, are less than 6.8 kilograms (15 lbs.) per day and less than 1.4 kilograms (3 lbs.) per hour. Emissions from all sources within the same control technique guidance group shall be totaled to determine actual emissions.

IX.A.7. Fugitive emission control

IX.A.7.a. Control techniques and work practices shall be implemented at all times to reduce VOC emissions from fugitive sources. Control techniques and work practices include, but are not limited to:

IX.A.7.a.(i) tight-fitting covers for open tanks;

IX.A.7.a.(ii) covered containers for solvent wiping cloths;

IX.A.7.a.(iii) proper disposal of dirty cleanup solvent.

IX.A.7.b. Emissions of organic material released during clean-up operations, disposal, and other fugitive emissions shall be included when determining total emissions, unless the source owner or operator documents that the VOCs are collected and disposed of in a manner that prevents evaporation to the atmosphere.

IX.A.8. Recordkeeping, Reporting, and Monitoring

IX.A.8.a. If add-on control equipment is used, continuous monitors of the following parameters shall be installed, calibrated, and operated at all times that the associated control equipment is operating:

IX.A.8.a.(i) exhaust gas temperature of all incinerators;

IX.A.8.a.(ii) temperature rise across a catalytic incineration bed;

IX.A.8.a.(iii) breakthrough of VOC on a carbon adsorption unit;

IX.A.8.a.(iv) any other monitoring and/or recording device, maintenance and/or control-media-replacement schedule(s) specified on a case-by-case basis by the Division.

IX.A.8.b. If add-on control equipment is used, in addition to the requirements of Section IX.A.8.a., the following information and any other necessary information, as determined applicable for each source by the Division, shall be monitored and

recorded daily in order to assure continuous compliance. The substitution of continuous recordings for daily recording may be allowed by the Division.

IX.A.8.b.(i) For the capture system: fan power use, duct flow, duct pressure.

IX.A.8.b.(ii) For carbon adsorbers: bed temperature, bed vacuum pressure, pressure at the vacuum pump, accumulated time of operation, concentration of VOC in the outlet gas, solvent recovery.

IX.A.8.b.(iii) For refrigeration systems: compressor discharge and suction pressures, condenser fluid temperature, solvent recovery.

IX.A.8.b.(iv) For incinerator systems: exhaust gas temperature, temperature rise across a catalytic incinerator bed, flame temperature, accumulated time of incinerator.

IX.A.8.c. Recordkeeping procedures shall follow the guidance in "Recordkeeping Guidance Document for Surface Coating Operations and the Graphic Arts Industry," July 1989, EPA 340/1-88-003.

IX.A.9. Required and Prohibited Acts

IX.A.9.a. No owner or operator of a source of VOCs subject to this section shall operate, cause, allow or permit the operation of the source, unless:

IX.A.9.a.(1) For each category of surface coating as specified in Sections IX.B. through IX.M., the owner or operator of a surface coating line or facility subject to that section does not cause, allow or permit the discharge into the atmosphere of any VOCs in excess of the specified emission limit, calculated as delivered to the coating applicator or as applied to the substrate, whichever is greater.

IX.A.10. Compliance Calculation Procedures

IX.A.10.a. Compliance with this section shall be determined on a daily basis. Sources may request a revision to the State Implementation Plan for longer times for compliance determination.

IX.A.10.b. Compliance calculation procedures shall follow the guidance in "Procedure for Certifying Quantity of Volatile Organic Compounds Emitted by Paint, Ink, and Other Coatings," EPA-450/3-84/019. In addition, for add-on controls or other compliance alternatives, calculation procedures shall follow the guidance of Section IX.A.5.f.

IX.A.11. The requirements of Sections IX.A.1. through IX.A.10. apply to each category of surface coating as specified in Sections IX.B. through IX.M. The requirements of IX.A.7. through IX.A.10. apply to the category of IX.N.

IX.A.12. The Division shall approve utilization of alternative compliance methods to the following sources pursuant to this Section IX.

IX.A.12.a. Lexmark International, Inc. shall be allowed to utilize the alternative compliance method of crossline averaging for processes and operations within the Manufactured Metal Parts and Metal products (Subgroup L) and within the Plastic Film Coating Operations (Subgroup J). The emission trading

requirements of Regulation Number 3, Part A, Section V. shall be met, and utilization of the alternative compliance method shall be subject to the following generic conditions, which shall be written and specifically described as enforceable permit terms and conditions in its permits:

IX.A.12.a.(i) The alternative compliance method shall result in an actual reduction that is equivalent to the actual reduction that would otherwise be achieved on a line-by-line basis pursuant to this Regulation Number 7.

IX.A.12.a.(ii) Credit shall not be received for downtime; however, credit is allowed for emission reductions from enforceable production limits.

IX.A.12.a.(iii) Cross line averaging shall be used only across lines of the same control technique guidance group. Lexmark shall use cross line averaging between Metal Parts and Metal Products lines or between Plastic Film Coating lines. Lexmark shall not use cross line averaging where the emissions from Plastic film coating lines are averaged with Metal Parts and Metal Products lines.

IX.A.12.a.(iv) The emission trading policy set forth in Regulation Number 3, Part A, Section V., shall be met on a daily weighted average.

IX.A.12.a.(v) Sources subject to Best Available Control Technology (BACT), and Lowest Achievable Emission Rate (LAER) shall not use cross line averaging.

IX.A.12.a.(vi) To determine reduction over baseline, VOC emissions shall be expressed according to Section IX. A. 5. f., as lbs/gallons solids.

IX.A.12.a.(vii) Monthly records shall be kept at the source to verify ongoing compliance with these conditions. The recordkeeping format shall be approved by the Division.

IX.A.12.a.(viii) An annual report demonstrating ongoing compliance with this regulation and all permit terms shall be filed with the Division. The report format shall be approved by the Division and specifically described in the permit.

IX.A.12.a.(ix) The Division shall issue a permit with federally enforceable terms and conditions to Lexmark limiting Lexmark's alternative compliance method emissions to those allowable under Section IX.L. and Section IX.J.

IX.A.12.a.(x) Commercial and Product quality control laboratory equipment are exempt from APEN filing and construction permit requirements under Regulation Number 3, Part A, Section II.D.1.(i), and Regulation Number 3, Part B, Section II.D.1.a.; and from construction permit requirements under Regulation Number 3, Part B, Section II.D.1.(i). Qualifying sources shall be exempt from Regulation Number 7, Section IX. A.6.

IX.A.12.a.(xi) Nothing in the alternative compliance method is intended to relax any emissions limitation of this Regulation Number 7.

IX.B. Automobile and Light-Duty Truck Assembly Plants

IX.B.1. Definitions

IX.B.1.a. "Application Area" means the area where the surface coating is applied by spraying, dipping or flow coating.

IX.B.1.b. "Automobile" means a passenger motor-vehicle or a derivative of same, capable of seating twelve (12) or fewer passengers, and having at least two driven wheels.

IX.B.1.c. "Automobile Assembly Facility" means a facility where parts (including assembled or partially assembled components) of automobiles are received, and finished automobiles are produced, partially or wholly by an assembly line.

IX.B.1.d. "Light-Duty Truck" means any motor vehicle rated at 8,500 pounds (3,855 kilograms) gross vehicle weight or less, and having at least two driven wheels, which is designed primarily for purposes of transportation of property or is a derivative of such vehicles. It includes, but is not limited to, pickup trucks, vans, and window vans rated at 8,500 pounds gross vehicular weight or less.

IX.B.1.e. "Light-Duty Truck Assembly Facility" means a facility where parts (including assembled or partially assembled components) of light-duty trucks are received, and finished light-duty trucks are produced, partially or wholly by an assembly line.

IX.B.2. Applicability

This section applies to all assembly and subassembly lines in an automobile or light-duty truck assembly facility, including those for frames, small parts, wheels, and main body parts. This section applies only to the manufacture of new vehicles.

IX.B.3. Emission Limitations

	Kg/lc	**Lb/gc**
Prime application, flashoff area, and oven	0.23	1.9
Topcoat application area, flashoff area, and oven	0.34	2.8
Final repair application, flashoff area and oven	0.58	4.8

IX.B.4. Coatings other than primer, surfacer (guidecoat), topcoat and final repair shall be considered under the miscellaneous metal parts Section IX.L.

IX.B.5. For topcoat application, if a complying coating is not used to meet the emission limit of Section IX.B.3, then:

IX.B.5.a. the alternate method shall meet an emission limit of 15.1 lb VOC/gal. solids deposited on the coated part; and

IX.B.5.b. compliance shall be determined on a daily weighted average basis.

IX.B.6. Topcoat operation shall include all spray booths, flash-off areas and ovens in which topcoat is applied, dried and cured, except for final offline repair.

IX.C. Can Coating Operations

IX.C.1. Definitions

IX.C.1.a. "Can Coatings" means any coatings containing organic materials and applied -- or intended for application -- by spray, roller, or other means onto the inside and/or outside surfaces of formed cans and components of cans.

IX.C.1.b. "End Sealing Compound" means a substance which is coated onto can ends and which functions as a seal when the end is assembled onto the can.

IX.C.1.c. "Exterior Base Coat" means a coating applied to the exterior of a can to provide protection to the metal and/or to provide background for any lithographic or printing operation.

IX.C.1.d. "Interior Base Coat" means the initial coating applied to the interior surface of a can by roller coater or spray.

IX.C.1.e. "Interior Body Spray" means a coating sprayed onto the interior surface of the can body to provide a protective film between the can and its contents.

IX.C.1.f. "Overvarnish" means a coating applied directly over ink to reduce the coefficient of friction, provide gloss, protect against abrasion, enhance product quality, and protect against corrosion.

IX.C.1.g. "Three-Piece Can Side Seam Spray" means a coating sprayed onto the interior and/or exterior of a can body seam on a three-piece can to protect the exposed metal.

IX.C.1.h. "Two-Piece Can Exterior End Coat" means a coating applied to the exterior of the bottom end of a two-piece can.

IX.C.2. Applicability

This section applies to coating applicator(s), and oven(s) of sheet can or end coating lines involved in sheet basecoat (exterior and interior) and over varnish, two-and three-piece can interior body spray, two-piece can exterior end (spray or roll coat), three-piece can side-seam spray, and end sealing compound operations.

IX.C.3. Emission Limitations

Can Coating	**Kg/lc**	**Lb/gc**
Sheet base coat (exterior and interior) and overvarnish two-piece can exterior (base coat and overvarnish)	0.34	2.8
Two and three-piece can interior body spray, two-piece can exterior end (spray or roll coat)	0.51	4.2

Three-piece can side-seam spray	0.66	5.5
End sealing compound	0.44	3.7
Any additional coats	0.51	4.2

IX.D. Coil Coating Operations

IX.D.1. Definitions

IX.D.1.a. “Coil Coating” means any surface coating applied by spray, roller, or other means onto one or both surfaces of flat metal sheets or strips that come in rolls or coils.

IX.D.1.b. “Quench Area” means a chamber where the hot metal exiting the oven is cooled by either a spray of water or a blast of air followed by water cooling.

IX.D.2. Applicability

This section applies to the coating applicator(s), oven(s), and quench area(s) of coil coating operations involved in primer, intermediate, top-coat or single-coat operations.

IX.D.3. Emission Limitations:

Coil Coating	**Kg/lc**	**Lb/gc**
Any coat (primer, intermediate coat, topcoat, single coat)	0.31	2.6

IX.E. Fabric Coating Operations

IX.E.1. Definitions

IX.E.1.a. “Fabric Coating" means the process of coating or impregnating the full, usable surface of a fabric web or sheet to impart properties that are not initially present such as strength, stability, water or acid repellency, or appearance. "Fabric Coating" excludes those processes normally included under fabric finishing (e.g. dyeing, treating for stain and wrinkle resistance, etc.).

IX.E.2. Applicability

This section applies to fabric coating lines which includes, but is not limited to, coaters and drying ovens.

IX.E.3. Emission Limitations

	Kg/lc	**Lb/gc**
Fabric Coating Line	0.35	2.9

IX.F. Large Appliance Coating Operations

IX.F.1. Definition

IX.F.1.a. "Large Appliances" includes doors, cases, lids, panels, interior support parts, and any other large (greater than one square decimeter (15.5 square inches)) coated surfaces of residential and commercial washers, dryers, ovens, ranges, refrigerators, freezers, water heaters, dishwashers, trash compactors, air conditioners, and all other products under SIC Code 363 according to the "Standard Industrial Classification Manual", Executive Office of the President, Office of Management and Budget, designated by convention of the industry as large appliances.

IX.F.2. Applicability

This section applies to all large appliance coating lines.

IX.F.3. Emission Limitations

	Kg/lc	**Lb/gc**
Large Appliance Coating Line; prime, single or topcoat application area, flashoff area, and oven	0.34	2.8

IX.G. Magnet Wire Coating Operations

IX.G.1. Definition

IX.G.1.a. "Magnet Wire Coating" means those operations which apply a coating of electrically insulating varnish or enamel (or similar substance) to wire which is known as "magnet wire." Magnet wire is usually copper or aluminum, and is used for electric motors, generators, transformers, magnets, and related products.

IX.G.2. Applicability

This section applies to, but is not limited to, coaters and drying ovens of magnet wire coating operations.

IX.G.3. Emission Limitations

	Kg/lc	**Lb/gc**
Magnetic wire coating operation	0.20	1.7

IX.H. Metal Furniture Coating Operations

IX.H.1. Definitions

IX.H.1.a. "Metal Furniture" means furnishings commonly considered furniture, for domestic, business, and/or institutional use, which have one or more essential, major components made of metal. "Metal furniture" includes, but is not limited to, tables, chairs, wastebaskets, beds, desks, lockers, shelving, cabinets, room dividers, clothing racks, chests of drawers, and sofas.

IX.H.1.b. "Metal Furniture Coating" means applying a "surface coating" to "metal furniture" as defined. It excludes coating of non-metal components.

IX.H.2. Applicability

This section applies to all metal furniture coating lines.

IX.H.3. Emission Limitations

	Kg/lc	**Lb/gc**
Metal Furniture Coating Line: All coats (including prime, single, and topcoat)	0.36	3.0

IX.I. Paper Coating Operations

IX.I.1. Definition

"Paper Coating" means impregnating or applying a uniform layer of "surface coating" to paper. It includes, but is not limited to, the production of: coated, glazed, decorated, and varnished paper; carbon and pressure-sensitive copy papers; paper adhesive-labels and tapes; blue-print; photographic and copier paper. It also includes coating of metal foil such as gift wrap and packaging. Paper coating does not include impregnation using a batch dipping process.

IX.I.2. Applicability

This section applies to paper coating lines, which includes, but is not limited to, coaters and drying ovens.

IX.I.3. Emission Limitations

	Kg/lc	**Lb/gc**
Paper Coating Line	0.35	2.9

IX.J. Plastic-Film Coating Operations

IX.J.1. Definition

IX.J.1.a. "Plastic-Film Coating" means applying a uniform layer of "surface coating" to a flexible web or sheet of thin plastic substance, excluding all rubbers and vinyl's* (polyvinyl chloride) except for the following two categories of vinyl products: (1) vinyl tapes and (2) vinyl's coated with an adhesive or pressure-sensitive coating. It includes, but is not limited to: plastic typewriter ribbons, photographic film, adhesive tapes, and magnetic recording tapes. (*see Section IX.K.)

IX.J.2. Applicability

This section applies to, but is not limited to, coaters and drying ovens of plastic-film coating lines.

IX.J.3. Emission Limitations

	Kg/lc	**Lb/gc**
Plastic-Film Coating Line	0.35	2.9

IX.K. Vinyl Coating Operations

IX.K.1. Definition

"Vinyl Coating" means applying a uniform layer, decorative or protective topcoat to a vinyl (polyvinyl chloride) coated fabric or vinyl sheet. It includes printing of same. Excluded are*: (1) the coating of same with adhesive or pressure-sensitive coatings and (2) vinyl tapes. (*see Section IX.J.)

IX.K.2. Application

This section applies to vinyl coating lines which includes, but is not limited to, coaters and drying ovens.

IX.K.3. Emission Limitations

	Kg/lc	**Lb/gc**
Vinyl Coating Line	0.45	3.8

IX.L. Manufactured Metal Parts and Metal Products

IX.L.1. General Provisions

IX.L.1.a. Applicability

This section applies to the application area(s), flashoff area(s), oven(s), and drying areas including (but not limited to) air and forced air drier(s) used in the surface coating of the metal parts and products listed below. This section applies to prime coat, top coat, and single coat operations. This section is applicable to surface coating of manufactured metal parts and metal products which include:

IX.L.1.a.(i) Large farm machinery (harvesting, fertilizing, and planting machines, tractors, combines, etc.);

IX.L.1.a.(ii) Small-farm, lawn and garden machinery (lawn and garden tractors, lawn mowers, rototillers, etc.);

IX.L.1.a.(iii) Small appliances (fans, mixers, blenders, crock pots, dehumidifiers, vacuum cleaners, etc.);

IX.L.1.a.(iv) Commercial machinery (office equipment, computers and auxiliary equipment, typewriters, calculators, vending machines, etc.);

IX.L.1.a.(v) Industrial machinery (pumps, compressors, conveyor components, fans, blowers, transformers, etc.);

IX.L.1.a.(vi) Fabricated metal products (metal covered doors, frames, etc.);

IX.L.1.a.(vii) Furniture hardware made of metal for use with non-metal furniture; and

IX.L.1.a.(viii) Any other industrial category which coats metal parts or products under the standard industrial classification code of major group 33 (primary metal industries), major group 34 (fabricated metal products), major group 35 (non-electric machinery), major group 36 (electrical machinery), major group 37 (transportation equipment), major group 38 (miscellaneous instruments), and major group 39 (miscellaneous manufacturing industries), according to the "Standard Industrial Classification Manual" Executive Office of the President, Office of Management and Budget.

IX.L.1.b. Exemptions

IX.L.1.b.(i) This Section IX.L. is not applicable to the surface coating of the following metal parts and products inasmuch as these are previously covered in Sections IX.B., C., D., F., G., and H., respectively:

IX.L.1.b.(i)(A) Automobiles and light-duty trucks

IX.L.1.b.(i)(B) Metal cans

IX.L.1.b.(i)(C) Flat metal sheets and strips in the form of rolls or coils

IX.L.1.b.(i)(D) Large appliances

IX.L.1.b.(i)(E) Magnet wire for use in electrical machinery

IX.L.1.b.(i)(F) Metal furniture

IX.L.1.b.(ii) This Section IX.L. is not applicable to the following special purpose coatings:

IX.L.1.b.(ii)(A) Division-approved exemptions for high performance coatings on a case-by-case basis.

IX.L.1.b.(ii)(B) Full exterior repainting of automobiles and light-duty trucks if fewer than 18 vehicles are painted per day.

IX.L.1.c. Definitions

For the purpose of this section, the following definitions apply:

IX.L.1.c.(i) "Air Dried Coating" means coatings which are dried by the use of air or forced warm air at temperatures up to 90°C (194°F);

IX.L.1.c.(ii) "Clear Coat" means a coating, which lacks color and opacity or a coating which is transparent;

IX.L.1.c.(iii) "Coating Application System" means all operations and equipment which apply, convey, and dry a surface coating, including, but not limited to, spray booths, flow coaters, flashoff areas, air dryers and ovens;

IX.L.1.c.(iv) "Extreme Environmental Conditions" means exposure to any of the following: temperatures consistently above 95°C, detergents, abrasive and scouring agents, solvents, and corrosive environments;

IX.L.1.c.(v) "Extreme Performance Coatings" means coatings designed for extreme environmental conditions.

IX.L.2. Provisions for Specific Processes

IX.L.2.a. No owner or operator of a facility or operation engaging in the surface coating of manufactured metal parts or metal products may operate a coating application system subject to this regulation that emits VOC in excess of:

IX.L.2.a.(i) Clear coatings: 0.52 kg/lc(4.3 lb/gc)

IX.L.2.a.(ii) Extreme Performance Coatings: 0.42 kg/lc (3.5 lb/gc)

IX.L.2.a.(iii) Air-Dried Coatings: 0.42 kg/lc (3.5 lb/gc)

IX.L.2.a.(iv) Other coatings and systems: 0.36 kg/lc (3.0 lb/gc) delivered to a coating applicator for all other coatings and coating application systems.

IX.L.2.b. If more than one emission limitation in Section IX.L.2.a. applies to a specific coating, then the least stringent emission limitation shall be applied.

IX.L.2.c. Pioneer Metal Finishing, Inc., a surface coating operation, is authorized pursuant to Regulation Number 3, Part A, Section V. and Regulation Number 7, Section II.D.1.a. to use up to twenty (20) tons of certified emission reduction credits of volatile organic compounds (VOC) as an alternative compliance method to satisfy the surface coating emission limitations of Regulation Number 7 in accordance with and upon demonstration of the conditions set forth below:

IX.L.2.c.(i) Certified emission reduction credits for VOCs (methanol) to be used in this transaction were formerly owned by the Coors Brewing Company, registered and issued in Emissions Reduction Credit Permit 91AR120R on July 25, 1994;

IX.L.2.c.(ii) Those emission reduction credits were originally obtained by Coors from Verticel, a company that produced honeycomb packaging material and was located within five miles of the PMF facility;

IX.L.2.c.(iii) The use of these VOC emission reduction credits identified above shall be used to satisfy VOC limitations of certain specified surface coatings in excess of Control Technique Guidance as specified in Regulation Number 7, Section IX.L.2.a. and Section IX.A.6.b., and applicable to the Pioneer Metal finishing operations;

IX.L.2.c.(iv) Such emission reduction credits identified above will be used by PMF to achieve compliance with Regulation Number 7 to compensate for ozone precursor emission of VOCs from non-compliant coatings which meet the emission trading requirements of Regulation Number 3, Part A, Section V. In order to satisfy the photochemical reactivity equivalency requirement of VOC trades, the methanol VOC ERCs will be reduced on a ratio of 1.1:1 for VOCs of toluene, ethylbenzene, xylene and ketones emitted from non-compliant coatings. All other VOCs involved in this transaction are considered to be of the same degree of photochemical reactivity;

IX.L.2.c.(v) The requirement in Regulation Number 3, Part A, Section V.F.2. shall not apply to this transaction;

IX.L.2.c.(vi) This transaction is only valid within the Denver/Boulder nonattainment area as described at 40 CFR 81, Subchapter C - Air Programs, Subpart C, Section 107 - Attainment Status Designations, Section 81.306;

IX.L.2.c.(vii) This transaction shall be calculated upon a pound for pound basis and averaged over a maximum 24-hour period.

IX.L.2.c.(viii) This transaction shall be effective upon approval by the U.S. Environmental Protection Agency as a revision to the Colorado State Implementation Plan and after issuance of a State Construction Permit incorporating, but not limited to, the conditions and requirements of the Section;

IX.L.2.c.(ix) This transaction may not be used to satisfy any current or future requirements of NSPS, BACT, LAER, or MACT requirements of HAPs which may apply to PMF, except that this transaction may be used to satisfy control technique guidance or RACT requirements contained in Regulation Number 7 which are applicable to PMF;

IX.L.2.c.(x) This transaction shall not interfere with any applicable requirement concerning attainment and reasonable further progress in the Colorado State Implementation Plan or any other applicable requirements of the Clean Air Act;

IX.L.2.c.(xi) This transaction shall be registered and enforced through a State Construction Permit issued to Pioneer Metal Finishing, Inc. containing, but not limited to the conditions and limitations set forth in this Section;

IX.L.2.c.(xii) Such state Construction Permit issued to Pioneer Metal Finishing, Inc. shall specify, among other, things the necessary monitory, recordkeeping and reporting requirements to insure that the emission reduction credits are applied in accordance with the conditions and requirements of this Section;

IX.L.2.c.(xiii) The state Construction Permit shall allow a daily maximum limitation of 160 lbs. of VOC emissions from non-compliant surface coatings and an annual limitation of 40,000 lbs. of non-compliant VOC emissions. The annual limitation shall be calculated on a 12-month rolling total calculated on the first day of each month using the previous 12 months.

IX.L.2.c.(xiv) The state Construction Permit shall limit the VOC-HAP emissions to less than ten (10) per year of any one HAP or twenty-five (25) tons per year of any combination of HAP emissions; and

IX.L.2.c.(xv) PMF will maintain records of daily and monthly totals of non-compliant surface coatings used in its operation and report such usages on an annual basis to the Division or as otherwise requested.

IX.M. Flat Wood Paneling Coating.

IX.M.1. Definitions

IX.M.1.a. "Class II Hardboard Paneling Finish" means finishes which meet the specifications of Voluntary Product Standard PS-59-73 as approved by the American National Standards Institute.

IX.M.1.b. "Coating Application System" means all operations and equipment which apply, convey, and dry a surface coating, including, but not limited to, spray booths, flow coaters, conveyers, flashoff areas, air dryers and ovens.

IX.M.1.c. "Hardboard" is a panel manufactured primarily from inter-felted ligno-cellulosic fibers which are consolidated under heat and pressure in a hot press.

IX.M.1.d. "Hardboard Plywood" is plywood whose surface layer is a veneer of hardwood.

IX.M.1.e. "Natural Finish Hardwood Plywood Panels" means panels whose original grain pattern is enhanced by essentially transparent finishes frequently supplemented by fillers and toners.

IX.M.1.f. "Printed Interior Panels" means panels whose grain or natural surface is obscured by fillers and basecoats upon which a simulated grain or decorative pattern is printed.

IX.M.1.g. "Thin Particleboard" is a manufactured board 1/4 inch or less in thickness made of individual wood particles which have been coated with a binder and formed into flat sheets by pressure.

IX.M.1.h. "Tileboard" means paneling that has a colored waterproof surface coating.

IX.M.2. Applicability

This section applies to all flat wood manufacturing and surface finishing facilities that manufacture printed interior panels made of hardwood plywood and thin particle board; natural finish hardwood plywood panels, or hardboard paneling with Class II finishes. This section does not apply to the manufacture of exterior siding, tileboard, or particleboard used as a furniture component.

IX.M.3. Emission Limitations

IX.M.3.a. 2.9 kg per 100 square meters of coated finished product (6.0 lb/1,000 sq. ft.) from printed interior panels, regardless of the number of coats applied;

IX.M.3.b. 5.8 kg per 100 square meters of coated finished product (12.0 lb/1,000 sq. ft.) from natural finish hardwood plywood panels, regardless of the number of coats applied; and

IX.M.3.c. 4.8 kg per 100 square meters of coated finished product (10.0 lb/1,000 sq. ft.) from Class II finishes on hardboard panels, regardless of the number of coats applied.

IX.N. Manufacture of Pneumatic Rubber Tires

IX.N.1. Definitions

IX.N.1.a. "Bead Dipping" means the dipping of an assembled tire bead into a solvent-based cement.

IX.N.1.b. "Green Tires" means assembled tires before holding and curing have occurred.

IX.N.1.c. "Green Tire Spraying" means the spraying of green tires, both inside and outside, with release compounds which help remove air from the tire during molding and prevent the tire from sticking to the mold after curing.

IX.N.1.d. "Pneumatic Rubber Tire Manufacture" means the production of pneumatic rubber, passenger type tires on a mass production basis.

IX.N.1.e. "Passenger Type Tire" means agricultural, airplane, industrial, mobile home, light and medium duty truck, and passenger vehicle tires with a bead diameter up to 20.0 inches and cross section dimension up to 12.8 inches.

IX.N.1.f. "Tread End Cementing" means the application of a solvent-based cement to the tire tread ends.

IX.N.1.g. "Undertread Cementing" means the application of a solvent-based cement to the underside of a tire tread.

IX.N.1.h. "Water Based Sprays" means release compounds, sprayed on the inside and outside of green tires, in which solids, water, and emulsifiers have been substituted for organic solvents.

IX.N.2. Applicability

This section applies to VOC emissions from the following operations in all pneumatic rubber tire facilities: undertread cementing, tread end cementing, bead dipping, and green tire spraying.

The provisions of this section do not apply to the production of specialty tires for antique or other vehicles when produced on an irregular basis or with short production runs. This exemption applies only to tires produced on equipment separate from normal production lines for passenger type tires.

IX.N.3. Provisions for Specific Processes

IX.N.3.a. The owner or operator of an undertread cementing, tread end cementing, or bead dipping operation subject to this regulation shall:

IX.N.3.a.(i) Install and operate a capture system, designed to achieve maximum reasonable capture, up to 85 percent by weight of VOC emitted, from all undertread cementing, tread end cementing and bead dipping operations. Maximum reasonable capture shall be consistent with the following documents:

IX.N.3.a.(i)(A) Industrial Ventilation, A Manual of Recommended Practices, 17th Edition, American Federation of Industrial Hygienists, 1982.

IX.N.3.a.(i)(B) Recommended Industrial Ventilation Guidelines, U.S. Department of Health, Education and Welfare, National Institute of Occupational Safety and Health, January 1976.

IX.N.3.a.(ii) Install and operate a control device that meets the requirements of one of the following:

IX.N.3.a.(ii)(A) A carbon adsorption system designed and operated in a manner such that there is at least a 95.0 percent removal of VOC by weight from the gases ducted to the control device; or,

IX.N.3.a.(ii)(B) An incineration system that oxidizes at least 90.0 percent of the nonmethane volatile organic compounds (VOC measured as total combustible carbon) which enter the incinerator to carbon dioxide and water.

IX.N.4. The owner or operator of a green tire spraying operation subject to this regulation must implement one of the following means of reducing volatile organic compound emissions:

IX.N.4.a. Substitute water-based sprays for the normal solvent-based mold release compound; or,

IX.N.4.a.(i) Install a capture system designed and operated in a manner that will capture and transfer at least 90.0 percent of the VOC emitted by the green tire spraying operation to a control device; and,

IX.N.4.a.(ii) In addition to Section IX.N.4.a.(i), install and operate a control device that meets the requirements of one of the following:

IX.N.4.a.(ii)(A) a carbon adsorption system designed and operated in a manner such that there is at least 95.0 percent removal of VOC by weight from the gases ducted to the control device; or,

IX.N.4.a.(ii)(B) an incineration system that oxidizes at least 90 percent of the nonmethane volatile organic compounds (VOC measured as total combustible carbon) to carbon dioxide and water.

IX.N.5. Testing of capture system efficiency shall meet the requirements of Section IX.A.5.e.

IX.N.6. Control devices shall meet the applicable requirements, including recordkeeping, of Sections IX.A.3.a., b., c., and e., and IX.A.8.a. and b.

IX.N.7. The applicable EPA reference methods l through 4, and 25, of 40 CFR Part 60, shall be used to determine the efficiency of control devices.

X. Use of Cleaning Solvents

X.A. General Provisions

X.A.1. Applicability

The provisions of this section apply to cold cleaners, non-conveyorized vapor degreasers, conveyorized degreasers, and industrial cleaning solvent operations. Open top vapor degreasers are a subset of non-conveyorized vapor degreasers. The owner or operator of a unit subject to this section shall ensure that no such unit is used unless the requirements of this section are satisfied. Section X.E. requirements are effective on January 1, 2017.

X.A.2. Definitions

X.A.2.a. "Cold-Cleaner" means a container of non-aqueous liquid solvent held below its boiling point, which is designed, used, or intended for cleaning solid objects in a batch-loaded process. A "cold-cleaner" may have provisions for heating the solvent. It does not include vapor degreasers or continuously loaded conveyorized degreasers.

X.A.2.b. "Composite Partial Vapor Pressure" means the sum of the partial pressures of the compounds defined as VOCs. Composite partial vapor pressure is calculated as follows:

$$PP_c = \sum_{i=1}^{n} \frac{(W_i)(VP_i)/MW_i}{\frac{W_w}{MW_w} + \sum_{e=1}^{n} \frac{W_e}{MW_e} + \sum_{i=1}^{n} \frac{W_i}{MW_i}}$$

Where:

Wi	=	Weight of the "i"th VOC compound, in grams
Ww	=	Weight of water, in grams
We	=	Weight of exempt compound, in grams
MWi	=	Molecular weight of the "i"th VOC compound, in g/g-mole
MWw	=	Molecular weight of water, in g/g-mole
MWc	=	Molecular weight of exempt compound, in g/g-mole
PPc	=	VOC composite partial vapor pressure at 20°C (68°F), in mm Hg
VPi	=	Vapor pressure of the "i"th VOC compound at 20°C(68°F), in mm Hg

X.A.2.c. "Conveyorized Degreaser" means an apparatus that performs degreasing or other cleaning functions through the use of non-aqueous liquid solvent and/or solvent vapors within a container, and which has a conveyor mechanism allowing continuous loading of items conveyed into and out of the solvent.

X.A.2.d. "Freeboard" in a vapor degreaser means the vertical distance from the top of the vapor zone (as established by normal operations within the specifications of the degreaser manufacturer) to the top of the degreaser.

For cold-cleaners "freeboard" means the vertical distance from the surface of the solvent liquid to the top of the degreaser.

If all sides are not even, the vertical distance to the top of the lowest side shall be used to make the determination of freeboard.

X.A.2.e. "Freeboard Ratio" means the ratio of the freeboard to the width of the solvent surface.

X.A.2.f. “Industrial Cleaning Solvent” means a VOC-containing liquid used to perform industrial cleaning solvent operations.

X.A.2.g. “Industrial Cleaning Solvent Operation” means the use of an industrial cleaning solvent for cleaning industrial operations such as spray gun cleaning, spray booth cleaning, large manufactured parts cleaning, equipment cleaning, floor cleaning, line cleaning, parts cleaning, tank cleaning, and small manufactured parts cleaning. Residential and janitorial cleaning are not considered industrial cleaning solvent operations.

X.A.2.h. "Non-Conveyorized Vapor Degreaser” means an apparatus, which uses non-aqueous solvent vapors within some type of container to degrease or otherwise clean solid objects in a batch-loaded process. It excludes continuously loaded conveyorized degreasers.

X.A.2.i. “Residential and Janitorial Cleaning” means the cleaning of a building or building components including, but not limited to, floors, ceilings, wall, windows, doors, stairs, bathrooms, furnishings, and exterior surfaces of office equipment, excluding the cleaning of work areas where manufacturing or repair activity is performed.

X.A.2.j. "Solvent Metal Cleaning" means the process of cleaning soils from metal surfaces by cold cleaning, conveyorized degreasing, or non-conveyorized vapor degreasing.

X.A.3. Transfer of waste solvent and used solvent

In any disposal or transfer of waste or used solvent, at least 80 percent by weight of the solvent/waste liquid shall be retained (i.e., no more than 20 percent of the liquid solvent/solute mixture shall evaporate or otherwise be lost during transfers).

X.A.4. Storage of waste solvent and used solvent

Waste or used solvent shall be stored in closed containers unless otherwise required by law.

X.A.5. Any control device shall meet the applicable requirements of Sections IX.A.3.a., b., c., e., and IX.A.8.a. and b.

X.B. Control of Solvent Cold-Cleaners

X.B.1. Control Equipment

X.B.1.a. Covers

X.B.1.a.(i) All cold-cleaners shall have a properly fitting cover.

X.B.1.a.(ii) Covers shall be designed to be easily operable with one hand under any of the following conditions:

X.B.1.a.(ii)(A) Solvent true vapor pressure is greater than 15 torr (0.3 psia) at 38^{o}C (100^{o}F).

X.B.1.a.(ii)(B) The solvent is agitated by an agitating mechanism.

X.B.1.a.(ii)(C) The solvent is heated.

X.B.1.b. Drainage Facility

X.B.1.b.(i) All cold-cleaners shall have a drainage facility that captures the drained liquid solvent from the cleaned parts.

X.B.1.b.(ii) For cold-cleaners using solvent which has a vapor pressure greater than 32 torr (0.62 psia) measured at 38°C (100°F) either:

X.B.1.b.(ii)(A) There shall be an internal drainage facility within the confines of the cold-cleaner, so that parts are enclosed under the (closed) cover to drain after cleaning, or if such a facility will not fit within;

X.B.1.b.(ii)(B) An enclosed, external drainage facility that captures the drained solvent liquid from the cleaned parts.

X.B.1.c. A permanent, clearly visible sign shall be mounted on or next to the cold-cleaner. The sign shall list the operating requirements.

X.B.1.d. Solvent spray apparatus shall not have a splashing, fine atomizing, or shower type action but rather should produce a solid, cohesive stream. Solvent spray shall be used at a pressure that does not cause excessive splashing.

For solvents with a true vapor pressure above 32 torr (0.62 psia) at 38°C (100°F), or, for solvents heated above 50°C (120°F), one of the following techniques shall be used:

X.B.1.d.(i) A freeboard ratio greater than or equal to 0.7.

X.B.1.d.(ii) A water or a non-volatile liquid cover. The cover liquid shall not be soluble in the solvent and shall not be denser than the solvent and the depth of the cover liquid shall be sufficient to prevent the escape of solvent vapors.

X.B.2. Operating requirements

X.B.2.a. The cold-cleaner cover shall be closed whenever parts are not being handled within the cleaner confines.

X.B.2.b. Cleaned parts shall be drained for at least 15 seconds and/or until dripping ceases. Any pools of solvent shall be tipped out on the clean part back into the tank.

X.C. Control of Non-Conveyorized Vapor Degreasers

X.C.1. Control Equipment

X.C.1.a. The non-conveyorized vapor degreaser shall have a cover which shall be designed and operated so that it can be easily opened and closed through the use of mechanical assists such as spring loading, counterweights, etc.; opening and closing the cover shall not disturb the vapor zone.

X.C.1.b. Safety Switches

The following two types of switches shall be installed on vapor degreasers:

X.C.1.b.(i) Condenser flow switch and thermostat - (shuts off sump heat if the condenser coolant is either not circulating or is too warm); and

X.C.1.b.(ii) Spray safety switch - (shuts off spray pump if the vapor level drops more than four (4) inches).

X.C.1.c. Control Device

X.C.1.c.(i) For non-conveyorized vapor degreasers with an open area (with the cover open) of one square meter (10.8 ft_2) or less, either the freeboard ratio shall be greater than or equal to 0.75, or one of the control devices in X.C.1.c.(ii) shall be used.

X.C.1.c.(ii) For non-conveyorized vapor degreasers with an open area (with the cover open) greater than one (1) square meter, (10.8 ft_2), at least one of the following control systems shall be used:

X.C.1.c.(ii)(A) Both a powered cover and a freeboard ratio greater than or equal to 0.75.

X.C.1.c.(ii)(B) A refrigerated chiller with a cooling capacity equivalent to or greater than the applicable specifications in Appendix C.

X.C.1.c.(ii)(C) An enclosed design: A system where the cover(s) or door(s) opens only when a dry part is entering or exiting the degreaser.

X.C.1.c.(ii)(D) A carbon adsorption system with ventilation greater than or equal to 15 cubic meters each minute per square meter (50 cfm/ft_2) of air/vapor area (when the cover(s) is [are] open), exhausting less than 25 parts per million (by volume) of solvent averaged over one complete adsorption cycle.

X.C.1.d. A permanent, clearly visible sign shall be mounted on or next to the degreaser. The sign shall list the operating requirements.

X.C.2. Operating Requirements

X.C.2.a. Keep cover closed at all times except when processing work loads into or out of the degreaser.

X.C.2.b. The following operations shall be performed to minimize solvent carry-out:

X.C.2.b.(i) Rack parts to allow full drainage.

X.C.2.b.(ii) Move parts as slowly as is practicable in and out of the degreaser. A maximum of one foot every five seconds by hand or a maximum of 5.5 cm/sec. (10.8ft/min) for a mechanically operated system.

X.C.2.b.(iii) Allow the workload to clean in the vapor zone at least 30 seconds or until condensation ceases.

X.C.2.b.(iv) Tip out any pools of solvent that remain on the cleaned parts before removal from the vapor zone.

X.C.2.b.(v) Allow parts to dry within the degreaser at least 15 seconds and/or until visually dry.

X.C.2.c. Solvents shall not be used to clean porous or absorbent materials; for example, cloth, leather, wood, rope, etc.

X.C.2.d. Workloads shall not occupy more than half of the degreaser's open top area.

X.C.2.e. Spraying shall not be done above the vapor level.

X.C.2.f. Solvent leaks shall be repaired immediately, or the degreaser shall be shut down.

X.C.2.g. Exhaust ventilation shall not exceed twenty (20) cubic meters per minute per square meter (65.6 cfm per sq. ft.) of degreaser open area, unless greater exhaust rates are necessary to meet Occupational and Safety Health Act requirements. Ventilation fans shall not be used near the degreaser opening, unless necessary to meet Occupational and Safety Health Act requirements.

X.C.2.h. The water separator shall function so that no visible water is present in the solvent exiting the separator.

X.D. Control of Conveyorized Degreasers

X.D.1. Control Equipment

X.D.1.a. Control Device

For all conveyorized degreasers with a solvent surface area greater than two (2) square meters (21.5 square feet), the degreasing shall be controlled by at least one of the following:

X.D.1.a.(i) Carbon adsorption system, with ventilation greater or equal to 15 cubic meters per minute per square meter (49.2 cfm/ft_2) of air/vapor interface for vapor degreasers (of air/liquid interface for non-vapor types) when down-time covers are open, and exhausting less than 25 parts per million of solvent (by volume) averaged over a complete adsorption cycle.

X.D.1.a.(ii) For vapor degreasers only: a refrigerated chiller with a cooling capacity equivalent to or greater than the applicable specifications in Appendix D.

X.D.1.b. Prevention of Carry-out

A drying tunnel, tumbling basket(s), or other demonstrably effective method(s) shall be employed to prevent cleaned parts from carrying out solvent liquid or vapor.

X.D.1.c. Safety Switches

X.D.1.c.(i) The following two (2) switch-circuits (or equivalent) shall be installed.

X.D.1.c.(i)(A) A spray safety switch shall shut off the spray pump and/or the conveyor if the vapor level drops more than four (4) inches.

X.D.1.c.(i)(B) A vapor level control thermostat shall shut off sump heat when the vapor level rises too high.

X.D.1.c.(ii) All conveyorized degreasers shall have a condenser thermostat and flow-detector switch (or equivalent) which shuts off sump heat if coolant is too warm or is not circulating.

X.D.1.d. Minimized Openings: Degreaser entrance and exit openings shall silhouette workloads so that the average clearance between parts (or parts-and the edge of the degreaser opening) is either:

X.D.1.d.(i) less than 10 centimeters (4 inches) or;

X.D.1.d.(ii) less than 10 percent of the width of the opening

X.D.1.e. Covers shall be provided to close off all the entrance(s) and exit(s) when the conveyor is not in use.

X.D.1.f. A permanent, clearly visible sign shall be mounted on or next to the degreaser. The sign shall list the operating requirements.

X.D.2. Operating Requirements

X.D.2.a. Exhaust ventilation shall not exceed 20 m^3/minute per square meter of degreaser opening (65.6 cf/m per square foot), unless necessary to meet OSHA requirements. Work place fans shall not be located near, nor directed at degreaser openings, unless necessary to meet OSHA requirements. Exhaust flow shall be measured by EPA reference methods 1 and 2 of 40 CFR Part 60.

X.D.2.b. Carry-out emissions shall be minimized by:

X.D.2.b.(i) Racking parts in such a manner to achieve best drainage.

X.D.2.b.(ii) Maintaining the vertical component of conveyor speed at less than 3.3 meters per minute (10.8 feet per minute).

X.D.2.c. Repair solvent leaks immediately, or shut down the degreaser.

X.D.2.d. The water separator shall function with an efficiency sufficient to prevent water from being visible in the solvent exiting the separator.

X.D.2.e. Down-time cover(s) shall be placed over entrances and exits of conveyorized degreasers immediately after the conveyor and exhaust are shut down. Covers shall be retained in position until immediately before start-up.

X.E. Control of Industrial Cleaning Solvent Operations

X.E.1. Control Requirements

The owner or operator of an industrial cleaning solvent operation with total combined uncontrolled actual VOC emissions equal to or greater than three (3) tons per calendar year (excluding VOC

emissions from solvents used for cleaning operations that are exempt under Section X.E.4.) must:

X.E.1.a. Limit the VOC content of cleaning solvents to less than or equal to 0.42 lb of VOC/gal (50 grams VOC/liter); or

X.E.1.b. Limit the composite partial vapor pressure of the cleaning solvent to 8 millimeters of mercury (mmHg) at 20 degrees Celsius (68 degrees Fahrenheit); or

X.E.1.c. Reduce VOC emissions with an emission control system having a control efficiency of 90% or greater.

X.E.2. Work Practice Requirements

The owner or operator of an industrial cleaning solvent operation must implement the following work practice requirements at all times to reduce VOC emissions from fugitive sources:

X.E.2.a. Cover open containers and used applicators in a manner that minimizes evaporation into the atmosphere;

X.E.2.b. Properly dispose of used solvent and shop towels; and

X.E.2.c. Implement good air pollution control practices that minimize emissions, including, but not limited to, using only volumes necessary for cleaning and maintaining cleaning equipment to be leak free.

X.E.3. Monitoring, Recordkeeping and Reporting Requirements

X.E.3.a. The owner or operator of an industrial cleaning solvent operation must keep the following records for two (2) years and make them available for inspection by the Division upon request:

X.E.3.a.(i) If applicable, records demonstrating that a listed exemption to this Section X.E. applies.

X.E.3.a.(ii) If applicable, monthly records such as safety data sheets or other analytical data from the industrial cleaning solvent manufacturer showing the VOC type and VOC content, or the composite partial vapor pressure at 20 degrees Celsius, and total amount of VOC-containing solvent used in solvent cleaning operations to demonstrate compliance with the control requirements in Sections X.E.1.a. and X.E.1.b.

X.E.3.a.(iii) If applicable, monthly records sufficient to demonstrate compliance with the control requirement in Section X.E.1.c.

X.E.3.a.(iv) Records of calendar year VOC emission estimates demonstrating whether the industrial cleaning solvent operation meets or exceeds the applicability threshold in Section X.E.1.

X.E.3.b. Compliance with the control requirements in Section X.E.1. must be demonstrated using one of the following methods as applicable:

X.E.3.b.(i) Safety data sheets or other analytical data from the industrial cleaning solvent manufacturer to demonstrate compliance with Sections X.E.1.a. and X.E.1.b.;

X.E.3.b.(ii) A manufacturer guarantee of the control equipment's emission control efficiency and operation and maintenance of control equipment according to manufacturer's specifications to demonstrate compliance with Section X.E.1.c.; or

X.E.3.b.(iii) A performance test conducted during representative operations using one of the following methods, as applicable:

X.E.3.b.(iii)(A) EPA Method 24 (40 CFR Part 60, Appendix A) to determine VOC content;

X.E.3.b.(iii)(B) EPA Method 18, 25, or 25A (40 CFR Part 60, Appendix A) to determine control efficiency of the emission control equipment.

X.E.4. Exemptions

X.E.4.a. Industrial cleaning solvent operations are not subject to Section X.E. if they are subject to one of the following:

X.E.4.a.(i) A work practice or emission control requirement in a federally enforceable New Source Performance Standard in 40 CFR Part 60, National Emission Standard for Hazardous Air Pollutants in 40 CFR Part 63, a Best Available Control Technology requirement of Regulation Number 3, Part B, a Lowest Achievable Emissions Rate requirement of Regulation Number 3, Part D; or

X.E.4.a.(ii) A work practice or emission control requirement in another federally enforceable section of Regulation 7 which establishes RACT.

X.E.4.b. The VOC control requirements in Section X.E.1. do not apply to:

X.E.4.b.(i) Cleaning of electrical and electronic components;

X.E.4.b.(ii) Cleaning of precision optics;

X.E.4.b.(iii) Cleaning of numismatic dies;

X.E.4.b.(iv) Stripping of cured inks, coatings, and adhesives;

X.E.4.b.(v) Cleaning of resin, coating, ink, and adhesive manufacturing, mixing, molding, and application equipment;

X.E.4.b.(vi) Cleaning of research and development laboratories;

X.E.4.b.(vii) Cleaning of medical device or pharmaceutical manufacturing equipment;

X.E.4.b.(viii) Performance testing to determine coating, adhesive, ink or ink performance;

X.E.4.b.(ix) Cleaning of equipment and materials used in testing for quality control or quality assurance purposes;

X.E.4.b.(x) Cleaning of digital printing operations; and

X.E.4.b.(xi) Cleaning of screen printing operations.

X.E.4.c. In lieu of compliance with Section X.E.1. and X.E.2., the owner or operator of an area source aerospace facility, as defined in 40 CFR Part 63, Section 63.742, may implement the solvent cleaning provisions of the National Emission Standards for Hazardous Air Pollutants for Aerospace Manufacturing and Rework facilities contained in 40 CFR Part 63, Section 63.744 along with the applicable definitions contained in 40 CFR Part 63, Section 63.742, except that:

X.E.4.c.(i) VOC-containing solvents which meet the definition of "non-HAP materials" in 40 CFR Part 63, Section 63.742 are not excluded from the housekeeping measures contained in 40 CFR Part 63, Section 63.744(a); and

X.E.4.c.(ii) The baseline reduction compliance option contained in 40 CFR Part 63, Section 63.744(b)(3) is not available for purposes of compliance with this VOC control rule.

XI. Use of Cutback Asphalt

XI.A. Definitions

XI.A.1. "Asphalt or Asphalt Cement" The dark-brown to black cementitious material (solid, semi-solid, or liquid in consistency) of which the main constituents are bitumen's which occur naturally or as a residue of petroleum refining.

XI.A.2. "Asphalt Concrete" A waterproof and durable paving material composed of dried aggregate, which is evenly coated with hot asphalt cement.

XI.A.3. "Cutback Asphalt or Cutback Asphalt Cement" Any asphalt which has been liquefied by blending with a VOC, such as a petroleum solvent diluents or, in the case of some slow cure asphalts (Road Oils), which has been produced directly from the distillation of petroleum.

XI.A.4. "Emulsified Asphalt" Asphalt emulsions produced by combining asphalt and water with emulsifying agent.

Emulsified Asphalt or any other coating or sealant, including but not limited to those produced from petroleum or coal, which contain more than five (5) percent of oil distillate as determined by ASTM Method D-244 is included in this definition.

XI.A.5. "Penetrating Prime Coat" An application of low-viscosity liquid asphalt to an absorbent surface in order to prepare it for overlaying with a layer or layers of asphalt cement or asphalt emulsion and mineral aggregate paving materials.

XI.B. Limitations

XI.B.1. Applicability

The provisions of this Section XI. apply to the use and storage of cutback asphalt for the paving and maintenance of all public roadways (including alleys), private roadways, parking lots, and driveways only within ozone nonattainment areas.

XI.B.2. Storage

Stockpiles of aggregate mixed with cutback asphalt are permitted October 1 through February 28 (29). Such storage is not permitted March 1 through September 30 except where it can be demonstrated to the Division that such storage is necessary.

XI.B.3. Use

Cutback asphalt may be used for any paving purpose October 1 through February 28 (29). No person shall use cutback asphalt or any coating included in the definition of cutback asphalt in Section IX.A.3. March 1 through September 30 except as provided:

XI.B.3.a. If used solely as a penetrating prime coat, or

XI.B.3.b. If the user can demonstrate to the Division that under the conditions of its intended use, there will be no emissions of volatile organic compounds to the ambient air.

XI.C. Recordkeeping

During the months of March through September, the person responsible for the use or storage of any cutback asphalt as permitted in Sections XI.B.3.a., XI.B.3.b., and Section XI.B.2. shall keep records of same, including type and amount of solvent(s) used.

XII. Volatile Organic Compound Emissions from Oil and Gas Operations

XII.A. Applicability

XII.A.1. Except as provided in Section XII.A.2. through XII.A.7.., this section applies to oil and gas exploration and production operations, natural gas compressor stations and natural gas drip stations:

XII.A.1.a. that collect, store, or handle condensate in the 8-hour Ozone Control Area (State Only: or any ozone nonattainment or attainment/maintenance area),

XII.A.1.b. that are located upstream of a natural gas plant,

XII.A.1.c. for which the owner or operator filed, or was required to file, an APEN pursuant to Regulation Number 3, Part A, and

XII.A.1.d. (State Only) that emit any amount of uncontrolled actual volatile organic compound emissions with the following exceptions.

XII.A.1.d.(i) (State Only) Volatile organic compounds emitted during the first 90 days from the date of first production for new and modified condensate storage tanks as defined in Section XII.B. must be equipped with a control device pursuant to Section XII.D., and comply with applicable monitoring, recordkeeping, and reporting requirements; and

XII.A.1.d.(ii) All dehydrators regardless of uncontrolled actual emissions are subject to Section XII.H.

XII.A.2. Oil refineries are not subject to Section XII.

XII.A.3. Natural gas-processing plants located in an ozone nonattainment or attainment maintenance area are subject to Section XII.G. and qualifying natural gas compressor

stations located in an ozone nonattainment or attainment maintenance area are subject to Section XII.I.

XII.A.4. Glycol natural gas dehydrators located at an oil and gas exploration and production operation, natural gas compressor station, drip station or gas processing plant in an ozone nonattainment or attainment maintenance area are subject to Sections XII.B. and XII.H.

XII.A.5. Well production facilities with uncontrolled actual volatile organic compound emissions greater than or equal to one (1) ton per year, as determined in Section XII.L.2.c., and natural gas compressor stations that collect, store, or handle hydrocarbon liquids are subject to Sections XII.B. and XII.L.

XII.A.6. Centrifugal compressors, reciprocating compressors, and pneumatic pumps are subject to Sections XII.B., XII.C.1.c. through XII.C.1.e., XII.J., and XII.K.

XII.A.7. The requirements of Sections XII.B. through XII.I. do not apply to any owner or operator in any calendar year in which the APENs for all of the atmospheric condensate storage tanks associated with the affected operations owned or operated by such person reflect a total of less than 30 tons-per-year of actual uncontrolled emissions of VOCs in the 8-Hour Ozone Control Area. Such requirements do, however, apply to such owner or operator in any subsequent calendar year in which the APENs for atmospheric condensate storage tanks associated with such affected operations reflect a total of 30 tons per year or more of actual uncontrolled emissions of VOCs in the 8-Hour Ozone Control Area.

XII.B. Definitions Specific to Section XII.

XII.B.1. “Affected Operations” means oil and gas exploration and production operations, natural gas compressor stations and natural gas drip stations, to which Section XII. applies.

XII.B.2. “Air Pollution Control Equipment”, as used in Section XII., means a combustion device or vapor recovery unit. Air pollution control equipment also means alternative emissions control equipment, pollution prevention devices and processes that comply with the requirements of Section XII.D.2.b. that are approved by the Division.

XII.B.3. “Approved Instrument Monitoring Method” means an infra-red camera, EPA Method 21, or other instrument based monitoring method or program approved in accordance with Section XII.L.8. If an owner or operator elects to use Division approved continuous emission monitoring, the Division may approve a streamlined inspection, recordkeeping, and reporting program for such operations.

XII.B.4. “Atmospheric Storage Tanks or Atmospheric Condensate Storage Tanks” means a type of condensate storage tank that vents, or is designed to vent, to the atmosphere.

XII.B.5. “Auto-Igniter” means a device which will automatically attempt to relight the pilot flame in the combustion chamber of a control device in order to combust volatile organic compound emissions.

XII.B.6. “Calendar Week” means a week beginning with Sunday and ending with Saturday.

XII.B.7. “Condensate Storage Tank” means any tank or series of tanks that store condensate and are either manifolded together or are located at the same well pad.

XII.B.8. “Centrifugal Compressor” means any machine used for raising the pressure of natural gas by drawing in low pressure natural gas and discharging significantly higher pressure

natural gas by means of mechanical rotating vanes or impellers. Screw, sliding vane, and liquid ring compressors are not centrifugal compressors.

XII.B.9. "Component" means each pump seal, flange, pressure relief device (including thief hatches or other openings on a controlled storage tank), connector, and valve that contains or contacts a process stream with hydrocarbons, except for components in process streams consisting of glycol, amine, produced water, or methanol.

XII.B.10. "Connector" means flanged, screwed, or other joined fittings used to connect two pipes or a pipe and a piece of process equipment or that close an opening in a pipe that could be connected to another pipe. Joined fittings welded completely around the circumference of the interface are not considered connectors.

XII.B.11. "Custody Transfer" means the transfer of crude oil or natural gas after processing and/or treatment in the producing operations or from storage vessels or automatic transfer facilities or other such equipment, including product loading racks, to pipelines or any other forms of transportation.

XII.B.12. "Downtime" means the period of time when a well is producing and the air pollution control equipment is not in operation.

XII.B.13. "Existing" means any atmospheric condensate storage tank that began operation before February 1, 2009, and has not since been modified.

XII.B.14. "Glycol Natural Gas Dehydrator" means any device in which a liquid glycol (including, ethylene glycol, diethylene glycol, or triethylene glycol) absorbent directly contacts a natural gas stream and absorbs water.

XII.B.15. "Infra-red Camera" means an optical gas imaging instrument designed for and capable of detecting hydrocarbons.

XII.B.16. "Modified or Modification" means any physical change or change in operation of a stationary source that results in an increase in actual uncontrolled volatile organic compound emissions from the previous calendar year that occurs on or after February 1, 2009. For atmospheric condensate storage tanks, a physical change or change in operation includes but is not limited to drilling new wells and recompleting, refracturing or otherwise stimulating existing wells.

XII.B.17. "Natural Gas Compressor Station" means a facility, located downstream of well production facilities, which contains one or more compressors designed to compress natural gas from well pressure to gathering system pressure prior to the inlet of a natural gas processing plant.

XII.B.18. "Natural Gas-Driven Diaphragm Pump" means a positive displacement pump powered by pressurized natural gas that uses the reciprocating action of flexible diaphragms in conjunction with check valves to pump a fluid. A pump in which a fluid is displaced by a piston driven by a diaphragm is not considered a diaphragm pump. A lean glycol circulation pump that relies on energy exchange with the rich glycol from the contactor is not considered a diaphragm pump.

XII.B.19. "Natural Gas Processing Plant" means any processing site engaged in the extraction of natural gas liquids from field gas, fractionation of mixed natural gas liquids to natural gas products, or both. A Joule-Thompson valve, a dew point depression valve, or an isolated or standalone Joule-Thompson skid is not a natural gas processing plant.

XII.B.20. "New" means any atmospheric condensate storage tank that began operation on or after February 1, 2009.

XII.B.21. "Reciprocating Compressor" means a piece of equipment that increases the pressure of process gas by positive displacement, employing linear movement of the piston rod.

XII.B.22. "Stabilized" when used to refer to stored condensate, means that the condensate has reached substantial equilibrium with the atmosphere and that any emissions that occur are those commonly referred to within the industry as "working and breathing losses".

XII.B.23. (State Only) "Surveillance System" means monitoring pilot flame presence or temperature in a combustion device either by visual observation or with an electronic device to record times and duration of periods where a pilot flame is not detected at least once per day.

XII.B.24. "System-Wide" when used to refer to emissions and emission reductions in Section XII.D., means collective emissions and emission reductions from all atmospheric condensate storage tanks under common ownership within the 8-hour Ozone Control Area or other specific Ozone Nonattainment or Attainment Maintenance Area for which uncontrolled actual volatile organic compound emissions are equal to or greater than two tons per year.

XII.B.25. "Well Production Facility" means all equipment at a single stationary source directly associated with one or more oil wells or gas wells. This equipment includes, but is not limited to, equipment used for storage, separation, treating, dehydration, artificial lift, combustion, compression, pumping, metering, monitoring, and flowline.

XII.C. General Provisions to Section XII.

XII.C.1. General Requirements for Air Pollution Control Equipment – Prevention of Leakage

XII.C.1.a. All air pollution control equipment used to demonstrate compliance with this Section XII. shall be operated and maintained consistent with manufacturer specifications and good engineering and maintenance practices. The owner or operator shall keep manufacturer specifications on file. In addition, all such air pollution control equipment shall be adequately designed and sized to achieve the control efficiency rates required by this Section XII. and to handle reasonably foreseeable fluctuations in emissions of volatile organic compounds. Fluctuations in emissions that occur when the separator dumps into the tank are reasonably foreseeable.

XII.C.1.b. All condensate collection, storage, processing and handling operations, regardless of size, shall be designed, operated and maintained so as to minimize leakage of volatile organic compounds to the atmosphere to the maximum extent practicable.

XII.C.1.c. All air pollution control equipment used to demonstrate compliance with Sections XII.D., XII.J. and XII.K. must meet a control efficiency of at least 95%. Failure to properly install, operate, and maintain air pollution control equipment at the locations indicated in the Division-approved spreadsheet is a violation of this regulation.

XII.C.1.d. If a flare or other combustion device is used to control emissions of volatile organic compounds to comply with Sections XII.D., XII.J., and XII.K. it shall be enclosed, have no visible emissions, and be designed so that an observer can, by means of visual observation from the outside of the enclosed flare or combustion device, or by other convenient means, such as a continuous monitoring device, approved by the Division, determine whether it is operating properly.

XII.C.1.e. All combustion devices used to control emissions of volatile organic compounds to comply with Sections XII.D., XII.J. and XII.K. shall be equipped with and operate an auto-igniter as follows:

XII.C.1.e.(i) (State Only) For condensate storage tanks that are constructed or modified after May 1, 2009, and before January 1, 2017, and controlled by a combustion device, auto-igniters shall be installed and operational, beginning the date of first production after any new tank installation or tank modification.

XII.C.1.e.(ii) (State Only) For all existing condensate storage tanks controlled by a combustion device in order to comply with the emissions control requirements of Section XII.D.2., auto-igniters shall be installed and operational beginning May 1, 2009, for condensate storage tanks with actual uncontrolled emissions of greater than or equal to 50 tons per year, and beginning May 1, 2010, for all other existing condensate storage tanks controlled by a combustion device, or within 180 days from first having installed the combustion device, whichever date comes later.

XII.C.1.e.(iii) All combustion devices installed on or after January 1, 2017, must be equipped with an operational auto-igniter upon installation of the combustion device.

XII.C.1.e.(iv) All combustion devices installed on or after January 1, 2018, and used to comply with Sections XII.J. or XII.K. must be equipped with an operational auto-igniter upon installation of the combustion device.

XII.C.1.f. (State Only) If a combustion device is used to control emissions of volatile organic compounds, surveillance systems shall be employed and operational as follows:

XII.C.1.f.(i) (State Only) Beginning May 1, 2010, for all existing condensate storage tanks with uncontrolled actual emissions of 100 tons per year or more based on data from the previous twelve consecutive months.

XII.C.1.f.(ii) (State Only) For all new and modified condensate storage tanks controlled by a combustion device for the first 90 days surveillance systems shall be employed and operational beginning 180 days from the date of first production after the tank was newly installed, or after the well was newly drilled, re-completed, re-fractured or otherwise stimulated, if uncontrolled actual emissions projected for the first twelve months based on data from the first 90 days of operation from the condensate storage tank are 100 tons or more of uncontrolled VOCs.

XII.C.2. The emission estimates and emission reductions required by Section XII.D. shall be demonstrated using one of the following emission factors:

XII.C.2.a. In the 8-Hour Ozone Control Area

XII.C.2.a.(i) For atmospheric condensate storage tanks at oil and gas exploration and production operations, a default emission factor of 13.7 pounds of volatile organic compounds per barrel of condensate shall be used unless a more specific emission factor has been established pursuant to Section XII.C.2.a.(ii)(B). The Division may require a more specific emission factor that complies with Section XII.C.2.a.(ii)(B).

XII.C.2.a.(ii) For atmospheric condensate storage tanks at natural gas compressor stations and natural gas drip stations, a specific emission factor established pursuant to this Section XII.C.2.a.(ii) shall be used. A specific emission factor developed pursuant to Section XII.C.2.a.(ii)(B) may also be used for atmospheric storage tanks at oil and gas exploration and production operations and, once established, or required by the Division, shall be used for such operations.

XII.C.2.a.(ii)(A) For atmospheric condensate storage tanks at natural gas compressor stations and natural gas drip stations a source may use a specific emissions factor that was used for reporting emissions from the source on APENs filed on or before February 28, 2003. The Division may, however, require the source to develop and use a more recent specific emission factor pursuant to Section XII.C.2.a.(ii)(B) if such a more recent emission factor would be more reliable or accurate.

XII.C.2.a.(ii)(B) Except as otherwise provided in XII.C.2.a.(i), a specific emission factor shall be one for which the Division has no objection, and which is based on collection and analysis of a representative sample of condensate pursuant to a test method approved by the Division.

XII.C.2.b. (State Only) For any other Ozone Nonattainment Area or Attainment/Maintenance Areas

XII.C.2.b.(i) (State Only) For atmospheric condensate storage tanks at oil and gas exploration and production operations, the source shall use a default basin-specific uncontrolled volatile organic compound emission factor established by the Division unless a source-specific emission factor has been established pursuant to Section XII.C.2.b.(iii). If the Division has established no default emission factor, if the Division has reason to believe that the default emission factor is no longer representative, or if it deems it otherwise necessary, the Division may require use of an alternative emission factor that complies with Section XII.C.2.b.(iii).

XII.C.2.b.(ii) (State Only) For atmospheric condensate storage tanks at natural gas compressor stations and natural gas drip stations, the source shall use a source-specific volatile organic compound emission factor established pursuant to Section XII.C.2.b.(iii). If the Division has reason to believe that the source-specific emission factor is no longer representative, or if it deems it otherwise necessary, the Division may require use of an alternative emission factor that complies with Section XII.C.2.b.(iii).

XII.C.2.b.(iii) (State Only) Establishment of or Updating Approved Emission Factors

XII.C.2.b.(iii)(A) (State Only) The Division may require the source to develop and/or use a more recent default basin-specific or source-specific volatile organic compound emission factor pursuant to Section XII.C.2.b., if such emission factor would be more reliable or accurate.

XII.C.2.b.(iii)(B) (State Only) For atmospheric condensate storage tanks at oil and gas exploration and production operations, the source may use a source-specific volatile organic compound emission factor for which the Division has no objection, and which is based on collection and analysis of a representative sample of condensate pursuant to a test method approved by the Division.

XII.C.2.b.(iii)(C) (State Only) For atmospheric storage tanks at natural gas compressor stations and natural gas drip stations, a source may use a volatile organic compound emissions factor that was used for reporting emissions from the source on APENs filed on or before February 28, 2003, or an alternative source-specific volatile organic compound emission factor established pursuant to Section XII.C.2.b.

XII.C.2.b.(iii)(D) (State Only) A default basin-specific volatile organic compound emissions factor shall be one for which the Division has no objection, and which is based on collection and analysis of a representative sample of condensate or an alternative method, pursuant to a test method approved by the Division, except as otherwise provided in XII.C.2.b.(i).

XII.C.2.b.(iii)(E) (State Only) A source-specific volatile organic compound emissions factor shall be one for which the Division has no objection, and which is based on collection and analysis of a representative sample of condensate pursuant to a test method approved by the Division.

XII.D. Condensate Storage Tank Emission Controls

The owners and operators of affected operations shall employ air pollution control equipment to reduce emissions of volatile organic compounds from atmospheric condensate storage tanks associated with affected operations by the dates and amounts listed. Emission reductions shall not be required for each and every unit, but instead shall be based on overall reductions in uncontrolled actual emissions from all the atmospheric storage tanks associated with the affected operations for which the owner or operator filed, or was required to file, an APEN pursuant to Regulation Number 3, Part A, due to either having exceeded reporting thresholds or retrofitting with air pollution control equipment in order to comply with system-wide control requirements.

XII.D.1. (State Only) New and Modified Condensate Tanks

Beginning February 1, 2009, owners or operators of any new or modified atmospheric condensate storage tank at exploration and production sites shall collect and control emissions by routing emissions to and operating air pollution control equipment pursuant to Section XII.D. The air pollution control equipment shall have a control efficiency of at least 95%, and shall control volatile organic compounds during the first 90 calendar days after the date of first production after

the tank was newly installed, or after the well was newly drilled, re-completed, re-fractured or otherwise stimulated. The air pollution control equipment and associated monitoring equipment required pursuant to Section XII.C.1. may be removed after the first 90 calendar days as long as the source can demonstrate compliance with the applicable system-wide standard.

XII.D.2. System-Wide Control Strategy

XII.D.2.a. The owners and operators of all atmospheric condensate storage tanks that emit greater than or equal to two tons per year of actual uncontrolled volatile organic compounds and are subject to this Section XII.D.2.a. in the 8-hour Ozone Control Area (State Only: or any other specific Ozone Nonattainment area or Attainment/Maintenance Area) shall employ air pollution control equipment to reduce emissions of volatile organic compounds from atmospheric condensate storage tanks by the dates and amounts listed. The dates and requisite reductions are as follows:

XII.D.2.a.(i) For the period May 1 through September 30 of 2005 such emissions shall be reduced by 37.5% from uncontrolled actual emissions on a daily basis.

XII.D.2.a.(ii) For the period of May 1 through September 30 of 2006, such emissions shall be reduced by 47.5% from uncontrolled actual emissions on a daily basis.

XII. D.2.a.(iii) For the period of May 1 through September 30 of each year from 2007 through 2008, such emissions shall be reduced by 75% from uncontrolled actual emissions on a weekly basis.

XII.D.2.a.(iv) Emission reductions achieved between January 1 and April 30, 2005 shall be averaged with emission reductions achieved between October 1 and December 31, 2005. For these two time periods, emissions shall be reduced by 30% from uncontrolled actual emissions and shall be calculated as an average of the emission reductions achieved during the seven months covered by the two periods.

XII.D.2.a.(v) Emission reductions achieved between January 1 and April 30, 2006 shall be averaged with emission reductions achieved between October 1 and December 31, 2006. Emissions shall be reduced by 38% from uncontrolled actual emissions, calculated as an average of the emission reduction achieved during the seven months covered by the two periods.

XII.D.2.a.(vi) For the period between January 1, 2007 and April 30, 2007, such emissions shall be reduced by 38% from uncontrolled actual emissions. For the period between October 1, 2007, and December 31, 2007, such emissions shall be reduced by 60% from uncontrolled actual emissions, calculated for each period as an average of the emission reduction achieved during the months covered by each period.

XII.D.2.a.(vii) Beginning with the year 2008, and each year thereafter, emission reductions achieved between January 1 and April 30 shall be averaged with emission reductions achieved between October 1 and December 31. Emissions shall be reduced by 70% from uncontrolled actual emissions, calculated as an average of the emission reduction

achieved during the seven months covered by the two periods with the exception of Sections XII.D.2.a.(viii) through XII.D.2.a.(x).

XII.D.2.a.(viii) For the calendar weeks that include May 1, 2009 through April 30, 2010, such emissions shall be reduced by 81% from uncontrolled actual emissions on a calendar weekly basis from May 1 through September 30 and 70% from uncontrolled actual emissions on a calendar monthly basis during October 1 through April 30.

XII.D.2.a.(ix) For the calendar weeks that include May 1, 2010 through April 30, 2011, such emissions shall be reduced by 85% from uncontrolled actual emissions on a calendar weekly basis in the May 1 through September 30 and 70% from uncontrolled actual emissions on a calendar monthly basis during October 1 through April 30.

XII.D.2.a.(x) Beginning May 1, 2011 and each thereafter, such emissions shall be reduced by 90% from uncontrolled actual emissions on a calendar weekly basis in the May 1 through September 30 and 70% from uncontrolled actual emissions on a calendar monthly basis during October 1 through April 30.

XII.D.2.b. Alternative emissions control equipment and pollution prevention devices and processes installed and implemented after June 1, 2004, shall qualify as air pollution control equipment, and may be used in lieu of, or in combination with, combustion devices and/or vapor recovery units to achieve the emission reductions required by this Section XII.D.2.a., if the following conditions are met:

XII.D.2.b.(i) The owner or operator obtains a construction permit authorizing such use of the alternative emissions control equipment or pollution prevention device or process. The proposal for such equipment, device or process shall comply with all regulatory provisions for construction permit applications and shall include the following:

XII.D.2.b.(i)(A) A description of the equipment, device or process;

XII.D.2.b.(i)(B) A description of where, when and how the equipment, device or process will be used;

XII.D.2.b.(i)(C) The claimed control efficiency and supporting documentation adequate to demonstrate such control efficiency;

XII.D.2.b.(i)(D) An adequate method for measuring actual control efficiency; and

XII.D.2.b.(i)(E) Description of the records and reports that will be generated to adequately track emission reductions and implementation and operation of the equipment, device or process, and a description of how such matters will be reflected in the spreadsheet and annual report required by Sections XII.F.3. and XII.F.4.

XII.D.2.b.(ii) Public notice of the application is provided pursuant to Regulation Number 3, Part B, Section III.C.4.

XII.D.2.b.(iii) EPA approves the proposal. The Division shall transmit a copy of the permit application and any other materials provided by the applicant, all public comments, all Division responses and the Division's permit to EPA Region 8. If EPA fails to approve or disapprove the proposal within 45 days of receipt of these materials, EPA shall be deemed to have approved the proposal.

XII.E. Condensate Storage Tank Monitoring

The owner or operator of any condensate storage tank that is being controlled pursuant to this Section XII. shall inspect or monitor the Air Pollution Control Equipment at least weekly to ensure that it is operating properly.

XII.E.1. Tanks controlled by Air Pollution Control Equipment other than a combustion device shall follow manufacturer's recommended maintenance. Air Pollution Control Equipment shall be periodically inspected to ensure proper maintenance and operation according to the Division-approved operation and maintenance plan.

XII.E.2. The owner or operator of any condensate storage tank that is being controlled pursuant to Section XII. shall inspect or monitor the Air Pollution Control Equipment at least weekly to ensure that it is operating. The inspection shall include the following:

XII.E.2.a. For combustion devices, a check that the pilot light is lit by either visible observation or other means approved by the Division. For devices equipped with an auto-igniter, a check that the auto-igniter is properly functioning;

XII.E.2.b. For combustion devices, a check that the valves for piping of gas to the pilot light are open;

XII.E.2.c. (State Only) In addition to complying with Sections XII.E.2.a. and XII.E.2.b., the owner or operator of tanks subject to the system-wide control strategy under Section XII.D.2.a. that have installed combustion devices may use a surveillance system to maintain records on combustion device operation.

XII.E.3. The owner or operator of all tanks subject to Section XII.D. shall document the time and date of each inspection, the person conducting the inspection, a notation that each of the checks required under this Section XII.E. were completed, description of any problems observed during the inspection, description and date of any corrective actions taken, and name of individual performing corrective actions. Further, all tanks subject to Section XII.D. shall comply with the following:

XII.E.3.a. For combustion devices, the owner or operator shall visually check for and document, on a weekly basis, the presence or absence of smoke;

XII.E.3.b. For vapor recovery units, the owner or operator shall check for and document on a weekly basis that the unit is operating and that vapors from the condensate tank are being routed to the unit;

XII.E.3.c. For all control devices, the owner or operator shall check for and document on a weekly basis that the valves for the piping from the condensate tank to the air pollution control equipment are open;

XII.E.3.d. For all atmospheric condensate storage tanks, the owner or operator shall check for and document on a weekly basis that the thief hatch is closed and latched.

XII.E.3.e. Beginning January 1, 2017, owners or operators of atmospheric condensate storage tanks with uncontrolled actual emissions of VOCs equal to or greater than six (6) tons per year based on a rolling twelve-month total must conduct and document audio, visual, olfactory ("AVO") inspections of the storage tank at the same frequency as liquids are loaded out from the storage tank. These inspections are not required more frequently than every seven (7) days but must be conducted at least every thirty one (31) days.

XII.E.4. (State Only) For atmospheric condensate storage tanks equipped with a surveillance system or other Division-approved monitoring system, the owner or operator shall check weekly that the system is functioning properly and that necessary information is being collected. Any loss of data or failure to collect required data may be treated by the Division as if the data were not collected.

XII.F. Condensate Storage Tank Recordkeeping and Reporting

The owner or operator of any atmospheric condensate storage tank subject to control pursuant to Section XII.D.2. shall maintain records and submit reports to the Division as required:

XII.F.1. The AIRS number assigned by the Division shall be marked on all condensate storage tanks required to file an APEN.

XII.F.2. If air pollution control equipment is required to comply with Section XII.D.2. visible signage shall be located with the control equipment identifying the AIRS number for each atmospheric condensate storage tank that is being controlled by that equipment.

XII.F.3. Recordkeeping for Tanks Subject to the System-Wide Control Strategy under Section XII.D.2.

The owner or operator shall, at all times, track the emissions and specifically volatile organic compound emissions reductions on a calendar weekly and calendar monthly basis to demonstrate compliance with the applicable emission reduction requirements of Section XII.D.2. This shall be done by maintaining a Division-approved spreadsheet of information describing the affected operations, the air pollution control equipment being used, and the emission reductions achieved, as follows.

XII.F.3.a. The Division-approved spreadsheet shall:

XII.F.3.a.(i) List all atmospheric condensate storage tanks subject to this Section XII by name and AIRS number, or if no AIRS number has been assigned the site location. The spreadsheet also shall list the monthly production volumes for each tank. The spreadsheet shall list the most recent measurement of such production at each tank, and the time period covered by such measurement of production.

XII.F.3.a.(ii) List the emission factor used for each atmospheric condensate storage tank. The emission factors shall comply with Section XII.C.2.

XII.F.3.a.(iii) List the location and control efficiency value for each unit of air pollution control equipment. Each atmospheric condensate storage tank being controlled shall be identified by name and an AIRS number.

XII.F.3.a.(iv) List the production volume for each tank, expressed as a weekly and monthly average based on the most recent measurement available. The weekly and monthly average shall be calculated by averaging the

most recent measurement of such production, which may be the amount shown on the receipt from the refinery purchaser for delivery of condensate from such tank, over the time such delivered condensate was collected. The weekly and monthly average from the most recent measurement will be used to estimate weekly and monthly volumes of controlled and uncontrolled actual emissions for all weeks and months following the measurement until the next measurement is taken.

XII.F.3.a.(v) Show the calendar weekly and calendar monthly-uncontrolled actual emissions and the calendar weekly and calendar monthly controlled actual emissions for each atmospheric condensate storage tank.

XII.F.3.a.(vi) Show the total system-wide calendar weekly and calendar monthly-uncontrolled actual emissions and the total system-wide calendar weekly and calendar monthly controlled actual emissions.

XII.F.3.a.(vii) Show the total system-wide calendar weekly and calendar monthly percentage reduction of emissions.

XII.F.3.a.(viii) Note any downtime of air pollution control equipment, and shall account for such downtime in the weekly control efficiency value and emission reduction totals. The notations shall include the date, time and duration of any scheduled downtime. For any unscheduled downtime, the spreadsheet shall record the date and time the downtime was discovered and the date and time the air pollution control equipment was last observed to be operating.

XII.F.3.a.(ix) Be maintained in a manner approved by the Division and shall include any other information requested by the Division that is reasonably necessary to determine compliance with this Section XII.

XII.F.3.a.(x) Be updated on a calendar weekly and calendar monthly basis and shall be promptly provided by e-mail or fax to the Division upon its request. The U.S. mail may also be used if acceptable to the Division.

XII.F.3.b. Failure to properly install, operate, and maintain air pollution control equipment at the locations indicated in the spreadsheet shall be a violation of this regulation.

XII.F.3.c. A copy of each calendar weekly and calendar monthly spreadsheet shall be retained for five years. A spreadsheet may apply to more than one week if there are no changes in any of the required data and the spreadsheet clearly identifies the weeks it covers. The spreadsheet may be retained electronically. However, the Division may treat any loss of data or failure to maintain the Division-approved spreadsheet, as if the data were not collected.

XII.F.3.d. Each owner or operator shall maintain records of the inspections required pursuant to Section XII.E. and retain those records for five years. These records shall include the time and date of the inspection, the person conducting the inspection, a notation that each of the checks required under Section XII.C. and XII.E. were completed and a description of any problems observed during the inspection, and a description and date of any corrective actions taken.

XII.F.3.e. (State Only) Each owner or operator shall maintain records of required surveillance system or other monitoring data and shall make these records available promptly upon Division request.

XII.F.3.f. (State Only) Each owner or operator shall maintain records on when an atmospheric condensate storage tank is newly installed, or when a well is newly drilled, re-completed, re-fractured or otherwise stimulated. Records shall be maintained per well associated with each tank and the date of first production associated with these activities.

XII.F.4. Reporting for Tanks Subject to the System-Wide Control Strategy under Section XII.D.2.a.

On or before April 30, 2006, and semi-annually by April 30 and November 30 of each year thereafter, each owner or operator shall submit a report using Division-approved format describing the air pollution control equipment used during the preceding calendar year (for the April 30 report) and from May 1 through September 30 (for the November 30 report) and how each company complied with the emission reductions required by Section XII.D.2. during those periods for the 8-hour Ozone Control Area or other specific Ozone Non-attainment or Attainment-Maintenance area. Such reports shall be submitted to the Division on a Division-approved form provided for that purpose.

XII.F.4.a. The report shall list all condensate storage tanks subject or used to comply with Section XII.D.2. and the production volumes for each tank. Production volumes may be estimated by the amounts shown on the receipt from refinery purchasers for delivery of condensate from such tanks.

XII.F.4.b. The report shall list the emission factor used for each tank. The emission factors shall comply with Section XII.C.2.

XII.F.4.c. The report shall list the location and control efficiency value for each piece of air pollution control equipment, and shall identify the atmospheric condensate storage tanks being controlled by each.

XII.F.4.d. The April 30 report shall show the calendar monthly-uncontrolled actual emissions and the controlled actual emissions for each atmospheric condensate storage tank for January 1 through April 30, May 1 through September 30 and October 1 through December 31 of the previous year. The November 30 report shall show such calendar weekly information for the weeks including May 1st through September 30th only.

XII.F.4.e. The April 30 report shall show the calendar monthly total system-wide uncontrolled actual emissions and the total system-wide controlled actual emissions for January 1 through April 30, May 1 through September 30 and October 1 through December 31 of the previous year. The November 30 report shall show such calendar weekly information for the weeks including May 1st through September 30th only.

XII.F.4.f. The April 30 report shall show the calendar monthly total system-wide percentage reduction of emissions for May 1 through September 30 of the previous year, and for the combined periods of January 1 through April 30 and October 1 through December 31 of the previous year. The November 30 report shall show such calendar weekly information for the weeks including May 1 through September 30 period only.

XII.F.4.g. The report shall note any downtime of air pollution control equipment, and shall account for such downtime in the weekly control efficiency value and emission reduction totals. The notations shall include the date, time and duration of any scheduled downtime. For any unscheduled downtime, the date and time the downtime was discovered and the last date the air pollution control equipment was observed to be operating should be recorded in the report.

XII.F.4.h. The report shall state whether the required emission reductions were achieved on a weekly basis during the preceding ozone season (calendar weeks including May 1 through September 30) for the November 30 report, and whether the required emission reductions were achieved on a calendar monthly basis during the preceding year for the April 30 report. If the required emission reductions were not achieved, the report shall state why not, and shall identify steps being taken to ensure subsequent compliance.

XII.F.4.i. The report shall include any other information requested by the Division that is reasonably necessary to determine compliance with this Section XII.

XII.F.4.j. A copy of each semi-annual report shall be retained for five years.

XII.F.4.k. In addition to submitting the semi-annual reports, on or before the 30th of each month commencing in June 2007, the owner or operator of any condensate storage tank that is required to control volatile organic compound emissions pursuant to Sections XII.A. and XII.D. shall notify the Division of any instances where the air pollution control equipment was not properly functioning during the previous month. The report shall include the time and date that the equipment was not properly operating, the time and date that the equipment was last observed operating properly, and the date and time that the problem was corrected. The report shall also include the specific nature of the problem, the specific steps taken to correct the problem, the AIRS number of each of the condensate tanks being controlled by the equipment or if no AIRS number has been assigned the site name, and the estimated production from those tanks during the period of non-operation.

XII.F.4.l. Commencing in 2007, on or before April 30 of each year, the owner or operator shall submit a list identifying by name and AIRS number or if no AIRS number has been assigned the site name, each condensate storage tank that is being controlled to meet the requirements set forth in Section XII.D.2. On the 30th of each month during ozone season (May through September) and on November 30 and February 28, the owner or operator shall submit a list identifying any condensate storage tank whose control status has changed since submission of the previous list.

XII.F.4.m. (State Only) Semi-annual report submittals shall be signed by a responsible official who shall also sign the Division-approved compliance certification form for atmospheric condensate storage tanks. The compliance certification shall include both a certification of compliance with all applicable requirements of Section XII. If any non-compliance is identified, citation, dates and durations of deviations from this Section XII., associated reasoning, and compliance plan and schedule to achieve compliance. Compliance certifications for state only conditions shall be identified separately from compliance certifications required under the State Implementation Plan.

XII.F.4.n. (State Only) Each Division-approved self-certification form, and compliance certification submitted pursuant to Section XII. shall contain a certification by a responsible official of the truth, accuracy and completeness of

such form, report or certification stating that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate and complete.

XII.F.5. The record-keeping and reporting required in Section XII. shall not apply to the owner or operator of any natural gas compressor station or natural gas drip station that is authorized to operate pursuant to a construction permit or Title V operating permit issued by the Division if the following criteria are met:

XII.F.5.a. Such permits are obtained by the owner or operator on or after the effective date of this provision and contain the provisions necessary to ensure the emissions reductions required by Section XII.D;

XII.F.5.b. The owners and operators of such natural gas compressor stations or natural gas drip stations do not own or operate any exploration and production operation(s); and

XII.F.5.c. Total emissions from atmospheric condensate storage tanks associated with such natural gas compressor stations or drip stations subject to APEN reporting requirements under Regulation Number 3, Part A owned or operated by the same person do not exceed 30 tons per year in the 8-hour Ozone Control Area.

XII.G. Natural gas-processing plants located in the 8-hour Ozone Control Area (State Only: or any specific Ozone Nonattainment or Attainment/Maintenance Area) shall comply with requirements of this Section XII.G., as well as the requirements of Sections XII.B., XII.C.1.a., XII.C.1.b., XII.H., XII.J., XII.K., and XVI.

XII.G.1. For fugitive volatile organic compound emissions from leaking equipment, the leak detection and repair (LDAR) program as provided at 40 CFR Part 60, Subpart OOOO (July 1, 2017) applies, regardless of the date of construction of the affected facility, unless subject to the LDAR program provided at 40 CFR Part 60, Subpart OOOOa (July 1, 2017).

XII.G.2. Air pollution control equipment shall be installed and properly operated to reduce emissions of volatile organic compounds from any atmospheric condensate storage tank (or tank battery) used to store condensate that has not been stabilized that has uncontrolled actual emissions of greater than or equal to two tons per year. Such air pollution control equipment shall have a control efficiency of at least 95%.

XII.G.3. Natural gas processing plants within the 8-hour Ozone Control Area constructed before January 1, 2018 must comply with the requirements of Section XII.G. beginning January 1, 2019. (State Only: Existing natural gas processing plants within any new Ozone Nonattainment or Attainment/Maintenance Area shall comply with this regulation within three years after the nonattainment designation.)

XII.G.4. The provisions of Sections XII.B., XII.C.1.a., XII.C.1.b., XII.G., XII.H., XII.J., XII.K., and XVI., apply upon the commencement of operations to any natural gas processing plant that commences operation in the 8-Hour Ozone Control Area or Ozone Nonattainment (State Only: or Attainment/Maintenance Area) after the effective date of this section.

XII.H. Emission Reductions from glycol natural gas dehydrators

XII.H.1. Beginning May 1, 2005, still vents and vents from any flash separator or flash tank on a glycol natural gas dehydrator located at an oil and gas exploration and production

operation, natural gas compressor station, drip station or gas-processing plant in the 8-Hour Ozone Control Area and subject to control requirements pursuant to Section XII.H.3., shall reduce uncontrolled actual emissions of volatile organic compounds by at least 90 percent on a rolling twelve-month basis through the use of a condenser or air pollution control equipment.

XII.H.2. (State Only) Beginning January 30, 2009, still vents and vents from any flash separator or flash tank on a glycol natural gas dehydrator located at an oil and gas exploration and production operation, natural gas compressor station, drip station or gas-processing plant in any Ozone Nonattainment or Attainment/Maintenance Area and subject to control requirements pursuant to Section XII.H.3., shall reduce uncontrolled actual emissions of volatile organic compounds by at least 90 percent on a rolling twelve-month basis through the use of a condenser or air pollution control equipment.

XII.H.3. The control requirements of Sections XII.H.1. and XII.H.2. apply where:

XII.H.3.a. Actual uncontrolled emissions of volatile organic compounds from the glycol natural gas dehydrator are equal to or greater than one ton per year; and

XII.H.3.b. The sum of actual uncontrolled emissions of volatile organic compounds from any single glycol natural gas dehydrator or grouping of glycol natural gas dehydrators at a single stationary source is equal to or greater than 15 tons per year. To determine if a grouping of dehydrators meets or exceeds the 15 tons per year threshold, sum the total actual uncontrolled emissions of volatile organic compounds from all individual dehydrators at the stationary source, including those with emissions less than one ton per year.

XII.H.4. For purposes of Section XII.H., emissions from still vents and vents from any flash separator or flash tank on a glycol natural gas dehydrator shall be calculated using a method approved in advance by the Division.

XII.H.5. Monitoring and recordkeeping

XII.H.5.a. Beginning January 1, 2017, owners or operators of glycol natural gas dehydrators subject to the control requirements of Sections XII.H.1. or XII.H.2. must check on a weekly basis that any condenser or air pollution control equipment used to control emissions of volatile organic compounds is operating properly, and document:

XII.H.5.a.(i) The date of each inspection;

XII.H.5.a.(ii) A description of any problems observed during the inspection of the condenser or air pollution control equipment; and

XII.H.5.a.(iii) A description and date of any corrective actions taken to address problems observed during the inspection of the condenser or air pollution control equipment.

XII.H.5.b. The owner or operator must check and document on a weekly basis that the pilot light on a combustion device is lit, that the valves for piping of gas to the pilot light are open, and visually check for the presence or absence of smoke.

XII.H.5.c. The owner or operator must document the maintenance of the condenser or air pollution control equipment, consistent with manufacturer specifications or good engineering and maintenance practices.

XII.H.5.d. The owner or operator must retain records for a period of five years and make these records available to the Division upon request.

XII.H.6. Reporting

XII.H.6.a. On or before November 30, 2017, and semi-annually by April 30 and November 30 of each year thereafter, the owner or operator must submit the following information for the preceding calendar year (April 30 report) and for May 1 through September 30 (November 30 report) using Division-approved format:

XII.H.6.a.(i) A list of the glycol natural gas dehydrator(s) subject to Section XII.H.;

XII.H.6.a.(ii) A list of the condenser or air pollution control equipment used to control emissions of volatile organic compounds from the glycol natural gas dehydrator(s); and

XII.H.6.a.(iii) The date(s) of inspection(s) where the condenser or air pollution control equipment was found not operating properly or where smoke was observed.

XII.I. The requirements of Sections XII.C. through XII.F. do not apply to the owner or operator of any natural gas compressor station or natural gas drip station located in an Ozone Nonattainment or Attainment/Maintenance Area if:

XII.I.1. Air pollution control equipment is installed and properly operated to reduce emissions of volatile organic compounds from all atmospheric condensate storage tanks (or tank batteries) that have uncontrolled actual emissions of greater than or equal to two tons per year;

XII.I.2. The air pollution control equipment is designed to achieve a VOC control efficiency of at least 95% on a rolling 12-month basis and meets the requirements of Sections XII.C.1.a. and XII.C.1.b;

XII.I.3. The owner or operator of such natural gas compressor station or natural gas drip station does not own or operate any exploration and production facilities in the Ozone Non-attainment or Attainment-maintenance Area; and

XII.I.4. The owner or operator of such natural gas compressor station or natural gas drip station does the following and maintains associated records and reports for a period of five years:

XII.I.4.a. Documents the maintenance of the air pollution control equipment according to manufacturer specifications;

XII.I.4.b. Conducts an annual opacity observation once each year on the air pollution control equipment to verify opacity does not exceed 20% during normal operations;

XII.I.4.c. Maintains records of the monthly stabilized condensate throughput and monthly actual VOC emissions; and

XII.I.4.d. Reports compliance with these requirements to the Division annually.

XII.I.5. A natural gas compressor station or natural gas drip station subject to Section XII.I. at which a glycol natural gas dehydrator and/or natural gas-fired stationary or portable engine is operated is subject to Sections XII.H., XII.J., and/or XVI. A natural gas compressor station subject to Section XII.I. is also subject to Section XII.L.

XII.J. Compressors

XII.J.1. Centrifugal compressor

XII.J.1.a. Beginning January 1, 2018, uncontrolled actual volatile organic compound emissions from wet seal fluid degassing systems on wet seal centrifugal compressors located between the wellhead and the point of custody transfer to the natural gas transmission and storage segment must be reduced by at least 95%. A centrifugal compressor located at a well production facility, or an adjacent well production facility and servicing more than one well production facility, is not subject to Section XII.J.1.

XII.J.1.b. If the owner or operator uses a control device or routes emissions to a process to reduce emissions, the owner or operator must equip the wet seal fluid degassing system with a continuous, impermeable cover that is connected through a closed vent system that routes the emissions from the wet seal fluid degassing system to the process or control device.

XII.J.1.c. The owner or operator must conduct annual visual inspections of the cover and closed vent system for defects that could result in air emissions. Defects of the closed vent system include, but are not limited to, visible cracks, holes, gaps in piping, loose connections, liquid leaks, or broken or missing caps or other closure devices. Defects of the cover include, but are not limited to, visible cracks, holes, gaps in the cover or between the cover and separator wall, broken or damaged seals or gaskets on closure devices, broken or missing hatches or other closure devices.

XII.J.1.d. The owner or operator must conduct annual EPA Method 21 inspections of the cover and closed vent system to determine whether the cover and closed vent system operates with volatile organic compound emissions less than 500 ppm.

XII.J.1.e. In the event that a defect that could result in air emissions or leak is detected, the owner or operator must make a first attempt to repair no later than five (5) days after detecting the defect or leak and complete repair no later than thirty (30) days after detecting the defect or leak.

XII.J.1.f. Owners or operators may delay inspection or repair of a cover or closed vent system if:

XII.J.1.f.(i) Repair is technically infeasible without a shutdown. If shutdown is required, a repair attempt must be made during the next scheduled shutdown and final repair completed within two (2) years after discovery.

XII.J.1.f.(ii) The cover or closed vent system is unsafe to inspect or repair because personnel would be exposed to an immediate danger as a consequence of completing the inspection or repair.

XII.J.1.f.(iii) The cover or closed vent system is difficult to inspect or repair because personnel must be elevated more than two (2) meters above a

supported surface or are unable to inspect or repair via a wheeled scissor-lift or hydraulic type scaffold that allows access up to 7.6 meters (25 feet) above the ground.

XII.J.1.f.(iv) The cover or closed vent system is inaccessible to inspect or repair because the cover or closed vent system is buried, insulated, or obstructed by equipment or piping that prevents access.

XII.J.1.g. The owner or operator must conduct monthly inspections of a combustion device used to reduce emissions to ensure the device is operating with no visible emissions.

XII.J.1.h. Recordkeeping

XII.J.1.h.(i) Owners or operators must maintain the following records for at least five (5) years and make records available to the Division upon request:

XII.J.1.h.(i)(A) Identification of each centrifugal compressor using a wet seal system;

XII.J.1.h.(i)(B) Each combustion device visible emissions inspection and any resulting responsive actions;

XII.J.1.h.(i)(C) Each cover and closed vent system inspection and any resulting responsive actions; and

XII.J.1.h.(i)(D) Each cover or closed vent system on the delay of inspection or repair list, the reason for and duration of the delay of inspection or repair, and the schedule for inspecting or repairing such cover or closed vent system.

XII.J.1.i. As an alternative to the inspection, repair, and recordkeeping provisions in Sections XII.J.1.c. through XII.J.1.f., XII.J.1.h.(i)(C), and XII.J.1.h.(i)(D), the owner or operator may inspect, repair, and document the cover and closed vent system in accordance with the leak detection and repair program in Section XII.L., including the inspection frequency.

XII.J.1.j. As an alternative to the emission control, inspection, repair, and recordkeeping provisions described in Sections XII.J.1.a. through XII.J.1.i., the owner or operator may comply with wet seal centrifugal compressors emission control, monitoring, recordkeeping, and reporting requirements of a New Source Performance Standard in 40 CFR Part 60.

XII.J.2. Reciprocating compressor

XII.J.2.a. Beginning January 1, 2018, the rod packing on reciprocating compressors located between the wellhead and the point of custody transfer to the natural gas transmission and storage segment must be replaced every 26,000 hours of operation or every thirty six (36) months. A reciprocating compressor located at a well production facility, or an adjacent well production facility and servicing more than one well production facility, is not subject to Section XII.J.2.

XII.J.2.a.(i) Owners or operators of reciprocating compressors located at a natural gas processing plant and constructed before January 1, 2018, must

XII.J.2.a.(i)(A) Begin monitoring the hours of operation starting January 1, 2018; or

XII.J.2.a.(i)(B) Conduct the first rod packing replacement required under Section XII.J.2. prior to January 1, 2021.

XII.J.2.a.(ii) Owners or operators of reciprocating compressors located at a natural gas processing plant and constructed after January 1, 2018, must begin monitoring the hours or months of operation upon commencement of operation of the reciprocating compressor.

XII.J.2.b. As an alternative to the requirement described in Section XII.J.2.a., beginning May 1, 2018, the owner or operator may collect rod packing volatile organic compound emissions using a rod packing emissions collection system that operates under negative pressure and routes the rod packing emissions through a closed vent system to a process.

XII.J.2.b.(i) The owner or operator must conduct annual visual inspections of the cover and closed vent system for defects that could result in air emissions. Defects of the closed vent system include, but are not limited to, visible cracks, holes, gaps in piping, loose connections, liquid leaks, or broken or missing caps or other closure devices. Defects of the cover include, but are not limited to, visible cracks, holes, gaps in the cover or between the cover and separator wall, broken or damaged seals or gaskets on closure devices, broken or missing hatches or other closure devices.

XII.J.2.b.(ii) The owner or operator must conduct annual EPA Method 21 inspections of the cover and closed vent system to determine whether the cover and closed vent system operates with volatile organic compound emissions less than 500 ppm.

XII.J.2.b.(iii) In the event that a defect that could result in air emissions or leak is detected, the owner or operator must make a first attempt to repair no later than five (5) days after detecting the defect or leak and complete repair no later than thirty (30) days after detecting the defect or leak.

XII.J.2.b.(iv) Owners or operators may delay inspection or repair of a cover or closed vent system if:

XII.J.2.b.(iv)(A) Repair is technically infeasible without a shutdown. If shutdown is required, a repair attempt must be made during the next scheduled shutdown and final repair completed within two (2) years after discovery.

XII.J.2.b.(iv)(B) The cover or closed vent system is unsafe to inspect or repair because personnel would be exposed to an immediate danger as a consequence of completing the inspection or repair.

XII.J.2.b.(iv)(C) The cover or closed vent system is difficult to inspect or repair because personnel must be elevated more than two (2)

meters above a supported surface or are unable to inspect or repair via a wheeled scissor-lift or hydraulic type scaffold that allows access up to 7.6 meters (25 feet) above the ground.

XII.J.2.b.(iv)(D) The cover or closed vent system is inaccessible to inspect or repair because the cover or closed vent system is buried, insulated, or obstructed by equipment or piping that prevents access.

XII.J.2.c. Recordkeeping

XII.J.2.c.(i) Owners or operators must maintain the following records for at least five (5) years and make records available to the Division upon request:

XII.J.2.c.(i)(A) Identification of each reciprocating compressor;

XII.J.2.c.(i)(B) The hours of operation or the number of months since the previous rod packing replacement, or a statement that emissions from the rod packing are being routed to a process through a closed vent system under negative pressure;

XII.J.2.c.(i)(C) The date of each rod packing replacement, or date of installation of a rod packing emissions collection system and closed vent system;

XII.J.2.c.(i)(D) Each cover and closed vent system inspection and any resulting responsive actions; and

XII.J.2.c.(i)(E) Each cover or closed vent system on the delay of inspection or repair list, the reason for and duration of the delay of inspection or repair, and the schedule for inspecting or repairing such cover or closed vent system.

XII.J.2.d. As an alternative to the inspection, repair, and recordkeeping provisions in Sections XII.J.2.b., XII.J.2.c.(i)(D), and XII.J.2.c.(i)(E), the owner or operator may inspect, repair, and document the cover and closed vent system in accordance with the leak detection and repair program in Section XII.L., including the inspection frequency.

XII.J.2.e. As an alternative to the emission control, inspection, repair, and recordkeeping provisions described in Sections XII.J.2.a. through XII.J.2.d., the owner or operator may comply with reciprocating compressor emission control, monitoring, recordkeeping, and reporting requirements of a New Source Performance Standard in 40 CFR Part 60.

XII.K. Pneumatic pumps

XII.K.1. Beginning May 1, 2018, the owner or operator of each natural gas-driven diaphragm pneumatic pump located at a natural gas processing plant must ensure the pneumatic pump has a volatile organic compound emission rate of zero.

XII.K.2. Beginning May 1, 2018, the owner or operator of each natural gas-driven diaphragm pneumatic pump located at a well production facility must reduce volatile organic compound emissions from the pneumatic pump by 95% if it is technically feasible to route

emissions to an existing control device or process at the well production facility. Natural gas-driven diaphragm pneumatic pumps that are in operation during any period of time during a calendar day less than 90 days per calendar year are not subject to Section XII.K.2.

XII.K.2.a. If the control device available onsite is unable to achieve a 95% emission reduction and it is not technically feasible to route the emissions to a process at the well production facility, the owner or operator must still route the pneumatic pump emissions to the existing control device.

XII.K.2.b. If the owner or operator subsequently installs a control device or it becomes technically feasible to route the emissions to a process, the owner or operator must reduce volatile organic compound emissions from the pneumatic pump by 95% within thirty (30) days of startup of the control device or of the feasibility of routing emissions to a process at the well production facility.

XII.K.2.c. The owner or operator is not required to control pneumatic pump emissions if, through an engineering assessment by a qualified professional engineer, routing a pneumatic pump to a control device or process at the well production facility is shown to be technically infeasible.

XII.K.2.d. If the owner or operator uses a control device or routes emissions to a process to reduce emissions, the owner or operator must connect the pneumatic pump through a closed vent system that routes the pneumatic pump emissions to the process or control device.

XII.K.2.e. The owner or operator must conduct annual visual inspections of the closed vent system for defects that could result in air emissions. Defects of the closed vent system include, but are not limited to, visible cracks, holes, gaps in piping, loose connections, liquid leaks, or broken or missing caps or other closure devices.

XII.K.2.f. The owner or operators must conduct annual EPA Method 21 inspections of the closed vent system to determine whether the closed vent system operates with volatile organic compound emissions less than 500 ppm.

XII.K.2.g. In the event that a defect that could result in air emissions or leak is detected, the owner or operator must make a first attempt to repair no later than five (5) days after detecting the defect or leak and complete repair no later than thirty (30) days after detecting the defect or leak.

XII.K.2.h. Owners or operators may delay inspection or repair of a closed vent system if:

XII.K.2.h.(i) Repair is technically infeasible without a shutdown. If shutdown is required, a repair attempt must be made during the next scheduled shutdown and final repair completed within two (2) years after discovery.

XII.K.2.h.(ii) The closed vent system is unsafe to inspect or repair because personnel would be exposed to an immediate danger as a consequence of completing the inspection or repair.

XII.K.2.h.(iii) The closed vent system is difficult to inspect or repair because personnel must be elevated more than two (2) meters above a supported surface or are unable to inspect or repair via a wheeled scissor-lift or

hydraulic type scaffold that allows access up to 7.6 meters (25 feet) above the ground.

XII.K.2.h.(iv) The closed vent system is inaccessible to inspect or repair because the closed vent system is buried, insulated, or obstructed by equipment or piping that prevents access.

XII.K.3. Recordkeeping

XII.K.3.a. Owners or operators must maintain the following records for at least five (5) years and make records available to the Division upon request:

XII.K.3.a.(i) Identification of each natural gas-driven diaphragm pneumatic pump;

XII.K.3.a.(ii) For natural gas-driven diaphragm pneumatic pumps in operation less than 90 days per calendar year, records of the days of operation each calendar year;

XII.K.3.a.(iii) Records of control devices designed to achieve less than 95% emission reduction, including an evaluation or manufacturer specifications indicating the percentage reduction the control device is designed to achieve;

XII.K.3.a.(iv) Records of the engineering assessment and certification by a qualified professional engineer that routing natural gas-driven diaphragm pneumatic pump emissions to a control device or process is technically infeasible;

XII.K.3.a.(v) Each closed vent system inspection and any resulting responsive actions; and

XII.K.3.a.(vi) Each closed vent system on the delay of inspection or repair list, the reason for and duration of the delay of inspection or repair, and the schedule for inspecting or repairing such closed vent system.

XII.K.4. As an alternative to the inspection, repair, and recordkeeping provisions in Sections XII.K.2.e. through XII.K.2.h., XII.K.3.a.(v), and XII.K.3.a.(vi), the owner or operator may inspect, repair, and document the closed vent system in accordance with the leak detection and repair program in Section XII.L., including the inspection frequency.

XII.K.5. As an alternative to the emission control, inspection, repair, and recordkeeping provisions described in Sections XII.K.1. through XII.K.4., the owner or operator may comply with natural gas-driven diaphragm pneumatic pump emission control, monitoring, recordkeeping, and reporting requirements of a New Source Performance Standard in 40 CFR Part 60.

XII.L. Leak detection and repair program for well production facilities and natural gas compressor stations located in the 8-hour Ozone Control Area.

XII.L.1. Natural gas compressor stations

XII.L.1.a. Beginning June 30, 2018, owners or operators of natural gas compressor stations must inspect components for leaks using an approved instrument monitoring method at least quarterly.

XII.L.1.b. Owners or operators of natural gas compressor stations constructed on or after June 30, 2018, must conduct an initial inspection for leaks from components using an approved instrument monitoring method no later than ninety (90) days after the facility commences operation. Thereafter, approved instrument monitoring method inspections must be conducted at least quarterly.

XII.L.2. Well production facilities

XII.L.2.a. Beginning June 30, 2018, owners or operators of well production facilities with uncontrolled actual volatile organic compound emissions greater than or equal to one (1) ton per year and less than or equal to six (6) tons per year must inspect components for leaks using an approved instrument monitoring method at least annually.

XII.L.2.b. Beginning June 30, 2018, owners or operators of well production facilities with uncontrolled actual volatile organic compound emissions greater than six (6) tons per year must inspect components for leaks using an approved instrument monitoring method at least semi-annually.

XII.L.2.c. For purposes of Sections XII.L.2.a. and XII.L.2.b., the estimated uncontrolled actual volatile organic compound emissions from the highest emitting storage tank at the well production facility determines the frequency at which inspections must be performed. If no storage tanks storing oil or condensate are located at the well production facility, owners or operators must rely on the facility emissions (controlled actual volatile organic compound emissions from all permanent equipment, including emissions from components determined by utilizing the emission factors defined as less than 10,000 ppmv of Table 2-8 of the 1995 EPA Protocol for Equipment Leak Emission Estimates).

XII.L.2.d. Owners or operators of well production facilities constructed on or after June 30, 2018, must conduct an initial inspection for leaks from components using an approved instrument monitoring method no sooner than fifteen (15) days and no later than thirty (30) days after the facility commences operation. Thereafter, approved instrument monitoring method inspections must be conducted in accordance with Sections XII.L.2.a. and XII.L.2.b.

XII.L.3. If a component is unsafe, difficult, or inaccessible to monitor, the owner or operator is not required to monitor the component until it becomes feasible to do so.

XII.L.3.a. Difficult to monitor components are those that cannot be monitored without elevating the monitoring personnel more than two (2) meters above a supported surface or are unable to be reached via a wheeled scissor-lift or hydraulic type scaffold that allows access to components up to 7.6 meters (25 feet) above the ground.

XII.L.3.b. Unsafe to monitor components are those that cannot be monitored without exposing monitoring personnel to an immediate danger as a consequence of completing the monitoring.

XII.L.3.c. Inaccessible to monitor components are those that are buried, insulated, or obstructed by equipment or piping that prevents access to the components by monitoring personnel.

XII.L.4. Leaks requiring repair: Only leaks from components exceeding the thresholds in Section XII.L.4. require repair under Section XII.L.5.

XII.L.4.a. For EPA Method 21 monitoring, repair is required for leaks with any concentration of hydrocarbon above 500 ppm not associated with normal equipment operation, such as pneumatic device actuation and crank case ventilation.

XII.L.4.b. For infra-red camera, repair is required for leaks with any detectable emissions not associated with normal equipment operation, such as pneumatic device actuation and crank case ventilation.

XII.L.4.c. For other approved instrument monitoring methods or programs, leak identification requiring repair will be established as set forth in an approval under Section XII.L.8.

XII.L.4.d. For leaks identified using an approved non-quantitative instrument monitoring method, owners or operators have the option of either repairing the leak in accordance with the repair schedule set forth in Section XII.L.5. or conducting follow-up monitoring using EPA Method 21 within five (5) working days of the leak detection. If the follow-up EPA Method 21 monitoring shows that the emission is a leak requiring repair as set forth in Section XII.L.4.a., the leak must be repaired and remonitored in accordance with Section XII.L.5.

XII.L.4.e. Owners or operators must maintain and operate approved non-quantitative instrument monitoring methods according to manufacturer recommendations.

XII.L.5. Repair and remonitoring

XII.L.5.a. First attempt to repair a leak must be made no later than five (5) working days after discovery and completed no later than thirty (30) working days after discovery, unless parts are unavailable, the equipment requires shutdown to complete repair, or other good cause exists.

XII.L.5.a.(i) If parts are unavailable, they must be ordered promptly and the repair must be made within fifteen (15) working days of receipt of the parts.

XII.L.5.a.(ii) If shutdown is required, a repair attempt must be made during the next scheduled shutdown and final repair completed within two (2) years after discovery.

XII.L.5.a.(iii) If delay is attributable to other good cause, repairs must be completed within fifteen (15) working days after the cause of delay ceases to exist.

XII.L.5.b. Within fifteen (15) working days of completion of a repair the leak must be remonitored using an approved instrument monitoring method to verify that the repair was effective.

XII.L.5.c. Leaks discovered pursuant to the leak detection methods of Section XII.L.4. are not subject to enforcement by the Division unless the owner or operator fails to perform the required repairs in accordance with Section XII.L.5. or keep required records in accordance with Section XII.L.6.

XII.L.6. Recordkeeping

XII.L.6.a. Documentation of the initial approved instrument monitoring method inspection for well production facilities and natural gas compressor stations;

XII.L.6.b. The date, facility name, and facility AIRS ID or facility location if the facility does not have an AIRS ID for each inspection;

XII.L.6.c. A list of the leaks requiring repair and the monitoring method(s) used to determine the presence of the leak;

XII.L.6.d. The date of first attempt to repair the leak and, if necessary, any additional attempt to repair;

XII.L.6.e. The date the leak was repaired and type of repair method applied;

XII.L.6.f. The delayed repair list, including the date and duration of any period where the repair of a leak was delayed due to unavailable parts, required shutdown, or delay for other good cause, the basis for the delay, and the schedule for repairing the leak. Delay of repair beyond thirty (30) days after initial discovery due to unavailable parts must be reviewed, and a record kept of that review, by a representative of the owner or operator with responsibility for leak detection and repair compliance functions. This review will not be made by the individual making the initial determination to place a part on the delayed repair list;

XII.L.6.g. The date the leak was remonitored and the results of the remonitoring; and

XII.L.6.h. A list of components that are designated as unsafe, difficult, or inaccessible to monitor, as described in Section XII.L.3., an explanation stating why the component is so designated, and the schedule for monitoring such component(s).

XII.L.6.i. Records must be maintained for a minimum of five years and made available to the Division upon request.

XII.L.7. Reporting: The owner or operator of each facility subject to the leak detection and repair requirements in Section XII.L. must submit a single annual report on or before May 31st of each year (beginning May 31st, 2019) that includes, at a minimum, the following information regarding leak detection and repair activities at their subject facilities conducted the previous calendar year:

XII.L.7.a. The total number of well production facilities and total number of natural gas compressor stations inspected;

XII.L.7.b. The total number of inspections performed per inspection frequency tier of well production facilities and the total number of inspections performed at natural gas compressor stations;

XII.L.7.c. The total number of identified leaks requiring repair broken out by component type, monitoring method, and inspection frequency tier of well production facility as reported in Section XII.L.7.b. and the total number of identified leaks requiring repair at natural gas compressor stations broken out by component type and monitoring method;

XII.L.7.d. The total number of leaks repaired for each inspection frequency tier of well production facilities as reported in Section XII.L.7.b. and the total number of leaks repaired for natural gas compressor stations;

XII.L.7.e. The total number of leaks on the delayed repair list as of December 31st broken out by component type, inspection frequency tier of well production facility as reported in Section XII.L.7.b. or natural gas compressor station, and the basis for each delay of repair;

XII.L.7.f. The record of all reviews conducted for delayed repairs due to unavailable parts extending beyond 30 days for the previous calendar year; and

XII.L.7.g. Each report shall be accompanied by a certification by a responsible official that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

XII.L.8. Alternative approved instrument monitoring methods may be used in lieu of, or in combination with an infra-red camera, EPA Method 21, or other approved instrument monitoring method to inspect for leaks as required by Section XII.L., if the following conditions are met:

XII.L.8.a. The proponent of the alternative approved instrument monitoring method applies for a determination of an alternative approved instrument monitoring method or program. The application must include, at a minimum, the following:

XII.L.8.a.(i) The proposed alternative approved instrument monitoring method manufacturer information;

XII.L.8.a.(ii) A description of the proposed alternative approved instrument monitoring method including, but not limited to:

XII.L.8.a.(ii)(A) Whether the proposed alternative approved instrument monitoring method is a quantitative detection method, and how emissions are quantified, or qualitative leak detection method;

XII.L.8.a.(ii)(B) Whether the proposed alternative approved instrument monitoring method is commercially available;

XII.L.8.a.(ii)(C) Whether the proposed alternative approved instrument monitoring method is approved by other regulatory authorities and for what application (e.g., pipeline monitoring, emissions detected);

XII.L.8.a.(ii)(D) The leak detection capabilities, reliability, and limitations of the proposed alternative approved instrument monitoring method, including, but not limited to, the ability to identify specific leaks or locations, detection limits, and any restrictions on use, as well as supporting data;

XII.L.8.a.(ii)(E) The frequency of measurements and data logging capabilities of the proposed alternative approved instrument monitoring method;

XII.L.8.a.(ii)(F) Data quality indicators for precision and bias of the proposed alternative approved instrument monitoring method;

XII.L.8.a.(ii)(G) Quality control and quality assurance procedures necessary to ensure proper operation of the proposed alternative approved instrument monitoring method;

XII.L.8.a.(ii)(H) A description of where, when, and how the proposed alternative approved instrument monitoring method will be used; and

XII.L.8.a.(ii)(I) Documentation (e.g., field or test data, modeling) adequate to demonstrate the proposed alternative approved instrument monitoring method or program is capable of achieving emission reductions that are at least as effective as the emission reductions achieved by the leak detection and repair provisions in Section XII.L.

XII.L.8.a.(iii) The Division will transmit a copy of the complete application and any other materials provided by the applicant to EPA..

XII.L.8.a.(iv) Public notice of the application is provided pursuant to Regulation Number 3, Part B, Section III.C.4.

XII.L.8.a.(v) The Division and the EPA approves the proposal. The Division will transmit a copy of the application and any other materials provided by the applicant, all public comments, all Division responses and the Division's approval to EPA Region 8. If EPA fails to approve or disapprove the proposal within six (6) months of receipt of these materials, EPA will be deemed to have approved the proposal.

XIII. Graphic Arts and Printing

XIII.A. Packaging Rotogravure, Publication Rotogravure, and Flexographic Printing

XIII.A.1. Definitions

For the purpose of this section, the following definitions apply:

XIII.A.1.a. "Flexographic Printing" means the application of words, designs, and pictures to a substrate by means of a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of rubber or other elastomeric materials.

XIII.A.1.b. "Packaging Rotogravure Printing" means rotogravure printing upon paper, paperboard, metal foil, plastic film, and other substrates, which are, in subsequent operations, formed into packaging products and labels for articles to be sold.

XIII.A.1.c. "Publication Rotogravure Printing" means rotogravure printing upon paper, which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements, and other types of printed materials.

XIII.A.1.d. "Roll Printing" means the application of words, designs, and pictures to a substrate usually by means of a series of hard rubber or steel rolls each with only partial coverage.

XIII.A.1.e. "Rotogravure Printing" means the application of words, designs, and pictures to a substrate by means of a roll printing technique, which involves an intaglio or recessed image areas in the form of cells.

XIII.A.2. Applicability

XIII.A.2.a. This section applies to all packaging rotogravure, publication rotogravure, and flexographic printing facilities whose potential emissions of volatile organic compounds before control (determined at design capacity and 8760 hrs/year, or at maximum production, and accounting for any capacity or production limitations in a federally-enforceable permit) are equal to or more than 90,000 Kg per year (100 tons/year). Potential emissions are to be estimated by extrapolating historical records of actual consumption of solvent and ink. (e.g., the historical use of 20 gallons of ink for 4,000 annual hours would be extrapolated to 43.8 gallons for 8760 hours.)The before-control volatile organic compound emissions calculations shall be the summation of all volatile organic compounds in the inks and solvents (including cleaning liquids) used.

XIII.A.3. Provisions for Specific Processes

XIII.A.3.a. No owner or operator of a facility subject to this section and employing VOC-containing ink shall operate, cause, allow, or permit the operation of the facility unless:

XIII.A.3.a.(i) The volatile fraction of ink, as it is applied to the substrate, contains 25.0 percent or less (by volume) of VOC and 75.0 percent or more (by volume) of water; or

XIII.A.3.a.(ii) The ink (minus water) as it is applied to the substrate, contains 60.0 percent or more (by volume) non-volatile material; or

XIII.A.3.a.(iii) The owner or operator installs and operates a control device and capture system in accordance with Sections XIII.A.3.b. and XIII.A.3.c.; or

XIII.A.3.a.(iv) A combination of solvent-borne inks and low solvent inks that achieve a 70% (volume) overall reduction of solvent usage (compared to an all solvent borne ink usage) is used; or

XIII.A.3.a.(v) Flexographic and packaging rotogravure printing facilities limit emissions to 0.5 pounds of VOC per pound of solids in the ink. The limit includes all solvent added to the ink: solvent in the purchased ink, solvent added to cut the ink to achieve desired press viscosity, and solvent added to ink on the press to maintain viscosity during the press run. (Publication rotogravure facilities shall not use this option); or

XIII.A.3.a.(vi) Crossline averaging is used. The requirements of Section IX.A.5.d. apply.

XIII.A.3.b. A capture system shall be used in conjunction with the emission control system in Section XIII.A.3.a. The design and operation of a capture system shall be consistent with good engineering practice, and in conjunction with control equipment shall be required to provide for an overall reduction in volatile organic compound emissions of at least:

XIII.A.3.b.(i) 75.0 percent where a publication rotogravure process is employed;

XIII.A.3.b.(ii) 65.0 percent where a packaging rotogravure process is employed; or

XIII.A.3.b.(iii) 60.0 percent where a flexographic printing process is employed.

XIII.A.3.c. The design, operation, and efficiency of any capture system used in conjunction with any emission control system shall be certified in writing by the source owner or operator and approved by the Division. Testing of any capture system may be required by the Division on a case-by-case basis, in cases where a total enclosure is not used or when material balance results are questionable. Testing of capture system efficiency shall meet the requirements of Section IX.A.5.e.

XIII.A.3.d. The overall reduction in VOC emissions specified in Section XII.A.3.b. shall be calculated by material balance methods approved by the Division, or by determination of capture and control device efficiencies. The overall VOC emission reduction rate equals the (percent capture efficiency X percent control device efficiency)/100.

XIII.A.4. Testing and Monitoring

The owner or operator of a source subject to the requirements of this section is also subject to the requirements of Section IX.A.3., IX.A.7, IX.A.9., and IX.A.10. In Section IX.A.3., EPA reference method 24A shall be the test method used for publication rotogravure inks, while EPA Reference method 24 data is acceptable for all other inks. Test methods as set forth in Appendix A, Part 60, Chapter I, Title 40, of the Code of Federal Regulations (CFR), in effect July 1, 1993.

XIII.A.5. The owner or operator of a source subject to the requirements of this section is also subject to the requirements of Section IX.A.8. "A Guideline for Graphic Arts Calculations" shall be used for compliance determination.

XIII.B. Lithographic and Letterpress Printing

XIII.B.1. General Provisions

XIII.B.1.a. Definitions

XIII.B.1.a.(i) “Alcohol” means any of the hydroxyl-containing organic compounds with a molecular weight equal to or less than 74.12, which includes methanol, ethanol, propanol, and butanol.

XIII.B.1.a.(ii) “Alcohol substitute” means nonalcohol additives that contain VOCs and are used in the fountain solution to reduce the surface tension of water or prevent ink piling.

XIII.B.1.a.(iii) “Cleaning material” means a VOC-containing material used to remove ink and debris from the printing press area, operating surfaces of the printing press and, printing press parts. Blanket wash is a type of cleaning material.

XIII.B.1.a.(iv) “Composite partial vapor pressure” means the sum of the partial pressures of the compounds defined as VOCs. Composite partial vapor pressure is calculated as follows:

$$PP_c = \sum_{i=1}^{n} \frac{(W_i)(VP_i)/MW_i}{\frac{W_w}{MW_w} + \sum_{e=1}^{n} \frac{W_e}{MW_e} + \sum_{i=1}^{n} \frac{W_i}{MW_i}}$$

Where:

Wi	=	Weight of the "i"th VOC compound, in grams
Ww	=	Weight of water, in grams
We	=	Weight of exempt compound, in grams
MWi	=	Molecular weight of the "i"th VOC compound, in g/g-mole
MWw	=	Molecular weight of water, in g/g-mole
MWc	=	Molecular weight of exempt compound, in g/g-mole
PPc	=	VOC composite partial vapor pressure at 20°C (68°F), in mm Hg
VPi	=	Vapor pressure of the "i"th VOC compound at 20°C(68°F), in mm Hg

XIII.B.1.a.(v) "Fountain solution" means a mixture of water, nonvolatile printing chemicals, and a liquid additive that reduces the surface tension of the water so that it spreads easily across the printing plate surface. The fountain solution wets the non-image areas so that the ink is maintained within the image areas.

XIII.B.1.a.(vi) "Heatset" means any lithographic or letterpress printing operation where printing inks are set by the evaporation of the ink oils in a heatset dryer.

XIII.B.1.a.(vii) "Heatset dryer" means a hot air dryer used in heatset lithography to heat the printed substrate and to promote the evaporation of ink oils.

XIII.B.1.a.(viii) "Lithographic printing" means a planographic printing process where the image and non-image areas are chemically differentiated (the image area is oil receptive and the non-image area is water receptive). This printing process differs from other conventional printing methods, where the image is a raised or recessed surface.

XIII.B.1.a.(ix) "Letterpress printing" means a printing process in which the image area is raised relative to the non-image area and the paste ink is transferred to the substrate directly from the image surface.

XIII.B.1.a.(x) "Non-heatset" means any printing operation where the printing inks are set without the use of heat. For the purpose of Section XIII.B., ultraviolet-cured and electron beam-cured inks are considered non-heatset.

XIII.B.1.a.(xi) "Offset lithographic printing" means a printing process that transfers the ink film from the lithographic plate to an intermediary surface (blanket), which in turn transfers the ink film to the substrate.

XIII.B.1.a.(xii) "Press" means a printing production assembly composed of one or more print units used to produce a printed substrate including any associated coating, spray powder application, heatset web dryer, ultraviolet or electron beam curing units, or infrared heating units.

XIII.B.1.a.(xiii) "Sheet-fed printing" means a printing process where individual sheets of paper or substrate are fed into the printing press.

XIII.B.1.a.(xiv) "Web printing" means a printing process where continuous rolls of substrate material are fed to the press and rewound or cut to size after printing.

XIII.B.1.b. Applicability

XIII.B.1.b.(i) The provisions of this Section XIII.B. apply to fountain solutions, cleaning materials, inks (which include varnishes) and coatings used in lithographic and letterpress printing presses. These materials are not subject to the requirements of Sections IX. and X.

XIII.B.1.b.(ii) The work practice requirements in Section XIII.B.1.c. apply to all lithographic and letterpress printing operations.

XIII.B.1.b.(iii) The VOC content limit for inks in Section XIII.B.1.d. applies to lithographic and letterpress printing operations where total combined uncontrolled actual VOC emissions from each printing operation, including related cleaning materials and fountain solutions, are equal to or greater than three (3) tons per calendar year.

XIII.B.1.b.(iv) The cleaning material requirements in Section XIII.B.2. apply to letterpress printing operations where total combined uncontrolled actual VOC emissions from each printing operation, including related cleaning materials and fountain solutions, are equal to or greater than three (3) tons per calendar year.

XIII.B.1.b.(v) The cleaning material and fountain solution requirements in Sections XIII.B.2. and XIII.B.3. apply to offset lithographic printing operations where total combined uncontrolled actual VOC emissions from each printing operation, including related cleaning materials and fountain solutions, are equal to or greater than three (3) tons per calendar year.

XIII.B.1.b.(vi) The control requirements in Section XIII.B.4. apply to each heatset web offset lithographic and heatset web letterpress printing press with the potential to emit from the dryer, prior to controls, at least 25 tons per calendar year of VOC (petroleum ink oil) from heatset inks.

XIII.B.1.c. Work Practice Requirements

Lithographic and letterpress printing operations must implement the following work practices at all times to reduce VOC emissions from fugitive sources:

XIII.B.1.c.(i) Cover open containers and keep cleaning materials in closed containers when not in use;

XIII.B.1.c.(ii) Properly dispose of used cleaning materials, fountain solutions, and used shop towels; and

XIII.B.1.c.(iii) Implement good air pollution control practices that minimize emissions, including, but not limited to, using only volumes necessary for cleaning and maintain cleaning equipment to repair cleaning materials leaks.

XIII.B.1.d. VOC Content Limit for Inks

XIII.B.1.d.(i) Lithographic and letterpress printing operations, excluding heatset web offset and heatset web letterpress printing operations, must use low-VOC inks, which average less than 30% (by weight) VOC on a monthly basis.

XIII.B.1.d.(ii) Heatset web offset lithographic and heatset web letterpress printing operations must use low-VOC inks, which average less than 40% (by weight) VOC on a monthly basis.

XIII.B.2. Offset lithographic printing and letterpress printing operations must comply with the following cleaning materials requirements;

XIII.B.2.a. All cleaning materials must contain less than 70% (by weight) VOC or have a VOC composite vapor pressure less than 10 mmHg at 20˚C.

XIII.B.2.b. Exemptions

The following materials and operations are exempt from the cleaning material requirements in Section XIII.B.2.a.:

XIII.B.2.b.(i) Cleaners used on electronic components of a press.

XIII.B.2.b.(ii) Pre-press cleaning operations.

XIII.B.2.b.(iii) Post-press cleaning operations.

XIII.B.2.b.(iv) Floor cleaning supplies (other than those used to clean dried ink).

XIII.B.2.b.(v) Cleaning performed in parts washers or cold cleaners that are subject to Section V.

XIII.B.2.c. Use of non-compliant cleaning materials

Cleaning materials not meeting the limits in Section XIII.B.2.a. are limited to less than or equal to 110 gallons per calendar year.

XIII.B.3. Offset lithographic printing operations must comply with the following fountain solution requirements:

XIII.B.3.a. Heatset web offset lithographic printing operations must:

XIII.B.3.a.(i) Use a fountain solution containing 1.6% alcohol (by weight) or less as applied;

XIII.B.3.a.(ii) Use a fountain solution containing 3% alcohol (by weight) or less as applied if the fountain solution is refrigerated to below 60˚F (15.5˚C); or

XIII.B.3.a.(iii) Use a fountain solution containing 5% alcohol substitute (by weight) or less as applied and no alcohol.

XIII.B.3.b. Sheet-fed printing operations must

XIII.B.3.b.(i) Use a fountain solution containing 5% alcohol (by weight) or less as applied;

XIII.B.3.b.(ii) Use a fountain solution containing 8.5% alcohol (by weight) or less as applied if the fountain solution is refrigerated to below 60˚F (15.5˚C); or

XIII.B.3.b.(iii) Use a fountain solution containing 5% alcohol substitute (by weight) or less as applied and no alcohol.

XIII.B.3.b.(iv) The following are exempt from the fountain solution requirements in Section XIII.B.3.b.:

XIII.B.3.b.(iv)(A) Fountain solution use associated with a sheet-fed printing press with maximum sheet size 11x17 inches or smaller.

XIII.B.3.b.(iv)(B) Fountain solution use associated with a sheet-fed printing press having a total fountain solution reservoir less than one (1) gallon.

XIII.B.3.c. Non-heatset web printing must use a fountain solution containing 5% alcohol substitute (by weight) or less and no alcohol.

XIII.B.4. Heatset web offset lithographic and heatset web letterpress printing operations must comply with the following control requirements:

XIII.B.4.a. Heatset web offset lithographic and heatset web letterpress printing operations must reduce VOC emissions from heatset dryers with an emission control system having a control efficiency of 90% or greater.

XIII.B.4.b. If the control device was first installed on or after January 1, 2017, heatset web offset lithographic and heatset web letterpress printing operations must reduce VOC emissions from heatset dryers with an emission control system having a control efficiency of 95% or greater.

XIII.B.4.c. Where inlet VOC concentration is low and a 90 or 95% control efficiency is not achievable due to low inlet concentrations or measurable due to equipment configuration, heatset web offset lithographic and heatset web letterpress printing operations may reduce the control device outlet concentration to 20 ppmv (as hexane on a dry basis).

XIII.B.4.d. The following are exempt from the control requirements in Section XIII.B.4.:

XIII.B.4.d.(i) Heatset presses used for book printing.

XIII.B.4.d.(ii) Heatset presses with maximum web width of 22 inches or less.

XIII.B.4.d.(iii) Waterborne or radiation (ultra-violet or electron beam) cured materials that are not heatset.

XIII.B.5. Monitoring, Recordkeeping and Reporting

XIII.B.5.a. The owner or operator of a heatset web offset lithographic or heatset web letterpress printing operation required to demonstrate compliance with Section XIII.B.4. must install, calibrate, maintain, and operate a temperature monitoring device, according to the manufacturer's specifications.

XIII.B.5.b. The owner or operator of a lithographic and letterpress printing operations subject to Sections XIII.B.1.d. and XIII.B.2. through XIII.B.4. must keep the following records for two (2) years and make them available for inspection by the Division upon request:

XIII.B.5.b.(i) If applicable, records demonstrating that a listed exemption to this Section XIII.B. applies.

XIII.B.5.b.(ii) If applicable, monthly records of the type, alcohol content or alcohol substitute content, and total volume of fountain solution used in printing operations.

XIII.B.5.b.(iii) If applicable, monthly records of the type, VOC content or composite vapor pressure, and total volume of the cleaning materials used in printing operations.

XIII.B.5.b.(iv) If applicable, monthly records of the type, VOC content, and total volume of inks (including varnishes) and coatings used in printing operations.

XIII.B.5.b.(v) If applicable, monthly records demonstrating compliance with the control requirements in Section XIII.B.4.

XIII.B.5.b.(vi) Records of calendar year VOC emission estimates demonstrating whether the printing operation meets or exceed the applicability thresholds in Section XIII.B.1.b.

XIII.B.5.c. Compliance with control requirements must be demonstrated using the following methods as applicable:

XIII.B.5.c.(i) Safety data sheets or other analytical data from the ink, cleaning material, or fountain solution manufacturer to demonstrate compliance with VOC content limit for inks in Section XIII.B.1.d., the cleaning material requirements in Section XIII.B.2., and the fountain solution requirements in Section XIII.B.3.;

XIII.B.5.c.(ii) A manufacturer guarantee of the control equipment's emission control efficiency and operation and maintenance of control equipment according to manufacturer's specifications to demonstrate compliance with the control equipment requirements in Section XIII.B.4.; or

XIII.B.5.c.(iii) A performance test conducted during representative conditions using one of the following methods as applicable:

XIII.B.5.c.(iii)(A) EPA Method 24 (40 CFR Part 60, Appendix A) to determine VOC content for inks, fountain solutions and cleaning materials; or

XIII.B.5.c.(iii)(B) EPA Method 18, 25, or 25A (40 CFR Part 60, Appendix A) to determine control efficiency or outlet concentration of the emission control equipment.

XIV. Pharmaceutical Synthesis

XIV.A. General Provisions

XIV.A.1. Applicability

This section applies to all sources of volatile organic compounds associated with pharmaceutical manufacturing activities, including, but not limited to, reactors, distillation units, dryers, storage of VOCs, extraction equipment, filters, crystallizers, and centrifuges.

XIV.A.2. Exemptions

Extraction of organic substances from animal or vegetable material; fermentation and culturing; formulation and packaging of pharmaceutical or medicinal products.

XIV.A.3. Definitions

For the purpose of this section, the following definitions apply:

XIV.A.3.a. "Control System" means any number of control devices, including condensers, which are designed and operated to reduce the quantity of VOC emitted to the atmosphere.

XIV.A.3.b. "Pharmaceutical" means a medicine or drug which appears in the United States Pharmacopoeia National Formulary, or which is so designated by the National Drug Code of the United States FDA Bureau of Drugs.

XIV.A.3.c. "Production Equipment Exhaust System" means a device for collecting and directing out of the work area VOC fugitive emissions from reactor openings, centrifuge openings, and other vessel openings for the purpose of protecting workers from excessive VOC exposure.

XIV.A.3.d. "Reactor" means a vat or vessel, which may be jacketed to permit temperature control, designed to contain chemical reactions.

XIV.A.3.e. "Separation Operation" means a process that separates a mixture of compounds and solvents into two or more components. Specific mechanisms include, but are not limited to, extraction, centrifugation, filtration, distillation, and crystallization.

XIV.A.3.f. "Synthesized Pharmaceutical Manufacturing" means manufacture of pharmaceutical products by chemical synthesis. It includes the manufacture of chemical intermediates (of sufficient purity) which are typically used by the pharmaceutical industry as precursors to finished mixtures of chemicals. (Thus, it excludes those chemical processes which are not directed at creating finished pharmaceutical or chemical intermediates to finished pharmaceuticals.)

XIV.B. Provisions for Specific Processes

XIV.B.1. The owner or operator of a facility subject to this section shall control the volatile organic compound emissions from each vent which has the potential to emit 6.80 kg/day (l5 lb./day) or more of VOC from reactors, distillation operations, crystallizers, centrifuge and vacuum dryers. Surface condensers or equivalent controls shall be used, provided that, if surface condensers are used, the condenser outlet gas temperature shall not exceed the following values:

VOCs True Vapor Pressure* at 20° in torr (and psia) from (minimum) up to ** (maximum)	Maximum temperature of Gas Stream immediately exiting the condenser
0-26(0-0.5)	35°C (95°F)
26-52(0.5-1.0)	25°C(77°F)
52-78(1.0-1.5)	10°C(50°F)
78-150(1.5-2.9)	0°C(32°F)
150-300(2.9-5.8)	-15°C(5°F)
Greater than 300(Greater than 5.8)	-25°C(-13°F)

*The calculation methods for gases containing more than one condensable component are complex. As a simplification, the temperature necessary for control by condensation can be roughly approximated by the weighted average of the temperatures necessary for condensation of each VOC considered separately but at concentrations equal to the total organic concentration.

**But not including the maximum value of the range.

XIV.B.2. Division approval shall be required for control equipment used to control VOCs of 570 torr (11 psia) and above.

XIV.B.3. The owner or operator of a facility subject to this section shall reduce the VOC emissions from each air dryer and production equipment exhaust system:

XIV.B.3.a. By at least 90 percent if emissions are 150 kg/day (330 lbs/day) or more of VOC, or,

XIV.B.3.b. To 15.0 kg/day (33 lb/day) or less if emissions are less than 150 kg/day (330 lb/day) of VOC.

XIV.B.4. The owner or operator of a facility subject to this section shall:

XIV.B.4.a. Provide a vapor balance system or equivalent control that is at least 90.0 percent effective in reducing emissions from truck or railcar deliveries to storage tanks with capacities greater than 7,570 liters (2,000 gallons) that store VOC with true vapor pressure greater than 210 torr (4.1 psia) at 20°C; and,

XIV.B.4.b. Install pressure/vacuum conservation vents set at plus or minus 0.2 kPa on all storage tanks that store VOC with true vapor pressures greater than 10.0 kPa (1.5 psi) at 20°C.

XIV.B.5. The owner or operator of a facility subject to this section shall enclose all centrifuges, rotary vacuum filters, and other filters having an exposed liquid surface, where the liquid contains VOC and exerts a total VOC true vapor pressure of 26 torr (0.5 psia) or more at 20°C.

XIV.B.6. The owner or operator of a synthesized pharmaceutical facility subject to this section shall install covers on all in-process tanks containing a volatile organic compound at any time. These covers shall remain closed unless sampling, maintenance, short-duration production procedures or inspection procedures require access.

XIV.B.7. The owner or operator of a facility subject to this section shall repair all leaks from which a liquid, containing VOC, can be observed running or dripping. The repair shall be completed the first time the equipment is off-line for a period of time long enough to complete the repair, except that no leak shall go unrepaired for more than 14 days after initial detection unless the Division issues written approval.

XIV.B.8. Each surface condenser shall have at least one temperature indicator with its sensor located in the outlet gas stream.

XIV.C. Testing and Monitoring

XIV.C.1. Sources subject to the requirements of this section are also subject to the requirements of Sections IX.A.3., IX.A.7., IX.A.8., and IX.A.9.

XV. Control of Volatile Organic Compound Leaks from Vapor Collection Systems and Vapor Control Systems Located at Gasoline Terminals, Gasoline Bulk Plants, and Gasoline Dispensing Facilities

XV.A. General Provisions

XV.A.1. Applicability

This section is applicable to all gasoline terminals, gasoline bulk plants and gasoline dispensing facilities (e.g., service stations) which are located in ozone nonattainment areas and which must have a vapor collection and/or a vapor control system pursuant to Section VI. and other applicable rules.

XV.A.2. Exemptions

This section is not applicable to those operations involving transfer of gasoline from gasoline dispensing facilities to motor vehicle fuel tanks nor to other dispensing operations at such facilities.

XV.A.3. Definitions

For the purpose of this section, the following definitions apply:

XV.A.3.a. "Gasoline Dispensing Facility" means any site where gasoline is dispensed to motor vehicle fuel tanks from stationary storage tanks, (e.g., service stations, fleet pumps, etc.)

XV.A.3.b. "Gasoline Transport Truck" means tank trucks or trailers equipped with a storage tank and used for the transport of gasoline from sources of supply to stationary storage tanks of gasoline dispensing facilities (e.g., service stations), bulk gasoline plants or gasoline terminals.

XV.A.3.c. "Vapor Collection System" means a vapor transport system which uses direct displacement by the gasoline being transferred to force vapors from the vessel being loaded into either a vessel being unloaded or a vapor control system or vapor holding tank.

XV.A.3.d. "Vapor Control System" means a system that is designed to control the release of volatile organic compounds displaced from a vessel during transfer of gasoline.

XV.B. Specific Provisions

XV.B.1. The operator of a vapor collection or vapor control system at a facility subject to the provisions of this section shall operate the vapor collection system and the gasoline loading equipment in a manner that prevents:

XV.B.1.a. Gauge pressure from exceeding 33.6 torr (18 inches of H2O) and vacuum from exceeding gauge pressure of minus 11.2 torr (minus 6 inches of H2O) at the point where the vapor return line on the truck connects with the vapor collection line of the facility.

XV.B.1.b. A reading equal to or greater than 100 percent of the lower explosive limit (LEL, measured as propane) at 2.5 centimeters from a known or potential leak source when measured by the procedures described in Appendix B of "Control of Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems," EPA-450/2-78-051, during loading or unloading operations at gasoline dispensing facilities, bulk plants and terminals.

XV.B.1.c. Avoidable liquid leaks from the system during loading or unloading operations at gasoline dispensing facilities, bulk plants, and terminals.

XV.B.1.d. Division representatives shall monitor for excessive back pressure and vapor leakage as is defined by Sections XV.B.1.a. and XV.B.1.b.

XV.B.2. Repairs and Modifications

XV.B.2.a. The operator shall within fifteen (15) days, repair and retest a vapor collection or control system that exceeds the pressure limits (Section XV.B.1.a.), excepting that;

XV.B.2.b. Should an applicable facility require modification or repairs that will take longer than fifteen (15) days to complete, the operator shall submit to the Division for approval a schedule which includes dates of commencement and completion.

XVI. Control of Emissions from Stationary and Portable Engines and Other Combustion Equipment in the 8-Hour Ozone Control Area

XVI.A Requirements for new and existing engines.

XVI.A.1. The owner or operator of any natural gas-fired stationary or portable reciprocating internal combustion engine with a manufacturer's design rate greater than 500 horsepower commencing operations in the 8-hour Ozone Control Area on or after June 1, 2004 shall employ air pollution control technology to control emissions, as provided in Section XVI.B.

XVI.A.2. Any existing natural gas-fired stationary or portable reciprocating internal combustion engine with a manufacturer's design rate greater than 500 horsepower, which existing engine was operating in the 8-hour Ozone Control Area prior to June 1, 2004, shall employ air pollution control technology on and after May 1, 2005, as provided in Section XVI.B.

XVI.B. Air pollution control technology requirements

XVI.B.1. For rich burn reciprocating internal combustion engines, a non-selective catalyst reduction and an air fuel controller shall be required. A rich burn reciprocating internal combustion engine is one with a normal exhaust oxygen concentration of less than 2% by volume.

XVI.B.2. For lean burn reciprocating internal combustion engines, an oxidation catalyst shall be required. A lean burn reciprocating internal combustion engine is one with a normal exhaust oxygen concentration of 2% by volume, or greater.

XVI.B.3. The emission control equipment required by this Section XVI.B shall be appropriately sized for the engine and shall be operated and maintained according to manufacturer specifications.

XVI.C. The air pollution control technology requirements in Sections XVI.A. and XVI.B. do not apply to:

XVI.C.1. Non-road engines, as defined in Regulation Number 3, Part A, Section I.B.31.

XVI.C.2. Reciprocating internal combustion engines that the Division has determined will be permanently removed from service or replaced by electric units on or before May 1, 2007. The owner or operator of such an engine shall provide notice to the Division of such intent by May 1, 2005 and shall not operate the engine identified for removal or replacement in the 8-hour Ozone Control Area after May 1, 2007.

XVI.C.3. Any emergency power generator exempt from APEN requirements pursuant to Regulation Number 3, Part A.

XVI.C.4. Any lean burn reciprocating internal combustion engine operating in the 8-hour Ozone Control Area prior to June 1, 2004, for which the owner or operator demonstrates to the Division that retrofit technology cannot be installed at a cost of less than $5,000 per ton of VOC emission reduction. Installation costs and the best information available for determining control efficiency shall be considered in determining such costs. In order to qualify for such exemption, the owner or operator must submit an application making such a demonstration, together with all supporting documents, to the Division by May 1, 2005. Any reciprocating internal combustion engine qualifying for this exemption shall not be moved to any other location within the 8-hour Ozone Control Area.

XVI.D. Combustion process adjustment

XVI.D.1. As of January 1, 2017, this Section XVI.D. applies to the following combustion equipment with uncontrolled actual emissions of NOx equal to or greater than five (5) tons per year, and that are located at existing major sources of NOx, as listed in Section XIX.A.

XVI.D.1.a. Boiler: an enclosed device using controlled flame combustion and having the primary purpose of recovering thermal energy in the form of steam or hot water.

XVI.D.1.b. Duct burner: a device that combusts fuel and is placed in the exhaust duct from another source (e.g., stationary combustion turbine, internal combustion engine, or kiln) to allow the firing of additional fuel to heat the exhaust gases before the exhaust gases enter a heat recovery steam generating unit.

XVI.D.1.c. Process heater: an enclosed device using controlled flame and a primary purpose to transfer heat indirectly to a process material or to a heat transfer material for use in a process.

XVI.D.1.d. Stationary combustion turbine.

XVI.D.1.e. Stationary internal combustion engine.

XVI.D.2. Combustion process adjustment

XVI.D.2.a. When burning the fuel that provides the majority of the heat input since the last combustion process adjustment and when operating at a firing rate typical of normal operation, the owner or operator must conduct the following inspections and adjustments of boilers and process heaters, as applicable:

XVI.D.2.a.(i) Inspect the burner and combustion controls and clean or replace components as necessary.

XVI.D.2.a.(ii) Inspect the flame pattern and adjust the burner or combustion controls as necessary to optimize the flame pattern.

XVI.D.2.a.(iii) Inspect the system controlling the air-to-fuel ratio and ensure that it is correctly calibrated and functioning properly.

XVI.D.2.a.(iv) Measure the concentration in the effluent stream of carbon monoxide and nitrogen oxide in ppm, by volume, before and after the adjustments in Sections XVI.D.2.a.(i) through (iii). Measurements may be taken using a portable analyzer.

XVI.D.2.b. The owner or operator of a duct burner must inspect duct burner elements, baffles, support structures, and liners and clean, repair, or replace components as necessary.

XVI.D.2.c. The owner or operator of a stationary combustion turbine must conduct the following inspections and adjustments, as applicable:

XVI.D.2.c.(i) Inspect turbine inlet systems and align, repair, or replace components as necessary.

XVI.D.2.c.(ii) Inspect the combustion chamber components, combustion liners, transition pieces, and fuel nozzle assemblies and clean, repair, or replace components as necessary.

XVI.D.2.c.(iii) When burning the fuel that provides the majority of the heat input since the last combustion process adjustment and when operating at a firing rate typical of normal operation, confirm proper setting and calibration of the combustion controls.

XVI.D.2.d. The owner or operator of a stationary internal combustion engine must conduct the following inspections and adjustments, as applicable:

XVI.D.2.d.(i) Change oil and filters as necessary.

XVI.D.2.d.(ii) Inspect air cleaners, fuel filters, hoses, and belts and clean or replace as necessary.

XVI.D.2.d.(iii) Inspect spark plugs and replace as necessary.

XVI.D.2.e. The owner or operator must operate and maintain the boiler, duct burner, process heater, stationary combustion turbine, or stationary internal combustion engine consistent with manufacturer's specifications, if available, or good engineering and maintenance practices.

XVI.D.2.f. Frequency

XVI.D.2.f.(i) The owner or operator must conduct the initial combustion process adjustment by April 1, 2017. An owner or operator may rely on a combustion process adjustment conducted in accordance with applicable requirements and schedule of a New Source Performance Standard in 40 CFR Part 60 or National Emission Standard for Hazardous Air Pollutants in 40 CFR Part 63 to satisfy the requirement to conduct an initial combustion process adjustment by April 1, 2017.

XVI.D.2.f.(ii) The owner or operator must conduct subsequent combustion process adjustments at least once every twelve (12) months after the initial combustion adjustment, or on the applicable schedule according to Sections XVI.D.4.a. or XVI.D.4.b.

XVI.D.3. Recordkeeping

XVI.D.3.a. The owner or operator must create a report once every calendar year identifying the combustion equipment at the facility subject to Section XVI.D. and including for each combustion equipment:

XVI.D.3.a.(i) The date of the adjustment;

XVI.D.3.a.(ii) Whether the combustion process adjustment under Sections XVI.D.2.a. through XVI.D.2.e. was followed, and what procedures were performed;

XVI.D.3.a.(iii) Whether a combustion process adjustment under XVI.D.4.a. and XVI.D.4.b. was followed, what procedures were performed, and what New Source Performance Standard or National Emission Standard for Hazardous Air Pollutants applied, if any; and

XVI.D.3.a.(iv) A description of any corrective action taken.

XVI.D.3.a.(v) If the owner or operator conducts the combustion process adjustment according to the manufacturer recommended procedures and schedule and the manufacturer specifies a combustion process adjustment on an operation time schedule, the hours of operation.

XVI.D.3.a.(vi) If multiple fuels are used, the type of fuel burned and heat input provided by each fuel.

XVI.D.3.b. The owner or operator must retain manufacturer recommended procedures, specifications, and maintenance schedule if utilized under Section XVI.D.4.a. for the life of the equipment, and make available to the Division upon request.

XVI.D.3.c. The owner or operator must retain annual reports for at least 5 years, and make available to the Division upon request.

XVI.D.4. As an alternative to the requirements described in Sections XVI.D.2.a. through XVI.D.2.e. and XVI.D.3.a.:

XVI.D.4.a. The owner or operator may conduct the combustion process adjustment according to the manufacturer recommended procedures and schedule; or

XVI.D.4.b. The owner or operator of combustion equipment that is subject to and required to conduct a period tune-up or combustion adjustment by the applicable requirements of a New Source Performance Standard in 40 CFR Part 60 or National Emission Standard for Hazardous Air Pollutants in 40 CFR Part 63 may conduct tune-ups or adjustments according to the schedule and procedures of the applicable requirements of 40 CFR Part 60 or 40 CFR Part 63.

XVI.D.4.c. The owner or operator may comply with applicable recordkeeping requirements related to combustion process adjustments conducted according to a New Source Performance Standard in 40 CFR Part 60 or National Emission Standard for Hazardous Air Pollutants in 40 CFR Part 63.

XVII. (State Only, except Section XVII.E.3.a. which was submitted as part of the Regional Haze SIP) Statewide Controls for Oil and Gas Operations and Natural Gas-Fired Reciprocating Internal Combustion Engines

XVII.A. (State Only) Definitions

XVII.A.1. "Air Pollution Control Equipment," as used in this Section XVII., means a combustion device or vapor recovery unit. Air pollution control equipment also means alternative emissions control equipment and pollution prevention devices and processes intended to reduce uncontrolled actual emissions that comply with the requirements of Section XVII.B.2.e.

XVII.A.2. "Approved Instrument Monitoring Method," means an infra-red camera, EPA Method 21, or other Division approved instrument based monitoring method or program. If an owner or operator elects to use Division approved continuous emission monitoring, the Division may approve a streamlined inspection and reporting program for such operations.

XVII.A.3. "Auto-Igniter" means a device which will automatically attempt to relight the pilot flame in the combustion chamber of a control device in order to combust VOC emissions.

XVII.A.4. "Centrifugal Compressor" means any machine used for raising the pressure of natural gas by drawing in low pressure natural gas and discharging significantly higher pressure natural gas by means of mechanical rotating vanes or impellers. Screw, sliding vane, and liquid ring compressors are not centrifugal compressors.

XVII.A.5. "Component" means each pump seal, flange, pressure relief device (including thief hatches or other openings on a controlled storage tank), connector, and valve that contains or contacts a process stream with hydrocarbons, except for components in process streams consisting of glycol, amine, produced water, or methanol.

XVII.A.6. "Connector" means flanged, screwed, or other joined fittings used to connect two pipes or a pipe and a piece of process equipment or that close an opening in a pipe that

could be connected to another pipe. Joined fittings welded completely around the circumference of the interface are not considered connectors.

XVII.A.7. "Date of First Production" means the date reported to the COGCC as the "date of first production."

XVII.A.8. "Glycol Natural Gas Dehydrator" means any device in which a liquid glycol (including ethylene glycol, diethylene glycol, or triethylene glycol) absorbent directly contacts a natural gas stream and absorbs water.

XVII.A.9. "Infra-red Camera" means an optical gas imaging instrument designed for and capable of detecting hydrocarbons.

XVII.A.10. "Intermediate Hydrocarbon Liquid" means any naturally occurring, unrefined petroleum liquid.

XVII.A.11. "Natural Gas Compressor Station" means a facility, located downstream of well production facilities, which contains one or more compressors designed to compress natural gas from well pressure to gathering system pressure prior to the inlet of a natural gas processing plant.

XVII.A.12. "Normal Operation" means all periods of operation, excluding malfunctions as defined in Section I.G. of the Common Provisions regulation. For storage tanks at well production facilities, normal operation includes but is not limited to liquid dumps from the separator.

XVII.A.13. "Open-Ended Valve or Line" means any valve, except safety relief valves, having one side of the valve seat in contact with process fluid and one side open to the atmosphere, either directly or through open piping.

XVII.A.14. "Reciprocating Compressor" means a piece of equipment that increases the pressure of process gas by positive displacement, employing linear movement of the piston rod.

XVII.A.15. "Stabilized" when used to refer to crude oil, condensate, intermediate hydrocarbon liquids, or produced water means that the vapor pressure of the liquid is sufficiently low to prevent the production of vapor phase upon transferring the liquid to an atmospheric pressure in a storage tank, and that any emissions that occur are limited to those commonly referred to within the industry as working, breathing, and standing losses.

XVII.A.16. "Storage Tank" means any fixed roof storage vessel or series of storage vessels that are manifolded together via liquid line. Storage vessel is as defined in 40 CFR Part 60, Subpart OOOO. Storage tanks may be located at a well production facility or other location.

XVII.A.17. "Visible Emissions" means observations of smoke for any period or periods of duration greater than or equal to one (1) minute in any fifteen (15) minute period during normal operation, pursuant to EPA Method 22. Visible emissions do not include radiant energy or water vapor.

XVII.A.18. "Well Production Facility" means all equipment at a single stationary source directly associated with one or more oil wells or gas wells. This equipment includes, but is not limited to, equipment used for storage, separation, treating, dehydration, artificial lift, combustion, compression, pumping, metering, monitoring, and flowline.

XVII.B. (State Only) General Provisions

XVII.B.1. General requirements for prevention of emissions and good air pollution control practices for all oil and gas exploration and production operations, well production facilities, natural gas compressor stations, and natural gas processing plants.

XVII.B.1.a. All intermediate hydrocarbon liquids collection, storage, processing, and handling operations, regardless of size, shall be designed, operated, and maintained so as to minimize leakage of VOCs and other hydrocarbons to the atmosphere to the extent reasonably practicable.

XVII.B.1.b. At all times, including periods of start-up and shutdown, the facility and air pollution control equipment must be maintained and operated in a manner consistent with good air pollution control practices for minimizing emissions. Determination of whether or not acceptable operation and maintenance procedures are being used will be based on information available to the Division, which may include, but is not limited to, monitoring results, opacity observations, review of operation and maintenance procedures, and inspection of the source.

XVII.B.2. General requirements for air pollution control equipment used to comply with Section XVII.

XVII.B.2.a. All air pollution control equipment shall be operated and maintained pursuant to the manufacturing specifications or equivalent to the extent practicable, and consistent with technological limitations and good engineering and maintenance practices. The owner or operator shall keep manufacturer specifications or equivalent on file. In addition, all such air pollution control equipment shall be adequately designed and sized to achieve the control efficiency rates and to handle reasonably foreseeable fluctuations in emissions of VOCs and other hydrocarbons during normal operations. Fluctuations in emissions that occur when the separator dumps into the tank are reasonably foreseeable.

XVII.B.2.b. If a combustion device is used to control emissions of VOCs and other hydrocarbons, it shall be enclosed, have no visible emissions during normal operation, and be designed so that an observer can, by means of visual observation from the outside of the enclosed combustion device, or by other means approved by the Division, determine whether it is operating properly.

XVII.B.2.c. Any of the effective dates for installation of controls on storage tanks, dehydrators, and/or internal combustion engines may be extended at the Division's discretion for good cause shown.

XVII.B.2.d. Auto-igniters: All combustion devices used to control emissions of hydrocarbons must be equipped with and operate an auto-igniter as follows:

XVII.B.2.d.(i) All combustion devices installed on or after May 1, 2014, must be equipped with an operational auto-igniter upon installation of the combustion device.

XVII.B.2.d.(ii) All combustion devices installed before May 1, 2014, must be equipped with an operational auto-igniter by or before May 1, 2016, or after the next combustion device planned shutdown, whichever comes first.

XVII.B.2.e. Alternative emissions control equipment will qualify as air pollution control equipment, and may be used in lieu of, or in combination with, combustion devices and vapor recovery units to achieve the emission reductions required by this Section XVII., if the Division approves the equipment, device or process. As part of the approval process the Division, at its discretion, may specify a different control efficiency than the control efficiencies required by this Section XVII.

XVII.B.3. Requirements for compressor seals and open-ended valves or lines

XVII.B.3.a. Beginning January 1, 2015, each open-ended valve or line at well production facilities and natural gas compressor stations must be equipped with a cap, blind flange, plug, or a second valve that seals the open end at all times except during operations requiring process fluid flow through the open-ended valve or line. Open-ended valves or lines in an emergency shutdown system which are designed to open automatically in the event of a process upset are exempt from the requirement to seal the open end of the valve or line. Alternatively, an open-ended valve or line may be treated as if it is a "component" as defined in Section XVII.A.5., and may be monitored under the provisions of Section XVII.F.

XVII.B.3.b. Beginning January 1, 2015, uncontrolled actual hydrocarbon emissions from wet seal fluid degassing systems on wet seal centrifugal compressors must be reduced by at least 95%, unless the centrifugal compressor is subject to 40 CFR Part 60, Subpart OOOO on that date or thereafter.

XVII.B.3.c. Beginning January 1, 2015, the rod packing on any reciprocating compressor located at a natural gas compressor station must be replaced every 26,000 hours of operation or every thirty six (36) months, unless the reciprocating compressor is subject to 40 CFR Part 60, Subpart OOOO on that date or thereafter. The measurement of accumulated hours of operation (26,000) or months elapsed (36) begins on January 1, 2015.

XVII.B.4. Oil refineries are not subject to Section XVII.

XVII.B.5. Glycol natural gas dehydrators and internal combustion engines that are subject to an emissions control requirement in a federal maximum achievable control technology ("MACT") standard under 40 CFR Part 63, a Best Available Control Technology ("BACT") limit, or a New Source Performance Standard ("NSPS") under 40 CFR Part 60 are not subject to Section XVII., except for the leak detection and repair requirements in Section XVII.F.

XVII.C. (State Only) Emission reduction from storage tanks at oil and gas exploration and production operations, well production facilities, natural gas compressor stations, and natural gas processing plants.

XVII.C.1. Control and monitoring requirements for storage tanks

XVII.C.1.a. Beginning May 1, 2008, owners or operators of all storage tanks storing condensate with uncontrolled actual emissions of VOCs equal to or greater than twenty (20) tons per year based on a rolling twelve-month total must operate air pollution control equipment that has an average control efficiency of at least 95% for VOCs.

XVII.C.1.b. Owners or operators of storage tanks with uncontrolled actual emissions of VOCs equal to or greater than six (6) tons per year based on a rolling twelve-month total must operate air pollution control equipment that achieves an average hydrocarbon control efficiency of 95%. If a combustion device is used, it must have a design destruction efficiency of at least 98% for hydrocarbons, except where the combustion device has been authorized by permit prior to May 1, 2014.

XVII.C.1.b.(i) Control requirements of Section XVII.C.1.b. must be achieved in accordance with the following schedule:

XVII.C.1.b.(i)(A) A storage tank constructed on or after May 1, 2014, must be in compliance within ninety (90) days of the date that the storage tank commences operation.

XVII.C.1.b.(i)(B) A storage tank constructed before May 1, 2014, must be in compliance by May 1, 2015.

XVII.C.1.b.(i)(C) A storage tank not otherwise subject to Sections XVII.C.1.b.(i)(A) or XVII.C.1.b.(i)(B) that increases uncontrolled actual emissions to six (6) tons per year VOC or more on a rolling twelve month basis after May 1, 2014, must be in compliance within sixty (60) days of discovery of the emissions increase.

XVII.C.1.c. Control requirements within ninety (90) days of the date of first production.

XVII.C.1.c.(i) Beginning May 1, 2014, owners or operators of storage tanks at well production facilities must collect and control emissions by routing emissions to operating air pollution control equipment during the first ninety (90) calendar days after the date of first production. The air pollution control equipment must achieve an average hydrocarbon control efficiency of 95%. If a combustion device is used, it must have a design destruction efficiency of at least 98% for hydrocarbons. This control requirement does not apply to storage tanks that are projected to have emissions less than 1.5 tons of VOC during the first ninety (90) days after the date of first production.

XVII.C.1.c.(ii) The air pollution control equipment and any associated monitoring equipment required pursuant to Section XVII.C.1.c.(i) may be removed at any time after the first ninety (90) calendar days as long as the source can demonstrate that uncontrolled actual emissions from the storage tank will be below the threshold in Section XVII.C.1.b.

XVII.C.1.d. Beginning May 1, 2014, or the applicable compliance date in Section XVII.C.1.b.(i), whichever comes later, owners or operators of storage tanks subject to Section XVII.C.1. must conduct audio, visual, olfactory (“AVO”) and additional visual inspections of the storage tank and any associated equipment (e.g. separator, air pollution control equipment, or other pressure reducing equipment) at the same frequency as liquids are loaded out from the storage tank. These inspections are not required more frequently than every seven (7) days but must be conducted at least every thirty one (31) days. Monitoring is not required for storage tanks or associated equipment that are unsafe, difficult, or inaccessible to monitor, as defined in Section XVII.C.1.e. The additional visual inspections must include, at a minimum:

XVII.C.1.d.(i) Visual inspection of any thief hatch, pressure relief valve, or other access point to ensure that they are closed and properly sealed;

XVII.C.1.d.(ii) Visual inspection or monitoring of the air pollution control equipment to ensure that it is operating, including that the pilot light is lit on combustion devices used as air pollution control equipment;

XVII.C.1.d.(iii) If a combustion device is used, visual inspection of the auto-igniter and valves for piping of gas to the pilot light to ensure they are functioning properly;

XVII.C.1.d.(iv) Visual inspection of the air pollution control equipment to ensure that the valves for the piping from the storage tank to the air pollution control equipment are open; and

XVII.C.1.d.(v) If a combustion device is used, inspection of the device for the presence or absence of smoke. If smoke is observed, either the equipment must be immediately shut-in to investigate the potential cause for smoke and perform repairs, as necessary, or EPA Method 22 must be conducted to determine whether visible emissions are present for a period of at least one (1) minute in fifteen (15) minutes.

XVII.C.1.e. If storage tanks or associated equipment is unsafe, difficult, or inaccessible to monitor, the owner or operator is not required to monitor such equipment until it becomes feasible to do so.

XVII.C.1.e.(i) Difficult to monitor means it cannot be monitored without elevating the monitoring personnel more than two meters above a supported surface or is unable to be reached via a wheeled scissor-lift or hydraulic type scaffold that allows access up to 7.6 meters (25 feet) above the ground.

XVII.C.1.e.(ii) Unsafe to monitor means it cannot be monitored without exposing monitoring personnel to an immediate danger as a consequence of completing the monitoring.

XVII.C.1.e.(iii) Inaccessible to monitor means buried, insulated, or obstructed by equipment or piping that prevents access by monitoring personnel.

XVII.C.2. Capture and monitoring requirements for storage tanks that are fitted with air pollution control equipment as required by Sections XII.D. or XVII.C.1.

XVII.C.2.a. Owners or operators of storage tanks must route all hydrocarbon emissions to air pollution control equipment, and must operate without venting hydrocarbon emissions from the thief hatch (or other access point to the tank) or pressure relief device during normal operation, unless venting is reasonably required for maintenance, gauging, or safety of personnel and equipment. Compliance must be achieved in accordance with the schedule in Section XVII.C.2.b.(ii).

XVII.C.2.a.(i) Venting is emissions from a controlled storage tank thief hatch, pressure relief device, or other access point to the storage tank, which:

XVII.C.2.a.(i)(A) Are primarily the result of over-pressurization, whether related to design, operation, or maintenance; or

XVII.C.2.a.(i)(B) Are the result of an open, unlatched, or visibly unseated pressure relief device (e.g., thief hatch or pressure relief valve), an open vent line, or an unintended opening in the storage tank (e.g., crack or hole).

XVII.C.2.a.(ii) When emissions from a controlled storage tank are observed, the Division may require the owner or operator to submit sufficient information demonstrating whether or not the emissions were primarily the result of over-pressurization. Absent a demonstration that such emissions were not primarily the result of over-pressurization, such emissions will be considered venting for purposes of Section XVII.C.2.a.

XVII.C.2.b. Owners or operators of storage tanks subject to the control requirements of Sections XII.D.2., XVII.C.1.a, or XVII.C.1.b. must develop, certify, and implement a documented Storage Tank Emission Management System ("STEM") plan to identify, evaluate, and employ appropriate control technologies, monitoring practices, operational practices, and/or other strategies designed to meet the requirements set forth in Section XVII.C.2.a. Owners or operators must update the STEM plan as necessary to achieve or maintain compliance. Owners or operators are not required to develop and implement STEM for storage tanks containing only stabilized liquids. The minimum elements of STEM are listed.

XVII.C.2.b.(i) STEM must include selected control technologies, monitoring practices, operational practices, and/or other strategies; procedures for evaluating ongoing storage tank emission capture performance; and monitoring in accordance with approved instrument monitoring methods following the applicable schedule in Section XVII.C.2.b.(ii) and Inspection Frequency in Table 1.

XVII.C.2.b.(ii) Owners or operators must achieve the requirements of Sections XVII.C.2.a. and XVII.C.2.b. and begin implementing the required approved instrument monitoring method in accordance with the following schedule:

XVII.C.2.b.(ii)(A) A storage tank constructed on or after May 1, 2014, must comply with the requirements of Section XVII.C.2.a. by the date the storage tank commences operation. The storage tank must comply with Section XVII.C.2.b. and implement the approved instrument monitoring method inspections within ninety (90) days of the date that the storage tank commences operation.

XVII.C.2.b.(ii)(B) A storage tank constructed before May 1, 2014, must comply with the requirements of Sections XVII.C.2.a. and XVII.C.2.b. by May 1, 2015. Approved instrument monitoring method inspections must begin within ninety (90) days of the Phase-In Schedule in Table 1, or within thirty (30) days for storage tanks with uncontrolled actual VOC emissions greater than 50 tons per year.

XVII.C.2.b.(ii)(C) A storage tank not otherwise subject to Sections XVII.C.2.b.(ii)(A) or XVII.C.2.b.(ii)(B) that increases uncontrolled actual emissions to six (6) tons per year VOC or more on a rolling twelve month basis after May 1, 2014, must comply with the requirements of Sections XVII.C.2.a. and XVII.C.2.b. and implement the required approved instrument monitoring method

inspections within sixty (60) days of discovery of the emissions increase.

XVII.C.2.b.(ii)(D) Following the first approved instrument monitoring method inspection, owners or operators must continue conducting approved instrument monitoring method inspections in accordance with the Inspection Frequency in Table 1.

Table 1 – Storage Tank Inspections

Threshold: Storage Tank Uncontrolled Actual VOC Emissions (tpy)	Approved Instrument Monitoring Method Inspection Frequency	Phase-In Schedule
≥ 6 and ≤ 12	Annually	January 1, 2016
> 12 and ≤ 50	Quarterly	July 1, 2015
> 50	Monthly	January 1, 2015

XVII.C.2.b.(iii) Owners or operators are not required to monitor storage tanks and associated equipment that are unsafe, difficult, or inaccessible to monitor, as defined in Section XVII.C.1.e.

XVII.C.2.b.(iv) STEM must include a certification by the owner or operator that the selected STEM strategy(ies) are designed to minimize emissions from storage tanks and associated equipment at the facility(ies), including thief hatches and pressure relief devices.

XVII.C.3. Recordkeeping: The owner or operator of each storage tank subject to Sections XII.D. or XVII.C. must maintain records of STEM, if applicable, including the plan, any updates, and the certification, and make them available to the Division upon request. In addition, for a period of two (2) years, the owner or operator must maintain records of any required monitoring and make them available to the Division upon request, including:

XVII.C.3.a. The AIRS ID for the storage tank.

XVII.C.3.b. The date and duration of any period where the thief hatch, pressure relief device, or other access point are found to be venting hydrocarbon emissions, except for venting that is reasonably required for maintenance, gauging, or safety of personnel and equipment.

XVII.C.3.c. The date and duration of any period where the air pollution control equipment is not operating.

XVII.C.3.d. Where a combustion device is being used, the date and result of any EPA Method 22 test or investigation pursuant to Section XVII.C.1.d.(v).

XVII.C.3.e. The timing of and efforts made to eliminate venting, restore operation of air pollution control equipment, and mitigate visible emissions.

XVII.C.3.f. A list of equipment associated with the storage tank that is designated as unsafe, difficult, or inaccessible to monitor, as described in Section XVII.C.1.e., an explanation stating why the equipment is so designated, and the plan for monitoring such equipment.

XVII.D. (State Only) Emission reductions from glycol natural gas dehydrators

XVII.D.1. Beginning May 1, 2008, still vents and vents from any flash separator or flash tank on a glycol natural gas dehydrator located at an oil and gas exploration and production operation, natural gas compressor station, or gas-processing plant subject to control requirements pursuant to Section XVII.D.2., shall reduce uncontrolled actual emissions of volatile organic compounds by at least 90 percent through the use of a condenser or air pollution control equipment.

XVII.D.2. The control requirement in Section XVII.D.1. apply where:

XVII.D.2.a. Actual uncontrolled emissions of volatile organic compounds from the glycol natural gas dehydrator are equal to or greater than two tons per year; and

XVII.D.2.b. The sum of actual uncontrolled emissions of volatile organic compounds from any single glycol natural gas dehydrator or grouping of glycol natural gas dehydrators at a single stationary source is equal to or greater than 15 tons per year. To determine if a grouping of dehydrators meets or exceeds the 15 tons per year threshold, sum the total actual uncontrolled emissions of volatile organic compounds from all individual dehydrators at the stationary source, including those with emissions less than two tons per year.

XVII.D.3. Beginning May 1, 2015, still vents and vents from any flash separator or flash tank on a glycol natural gas dehydrator located at an oil and gas exploration and production operation, natural gas compressor station, or gas-processing plant subject to control requirements pursuant to Section XVII.D.4., shall reduce uncontrolled actual emissions of hydrocarbons by at least 95 percent on a rolling twelve-month basis through the use of a condenser or air pollution control equipment. If a combustion device is used, it shall have a design destruction efficiency of at least 98% for hydrocarbons, except where:

XVII.D.3.a. The combustion device has been authorized by permit prior to May 1, 2014; and

XVII.D.3.b. A building unit or designated outside activity area is not located within 1,320 feet of the facility at which the natural gas glycol dehydrator is located.

XVII.D.4. The control requirement in Section XVII.D.3. apply where:

XVII.D.4.a. Uncontrolled actual emissions of VOCs from a glycol natural gas dehydrator constructed on or after May 1, 2015, are equal to or greater than two (2) tons per year. Such glycol natural gas dehydrators must be in compliance with Section XVII.D.3. by the date that the glycol natural gas dehydrator commences operation.

XVII.D.4.b. Uncontrolled actual emissions of VOCs from a single glycol natural gas dehydrator constructed before May 1, 2015, are equal to or greater than six (6) tons per year, or two (2) tons per year if the glycol natural gas dehydrator is located within 1,320 feet of a building unit or designated outside activity area.

XVII.D.4.c. For purposes of Sections XVII.D.3. and XVII.D.4.:

XVII.D.4.c.(i) Building Unit means a residential building unit, and every five thousand (5,000) square feet of building floor area in commercial facilities or every fifteen thousand (15,000) square feet of building floor area in warehouses that are operating and normally occupied during working hours.

XVII.D.4.c.(ii) A Designated Outside Activity Area means an outdoor venue or recreation area, such as a playground, permanent sports field, amphitheater, or other similar place of public assembly owned or operated by a local government, which the local government had established as a designated outside activity area by the COGCC; or an outdoor venue or recreation area where ingress to or egress from could be impeded in the event of an emergency condition at an oil and gas location less than three hundred and fifty (350) feet from the venue due to the configuration of the venue and the number of persons known or expected to simultaneously occupy the venue on a regular basis.

XVII.E. Control of emissions from new, modified, existing, and relocated natural gas fired reciprocating internal combustion engines.

XVII.E.1. (State Only) The requirements of this Section XVII.E. do not apply to any engine having actual uncontrolled emissions below permitting thresholds listed in Regulation Number 3, Part B.

XVII.E.2. (State Only) New, Modified and Relocated Natural Gas Fired Reciprocating Internal Combustion Engines

XVII.E.2.a. Except as provided in Section XVII.E.2.b., the owner or operator of any natural gas fired reciprocating internal combustion engine that is either constructed or relocated to the state of Colorado from another state, on or after the date listed in Table 2 shall operate and maintain each engine according to the manufacturer's written instructions or procedures to the extent practicable and consistent with technological limitations and good engineering and maintenance practices over the entire life of the engine so that it achieves the emission standards required in Section XVII.E.2.b. Table 2.

XVII.E.2.b. Actual emissions from natural gas fired reciprocating internal combustion engines shall not exceed the emission performance standards in Table 2 as expressed in units of grams per horsepower-hour (G/hp-hr)

TABLE 2

Maximum Engine Hp	Construction or Relocation Date	Emission Standards is G/hp-hr		
		NOx	CO	VOC
< 100 Hp	Any	NA	NA	NA
≥ 100 Hp	On or after January 1, 2008	2.0	4.0	1.0

and < 500 Hp	On or after January 1, 2011	1.0	2.0	0.7
≥ 500 Hp	On or after July 1, 2007	2.0	4.0	1.0
	On or after July 1, 2010	1.0	2.0	0.7

XVII.E.3. Existing Natural Gas Fired Reciprocating Internal Combustion Engines

XVII.E.3.a. (Regional Haze SIP) Rich Burn Reciprocating Internal Combustion Engines

XVII.E.3.a.(i) Except as provided in Sections XVII.E.3.a.(i)(B) and (C) and XVII.E.3.a.(ii), all rich burn reciprocating internal combustion engines with a manufacturer's name plate design rate greater than 500 horsepower, constructed or modified before February 1, 2009 shall install and operate both a non-selective catalytic reduction system and an air fuel controller by July 1, 2010. A rich burn reciprocating internal combustion engine is one with a normal exhaust oxygen concentration of less than 2% by volume.

XVII.E.3.a.(i)(A) All control equipment required by this Section XVII.E.3.a. shall be operated and maintained pursuant to manufacturer specifications or equivalent to the extent practicable, and consistent with technological limitations and good engineering and maintenance practices. The owner or operator shall keep manufacturer specifications or equivalent on file.

XVII.E.3.a.(i)(B) Internal combustion engines that are subject to an emissions control requirement in a federal maximum achievable control technology ("MACT") standard under 40 CFR Part 63, a Best Available Control Technology ("BACT") limit, or a New Source Performance Standard under 40 CFR Part 60 are not subject to this Section XVII.E.3.a.

XVII.E.3.a.(i)(C) The requirements of this Section XVII.E.3.a. do not apply to any engine having actual uncontrolled emissions below permitting thresholds listed in Regulation Number 3, Part B.

XVII.E.3.a.(ii) Any rich burn reciprocating internal combustion engine constructed or modified before February 1, 2009, for which the owner or operator demonstrates to the Division that retrofit technology cannot be installed at a cost of less than $ 5,000 per ton of combined volatile organic compound and nitrogen oxides emission reductions (this value shall be adjusted for future applications according to the current day consumer price index) is exempt complying with Section XVII.E.3.a. Installation costs and the best information available for determining control efficiency shall be considered in determining such costs. In order to qualify for such exemption, the owner or operator must submit an application making such a demonstration, together with all supporting documents, to the Division by August 1, 2009.

XVII.E.3.b. (State Only) Lean Burn Reciprocating Internal Combustion Engines

XVII.E.3.b.(i) Except as provided in Section XVII.E.3.b.(ii), all lean burn reciprocating internal combustion engines with a manufacturer's nameplate design rate greater than 500 horsepower shall install and operate an oxidation catalyst by July 1, 2010. A lean burn reciprocating internal combustion engine is one with a normal exhaust oxygen concentration of 2% by volume, or greater.

XVII.E.3.b.(ii) Any lean burn reciprocating internal combustion engine constructed or modified before February 1, 2009, for which the owner or operator demonstrates to the Division that retrofit technology cannot be installed at a cost of less than $ 5,000 per ton of volatile organic compound emission reduction (this value shall be adjusted for future applications according to the current day consumer price index) is exempt complying with Section XVII.E.3.b.(i). Installation costs and the best information available for determining control efficiency shall be considered in determining such costs. In order to qualify for such exemption, the owner or operator must submit an application making such a demonstration, together with all supporting documents, to the Division by August 1, 2009.

XVII.F. (State Only) Leak detection and repair program for well production facilities and natural gas compressor stations

XVII.F.1. The following provisions of Section XVII.F. shall apply in lieu of any directed inspection and maintenance program requirements established pursuant to Regulation Number 3, Part B, Section III.D.2.

XVII.F.2. Owners or operators of well production facilities or natural gas compressor stations that monitor components as part of Section XVII.F. may estimate uncontrolled actual emissions from components for the purpose of evaluating the applicability of component fugitive emissions to Regulation Number 3 by utilizing the emission factors defined as less than 10,000 ppmv of Table 2-8 of the 1995 EPA Protocol for Equipment Leak Emission Estimates (Document EPA-453/R-95-017).

XVII.F.3. Beginning January 1, 2015, owners or operators of natural gas compressor stations must inspect components for leaks using an approved instrument monitoring method, in accordance with the following schedule:

XVII.F.3.a. Approved instrument monitoring method inspections must begin within ninety (90) days after January 1, 2015, or the date the natural gas compressor station commences operation if such date is after January 1, 2015, for natural gas compressor stations with fugitive VOC emissions greater than zero (0) but less than or equal to fifty (50) tons per year.

XVII.F.3.b. Approved instrument monitoring method inspections must begin within thirty (30) days after January 1, 2015, or the date the natural gas compressor station commences operation if such date is after January 1, 2015, for natural gas compressor stations with fugitive VOC emissions greater than fifty (50) tons per year.

XVII.F.3.c. Following the first approved instrument monitoring method inspection, owners or operators must continue conducting approved instrument monitoring method inspections in accordance with the Inspection Frequency in Table 3.

XVII.F.3.d. For purposes of Section XVII.F.3., fugitive emissions must be calculated using the emission factors of Table 2-4 of the 1995 EPA Protocol for Equipment Leak Emission Estimates (Document EPA-453/R-95-017), or other Division approved method.

Table 3 – Natural Gas Compressor Station Component Inspections	
Fugitive VOC Emissions (tpy)	Inspection Frequency
> 0 and ≤ 12	Annually
> 12 and ≤ 50	Quarterly
> 50	Monthly

XVII.F.4. Requirements for well production facilities

XVII.F.4.a. Owners or operators of well production facilities constructed on or after October 15, 2014, must identify leaks from components using an approved instrument monitoring method no sooner than fifteen (15) days and no later than thirty (30) days after the facility commences operation. This initial test constitutes the first, or only for facilities subject to a one time approved instrument monitoring method inspection, of the periodic approved instrument monitoring method inspections. Thereafter, approved instrument monitoring method and AVO inspections must be conducted in accordance with the Inspection Frequencies in Table 4.

XVII.F.4.b. Owners or operators of well production facilities constructed before October 15, 2014, must identify leaks from components using an approved instrument monitoring method within ninety (90) days of the Phase-In Schedule in Table 4; within thirty (30) days for well production facilities subject to monthly approved instrument monitoring method inspections; or by January 1, 2016, for well production facilities subject to a one time approved instrument monitoring method inspection. Thereafter, approved instrument monitoring method and AVO inspections must be conducted in accordance with the Inspection Frequencies in Table 4.

XVII.F.4.c. The estimated uncontrolled actual VOC emissions from the highest emitting storage tank at the well production facility determines the frequency at which inspections must be performed. If no storage tanks storing oil or condensate are located at the well production facility, owners or operators must rely on the facility emissions (controlled actual VOC emissions from all permanent equipment, including emissions from components determined by utilizing the emission factors defined as less than 10,000 ppmv of Table 2-8 of the 1995 EPA Protocol for Equipment Leak Emission Estimates).

Table 4 – Well Production Facility Component Inspections				
Thresholds (per XVII.F.4.c.)				
Well production	Well production	Approved	AVO	Phase-In

facilities without storage tanks (tpy)	facilities with storage tanks (tpy)	Instrument Monitoring Method Inspection Frequency	Inspection Frequency	Schedule
> 0 and ≤ 6	> 0 and ≤ 6	One time	Monthly	January 1, 2016
> 6 and ≤ 12	> 6 and ≤ 12	Annually	Monthly	January 1, 2016
> 12 and ≤ 20	> 12 and ≤ 50	Quarterly	Monthly	January 1, 2015
> 20	> 50	Monthly		January 1, 2015

XVII.F.5. If a component is unsafe, difficult, or inaccessible to monitor, the owner or operator is not required to monitor the component until it becomes feasible to do so.

XVII.F.5.a. Difficult to monitor components are those that cannot be monitored without elevating the monitoring personnel more than two (2) meters above a supported surface or are unable to be reached via a wheeled scissor-lift or hydraulic type scaffold that allows access to components up to 7.6 meters (25 feet) above the ground.

XVII.F.5.b. Unsafe to monitor components are those that cannot be monitored without exposing monitoring personnel to an immediate danger as a consequence of completing the monitoring.

XVII.F.5.c. Inaccessible to monitor components are those that are buried, insulated, or obstructed by equipment or piping that prevents access to the components by monitoring personnel.

XVII.F.6. Leaks requiring repair: Leaks must be identified utilizing the methods listed in Section XVII.F.6. Only leaks from components exceeding the thresholds in Section XVII.F.6. require repair under Section XVII.F.7.

XVII.F.6.a. For EPA Method 21 monitoring, at facilities constructed before May 1, 2014, repair is required for leaks with any concentration of hydrocarbon above 2,000 parts per million (ppm) not associated with normal equipment operation, such as pneumatic device actuation and crank case ventilation, except for well production facilities where a leak is defined as any concentration of hydrocarbon above 500 ppm not associated with normal equipment operation, such as pneumatic device actuation and crank case ventilation.

XVII.F.6.b. For EPA Method 21 monitoring, at facilities constructed on or after May 1, 2014, repair is required for leaks with any concentration of hydrocarbon above 500 ppm not associated with normal equipment operation, such as pneumatic device actuation and crank case ventilation.

XVII.F.6.c. For infra-red camera and AVO monitoring, repair is required for leaks with any detectable emissions not associated with normal equipment operation, such as pneumatic device actuation and crank case ventilation.

XVII.F.6.d. For other Division approved instrument monitoring methods or programs, leak identification requiring repair will be established as set forth in the Division's approval.

XVII.F.6.e. For leaks identified using an approved non-quantitative instrument monitoring method or AVO, owners or operators have the option of either repairing the leak in accordance with the repair schedule set forth in Section XVII.F.7. or conducting follow-up monitoring using EPA Method 21 within five (5) working days of the leak detection. If the follow-up EPA Method 21 monitoring shows that the emission is a leak requiring repair as set forth in Section XVII.F.6., the leak must be repaired and remonitored in accordance with Section XVII.F.7.

XVII.F.7. Repair and remonitoring

XVII.F.7.a. First attempt to repair a leak must be made no later than five (5) working days after discovery and repair of a leak discovered on or after January 1, 2018, completed no later than thirty (30) working days after discovery, unless parts are unavailable, the equipment requires shutdown to complete repair, or other good cause exists.

XVII.F.7.a.(i) If parts are unavailable, they must be ordered promptly and the repair must be made within fifteen (15) working days of receipt of the parts.

XVII.F.7.a.(ii) If shutdown is required, a repair attempt must be made during the next scheduled shutdown and final repair completed within two (2) years after discovery.

XVII.F.7.a.(iii) If delay is attributable to other good cause, repairs must be completed within fifteen (15) working days after the cause of delay ceases to exist.

XVII.F.7.b. Within fifteen (15) working days of completion of a repair, the leak must be remonitored using an approved instrument monitoring method to verify that the repair was effective.

XVII.F.7.c. Leaks discovered pursuant to the leak detection methods of Section XVII.F.6. are not subject to enforcement by the Division unless the owner or operator fails to perform the required repairs in accordance with Section XVII.F.7. or keep required records in accordance with Section XVII.F.8.

XVII.F.8. Recordkeeping: The owner or operator of each facility subject to the leak detection and repair requirements in Section XVII.F. must maintain the following records for a period of two (2) years and make them available to the Division upon request.

XVII.F.8.a. Documentation of the initial approved instrument monitoring method inspection for new well production facilities;

XVII.F.8.b. The date, facility name, and facility AIRS ID or facility location if the facility does not have an AIRS ID for each inspection;

XVII.F.8.c. A list of the leaking components requiring repair and the monitoring method(s) used to determine the presence of the leak;

XVII.F.8.d. The date of first attempt to repair the leak and, if necessary, any additional attempt to repair the leak;

XVII.F.8.e. The date the leak was repaired and for leaks discovered and repaired on or after January 1, 2018, the type of repair method applied;

XVII.F.8.f. The delayed repair list, including the basis for placing leaks on the list;

XVII.F.8.g. For leaks discovered on or after January 1, 2018, the delayed repair list must include the date and duration of any period where the repair of a leak was delayed due to unavailable parts, required shutdown, or delay for other good cause, the basis for the delay, and the schedule for repairing the leak. Delay of repair beyond thirty (30) days after initial discovery due to unavailable parts must be reviewed, and a record kept of that review, by a representative of the owner or operator with responsibility for leak detection and repair compliance functions. This review will not be made by the individual making the initial determination to place a part on the delayed repair list;

XVII.F.8.h. The date the leak was remonitored and the results of the remonitoring; and

XVII.F.8.i. A list of components that are designated as unsafe, difficult, or inaccessible to monitor, as described in Section XVII.F.5., an explanation stating why the component is so designated, and the schedule for monitoring such component(s).

XVII.F.9. Reporting: The owner or operator of each facility subject to the leak detection and repair requirements in Section XVII.F. must submit a single annual report on or before May 31st of each year that includes, at a minimum, the following information regarding leak detection and repair activities at their subject facilities conducted for calendar years prior to January 1, 2018:

XVII.F.9.a. The number of facilities inspected;

XVII.F.9.b. The total number of inspections;

XVII.F.9.c. The total number of leaks identified, broken out by component type;

XVII.F.9.d. The total number of leaks repaired;

XVII.F.9.e. The number of leaks on the delayed repair list as of December 31st; and

XVII.F.9.f. Each report shall be accompanied by a certification by a responsible official that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

XVII.F.10. Reporting, beginning with the reporting year of 2019: The owner or operator of each facility subject to the leak detection and repair requirements in Section XVII.F. must submit a single annual report on or before May 31st of each year (beginning May 31st, 2019) that includes, at a minimum, the following information regarding leak detection and repair activities at their subject facilities conducted the previous calendar year:

XVII.F.10.a. The total number of well production facilities and total number of natural gas compressor stations inspected;

XVII.F.10.b. The total number of inspections performed per inspection frequency tier of well production facilities and inspection frequency tier of natural gas compressor stations;

XVII.F.10.c. The total number of identified leaks requiring repair, broken out by component type, monitoring method, and inspection frequency tier of well production facilities, as reported in Section XVII.F.10.b., or inspection frequency tier of natural gas compressor stations;

XVII.F.10.d. The total number of leaks repaired for each inspection frequency tier of well production facilities, as reported in Section XVII.F.10.b., or inspection frequency tier of natural gas compressor stations;

XVII.F.10.e. The total number of leaks on the delayed repair list as of December 31st broken out by component type, inspection frequency tier of well production facilities, as reported in Section XVII.F.10.b., or inspection frequency tier of natural gas compressor stations, and the basis for each delay of repair;

XVII.F.10.f. The record of all reviews conducted for delayed repairs due to unavailable parts extending beyond 30 days for the previous calendar year; and

XVII.F.10.g. Each report must be accompanied by a certification by a responsible official that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

XVII.G. (State Only) Control of emissions from well production facilities

Well Operation and Maintenance: On or after August 1, 2014, gas coming off a separator, produced during normal operation from any newly constructed, hydraulically fractured, or recompleted oil and gas well, must either be routed to a gas gathering line or controlled from the date of first production by air pollution control equipment that achieves an average hydrocarbon control efficiency of 95%. If a combustion device is used, it must have a design destruction efficiency of at least 98% for hydrocarbons.

XVII.H. (State Only) Venting during downhole well maintenance and liquids unloading events

XVII.H.1. Beginning May 1, 2014, owners or operators must use best management practices to minimize hydrocarbon emissions and the need for well venting associated with downhole well maintenance and liquids unloading, unless venting is necessary for safety.

XVII.H.1.a. During liquids unloading events, any means of creating differential pressure must first be used to attempt to unload the liquids from the well without venting. If these methods are not successful in unloading the liquids from the well, the well may be vented to the atmosphere to create the necessary differential pressure to bring the liquids to the surface.

XVII.H.1.b. The owner or operator must be present on-site during any planned well maintenance or liquids unloading event and must ensure that any venting to the atmosphere is limited to the maximum extent practicable.

XVII.H.1.c. Records of the cause, date, time, and duration of venting events under Section XVII.H. must be kept for two (2) years and made available to the Division upon request.

XVIII. Natural Gas-Actuated Pneumatic Controllers Associated with Oil and Gas Operations

XVIII.A. Applicability

This section applies to pneumatic controllers that are actuated by natural gas, and located at, or upstream of natural gas processing plants (upstream activities include: oil and gas exploration and production operations and natural gas compressor stations).

XVIII.B. Definitions

XVIII.B.1. "Affected Operations" means pneumatic controllers that are actuated by natural gas, and located at, or upstream of natural gas processing plants (upstream activities include: oil and gas exploration and production operations and natural gas compressor stations).

XVIII.B.2. "Continuous Bleed" means an intentional continuous bleed rate of natural gas from a pneumatic controller.

XVIII.B.3. "Custody Transfer" means the transfer of crude oil or natural gas after processing and/or treatment in the producing operations or from storage vessels or automatic transfer facilities or other such equipment, including product loading racks, to pipelines or any other forms of transportation.

XVIII.B.4. "Enhanced Response" means to return equipment to proper operation and includes but is not limited to, cleaning, tuning, and repairing leaking gaskets, tubing fittings, and seals; tuning to operate over a broader range of proportional band; and eliminating unnecessary valve positioners.

XVIII.B.5. "High-Bleed Pneumatic Controller" means a pneumatic controller that is designed to have a continuous bleed rate that emits in excess of 6 standard cubic feet per hour (scfh) of natural gas to the atmosphere.

XVIII.B.6. (State Only) "Intermittent pneumatic controller" means a pneumatic controller that vents non-continuously.

XVIII.B.7. "Low-Bleed Pneumatic controller" means a pneumatic controller that is designed to have a continuous bleed rate that emits less than or equal to 6 scfh of natural gas to the atmosphere.

XVIII.B.8. "Natural Gas Processing Plant" means any processing site engaged in the extraction of natural gas liquids from field gas, fractionation of mixed natural gas liquids to natural gas products, or both. A Joule-Thompson valve, a dew point depression valve, or an isolated or standalone Joule-Thompson skid is not a natural gas processing plant.

XVIII.B.9. "No-Bleed Pneumatic Controller" means any pneumatic controller that is not using hydrocarbon gas as the valve's actuating gas.

XVIII.B.10. "Pneumatic Controller" means an instrument that is actuated using pressurized gas and used to control or monitor process parameters such as liquid level, gas level, pressure, valve position, liquid flow, gas flow and temperature.

XVIII.B.11. "Self-contained Pneumatic Controller" means a pneumatic controller that releases gas to a process or sales line instead of to the atmosphere.

XVIII.C. Emission Reduction Requirements

Owners and operators of affected operations shall reduce emissions of volatile organic compounds from pneumatic controllers associated with affected operations as follows:

XVIII.C.1. Continuous bleed, natural gas-driven pneumatic controllers in the 8-Hour Ozone Control Area and located from the wellhead to the natural gas processing plant or point of custody transfer to an oil pipeline:

XVIII.C.1.a. All pneumatic controllers placed in service on or after February 1, 2009, must emit natural gas emissions in an amount equal to or less than a low-bleed pneumatic controller, unless allowed pursuant to Section XVIII.C.1.c.

XVIII.C.1.b. All high-bleed pneumatic controllers in service prior to February 1, 2009 shall be replaced or retrofit such that natural gas emissions are reduced to an amount equal to or less than a low-bleed pneumatic controller, by May 1, 2009, unless allowed pursuant to Section XVIII.C.1.c.

XVIII.C.1.c. All high-bleed pneumatic controllers that remain in service due to safety and/or process purposes must comply with Sections XVIII.D. and XVIII.E.

XVIII.C.1.c.(i) For high-bleed pneumatic controllers in service prior to February 1, 2009, the owner/operator must submit justification for high-bleed pneumatic controllers to remain in service due to safety and /or process purposes by March 1, 2009.

XVIII.C.1.c.(ii) For high-bleed pneumatic controllers placed in service on or after February 1, 2009, the owner/operator must submit justification for high-bleed pneumatic controllers to be installed due to safety and /or process purposes thirty (30) days prior to installation.

XVIII.C.2. Continuous bleed, natural gas-driven pneumatic controllers in the 8-Hour Ozone Control Area and located at a natural gas processing plant:

XVIII.C.2.a. All pneumatic controllers placed in service on or after January 1, 2018, must have a natural gas bleed rate of zero, unless allowed pursuant to Section XVIII.C.2.c.

XVIII.C.2.b. All pneumatic controllers with a bleed rate greater than zero in service prior to January 1, 2018, must be replaced or retrofit such that the pneumatic controller has a natural gas bleed rate of zero by May 1, 2018, unless allowed pursuant to Section XVIII.C.2.c.

XVIII.C.2.c. All pneumatic controllers with a natural gas bleed rate greater than zero that remain in service due to safety and/or process purposes must comply with Sections XVIII.D. and XVIII.E.

XVIII.C.2.c.(i) For pneumatic controllers with a natural gas bleed rate greater than zero in service prior to January 1, 2018, the owner or operator must submit justification for pneumatic controllers to remain in service due to safety and /or process purposes by May 1, 2018.

XVIII.C.2.c.(ii) For pneumatic controllers with a natural gas bleed rate greater than zero placed in service on or after January 1, 2018, the owner or operator must submit justification for pneumatic controllers to be installed due to safety and /or process purposes thirty (30) days prior to installation.

XVIII.C.3. (State Only) Statewide:

XVIII.C.3.a. Owners or operators of all pneumatic controllers placed in service on or after May 1, 2014, must:

XVIII.C.3.a.(i) Utilize no-bleed pneumatic controllers where on-site electrical grid power is being used and use of a no-bleed pneumatic controller is technically and economically feasible.

XVIII.C.3.a.(ii) If on-site electrical grid power is not being used or a no-bleed pneumatic controller is not technically and economically feasible, utilize pneumatic controllers that emit natural gas emissions in an amount equal to or less than a low-bleed pneumatic controller, unless allowed pursuant to Section XVIII.C.3.c.

XVIII.C.3.a.(iii) For purposes of Section XVIII.C.3.a.(ii), instead of a low-bleed pneumatic controller, owners or operators may utilize a natural gas-driven intermittent pneumatic controller.

XVIII.C.3.a.(iv) Utilizing self-contained pneumatic controllers satisfies Section XVIII.C.3.a.(i).

XVIII.C.3.b. All high-bleed pneumatic controllers in service prior to May 1, 2014, must be replaced or retrofitted by May 1, 2015, such that natural gas emissions are reduced to an amount equal to or less than a low-bleed pneumatic controller, unless allowed pursuant to Section XVIII.C.3.c.

XVIII.C.3.c. All high-bleed pneumatic controllers that must remain in service due to safety and/or process purposes must comply with Sections XVIII.D. and XVIII.E.

XVIII.C.3.c.(i) For high-bleed pneumatic controllers in service prior to May 1, 2014, the owner/operator must submit justification for high-bleed pneumatic controllers to remain in service due to safety and/or process purposes by March 1, 2015.

XVIII.C.3.c.(ii) For high-bleed pneumatic controllers placed in service on or after May 1, 2014, the owner/operator must submit justification for high-bleed pneumatic controllers to be installed due to safety and/or process purposes thirty (30) days prior to installation.

XVIII.D. Monitoring

This section applies to pneumatic controllers identified in Sections XVIII.C.1.c. andVIII.C.2.c. (State Only: and in Section XVIII.C.3.c.).

XVIII.D.1. In the 8-Hour Ozone Control Area and located from the wellhead to the natural gas processing plant or point of custody transfer to an oil pipeline:

XVIII.D.1.a. Effective May 1, 2009, each high-bleed pneumatic controller must be physically tagged by the owner or operator identifying it with a unique high-bleed pneumatic controller number that is assigned and maintained by the owner or operator.

XVIII.D.1.b. Effective May 1, 2009, the owner or operator must inspect each high-bleed pneumatic controller on a monthly basis, perform necessary maintenance

(such as cleaning, tuning, and repairing leaking gaskets, tubing fittings, and seals; tuning to operate over a broader range of proportional band, eliminating unnecessary valve positioners), and maintain the pneumatic controller according to manufacturer specifications to ensure that the controller's natural gas emissions are minimized.

XVIII.D.2. In the 8-Hour Ozone Control Area and located at a natural gas processing plant:

XVIII.D.2.a. Effective May 1, 2018, each pneumatic controller with a natural gas bleed rate greater than zero must be physically tagged by the owner or operator identifying it with a unique pneumatic controller number that is assigned and maintained by the owner or operator.

XVIII.D.2.b. Effective May 1, 2018, the owner or operator must inspect each pneumatic controller with a natural gas bleed rate greater than zero on a monthly basis, perform necessary maintenance (such as cleaning, tuning, and repairing leaking gaskets, tubing fittings, and seals; tuning to operate over a broader range of proportional band; eliminating unnecessary valve positioners), and maintain the pneumatic controller according to manufacturer specifications to ensure that the controller's natural gas emissions are minimized.

XVIII.D.3. (State Only) Statewide:

XVIII.D.3.a. Effective May 1, 2015, each high-bleed pneumatic controller must be physically tagged by the owner or operator identifying it with a unique high-bleed pneumatic controller number that is assigned and maintained by the owner or operator.

XVIII.D.3.b. Effective May 1, 2015, the owner or operator must inspect each high-bleed pneumatic controller on a monthly basis, perform necessary maintenance (such as cleaning, tuning, and repairing leaking gaskets, tubing fittings, and seals; tuning to operate over a broader range of proportional band; eliminating unnecessary valve positioners), and maintain the pneumatic controller according to manufacturer specifications to ensure that the controller's natural gas emissions are minimized.

XVIII.E. Recordkeeping

XVIII.E.1. In the 8-Hour Ozone Control Area:

XVIII.E.1.a. Continuous bleed, natural gas-driven pneumatic controllers located from the wellhead to the natural gas processing plant or point of custody transfer to an oil pipeline:

XVIII.E.1.a.(i) By January 1, 2019, owners or operators must compile an estimate of the total number of continuous bleed, natural gas-driven pneumatic controllers in service prior to January 1, 2018, and documentation (e.g., manufacturer specification, engineering calculations) that the natural gas bleed rate is less than or equal to 6 standard cubic feet of gas per hour.

XVIII.E.1.a.(ii) Beginning January 1, 2018, the owner or operator must maintain records of the make and model of each type of continuous bleed, natural gas-driven pneumatic controllers placed in service on or after January 1, 2018, and documentation (e.g., manufacturer specification, engineering

calculations) that the natural gas bleed rate is less than or equal to 6 standard cubic feet of gas per hour. Owners or operators must use this information to update the estimate required in Section XVIII.E.1.a.(i) every three years (i.e., by January 1, 2022, January 1, 2025, etc.).

XVIII.E.1.b. Continuous bleed, natural gas-driven pneumatic controllers located at a natural gas processing plant:

XVIII.E.1.b.(i) By January 1, 2019, owners or operators must compile an estimate of the total number of continuous bleed, natural gas-driven pneumatic controllers in service prior to January 1, 2018, and documentation (e.g., manufacturer specification, engineering calculations) that the natural gas bleed rate is zero.

XVIII.E.1.b.(ii) Beginning January 1, 2018, the owner or operator must maintain records of the make and model of each type of continuous bleed, natural gas-driven pneumatic controllers placed in service on or after January 1, 2018, and documentation (e.g., manufacturer specification, engineering calculations) that the natural gas bleed rate is zero. Owners or operators must use this information to update the estimate required in Section XVIII.E.1.b.(i) every three years (i.e., by January 1, 2022, January 1, 2025, etc.).

XVIII.E.1.c. Records must be maintained for a minimum of five years and made available to the Division upon request.

XVIII.E.2. This section applies only to pneumatic controllers identified in Sections XVIII.C.1.c. and XVIII.C.2.c. (State Only: and in Section XVIII.C.3.c.).

XVIII.E.2.a. The owner or operator must maintain a log of the total number of pneumatic controllers and their associated controller numbers per facility, the total number of pneumatic controllers per company and the associated justification that the pneumatic controllers must be used pursuant to Sections XVIII.C.1.c. and XVIII.C.2.c. (State Only: and in Section XVIII.C.3.c.). The log shall be updated on a monthly basis.

XVIII.E.2.b. The owner or operator must maintain a log of necessary maintenance which shall include, at a minimum, inspection dates, the date of the maintenance activity, pneumatic controller number, description of the maintenance performed, results and date of any corrective action taken, and the printed name and signature of the individual performing the maintenance. The log shall be updated on a monthly basis.

XVIII.E.2.c. Records of maintenance of pneumatic controllers shall be maintained for a minimum of three years and readily made available to the Division upon request.

XVIII.F. (State Only) Pneumatic Controller Inspection and Enhanced Response in the 8-Hour Ozone Control Area

XVIII.F.1. Beginning January 1, 2018, owners or operators of natural gas-driven pneumatic controllers must operate and maintain pneumatic controllers consistent with manufacturer’s specifications, if available, or good engineering and maintenance practices.

XVIII.F.2. Pneumatic controller inspection

XVIII.F.2.a. Beginning June 30, 2018, owners or operators of natural gas-driven pneumatic controllers at well production facilities must inspect pneumatic controllers using an approved instrument monitoring method at least:

XVIII.F.2.a.(i) Annually at well production facilities with uncontrolled actual volatile organic compound emissions greater than or equal to one (1) ton per year and less than or equal to six (6) tons per year.

XVIII.F.2.a.(ii) Semi-annually at well production facilities with uncontrolled actual volatile organic compound emissions greater than six (6) tons per year and less than or equal to twelve (12) tons per year.

XVIII.F.2.a.(iii) Quarterly at well production facilities with uncontrolled actual volatile organic compound emissions greater than twelve (12) tons per year and less than or equal to twenty (20) tons per year, or fifty (50) tons per year if no storage tanks storing oil or condensate are located at the well production facility.

XVIII.F.2.a.(iv) Monthly at well production facilities with uncontrolled actual volatile organic compound emissions greater than twenty (20) tons per year, or fifty (50) tons per year if no storage tanks storing oil or condensate are located at the well production facility.

XVIII.F.2.a.(v) For purposes of Section XVIII.F.2.a., the estimated uncontrolled actual VOC emissions from the highest emitting storage tank at the well production facility determines the frequency at which inspections must be performed. If no storage tanks storing oil or condensate are located at the well production facility, owners or operators must rely on the facility emissions (controlled actual VOC emissions from all permanent equipment, including emissions from components determined by utilizing the emission factors defined as less than 10,000 ppmv of Table 2-8 of the 1995 EPA Protocol for Equipment Leak Emission Estimates).

XVIII.F.2.b. Beginning June 30, 2018, owners or operators of natural gas-driven pneumatic controllers at natural gas compressor stations must inspect pneumatic controllers using an approved instrument monitoring method at least:

XVIII.F.2.b.(i) Quarterly at natural gas compressor stations with fugitive volatile organic compound emissions greater than zero (0) and less than or equal to fifty (50) tons per year.

XVIII.F.2.b.(ii) Monthly at natural gas compressor stations with fugitive volatile organic compounds greater than fifty (50) tons per year.

XVIII.F.2.b.(iii) For purposes of Section XVIII.F.2.b., fugitive emissions must be calculated using the emission factors of Table 2-4 of the 1995 EPA Protocol for Equipment Leak Emission Estimates (Document EPA-453/R-95-017), or other Division approved method.

XVIII.F.2.c. Where detectable emissions from the pneumatic controller are observed, owners or operators must determine whether the pneumatic controller is operating properly within five (5) working days after detecting emissions. In

making this determination, owners or operators may use techniques other than approved instrument monitoring methods.

XVIII.F.2.d. For pneumatic controllers not operating properly, the owner or operator must conduct enhanced response or follow manufacturer specifications to return the pneumatic controller to proper operation.

XVIII.F.3. Enhanced response and remonitoring

XVIII.F.3.a. Enhanced response must begin no later than five (5) working days and the pneumatic controller returned to proper operation no later than thirty (30) working days after determining the pneumatic controller is not operating properly, unless parts are unavailable, the equipment requires shutdown to complete enhanced response, or other good cause exists. If parts are unavailable, they must be ordered promptly and enhanced response conducted within fifteen (15) working days of receipt of the parts. If shutdown is required, enhanced response must be conducted during the next scheduled shutdown. If delay is attributable to other good cause, enhanced response must be completed within fifteen (15) working days after the cause of delay ceases to exist.

XVIII.F.3.b. Within fifteen (15) working days of completion of enhanced response, the owner or operator must verify the pneumatic controller is operating properly. In verifying proper operation, owners or operators may use techniques other than approved instrument monitoring methods.

XVIII.F.3.c. Pneumatic controllers found emitting detectable emissions are not subject to enforcement by the Division unless the owner or operator fails to determine whether the pneumatic controller is operating properly in accordance with Section XVIII.F.2.b., perform any necessary enhanced response in accordance with Section XVIII.F.3., keep records in accordance with Section XVIII.F.4., or submit reports in accordance with Section XVIII.F.5.

XVIII.F.4. Owners or operators must maintain the following records for a minimum of three (3) years and make records available to the Division upon request.

XVIII.F.4.a. The date, facility name, facility AIRS ID or facility location if the facility does not have an AIRS ID, and approved instrument monitoring method used for each inspection;

XVIII.F.4.b. A list of pneumatic controllers, including type, determined to be not operating properly;

XVIII.F.4.c. For intermittent pneumatic controllers observed to have detectable emissions but determined to be operating properly, a brief explanation of the basis for concluding that the intermittent pneumatic controller was operating properly. The explanation can include, but is not limited to, an owner or operator's standard operating procedure detailing how to determine whether an intermittent pneumatic controller is operating properly, or an individual explanation;

XVIII.F.4.d. The date(s) of enhanced response and a description of the actions taken to return the pneumatic controller to proper operation;

XVIII.F.4.e. The date the owner or operator verified the pneumatic controller was returned to proper operation; and

XVIII.F.4.f. The delayed repair list, including the date and duration of any period where the enhanced response was delayed beyond thirty (30) days after determining the pneumatic controller is not operating properly due to unavailable parts, required shutdown, or delay for other good cause, the basis for the delay, and the schedule for returning the pneumatic controller to proper operation. Delay of enhanced response due to unavailable parts must be reviewed, and a record kept of that review, by a representative of the owner or operator with responsibility for pneumatic controller inspection and enhanced response compliance functions. This review will not be made by the individual making the initial determination to place a part on the delayed repair list.

XVIII.F.5. Owners or operators of pneumatic controllers at well production facilities or natural gas compressor stations must submit a single annual report on or before May 31st of each year (beginning May 31st, 2019) that includes, at a minimum, the following information regarding pneumatic controller inspection and enhanced response activities at their subject facilities conducted the previous calendar year:

XVIII.F.5.a. The total number and type of pneumatic controllers returned to proper operation, the types of actions taken to return the pneumatic controllers to proper operation, and the facility type (by inspection frequency tier of well production facility or natural gas compressor station);

XVIII.F.5.b. The number and type of pneumatic controllers on the delayed repair list as of December 31st broken out by the facility type (by inspection frequency tier of well production facility or natural gas compressor station), and the basis for each delay; and

XVIII.F.5.c. The record of all reviews conducted for delayed repairs due to unavailable parts extending beyond 30 days for the previous calendar year.

XVIII.F.6. The provisions in Section XVIII.F. will be reassessed by the Division and stakeholders in 2020.

XIX. Control of Emissions from Specific Major Sources of VOC and/or NOx in the 8-hour Ozone Control Area

XIX.A. The following major sources, that emit or have the potential to emit 100 tons per year of VOC or NOx as of January 1, 2017, and are located in the 8-hour Ozone Control Area, were analyzed in Colorado's Moderate Area SIP for the 2008 8-Hour Ozone NAAQS.

Anheuser-Busch, Fort Collins Brewery (069-0060) and Nutri-Turf (123-0497) (major for VOC and NOx)

Ball Metal Beverage Container Corporation (059-0010 major for VOC)

Buckley Air Force Base (005-0028 major for NOx)

Carestream Health (123-6350 major for NOx)

Cemex Construction Materials (013-0003 major for VOC and NOx)

Colorado Interstate Gas, Latigo (005-0055 major for NOx)

Colorado Interstate Gas, Watkins (001-0036 major for VOC and NOx)

Colorado State University (069-0011 major for NOx)

Corden Pharma Colorado (013-0025 major for VOC)

DCP Midstream, Enterprise (123-0277 major for VOC and NOx)

DCP Midstream, Greeley (123-0099 major for VOC and NOx)

DCP Midstream, Kersey/Mewbourn (123-0090 major for VOC and NOx)

DCP Midstream, Lucerne (123-0107 major for VOC and NOx)

DCP Midstream, Marla (123-0243 major for VOC and NOx)

DCP Midstream, Platteville (123-0595 major for VOC and NOx)

DCP Midstream, Roggen (123-0049 major for VOC and NOx)

DCP Midstream, Spindle (123-0015 major for VOC and NOx)

Denver Regional Landfill, Front Range Landfill, Timberline Energy (123-0079 major for NOx)

Elkay Wood Products (001-1602 major for VOC)

IBM Corporation (013-0006 major for NOx)

Kerr-McGee Gathering, Frederick (123-0184 major for VOC and NOx)

Kerr-McGee Gathering, Hudson (123-0048 major for VOC and NOx)

Kerr-McGee Gathering, Fort Lupton/Platte Valley/Lancaster (123-0057 major for VOC and NOx)

Kodak Alaris (123-0003 major for VOC)

Metal Container Corporation (123-0134 major for VOC)

MillerCoors Golden Brewery, Rocky Mountain Metal Container (059-0006), MMI/EtOH (059-0828), and Colorado Energy Nations Company, LLC (059-0820) (major for VOC and NOx)

Owens-Brockway Glass (123-4406 major for NOx)

Phillips 66 Pipeline, Denver Terminal (001-0015 major for VOC)

Plains End (059-0864 major for VOC and NOx)

Public Service, Cherokee (001-0001 major for NOx)

Public Service, Denver Steam Plant (031-0041 major for NOx)

Public Service, Fort Lupton (123-0014 major for NOx)

Public Service, Fort Saint Vrain (123-0023 major for NOx)

Public Service, Rocky Mountain Energy Center (123-1342 major for NOx)

Public Service, Valmont (013-0001 major for NOx)

Public Service, Yosemite (123-0141 major for NOx)

Public Service, Zuni (031-0007 major for NOx)

Rocky Mountain Bottle Company (059-0008 major for NOx)

Sinclair Transportation Company, Denver Terminal (001-0019 major for VOC)

Spindle Hill Energy (123-5468 major for NOx)

Suncor Energy, Commerce City Refinery Plants 1, 2, and 3 (001-0003 major for VOC and NOx)

Thermo Cogeneration, JM Shafer (123-0250 major for NOx)

Tri-State Generation, Frank Knutson (001-1349 major for NOx)

TXI Operations (059-0409 major for NOx)

University of Colorado Boulder (013-0553 major for NOx)

WGR Asset Holding, Wattenberg (001-0025 major for VOC and NOx)

XIX.B. Owners or operators of the following major sources must submit a RACT analysis for the facility or specified emission points to the Division no later than December 31, 2017. Approved RACT determinations will be addressed in the relevant source permit or through rule revisions, as appropriate.

Anheuser-Busch (069-0060) – emission points equal to or greater than 2 tpy VOC or 5 tpy NOx

Buckley Air Force (005-0028) – engines and engine test cell (pt 102, 103, 104, 105, 101)

Carestream Health (123-6350) – boilers (pt 004)

Colorado State University (069-0011) – boilers (pt 003, 005, 007, 013)

IBM (013-0006) – engines and boilers (pt 088, 090, 001, 011, 095)

MillerCoors Golden Brewery (059-0006) – emission points with emissions equal to or greater than 2 tpy VOC or 5 tpy NOx

MMI/EtOH (059-0828) – emission points with emissions equal to or greater than 2 tpy VOC or 5 tpy NOx

Nutri-Turf (123-0497) – emission points with emissions equal to or greater than 2 tpy VOC or 5 tpy NOx

Owens-Brockway (123-4406) – emission points with emissions equal to or greater than 5 tpy NOx (pt 001-023, 025)

Public Service Company, Cherokee (001-0001) – turbines (pt 028, 029)

Public Service Company, Fort Saint Vrain (123-0023) – turbines (pt 010, 011, 001)

Rocky Mountain Bottle (059-0008) – glass melt furnaces (pt 001)

Suncor (001-0003) – boilers (pt 309, 019, 021, 023)

Tri-State Generation and Transmission, Frank Knutson (001-1349) – turbines (pt 001, 003)

TXI (059-0409) – shale kiln (pt 001)

University of Colorado (013-0553) – Power House and East District – boilers (pt 001, 002, 012, 013) and Williams Village– boilers (pt 016, 017)

XIX.C. Stationary combustion turbines at the following major sources must comply with the applicable NOx emission limits and associated monitoring, recordkeeping, and reporting requirements in either 40 CFR Part 60, Subpart GG (July 1, 2016) or 40 CFR Part 60, Subpart KKKK (July 1, 2016) as expeditiously as practicable, but no later than January 1, 2017:

XIX.C.1. DCP Midstream, Kersey/Mewbourn (123-0090) – turbines (pt 111, 112, 118).

XIX.C.2. DCP Midstream, Lucerne (123-0107) – turbines (pt 044, 045).

XIX.C.3. Kerr-McGee, Fort Lupton/Platte Valley/Lancaster (123-0057) – turbine (pt 052).

XIX.C.4. Public Service Company, Fort Saint Vrain (123-0023) – turbines (pt 004, 005, 008).

XIX.C.5. Public Service Company, Rocky Mountain Energy Center (123-1342) – turbines (pt 001, 002).

XIX.C.6. Spindle Hill (123-5468) – turbines (pt 001, 002).

XIX.C.7. Thermo Cogeneration, JM Shafer (123-0250) – turbines (pt 001-005).

XIX.C.8. University of Colorado (013-0553) – Powerhouse turbines (pt 003, 005).

XIX.C.9. WGR Wattenberg (001-0025) – turbines (pt 021).

XIX.D. Stationary internal combustion engines at the following major sources must comply with applicable NOx emission limits and associated monitoring, recordkeeping, and reporting requirements in 40 CFR Part 60, Subpart IIII (July 1, 2016), 40 CFR Part 60, Subpart JJJJ (July 1, 2016), and/or 40 CFR Part 63, Subpart ZZZZ (July 1, 2016) as expeditiously as practicable, but no later than January 1, 2017:

XIX.D.1. Buckley Air Force (005-0028) – engines (pt 120, 118, 119, 124, 128, 138, 139).

XIX.D.2. Colorado State University (069-0011) – engines (pt 018).

XIX.D.3. DCP Midstream, Greeley (123-0099) – engine (pt 102).

XIX.D.4. DCP Midstream, Kersey/Mewbourn (123-0090) – engine (pt 101).

XIX.D.5. DCP Midstream, Spindle (123-0015) – engines (pt 059, 075).

XIX.D.6. IBM (013-0006) – engines (pt 092, 094).

XIX.D.7. Owens-Brockway (123-4406) – engine (pt 024).

XIX.D.8. Plains End (059-0864) – engine (pt 005).

XIX.D.9. PSCo Cherokee (001-0001) – engine (pt 031).

XIX.D.10. Spindle Hill (123-5468) – engine (pt 005).

XIX.D.11. Suncor (001-0003) – engines (pt 150, 151).

XIX.D.12. Timberline Energy (123-0079) – engines (pt 010, 011).

XIX.E. Elkay Wood Products (001-1602) must comply with applicable requirements in 40 CFR Part 63, Subpart JJ (July 1, 2016) as expeditiously as practicable, but no later than January 1, 2017.

XIX.F. Cemex Construction Materials (013-0003) must comply with applicable THC requirements and associated monitoring, recordkeeping, and reporting in 40 CFR Part 63, Subpart LLL (July 1, 2016) as expeditiously as practicable, but no later than January 1, 2017.

XIX.G. Denver Regional Landfill and Front Range Landfill (123-0079) (pt 007, 013) must comply with applicable flare requirements in 40 CFR Part 60, Subpart WWW (July 1, 2016) as expeditiously as practicable, but no later than January 1, 2017.

XX. Statements of Basis, Specific Statutory Authority and Purpose

XX.A. December 21, 1995 (Section II.B.)

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedures Act, Section 24-4-103, C.R.S. and the Colorado Air Pollution Prevention and Control Act, Section 25-7-110.5, C.R.S.

Basis

Regulation Numbers 3, 7 and the Common Provisions establish lists of Negligibly Reactive Volatile Organic Compounds (NRVOCs). The revisions adopted consolidate the list of NRVOCs into the Common Provisions, assuring that the same list of NRVOCs apply to all the Colorado regulations. This provides more consistency in those chemicals regulated as VOCs.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act provides the authority for the Colorado Air Quality Control Commission to adopt and modify regulations pertaining to organic solvents and photochemical substances. Section 25-7-109(2)(f) and 25-7-109(2)(g), C.R.S., grant the Commission the authority to promulgate regulations pertaining to Organic solvents and photochemical substances. The Commission's action is taken pursuant to authority granted and procedures set forth in Sections 25-7-105, 25-7-109, and 25-7-110, C.R.S.

Purpose

These revisions to Regulations Numbers 3, 7, and the Common Provision are intended to clarify substances that are negligibly reactive VOCs, which are reflected in the EPA list of non-photochemically reactive VOCs. By consolidating the list (which consists of the EPA list of non-photochemically VOCs), and adopting the EPA definition by reference, a single list of negligibly reactive VOCs will apply uniformly to all Colorado Air Quality Control Commission regulations.

This revision will also include EPA's recent addition of acetone to the negligibly reactive VOC list. The addition of acetone to the list of negligibly reactive VOC's provides additional flexibility to sources looking

for an alternative to more photochemically reactive VOCs. Because the EPA has added acetone to their list of non-photochemically reactive VOCs many industries, which make and supply products to Colorado industries, are planning to substitute acetone for more reactive VOCs. This change in the content of products purchased by industry for use in Colorado would adversely affect industries in Colorado if acetone remains a regulated VOC in Colorado. By adopting acetone as a negligibly reactive VOC industries will be able to take advantage of and benefit from this possible shift in product contents.

XX.B. March 21, 1996 (Sections I.A.1. through I.A.4.; II.D.; II.E.)

The changes to Regulation Number 7 were adopted as part of the Commission's decision to redesignate the Denver metro area as an attainment and maintenance area for ozone, together with the relevant amendments to the Ambient Air Quality Standards regulation and Regulation Number 3. The Ozone Maintenance Plan, also adopted by the Commission on March 21, 1996 as part of the redesignation, based part of its demonstration of maintenance on the continued existence of rules regulating VOC emissions. Such rules include the application of the permit requirements of Regulation Number 3 to gasoline stations, and the continued application of Regulation Number 7 for the control of VOC in nonattainment areas. The VOC controls in Regulation Number 7 were adopted into the SIP in May 1995, after Denver attained the ozone standard. The maintenance demonstration was based on future inventories that assumed the continuance of existing VOC controls in the Denver Metro area.

Pursuant to Section 25-7-107(2.5), C.R.S., the Commission is required to take expeditious action to redesignate the area as an attainment area for ozone. The CAA requires the submittal of a maintenance plan demonstrating maintenance of the ozone standard for any such redesignation request. The changes to Regulation Number 7 are consistent with continued maintenance of the ozone standard and are not otherwise more stringent than the relevant federal requirements.

The purpose of the revisions to Regulation Number 7, Section I.A is to provide a de minimis source with an opportunity to obtain an exemption from the requirements of Regulation Number 7 through rule-making. This revision will be submitted to the EPA for inclusion in the State Implementation Plan (SIP). Upon inclusion of this revision in the SIP, exemptions from Regulation Number 7 adopted by the Commission shall apply for purposes of both federal and state law, pending review by the state legislature pursuant to § 25-7-133(2), C.R.S. The rule revision includes several limitations on the scope of such exemptions:

1. The aggregate of all emissions from de minimis sources may not exceed five tons of emissions per day. The purpose of this limitation is to protect the projections contained in the emissions inventory, and to prevent growth in such emissions from exceeding the National Ambient Air Quality Standard (NAAQS) for ozone.

2. An exemption may not be granted if the Division demonstrates that such exemption will cause or contribute to air pollution levels that exceed the NAAQS, even if the total aggregate emissions from such sources is less than five tons per day.

3. The Commission rule prohibits more than one rulemaking hearing per year to consider potential de minimis exemptions in the aggregate. The purpose of this provision is to prevent the granting of case-by-case exemptions, and to conserve agency resources. The granting of exemptions on a case-by-case basis would grant an unfair advantage for those sources that are able to have their case heard by the Commission before other, similarly situated sources, submit a request for a de minimis exemption. However, upon a showing of an emergency, and at the discretion of the Commission, the Commission may always grant an exemption on a case-by-case basis.

4. The Commission rule provides that the growth in emissions due to such de minimis exemptions may not exceed the growth that was included in the emissions inventory in the SIP.

5. The Commission rule requires the de minimis exemptions to be included in a permit that is subject to review and comment by the public and by EPA.

The rule revision proposed by the Regional Air Quality Council (RAQC) did not include these limitations. However, the Commission may not have used the rule as proposed by RAQC to grant unlimited exemptions from the requirements of Regulation Number 7 because such an action would undermine the regulation and the maintenance demonstration contained in the SIP. The limitations adopted by the Commission were the subject of an alternative proposal submitted by the Division. The purpose of the limit is to ensure that the de minimis exemption provision cannot be used to jeopardize attainment of the NAAQs. Such a limit is necessary in order to obtain EPA approval of this SIP revision. The alternative proposal submitted by the Division and adopted by the Commission will have no regulatory impact on any person, facility, or activity. Even without an express provision limiting the de minimis exemptions to five tons per day, the Commission generally would not have granted de minimis exemptions in excess of that amount because such emissions are not accounted for in the emissions inventory and would undermine the maintenance demonstration. Furthermore, the alternative proposed by the Division does not, by itself, create an exemption from any regulatory requirement. The alternative simply limits the scope of the exemptions that may become fully effective without a SIP revision. However, the rule does not in any way limit the Commission's authority to amend the SIP.

The emissions inventory submitted to EPA anticipated growth in emissions in both the area source and minor source categories, as well as the major source category. In order to ensure that any growth in emissions due to the granting of de minimis exemptions will not cause total emissions to exceed the growth projections for these categories, the Division will keep track of the permitted allowable emissions that may result from sources and source categories entitled to such exemptions. In addition, the growth in emissions from area, major and minor source categories will be tracked when the Division performs the periodic inventories described in the SIP for the years 1999, 2002 and 2003. Any permitted growth in emissions due to de minimis exemptions will be added to the emissions for the source categories as reflected in the most recent periodic inventory. No further de minimis exemptions will be granted if the total growth in emissions exceeds the growth projections contained in the SIP. In addition, if the total growth exceeds the growth projections contained in the SIP, one or more of the contingency measures will be implemented to offset such growth, or the SIP will be revised as necessary to ensure continued maintenance of the standard.

The purpose of the addition of Regulation Number 7, Section II.E. is to provide sources with a process to obtain approval of an alternative emission control plan, compliance method, test method, or test procedure without waiting for EPA to approve of a site-specific SIP revision. The rule provides that any such alternative must be just as effective as the relevant regulatory provision, and that such effectiveness must be demonstrated using equally effective test methods and procedures. The changes to this section delegate the authority to the Division to approve of such alternatives. Since rulemaking is not required under Section II.E., the language allowing a source to assert that the relevant regulatory provision does not represent RACT has been omitted from this section. Such a change to the substantive requirements of Regulation Number 7 would require a rule change.

The rule revision proposed by the RAQC provided that alternative emissions control plans and compliance methods must be just as effective as those contained in the rule, but did not describe the test methods to be used to demonstrate such effectiveness. The Division proposed an alternative rule requiring such effectiveness to be demonstrated using test methods and procedures that are just as effective as those set out in the rule, or that have otherwise been approved by EPA. Such criteria for test methods and procedures are necessary in order to obtain EPA approval of this SIP revision. However, even without this language in the rule the Division would have required approved test methods and procedures in order to approve of proposed alternatives. The Division's alternative proposal provides the needed certainty in the most flexible manner possible. Furthermore, the alternative proposed by the Division does not impose any new regulatory requirement. Instead, it merely establishes criteria for allowing persons subject to the regulation to propose, in their discretion, an alternative means of complying with the existing regulatory requirements. Therefore, the alternative proposal submitted by the Division and adopted by the Commission will have no regulatory impact on any person, facility, or activity.

The rule revisions provide that no permit may be issued based on the provisions allowing for the creation of de minimis exemptions and the approval of alternative compliance plans without first revising the SIP unless EPA first approves of such regulatory revisions as part of the State Implementation Plan. The purpose of this condition is to address the possible disapproval of these revisions by EPA. In the event these changes are not approved by EPA, the remaining regulatory provisions of Regulation Number 7 will remain in full force and effect, and therefore, the EPA may approve of the maintenance plan and the redesignation request.

The revisions to Regulation Number 7 are procedural changes that are not intended to reduce air pollution.

For clarification, the Commission adopted these regulation revisions as follows:

REGULATION REVISION	OZONE SIP AND MAINTENANCE PLAN
Section I.A.1	Exists in Appendix C of the Ozone Maintenance Plan to become a part of that document approved March 21, 1996
Sections I.A.2., 3., 4.; Section II.D., II.E.	Adopted as subsequent regulation revisions to be submitted to the Governor and EPA separately and concurrently as a revision to the Ozone SIP (and Maintenance Plan)

The specific statutory authority to promulgate the rules necessary for redesignation is set out in §§ 25-7-105(1)(a)(I) and (2); -106(1)(a); -107 (1) and (2.5); and -301. The authority to adopt such rules includes the authority to adopt exceptions to the rules, and the process for applying for any such exemptions.

XX.C. November 21, 1996 (Section XII.)

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedures Act, Section 24-4-103, C.R.S. and the Colorado Air Pollution Prevention and Control Act, Section 25-7-110.5, C.R.S.

Basis

Regulation Numbers 3, 7 and the Common Provisions establish lists of Negligibly Reactive Volatile Organic Compounds (NRVOCs). The revisions adopted update the list of NRVOCs so that the state list remains consistent with the federal list. Additionally because perchloroethylene will no longer be listed as a VOC in Regulation Number 7, Section XII, Control of VOC Emissions from Dry Cleaning Facilities using Perchloroethylene as a Solvent, is being deleted.

Regulation Numbers 8 and 3 list the federal Hazardous Air Pollutants (HAPs). In the June 8, 1996 Federal Register the EPA removed Caprolactam (CAS 105-60-2) from the federal list of Hazardous Air Pollutants. The conforming changes in Regulation Number 3, Appendices B, C and D have been made to keep the list of federal HAPs in Regulation Number 3 consistent with the federal list. The list of HAPs in Regulation Number 8 has been removed and a reference to the list in Regulation Number 3 has been added.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act provides the authority for the Colorado Air Quality Control Commission to adopt and modify regulations pertaining to organic solvents and photochemical substances. Section 25-7-109(2)(f) and 25-7-109(2)(g), C.R.S., grant the Commission the authority to promulgate regulations pertaining to organic solvents and photochemical substances. Sections 25-7-

105(1)(I)(b) and 25-7-109(2)(h) provide authority to adopt emission control regulations and emission control regulations relating to HAPs respectively. The Commission's action is taken pursuant to authority granted and procedures set forth in Sections 25-7-105, 25-7-109, and 25-7-110, C.R.S.

Purpose

These revisions to Regulation Numbers 3, 7, 8 and the Common Provisions are intended to update the state lists of NRVOCs, the Ozone SIP, and HAPs for consistency with the federal lists.

XX.D. October 15, 1998 (Section II.F.)

The Gates Rubber Co. Site-specific Revision

The Gates Rubber Co. (Gates), by and through its attorney, submitted this Statement of Basis, Specific Statutory Authority and Purpose for amendments to Regulation Number 7, Control of Emissions of Volatile Organic Compounds.

Basis

Regulation Number 3 contains a certification and trading of emission reduction credits section (Section V), which sets forth the definitions and process for obtaining emission credits and using those credits. This section was amended to permit the use of emission reduction credits (ERC) to satisfy reasonably available control technology (RACT) requirements. The criteria for approval of ERC transactions specifies that they must involve like pollutants (for volatile organic compounds, the same degree of toxicity and photochemical reactivity), must be within the same nonattainment area, may not be used to satisfy Federal technology control requirements and may not be inconsistent with standards or regulations or to circumvent new source performance standards, best available control technology, lowest available emission rate technology controls or NESHAPs.

Regulation Number 7 sets forth CTG and RACT emission limitations, equipment requirements and work practices intended to control emission of volatile organic compounds (VOC) from new and existing stationary sources. The control measures specified in Regulation Number 7 are designed to reduce the ambient concentrations of ozone in ozone nonattainment areas and to maintain adequate air quality in other areas.

Specific Statutory Authority

The provisions of C.R.S. §§ 25-7-105 and 25-7-109 to 110 provide the specific statutory authority for the amendments to this regulation adopted by the Commission. The Commission has also adopted in compliance with C.R.S. § 24-4-103(4), this Statement of Basis, Specific Statutory Authority and Purpose.

Purpose

The purpose of this amendment to Regulation Number 7 is to establish a source specific rule for Gates to allow the use of emission reduction credits to satisfy the RACT requirements for VOC emissions pursuant to Regulation Number 7 for surface coatings operations not specifically listed in Section IX of Regulation Number 7. Regulation Number 3 provides specific authorization to use emission reduction credit transactions as an alternative compliance method to satisfy CTG and RACT requirements.

Specifically, the VOC certified emissions reduction credits to be used in this emission credit transaction in an amount up to 12 tons per year are from Coors Brewing Company pursuant to their emissions reduction credit Permit. The emission reduction credits will be used to satisfy the general requirements that all sources apply RACT. These emission reduction credits will be used by Gates so that Gates can use solvent-based surface coatings which contain VOCs periodically in lieu of the water-based coatings normally used on its 10 Cord coating line (S033, S034, and S035). These credits will allow Gates to meet

RACT requirements without applying control technology to the 10 Cord line, other than the currently installed catalytic incinerator on the emissions from the drying oven from the fourth dip, which reduces those emissions by at least 90%.

The relevant portion of Regulation Number 3, which applies to the Gates credit transaction is Section V.F., entitled "Criteria for Approval of all Transactions." The first requirement is that the transaction involve like pollutants. In the present case, the emission credit transaction involves the exchange of VOC pollutants. Coors credits for methanol will be exchanged for m-pyrol. Exhaust from the catalytic incinerator, which contains unconverted toluene and xylene, is routed to the curing ovens of the other zones of the 10 Cord line, including the first zone. The Division has previously found that, excluding the emissions from the non-compliant coatings addressed in this rule, the 10 Cord line has met RACT standards. The use of the non-compliant coatings adds no HAPs to the Gates emissions. Other non-criteria reportable pollutants are present at well below APEN de minimis quantities under scenario 2, which is applicable to the 10 Cord line. Regulation Number 3 further requires that toxic or VOC pollutants involve the same degree of toxicity and photochemical reactivity or else a greater reduction may be required. Since these pollutants are both toxics and VOCs (except that m-pyrol is not a toxic), both have been addressed.

All of these compounds are commonly used in the surface coating industry with appropriate safeguards during their use. With respect to toxicity of the Gates compounds, m-pyrol is not listed as a toxic compound on either the federal or state lists. Methanol, the VOC in the Coors credit, is a Bin C HAP. Because the m-pyrol in the non-compliant coatings is not a HAP, the Gates VOCs have equal or lower toxicity than those being purchased from Coors. Therefore, HAP emissions will be reduced in the airshed.

The photochemical reactivities of VOCs are important because of their impact on the ozone formation process in an airshed. The Air Pollution Control Division relied upon the work of Dr. William P.L. Carter, Professor at the University of California, whose article entitled "Development of Ozone Reactivity Scales for Volatile Organic Compounds" describes relative photochemical reactivity scales and comparisons. Dr. Carter notes that there are a number of ways to quantify VOC reactivities, but the most relevant measure of VOC effects on ozone is the actual change in ozone formation in an airshed. This results from changing the emissions of the VOC in that airshed which depends not only on how rapidly the VOC reacts and the nature of its atmospheric reaction mechanism, but also the nature of the airshed where it is emitted, including the effects of other pollutants which are present.

Dr. Carter further states that the VOC effect on ozone in the atmosphere can only be estimated using computer airshed models. The effect of changing the emissions of a given VOC on ozone formation in a particular episode will, in general, depend on the magnitude of the emissions change and on whether the VOC is being added to, subtracted from, or replacing a portion of the base case emissions.

Dr. Carter's derived relative reactivity scale includes reactive organic gases whose indices for maximum incremental reactivity (MIR) range from 0.004 to 6.5. The MIR values were updated in 1997. The VOCs and their respective MIR involved with this exchange are as follows:

Methanol	0.16
m-Pyrol	0.57

The pending emission credits of VOCs being used in the proposed emissions credit transaction are for methanol. The VOCs emitted from uncontrolled use of solvent-based coatings at Gates are from m-pyrol. Regulation Number 3 provides that if the VOCs are not of the same photochemical reactivity, a greater offset may be required. The Commission required that, based on a past ERC trade for Pioneer Metal Finishing, that methanol credits in a 1.1:1 offset ratio be exchanged for toluene and xylenes. Here, however, the Commission finds that m-pyrol and methanol have similar photochemical reactivities, so no offset will be required.

The second requirement states that the transaction must not result in an increased concentration, at the point of maximum impact of hazardous air pollutants. This provision was derived from the EPA Emissions Trading Policy Statement and referred to NESHAP requirements involved in bubble transactions. If this provision is interpreted to apply generally to a facility which is limited by an existing permit to some level of VOC emissions on a twenty-four hour basis, any additional VOCs allowed pursuant to an emission transaction would by its application increase the concentration of VOCs at the maximum point of impact. Since it appears to have been intended to limit NESHAP offsets in bubble transactions, and no NESHAPs are applicable in the Gates transaction, and recognizing the earlier action of the Commission in approving the use of ERC transactions to satisfy CTG requirements and in approving a previous ERC transaction for Pioneer Metal Finishing, the Commission determined that this requirement should not apply to this transaction.

The next requirement states that no transaction may be approved which is inconsistent with any standard established by the Federal Act, the state Air Quality Control Act or the regulations promulgated under either, or to circumvent NSPS requirements or BACT or LAER, although the Commission may approve a transaction using a certified emission reduction credit in lieu of a specified CTG method or RACT. The emissions involved in this transaction at Gates are not subject to NSPS, BACT, or LAER. Regulation Number 7 applies only RACT to the Gates operations involved. Regulation Number 3 clearly permits the use of emission reduction credits to satisfy RACT.

The emission must involve sources which are located within the same nonattainment area. In the present case, both Gates, whose operations are located at 900 S. Broadway, Denver, Colorado, who is proposing to use the credits, and the source of the credits, Verticel, whose operations were located at 4607 South Windermere Street, Englewood, Colorado, are located in the Denver nonattainment area, less than five miles apart.

The next requirement prohibits the use of emission reduction credits to meet applicable technology-based requirements for new sources, such as NSPS, BACT, or LAER. As stated, the Gates operations involved in this transaction are not subject to NSPS, BACT, or LAER or any other technology-based requirement except for RACT requirements for which an ERC transaction may be used to satisfy such requirements.

The next requirement states that VOC trades will be considered equal in ambient effect where the trade is a pound for pound trade in the same control strategy demonstration area. It appears that this requirement, which was taken from the EPA Emissions Trading Policy Statement, made the assumption that the "pound for pound" trend would have an equal impact on the ambient environment, with respect to ozone. Since there was no independent photochemical reactivity equivalency requirement in the 1986 Policy Statement, this requirement appears to be redundant with the requirement for insuring the same degree of photochemical reactivity among traded pollutants.

For VOC trades involving surface coating, the requirements state that emissions must be calculated on a solids-applied basis and must specify the maximum time period over which the emissions may be averaged, not to exceed 24 hours. The proposed emissions credit transaction is based on a 24-hour period. With respect to the solids-applied basis calculation, this transaction will be calculated on the basis of the pounds of VOCs from uncontrolled solvent-based coatings.

The emissions credit transaction will require a SIP revision. The source specific rule for Gates will be forwarded to EPA for approval. The state emission permit for Gates pursuant to the emissions credit transaction will be state effective (but not federally effective) until the SIP revision is approved by EPA.

Gates proposed the following VOC emissions limitation in its state permit taking into consideration the pounds per year VOC emissions allowed by this emissions credit transaction:

1. A daily maximum limitation of 400 lbs. of VOC emissions from uncontrolled solvent-based surface coatings, calculated on a monthly basis for compliance purposes. Calculations will be performed by the 30th of the following month.

2. An annual limitation of no more than 24,000 lbs. (12 tons) of VOC emissions from uncontrolled solvent-based surface coatings.

Gates proposes to calculate the annual total VOC limitation on a rolling 12-month basis. Gates further proposes to keep monthly totals of non-compliant surface coatings used and to calculate daily usage based on monthly usage divided by the number of days non-compliant surface coatings were used. Records of usages and calculations will be kept and produced at the Division's request.

This source-specific rule has a negligible or no effect upon the other provisions of the ozone SIP.

It is contemplated that a State construction permit will be issued to Gates upon final approval by the Commission. Should the approval come after the issuance of Gates' Title V operating permit, the terms of the construction permit will be added to the operating permit.

XX.E. January 11, 2001 (Sections III.C., IX.L.2.c.(1), and X.D.2. through XI.A.3.)

Readoption of Changes to Regulation Number 7 that were not printed in the regulation or the Colorado Code of Regulations.

Background

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Administrative Procedures Act, C.R.S. (1988), Sections 24-4-103(4) and (12.5) for adopted or modified regulations.

Basis

During a review of the version of Regulation Number 7 adopted by the Air Quality Control Commission and the version of Regulation Number 7 published in the Colorado Code of Regulations, several significant discrepancies have been identified. This rule making will clarify the Commission's intent to adopt the following revisions to Regulation Number 7:

1. Section III.C regarding General Requirements for Storage of Volatile Organic Compounds omits the following revision:

   "Beer production and associated beer container storage and transfer operations involving volatile organic compounds with a true vapor pressure of less than 1.5 PSIA at actual conditions are exempt from the provisions of Section III.B."

2. Section IX.L.2.c.(i) contains discrepancies in reference to the permit number of Coors Brewing Company Emissions Reduction Credit Permit issued on July 25, 1994.

3. Section X.D.2. through Section XI.A.3. was omitted from the CCR as published in the current version of Regulation Number 7.

Authority

Sections 25-7-109, C.R.S. (1997) authorize the Commission to adopt emission control regulations.

Purpose

Re-adoption of the proposed rule will eliminate the discrepancies between the Commission's adopted provisions within Regulation Number 7 and those contained within the Colorado Code of Regulations. Adoption of the amendments will benefit the regulated community by providing sources with consistent information.

XX.F. November 20, 2003 (Sections I.A.2. through I.A.4., II.D. and II.E.)

The Commission repealed the provisions establishing a procedure for granting exemptions for de minimis sources, and the procedure for approving alternative compliance plans without source-specific SIP revisions. The Commission had adopted the repealed provisions in March 1996, but had delayed the effective date pending EPA approval through the SIP revision process. Earlier this year, EPA informed the Commission of its intent to disapprove the provisions unless they were withdrawn. Thus, the provisions that are the subject of this rulemaking action never took effect. The Commission hereby repeals such provisions in order to avoid disapproval of the earlier SIP submittal, and to remove extraneous provisions from Regulation Number 7. Such repeal is required in order to comply with federal requirements, and is not otherwise more stringent than the requirements of the federal act.

Sections 25-7-105(1)(a)(I) and 25-7-301 authorize the Commission to adopt and revise a comprehensive SIP, and to regulate emissions from stationary sources, as necessary to maintain the national ambient air quality standard for ozone in accordance with the federal act.

XX.G. (March 2004, Sections I.A, I.B., XII., and XVI.

The March 2004 revisions were adopted in conjunction with the Early Action Compact Ozone Action Plan, which is a SIP revision for attainment of the 8-hour ozone standard by December 31, 2007. The Commission adopted four new control measures in Regulation Number 7 to reduce emissions of volatile organic compounds (VOC). The control measures require the installation of air pollution control technology to control: (1) VOC emissions from condensate operation at oil and gas (E&P) facilities; (2) emissions from stationary and portable reciprocating internal combustion engines; (3) certain VOC emissions from gas-processing plants; and, (4) emissions from dehydrators at oil and gas operations.

The new requirements in Sections XII., and XVI. apply to a larger geographic area than the pre-existing requirements of Regulation Number 7, as set out in Section I.A. of the rule. The reference to the "Denver Metro Attainment Maintenance Area", which is not a defined term, in Section I.A was changed to refer to the "Denver 1-hour ozone attainment/maintenance area", which is defined in the Ambient Air Quality Standards Rule. Similarly, the reference to the "Denver Metropolitan Nonattainment Area Ozone Maintenance State Implementation Plan" was changed to the "Ozone Redesignation Request and Maintenance Plan for the Denver Metropolitan Area," which is the correct name of the document submitted to EPA in May 2001.

Regarding VOC emissions from condensate operations, the Commission has determined that an overall reduction of 47.5% VOCs is required of each E&P operation so as to meet the requirements of the SIP. Further the Commission decided not to take a unit-by-unit approach, but rather, the amendments take a more flexible approach to regulating such emissions by requiring sources that have filed, or were required to file, APENs to choose emission controls and locations for applying those controls. This approach also minimizes the risk that sources may reconfigure tanks to avoid implementing the regulation.

Section XII.A.6. provides an exemption for owners and operators with less than 30 tpy of flash emissions subject to APEN reporting requirements. Regulation Number 7 previously included more general exemptions for emissions from condensate operations, but such pre-existing exemptions should have been repealed as part of this revision to Regulation Number 7. To the extent any pre-existing exemption for condensate operations remains, such pre-existing exemption shall not be construed to supersede the requirements of Section XII.

The rule also requires annual reports describing how E&P sources will achieve the requisite emission reductions. Such reports are necessary so that the Division can determine whether or not the emission reductions are being achieved.

Section XII.B. of Regulation Number 7 is required to ensure that existing and new natural gas processing plants employ air pollution control technology to control emissions from leaking equipment, and

atmospheric condensate storage tanks (and tank batteries). The Commission is specifically requiring a leak detection and repair (LDAR) program for all gas plants, according to the provisions of 40 CFR Part 60, Subpart KKK, regardless of the date of construction of the affected facility. This is necessary to ensure these large facilities are well controlled and VOC emissions minimized.

Section XII. C. pertains to control of VOC emissions from natural gas dehydration operations. The Commission determined that, in order to meet the requirements of the SIP, emissions must be reduced from all dehydration operations located in the 8-hour Ozone Control Area if such operations produce emissions above the minimum threshold specified in the rule. Further the Commission decided that flexibility should be allowed in how emissions are reduced, so several options are listed from which a source owner or operator may choose. If other equally effective measures or control devices are available, the Division may, on a case-by-case basis, approve the use of such alternatives.

Similarly, Section XVI. establishes controls for reciprocating internal combustion engines. Both "lean" and "rich" burn engines are addressed and though the Commission has specified the default control technology to be applied to each engine type, the Division is allowed to approve alternative technology if a demonstration can be made that the alternative is at least as effective as the listed device in reducing VOC emissions. Parties to the rulemaking hearing provided evidence that suitable, cost-effective control equipment may not be available for some existing engines. The rule adopted by the Commission includes an exemption for lean burn engines if the owner demonstrates that such emissions controls would cost $5,000 or more per ton of VOC removed. In calculating such costs, the Division shall use an appropriate amortization period and current discount rate. The Commission directs the Division to further investigate the question of whether controls are available and suitable for lean burn engines, and to recommend any revisions necessary for the regulation applicable to such engines. New engines locating in the control area must comply with the requirements effective June 1, 2004, but existing engines have until May 1, 2005 to come into compliance. Since the rule provides an exemption for existing engines that cannot be controlled for less than $5,000 per ton, the rule must make the distinction between new and existing engines so that engines will not be moved into the area during prior to May 2005 and subsequently apply for such an exemption.

The Commission recognizes that, at this point in time, the controls required by the rule amendments constitute Reasonably Available Control Technology (RACT), at a minimum, and in some cases, the controls mandated by this regulation may, in fact, constitute Best Available Control Technology (BACT). This means that this regulation shall not be used: (a) to preclude a source from asserting that one of the controls mandated herein constitutes BACT or Lowest Achievable Emissions Rate (LAER) for a new source or major modification, (b) require the Division or Commission to mandate different control technologies as BACT, or (c) preclude the Division or Commission from requiring additional or more stringent air pollution control technologies as necessary or appropriate to comply with applicable BACT or LAER requirements for new sources and major modifications.

By its terms, the New Source Performance Standard (NSPS) applicable to leaking equipment at onshore natural gas processing plants (40 CFR Part 60, Subpart KKK) applies to “affected facilities” and “process units” at such facilities as those terms are defined in the standard. In general, plants that were constructed prior to January 20, 1984 are exempt from the standard, unless subsequently modified or reconstructed, or newly constructed after that date. Since process units at a single gas plant can be distinct, certain gas plants may contain equipment that is not presently subject to the NSPS because of its date of construction. The control requirement in Section XII.B. would extend leak detection and repair program requirements to such equipment.

The statutory authority for the revisions to regulation Number 7 is set out in Sections 25-7-105(1)(a) and (1)(b); 25-7-106(1)(c), (5) and (6); and 25-7-109(1)(a) and (2), C.R.S.

The March 2004 revisions to Regulation Number 7 are based on reasonably available, validated, reviewed, and sound scientific methodologies. All validated, reviewed and sound scientific methodologies and information made available by interested parties has been considered. Evidence in the record supports the finding that the rule shall result in a demonstrable reduction in air pollution. The Commission

chose the most cost-effective mix of control strategies available to comply with the 8-hour ozone NAAQS. Where possible, the regulations provide the regulated community with flexibility to achieve the necessary reductions. The Commission chose the regulatory alternative that will maximize the air quality benefits in the most cost-effective manner.

XX.H. (December 2004, SECTIONS I.A., II.A., XII. and XVI.)

The December 2004 revisions were adopted to respond to U.S. EPA comments on the Ozone Action Plan the Commission adopted in March 2004. EPA required the rule revision in order to make the control measures incorporated into the State Implementation Plan practically enforceable as required by the federal Clean Air Act. The Federal Act requires all of the regulatory provisions adopted in this rulemaking action, and none of the provisions are more stringent than the requirements of the federal act.

The revised rule includes a process for obtaining emission reduction credit for pollution prevention measures. In order to qualify for emission reduction credit a pollution prevention measures must, among other things, be included in a permit even if it does not involve the construction of an air pollution source and would not otherwise trigger a requirement for a permit. The revisions to the regulation do not, however, create a requirement for sources to obtain a permit for pollution prevention measures for which the source will not take emissions reduction credit.

The Commission has the statutory authority to adopt the revisions pursuant to Sections 25-7-105(1)(a) and (1)(b); 25-7-106(1)(c), (5) and (6); and 25-7-109(1)(a) and (2), C.R.S.

The control measures necessary to achieve the 8-hour ozone standard were adopted in March 2004. The December 2004 rule changes do not impose new emission control requirements or emission reduction requirements on industry. Instead, the December 2004 rule revisions are intended to make the previously adopted requirements more enforceable, and to make sure that the requisite emission reductions occur during the ozone season when they are needed. Thus, the December 2004 are administrative in nature in that they are intended to assist with the administration and enforcement of the previously adopted controls. The Commission recognizes that the December 2004 rule amendments impose additional recordkeeping and reporting requirements, and therefore costs, on the regulated community. The changes, however, are not intended to achieve further reduction in emissions of volatile organic compounds beyond the reduction requirements adopted in March 2004. They are instead intended to make the March 2004 revisions fully enforceable and acceptable to EPA. Since the December 2004 rule changes are administrative in nature, the requirements of Section 25-7-110.8 C.R.S. do not apply.

XX.I. December 17, 2006 (Section XII.)

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act Sections 24-4-103(4), C.R.S. for new and revised regulations.

Basis

Regulation Number 7, Section XII imposes emission control requirements on oil and gas condensate tanks located in Adams, Arapahoe, Boulder, Douglas and Jefferson Counties, the Cities and Counties of Broomfield and Denver and parts of Larimer and Weld Counties (“8-Hour Ozone Control Area”). The condensate tank requirements, along with other requirements applicable to oil and gas operations and natural gas fired reciprocating internal combustion engines, were initially promulgated in March 2004, and later revised in December 2004, in connection with an Early Action Compact Ozone Action Plan (“EAC”) entered into between the State of Colorado and the United States Environmental Protection Agency. The purpose of the EAC is to prevent exceedances of the 8-Hour Ozone Standard and avoid a nonattainment designation for the area. Pursuant to the EAC, Colorado committed to limiting Volatile Organic Compound (“VOC”) emissions from condensate tanks located in the 8-Hour Ozone Control Area to 91.3 tons per day (“TPD”) as of May 1, 2007 and 100.9 TPD as of May 1, 2012. Because of unanticipated

growth of condensate tank emissions since 2004, the control requirements for condensate tanks adopted during the 2004 rulemaking are insufficient to meet these daily emission numbers. The current revisions require a greater level of control of condensate tank emissions in the 8-Hour Ozone Control Area in order to meet the commitments set forth in the EAC and to prevent future exceedances of the 8-Hour Ozone Standard. These revisions are based on reasonably available, validated, reviewed and sound scientific methodologies. All validated, reviewed and sound scientific methodologies made available by interested parties have been considered. Evidence in the record supports the finding that the rule shall result in a demonstrable reduction in air pollution, and will reduce the risk to human health or the environment or otherwise provide benefits justifying the costs. Among the options considered, the regulatory option chosen will maximize the air quality benefits in the most cost-effective manner.

Specific Statutory Authority

The specific statutory authority for these revisions is set forth in Section, 25-7-105(1)(a), C.R.S., which gives the Air Quality Control Commission authority to promulgate rules and regulations necessary for the proper implementation of a comprehensive state implementation plan that will assure attainment of national ambient air quality standards. Additional authority for these revisions is set forth in Sections, 25-7-106 and 25-7-109, which allow the Commission to promulgate emission control regulations and recordkeeping requirements applicable to air pollution sources. Specifically, Section 25-7-106(1)(c) authorizes the Commission to adopt emission control regulations that are applicable to specified areas within the state. Section 25-7-109(1)(a) authorizes the Commission to adopt emission control regulations. Section 25-7-109(3)(b) authorizes the Commission to adopt emission control regulations for the storage and transfer of petroleum products and any other volatile organic compounds.

Purpose

The Revisions to Section XII. were adopted in order to meet the commitments with respect to condensate tank emissions set forth in the Early Action Compact Ozone Action Plan entered into between the State of Colorado and U.S. EPA, prevent exceedances of the 8-Hour Ozone Standard, and simplify recordkeeping and reporting requirements.

To accomplish these goals the revised regulation raises the system-wide control requirements for the ozone season from the current 47.5% to 75% commencing in 2007 and 78% in 2012. While the rule establishes a higher percentage reduction in 2012 the Commission recognizes that given the uncertainty of emissions growth over the next 6 years, this reduction requirement may be too high and may need to be revisited as the 2012 deadline approaches. For the non-ozone season the required reduction has been raised from 38% to 60% commencing October 2007, and 70% commencing January 1, 2008. Determination of compliance during the ozone season under the revisions will be on a weekly basis instead of a daily basis, in recognition of the fact that condensate production is not typically measured on a daily basis. Under the previous version of the Rule, production could be tracked on something greater than a daily basis and the total divided by the number of days to obtain a daily number. As such, the prior rule did not truly give a daily average and thus the move to a weekly average is of little substance. Apart from this change, calculation of emissions for compliance purposes will remain the same as under the previous version of the rule.

In addition to raising the system-wide reduction requirements, the current rule adds significant new monitoring, record-keeping and reporting requirements, and a “backstop” threshold requirement to have emission controls on all condensate storage tanks with uncontrolled actual emissions of 20 tpy or more of VOC flash emission, as a state-only requirement within the EAC area pursuant to Section XVII.C.1. of Regulation Number 7. Owners and operators will continue to keep a spreadsheet that tracks emission reductions and submit an Annual Report as required under the previous version of the rule. Owners and operators are now also required to submit a semi-annual report on November 30 of each year detailing their emissions during the preceding ozone season. Additional record keeping has been added so as to require that a weekly checklist be maintained detailing inspections of control devices. This checklist will assist operators in the inspection and maintenance practice and provide a record that proper inspections have been done. If the inspections show a problem with the control device, the owner or operator will be

required to notify the Division of problems on a monthly basis. This requirement will allow the Division to track problems on a more timely basis and ensure compliance with the rule. Finally, a provision has been added to require owners or operators to submit a list of all their controlled tanks on April 30 of each year and notify the Division monthly during ozone season if the control status of any tank changes.

XX.J. December 17, 2006 (Sections I.A.1.b. and XVII.)

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act Sections 24-4-103(4), C.R.S. for new and revised regulations.

Basis

The Air Quality Control Commission has adopted these state-only provisions as a means of reducing air emissions from oil and gas operations throughout Colorado. Due to the large growth in oil and gas production in a number of regions of the state emissions from oil and gas operations have rapidly increased over the past few years and are expected to increase further in the foreseeable future. These revisions are a proactive measure designed to eliminate air emissions that could threaten attainment of ambient air quality standards and adversely affect visibility in Class I Areas. These revisions are based on reasonably available, validated, reviewed and sound scientific methodologies. All validated, reviewed and sound scientific methodologies made available by interested parties have been considered. Evidence in the record supports the finding that the rule shall result in a demonstrable reduction in air pollution, and will reduce the risk to human health or the environment or otherwise provide benefits justifying the costs. Among the options considered, the regulatory option chosen will maximize the air quality benefits in the most cost-effective manner.

Specific Statutory Authority

The specific statutory authority for these revisions is set forth in Sections 25-7-106 and 25-7-109 of the Colorado Air Pollution Prevention and Control Act ("Act"), which allow the Commission to promulgate emission control regulations and recordkeeping requirements applicable to air pollution sources. Additional authority is set forth in Section 25-7-105.1, which allows the Commission to adopt state-only standards. Specifically, Section 25-7-106(1)(c) authorizes the Commission to adopt emission control regulations that are applicable to the entire state. Section 25-7-109(1)(a) authorizes the Commission to adopt emission control regulations. Section 25-7-109(3)(b) authorizes the Commission to adopt emission control regulations for the storage and transfer of petroleum products and any other volatile organic compounds.

Purpose

The Revisions to Section XVII. were adopted in order to reduce air emissions from oil and gas operations and natural gas fired reciprocating internal combustion engines in Colorado. These revisions constitute a forward-looking approach to deal with a rapidly growing source of air emissions, and are designed to reduce the possibility of future problems with respect to the attainment of National Ambient Air Quality Standards and state and federal Class I Area visibility goals. Since the requirements are not mandated under federal law and are not currently necessary to meet National Ambient Air Quality Standards they are being adopted as a state-only requirement in accordance with the Act and as provided for under the Federal Clean Air Act.

These revisions establish emission control requirements for condensate storage tanks, glycol dehydrators and natural gas fired reciprocating internal combustion engines in Colorado. These provisions require that condensate tank and dehydrator controls meet a 95% percent control efficiency. As in the EAC Area, this requirement does not contemplate stack testing in order to verify the control efficiency. The insertion of the word average allows operators some downtime without a violation occurring so long as the downtime does not result in an average control efficiency of less than 95% considering the actual engineered control efficiency. For the purposes of XVII.C.4.b. observed operation of flare auto-igniters

can include telemetric monitoring systems, physical on-site function tests or auditory confirmation of the auto-igniter function.

The requirements applicable to glycol dehydrators mirror the requirements applicable in the 8-Hour Ozone Control Area set forth in Section XII, and should be interpreted consistently with those provisions notwithstanding the addition of clarifying language. For example, language has been added clarifying that grouping of dehydrators is limited to dehydrators at a single site. Similarly, the word "production" has been added to the definition of condensate tank to clarify that the requirements, as within the EAC, do not apply to produced water tanks.

Determination of whether a condensate tank's emissions are at or above the threshold is based on the emissions from the tank during the preceding twelve-month period. If a tank has been in service for less than twelve months, applicability shall be based on uncontrolled actual emissions over the service period of the tank multiplied out to twelve months. Accordingly, if a tank has been in service for three months, applicability of the control requirements will be based on the uncontrolled actual emissions from the tank for those three months multiplied by four. If emissions from a controlled tank decrease, operators may remove the controls when emissions from the previous twelve-month period falls below the applicable threshold. Operators will remain responsible, however, for controlling a tank if a subsequent emission increase results in emissions being over the applicable threshold during the preceding twelve months. For tanks serving newly drilled, recompleted or restimulated wells (including refrac'd wells) the owner or operator will have 90 days to determine anticipated production and, if necessary install a control device. In determining anticipated production the owner or operator may use an appropriate decline factor to determine expected emissions over the first 12 months after the new drilling, recompletion or re-stimulation. If the owner or operator determines that emissions will be below the 20 tpy threshold following the new drilling, recompletion or restimulation, the owner or operator shall notify the Division of this determination.

Certain differences with the requirements applicable to the 8-Hour Ozone Control Area have been included in order to provide greater flexibility to operators in other areas of the state and in light of the fact that the regulation represents a proactive attempt to avoid future impacts from oil and gas emissions. Specifically, the standards for obtaining approval of an alternative pollution control device have been relaxed to promote innovative control strategies. Additionally, a provision has been added to allow an extension of the control requirement deadlines at the Division's discretion for good cause shown. This provision allows the Division to extend a deadline where shortages of control equipment, and crews may prevent an operator from meeting the deadlines, particularly in areas where access is limited by the weather or other issues. With respect to Section VII.B.1.c. of the General Provisions, the Commission has determined that as a general rule during normal operations no emissions should be visible from the air pollution control equipment. Normal operations include reasonably foreseeable fluctuations in emissions from the condensate tank, including the fluctuations that occur during a separator dump. However, a transient (lasting less than 10 seconds) "puff" of smoke when the main burner ignites or shuts down would not be considered a violation of the "no visible emission" standard. Finally, a provision has been included that exempts units subject to the rule if such units are also subject to a control standard under the MACT, BACT or NSPS Programs. This exception is of most importance for new and newly relocated engines that may become subject to a currently pending NSPS Standard under Subpart JJJJ.

The engine provisions only apply to engines that are constructed or relocated into Colorado after the applicability date and do not impose requirements on units that are currently located in the state.

The Commission recognizes that the adopted emission control requirements represent a first step in addressing rapidly growing emissions from oil and gas operations throughout the state. Accordingly the Commission directs the Division to provide an annual update on emission growth trends, environmental impacts, modeling and monitoring efforts, the adequacy of emission controls to protect the NAAQS and the health impacts of emissions from the oil and gas sector.

XX.K. December 12, 2008 (Title, Sections I., II., VI. – XIII., XVII., XVIII., and Appendices A-F)

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act Sections 24-4-103(4), C.R.S. for new and revised regulations.

Basis

The Air Quality Control Commission has adopted revisions throughout Regulation Number 7 to address ozone formation in the 8-Hour Ozone Nonattainment Area (NAA), including the 9-county Denver Metropolitan Area and North Front Range (DMA/NFR) NAA. Specifically, the Commission has adopted revisions to reduce an ozone precursor, volatile organic compound (VOC) emissions, and thus reduce ozone formation. These revisions are necessary to ensure attainment with the current 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) set at 0.08 parts per million (ppm), and to achieve additional ozone reductions in light of both the new ozone NAAQS set at 0.075 ppm and the Governor's July 27, 2007 directive to proactively and pragmatically reduce ozone levels.

As of November 20, 2007, the EPA's deferral of a nonattainment designation for the area in question expired, signifying that the area is now considered nonattainment, or in violation of the 1997 8-hour Ozone NAAQS of 0.08 ppm for ground level ozone. The DMA/NFR includes all of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, and Jefferson Counties as well as portions of Larimer and Weld Counties. This area is now known as the DMA/NFR NAA.

Pursuant to the Federal Clean Air Act, Colorado must prepare and submit a revision to the State Implementation Plan (SIP) to the EPA no later than June 30, 2009 that demonstrates attainment of the 8-Hour Ozone NAAQS no later than 2010. The Commission has adopted an Attainment Plan that satisfies this requirement. The Attainment Plan demonstrates attainment with no additional control measures.

Photochemical grid dispersion modeling indicates that without further emission controls, Colorado will attain the 8-hour standard by 2010. The dispersion modeling reflects that Colorado would attain the standard by a narrow margin. Photochemical dispersion modeling analysis is the primary tool used to assess present and future air quality trends, and is required for EPA to approve the state attainment demonstration in the SIP.

In addition, pursuant to EPA guidance, if modeling results indicate that the highest ozone levels will fall between 0.082 and 0.087 ppm, Colorado must conduct a "weight of evidence" analysis and other supplemental analyses in order to corroborate the modeling results. Colorado's model results are within this range, and thus the state has conducted this analysis. The analysis supports the conclusion that Colorado will attain the standard by 2010.

The Commission is also adopting State-only revisions to Regulation Number 7 to further address ozone formation in the DMA/NFR NAA. Specifically, the Commission has adopted revisions to reduce an ozone precursor, volatile organic compound (VOC) emissions, and thus reduce ozone formation. These revisions help Colorado make progress toward eventual compliance with the new ozone NAAQS set at 0.075 ppm as well as the Governor's directive to proactively and pragmatically reduce ozone levels.

Statutory Authority

The statutory authority for these revisions is set forth in the Colorado Air Pollution Prevention and Control Act ("Act"), C.R.S. § 25-7-101, et seq., specifically, C.R.S. §25-7-105(12) (authorizing rules necessary to implement the provisions of the emission notice and construction permit programs and the minimum elements of the operating permit program), 109(1)(a), (2) and (3) (authorizing rules requiring effective practical air pollution controls for significant sources and categories of sources, including rules pertaining to nitrogen oxides and hydrocarbons, photochemical substances, as well as rules pertaining to the storage and transfer of petroleum products and any other VOCs), and § 25-7-301 (authorizing the development of a program for the attainment and maintenance of the NAAQS).

Purpose

These revisions to Regulation Number 7 are part of an overall ozone reduction strategy. The Commission intends that this overall ozone reduction strategy accomplishes six objectives: A) reduce VOC and nitrogen oxides' (NOx) emissions from oil and gas operations in the Ozone NAA and across the state, B) revise the control requirements for condensate tanks by a refined system-wide control strategy in the Ozone NAA, C) expand VOC RACT requirements for listed source categories for 100 tpy sources such that all Ozone NAAs are subject to Regulation Number 7's RACT requirements, D) clarify how the RACT requirements in Regulation Numbers 3 and 7 interact in the Ozone NAA, E) improve the Division's inventory of condensate emissions and other relevant sources in the NAA; and F) make typographical, grammatical and formatting changes for greater clarity and readability.

In support of objectives A-D and F, the Commission adopts these revisions to Regulation Number 7 to revise condensate tank regulations, set pneumatic controller regulations, expand RACT applicability and make associated corrections (Regulation Number 7, Sections I., II., VI. – XIII., XVII., XVIII., and Appendices A-F).

In the course of this proceeding, the Division and certain parties supported a compromise proposal regarding the control of condensate tanks. The Commission finds this proposal to be appropriate with certain changes noted herein. The Commission is requiring an increase from 75% to 81% control on a system-wide basis in 2009; to 85% control on a system-wide basis in 2010; and to 90% control on a system-wide basis in 2011 in the 8-Hour Ozone NAA. The Commission is adopting new VOC controls for pneumatic controllers in the 8-Hour Ozone NAA in Regulation Number 7, Section XVIII.

These system-wide control percentages achieve significant ozone precursor reductions in 2009, 2010 and 2011, with emphasis on significant VOC emissions reductions in 2010, during the monitoring period for the attainment demonstration. These revisions will help to ensure that the non-attainment area realizes the necessary reductions during the 2010 attainment year. Further, these revisions are an important step in putting the State on a path towards attaining the 2008 8-Hour ozone standard. A number of parties including the Regional Air Quality Council and the North Front Range Metropolitan Planning Organization supported this proposal to secure VOC reductions from this source at these levels and according to this schedule. The system-wide approach has been approved by the Commission in the past, as well as by EPA in revisions to the State Implementation Plan. The Commission decided to defer decision making on the implementation of a 95% system-wide level of control, given concerns regarding the notable incremental cost associated with control to the equivalent of 2 tpy tanks as well as concerns regarding the flexibility intended to be afforded by a system-wide approach. Tank operators also expressed concern about the loss of incentive to over-control their systems to meet the standard, and the difficulty for small operators to control at the 95% system-wide level at this time. The proposed control percentages continue to afford flexibility in operations to condensate tank operators, while ensuring attainment of the standard by 2010. Therefore, the Commission is deferring further control for future modeling, air quality analysis, and/or administrative review, whether to control this source in the future at the 95% system-wide control level or through some other approach for purposes of the 2008 8-Hour standard.

The provisions of the compromise proposal, including the commensurate emissions reductions, support the State Implementation Plan's ability to assure attainment and maintenance of the 1997 8-Hour Ozone NAAQS. Inclusion of these provisions enhances the Weight of Evidence demonstration supporting attainment by 2010 pursuant to this State Implementation Plan. The Commission recognizes parties subject to the compromise Regulation Number 7 provisions for condensate tank system-wide emissions reductions concur that these provisions are appropriate for inclusion in the State Implementation Plan.

Further the Commission intends to expand the applicability of RACT requirements to existing, new and modified sources in Ozone NAAs outside of the historic one-hour Ozone NAA or attainment/maintenance area (Regulation Number 7, Sections I and II). The Commission further intends to clarify how the control technology requirements of Regulation Number 7 interact with Regulation 3, Part B, Section II.D.2.

Finally, the Commission intends to make grammatical, typographical, formatting revisions, and other editing revisions throughout Regulation Number 7.

Condensate Tank Emissions Control

Condensate storage tank control requirements in Regulation Number 7, Section XII. are revised by reorganizing the rule, adding/revising definitions, adding monitoring requirements, revising recordkeeping and reporting requirements, and setting additional control requirements for tanks. The current requirements are reorganized by specifying applicability, definitions, general provisions, emissions controls, monitoring, and recordkeeping and reporting sections. The terms new, existing, modified/modification, auto-igniter, and surveillance system were defined.

Tanks serving newly drilled, recompleted or stimulated wells are required to employ air pollution control equipment during the first 90 days of production. After the first 90 calendar days, the control device may be removed. This requirement is designed to address the fact that production, and thus emissions, is at their greatest during the period immediately after drilling, recompletion or stimulation, and the fact that the actual production/emission level is not known prior to drilling, recompletion or stimulation. By requiring controls on all tanks serving newly drilled, recompleted or stimulated wells, the proposed rule significantly reduces emissions during the initial period, while allowing owners and operators to remove control devices afterward, as part of the overall system-wide control regime. All tanks over 2 tpy must participate in the overall system-wide program. Furthermore, since Regulation Number 7's system-wide program is essentially RACT for condensate tanks in the NAA, new and modified 2 tpy or greater condensate tanks (affected by Regulation Number 3 RACT) may also move their control devices after the first 90 days when participating in the overall system-wide control regime, as long as the overall system-wide requirements are being met. Such flexibility is provided as to avoid two regulatory programs: one for tanks that might never be allowed to move their control devices under Regulation Number 3 RACT and one for tanks that would be allowed the flexibility under a system-wide program. Finally, it is the intent of this rule that sources may use their 2 tpy or greater "modified" tanks emissions (i.e., during those tanks' first 90 days of production) in the source's overall system wide calculation. After 90 days, sources must include – whether controlled or otherwise - the 2 tpy or greater "modified" tanks in the overall system-wide calculation. In the case of modified tanks that fall below 2 tpy, it is not the intent of the commission for sources to include these less than 2 tpy tanks in any system-wide calculation. However, sources may use the less than 2 tpy controlled tanks, if necessary to demonstrate system-wide compliance.

The Commission is requiring the installation and operation of auto-igniters for each combustion device. In many cases, condensate tanks are remotely located and unmanned. Auto-igniters will provide greater assurance that the control devices are functioning, under these circumstances. Auto-igniters may be relied on to identify when the pilot is not lit and attempt to relight it, and ensure control operation. The Commission is also requiring surveillance on batteries with uncontrolled emissions greater than 100 tpy. Operators must use surveillance to document the duration of time when the pilot is not lit, and to discover if repairs are necessary to ensure proper control operation. The Commission is targeting this size of battery in order to strike a balance between the need to more carefully monitor performance among the largest batteries, the cost associated with surveillance and the division's capacity to manage the information. The Commission acknowledges that three well operators, Encana, Anadarko and Noble Energy, have agreed to participate with the Division in a pilot program regarding the implementation of electronic surveillance systems.

With regard to recordkeeping and reporting requirements, operators will still record estimated emissions each week (as part of the current Regulation Number 7 requirements) and will report this information to the Division semi-annually. In addition, the Division has revised these requirements so that sources now must keep monthly records throughout the year and provide any of those records within 5 business days of a division request. Further, operators may only use a Division-approved spreadsheet to submit emissions records. Further, a responsible official must now certify the accuracy of the data in the semi-annual reports. This level of recordkeeping and reporting will allow the Division greater capacity to verify compliance and additional availability to work with sources (especially smaller operators). The Commission intends that record-keeping and reporting requirements for surveillance apply only to tanks with uncontrolled emissions greater than 100 tpy.

Controls on 2 Tons Per Year Tanks and Lower

The Commission intends that substantial emissions reductions be achieved from condensate storage tanks and that industry retain the flexibility to decide which tanks to control in order to achieve those reductions. The rule has been revised to subject any condensate storage tank to this rule in the Applicability Section, but stipulates in the Emission Control Section that in order to determine the appropriate system-wide emissions reductions, only two ton per year tanks be considered. In doing this, the Commission intends that tanks that emit actual uncontrolled volatile organic compound emissions of two tons per year or more be considered in determining compliance with the system-wide emissions reductions for the specific ozone non-attainment or attainment maintenance area, and that industry have the flexibility to control smaller tanks in those specific ozone non-attainment or attainment maintenance areas if needed in order to meet the applicable system-wide emissions reductions. For example, if a company owns 20 tanks that emit actual uncontrolled volatile organic compound emissions of two tons per year in a specific ozone non-attainment area, and 15 tanks that emit less than two tons per year, the company would determine its required emission reductions of the production through the 20 two tpy tanks, but be able to control any of the 15 additional less than 2 tpy tanks in order to comply with the system-wide emissions reduction or maintain the desired over control as buffer. However, all tanks controlled in order to comply with the system-wide emissions reduction standard must have filed an APEN and obtained a valid permit in order to be considered as part of the compliance demonstration.

Calendar Weekly and Calendar Monthly Records and Reports

The Commission intends that records and associated reports demonstrating compliance with the weekly emission reduction requirement shall start with the calendar week containing May 1st and end with the calendar week containing September 30th, or other specified dates in the rule. A calendar week begins midnight Sunday morning and ends the following Saturday evening at midnight. Thus, where May 1st falls on any day other than Sunday, the calendar week of May 1st begins on midnight of the preceding Sunday morning. Similarly, the weekly emission reduction requirement applies to the full calendar week that includes September 30th. So, if September 30th falls somewhere in the middle of a calendar week, the emissions reduction requirement applies to that calendar week in full, beginning midnight Sunday morning and ending the following Saturday evening at midnight.

Consequently, calendar monthly records and associated reports demonstrating compliance with the monthly emission reduction requirement shall apply to midnight the morning of day 1 through midnight the evening of the last day of each specific calendar month.

The Commission intentionally broadened the definition of surveillance to provide that: 1) electronic surveillance is not specifically required, and other means to gather information from remote locations is allowed; and 2) data only had to be gathered on a daily basis. The Commission intends that currently required surveillance need only monitor combustion device flame presence or temperature once every day, in order to balance the need to gather adequate data on combustion device operation with the amount of data to be gathered, handled and processed. The Commission believes this is a fair approach considering that only the largest atmospheric condensate storage tanks (those with actual uncontrolled volatile organic compound emissions equal to or greater than 100 tons per year) are subject to this surveillance requirement.

Finally, the Commission intends that the monitoring be completed to ensure compliance, and has determined that failing to monitor as required, losing monitoring data, and failing to maintain monitoring data should be treated similarly to recordkeeping requirements. Thus, these actions “may be treated by the Division as if the data were not collected.”

The Commission intends that system-wide emissions control requirements apply to each specific ozone non-attainment or attainment maintenance area and not collectively to all ozone non-attainment or attainment maintenance areas state-wide. This means that the system-wide emissions control requirements apply specifically to the Ozone Control Area (a.k.a. the Denver Metropolitan Area/North Front Range Ozone Control Area), separately from any future designated ozone non-attainment area. Each new ozone non-attainment area designated in the future shall be subject to the system-wide control requirements by themselves. This is needed to ensure that necessary controls are achieved and

maintained in each ozone non-attainment or attainment maintenance area, and that these controls are not removed and offset by system-wide controls in some other ozone non-attainment area.

Pneumatics Emissions Control

This revision establishes new VOC controls for pneumatic controllers in the 8-hour Ozone NAA in Regulation Number 7, Section XVIII. Pneumatic controllers are widely used in the oil and gas industry to control or monitor process parameters such as liquid level, gas level, pressure, valve position, liquid flow, gas flow and temperature. Pneumatic controllers of interest are instruments that are actuated using natural gas pressure (of which some natural gas may be bled to the atmosphere from the pneumatic controller and some may be vented from the associated valve). Natural gas-actuated pressure relief devices are not intended to be covered by this rule. There are high-bleed controllers designed to emit more than six standard cubic feet of gas per hour (scfh) to the atmosphere, and low-bleed controllers that emit six scfh or less. Historically, high-bleed controllers have been used.

A 2003 EPA study reported that emissions from pneumatic controllers are collectively one of the largest sources of methane emissions in the natural gas industry. Estimated annual nationwide methane emissions are approximately 31 billion cubic feet (Bcf) from the production sector, 16 Bcf from the processing sector, and 14 Bcf from the transmission sector. As stated, by definition, high-bleed pneumatic controllers emit more than six scfh of natural gas to the atmosphere. The highest bleed rate listed in one source, a table published by the EPA, is 42 cubic feet per hour (cfh). The average bleed rate for high-bleed pneumatic controllers in the NAA is 21 cfh. Natural gas is primarily composed of methane, but also contains other compounds including VOCs and hazardous air pollutants (HAPs). VOC emissions from pneumatic controllers within the NAA were 24.8 tons per day (tpd) for the 2006 baseline and have been projected to be 31.1 tpd for the 2010 baseline. These emissions represent 14.0 and 15.1 percent of the total VOC emissions from oil and gas sources in the NAA in 2006 and 2010, respectively. Therefore, emission reductions related to this source category have the potential to be significant.

These rules require that most high-bleed controllers must be replaced with the equivalent of low-bleed or better pneumatic controllers by May 1, 2009. There is an exception that allows high-bleed controllers that the Division agrees are necessary for safety purposes. Operators must inspect and maintain in-use high-bleed controllers on a monthly basis. Operators must also keep logs of the number of in-use high-bleed controllers, as well as the reasoning that high-bleed controller remains in place, and the inspection and maintenance of the in-use high-bleed controllers. These revisions further require operators to physically tag the in-use high-bleed controllers to enable the Division to track compliance.

The oil and gas industry has already begun replacing high-bleed controllers with low-bleed controllers, understanding the financial gain of minimizing the bleed rate of pneumatic controllers.

RICE Controls

Reciprocating internal combustion engine (RICE) requirements of Regulation Number 7, Section XVI. applies in what was the early action compact area (now the Ozone NAA). These revisions extend the RICE requirements' applicability to a state-wide basis.

Expand and Clarify RACT Requirements

Regulation Number 7 is revised to expand its application to all subject sources in any Ozone NAA and Attainment/Maintenance Areas. This previously applied to the one-hour attainment/maintenance area nonattainment area. Accordingly, this regulation will apply to some sources that were previously outside of its geographic scope. It is intended that existing sources become subject to previously adopted Control Technique Guidelines (CTGS) or general RACT requirements, and are given time to comply to implement the general RACT requirements. Specifically, existing sources that have not been modified are allowed three years from the date of ozone non-attainment designation to implement general RACT requirements. All new or modified sources become subject to these general RACT requirements upon commencing

operation after the new ozone non-attainment designation date. This revision is considered a measured approach to ensuring the consistent use of best practices across the NAA as well as reductions in ozone precursors considered necessary to attaining the 8-hour ozone standard.

This revision expands Regulation Number 7's applicability to any Ozone NAA or attainment/maintenance area. This is done intentionally to apply Regulation Number 7 requirements to current as well as any future Ozone NAA or attainment maintenance areas in Colorado.

Additionally, this revision clarifies how the Regulation Number 3 RACT requirements interact with Regulation Number 7. This revision specifies that pursuant to Regulation Number 7, Section II.C. all existing sources that emit 100 tons per year of VOC emissions and that are located in the 8-hour Ozone NAA become subject to RACT.

Further, Regulation Number 7 is currently unclear on whether or not existing sources that are modified become subject to new source requirements. This revision clarifies that existing sources that are modified are subject to the Regulation Number 3, Part B, Section II.D. requirements and are considered to be a new source for the purposes of Regulation Number 7.

This revision also clarifies that the both case-by-case and general RACT requirements of Regulation Number 7, Section II.C. only apply to existing, new and modified sources. For sources at which all air pollution generating activities at that source are already subject to RACT or BACT, the RACT analysis would show that all activities are already subject to RACT or BACT. For any other air pollution generating activities not covered by RACT or BACT, the source would only have to complete a RACT analysis specific to those activities.

Typographical, Grammatical, Formatting and Other Changes

The commission changed the title of Regulation Number 7 to include NOx. An outline of the sections is provided to better understand the contents of Regulation Number 7. Outdated sections are removed (i.e. Section II.F.1. specific to Gates Rubber Company, which is now out of business). Section XII., specific to condensate tanks in the Ozone NAA is reorganized for clarity. One appendix (new Appendix A) is added to provide maps of Ozone NAAs and chronologies of attainment designations, of which certain requirements key off. Finally, sections and appendices are renumbered and formatted as necessary.

Section 110.5 and 110.8 Analysis

Some of these revisions are not intended to be incorporated into Colorado's SIP. To the extent these revisions could be construed to exceed the requirements of federal law, the Commission provides the following additional statement, consistent with C.R.S. § 25-7-110.5(5)(a):

(I) These rules are intended to reduce uncontrolled emissions of ozone precursor pollutants. The rules thereby serve to attain and maintain compliance with the National Ambient Air Quality Standard (NAAQS) for Ozone. However, there are no comparable federal requirements that apply to the sources in question.

(II) There are no applicable federal requirements, other than the duty to attain the ozone NAAQS. There is considerable flexibility in meeting the NAAQS. However, there are very limited sources of uncontrolled anthropogenic ozone precursor emissions to target in order to reduce ozone. Consequently, the sources in question, as a significant source of uncontrolled VOCs and NOx, must be targeted in order to attain the standard.

(III) There are no applicable federal requirements, other than the duty to attain the ozone NAAQS. The ozone NAAQS was not determined taking into account concerns that are unique to Colorado.

(IV) These rules may prevent or reduce the need for costly retrofit to meet more stringent requirements at a later date. The DMA/NFR non-attainment area has violated the 0.08 ppm ozone NAAQS. Colorado will

soon be required to comply with the new ozone NAAQS of 0.075 ppm. Colorado Governor Ritter has directed that Colorado air quality planning agencies implement measures to reduce ozone to a level below the NAAQS. If these rules are not adopted now, it may be necessary to require more costly retrofitting in order to meet the Governor's directive as well as the new NAAQS.

(V) Since there are no applicable federal requirements, there is no timing issue with regard to implementing federal requirements. However, these controls are intended to help the DMA/NFR attain the NAAQS. If the standard is not attained by the 2010 ozone season, the area may face a "moderate" non-attainment designation.

(VI) The adopted rules will assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth.

(VII) The adopted rules establish reasonable equity for sources subject to the rules by providing the same standards for similarly situated sources.

(VIII) If the state rules were not adopted, other sectors may face a disproportionate share of the burden of reducing precursor pollutants.

(IX) There are no corresponding federal requirements.

(X) Demonstrated technology is available to comply. Sources are already using the control devices intended to be used to comply with these rules. However, sources face an additional burden of implementing auto-igniters and surveillance. The Commission anticipates a reasonable degree of delay in securing and installing the technology in question and has accommodated the sources by providing for a reasonable delay for the application of these requirements.

(XI) The adopted rules will reduce VOC and NOx emissions, thereby contributing to the prevention of the formation of ozone through the most cost-effective means available.

(XII) Alternative rules requiring additional controls for other sources would also provide gains toward attaining the ozone NAAQS. However, oil and gas industry members are the largest anthropogenic stationary source of precursor pollutants in the State. A disproportionate benefit to this industry would accrue if their uncontrolled emissions remain at current levels compared to other stationary sources.

(XIII) A no-action alternative may address the ozone NAAQS. Modeling and other analysis suggests that the NAA would attain the standard by 2010 without these rules. However, this analysis suggests that ambient levels of ozone would be very close to the NAAQS. These rules provide more assurance of attaining the ozone NAAQS while also providing for reductions that are necessary to make progress toward the new ozone NAAQS. No action would only delay the necessary reductions.

Further, pursuant to C.R.S. § 25-7-110.8(1), the Commission makes the determination that:

(I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

(II) Evidence in the record supports the finding that the rules shall result in a demonstrable reduction of ground-level ozone.

(III) Evidence in this record supports the finding that the rules shall bring about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.

(IV) The rules are the most cost effective, provide the regulated community flexibility, and achieve any necessary reduction in air pollution.

(V) The selected regulatory alternative will maximize the air quality benefits of regulation in the most cost-effective manner.

XX.L. January 7, 2011 (Outline and Sections I. and XVII.)

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedures Act, Section 24-4-103, C.R.S., and the Colorado Air Pollution Prevention and Control Act, Sections 25-7-110 and 25-7-110.5, C.R.S (the Act).

Specific Statutory Authority

The Colorado Air Quality Control Commission (Commission) promulgates this regulation pursuant to the authority granted in Sections 25-7-105(1)(c), C.R.S. (authority to adopt a prevention of significant deterioration program); 25-7-109(1)(a) (authority to require the use of air pollution controls); 25-7-109(2)(a) (authority to adopt emission control regulations pertaining to visible pollutants); and 25-7-114.4(1) (authority to adopt rules for the administration of permits).

Basis and Purpose

The Commission intends that the current Regulation Number 7, Section XVII.E.3.a. identifying technology-based control requirements for existing rich burn reciprocating internal combustion engines (RICE), or rich burn RICE that were constructed or modified prior to February 1, 2009, become a NOx emission control measure that is included as part of the Regional Haze SIP and become federally enforceable upon EPA approval.

The technology-based control requirements of Section XVII.E.3.a. reduce NOx. This proposal only changes the enforceability of these currently state-only requirements such that they become federally enforceable. This proposal does not change emission control, monitoring, recordkeeping or reporting requirements.

The Commission also intends that the following provisions, added in Sections XVII.E.3.a.(i)(a) through (c), will continue to be effective under the Regional Haze SIP. Specifically, these provisions require good air pollution control practices and allow for exemptions from the requirements for existing rich burn RICE. The exemptions apply to any existing rich burn RICE either with uncontrolled actual emissions below permitting thresholds or that is subject to a New Source Performance Standard (NSPS), National Emission Standard for Hazardous Air Pollutants (NESHAP), or Best Available Control Technology (BACT) limit.

Existing lean burn RICE requirements are not incorporated into the Regional Haze SIP, as the associated controls do not reduce NOx or SO2.

Colorado has determined that it is reasonable and appropriate to make these RICE requirements federally enforceable in this first planning period, as part of the state's strategy for addressing reasonable progress towards achieving natural visibility conditions in federal Class I areas.

XX.M. December 20, 2012 (Sections II., XII., and XVII.)

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act Sections 24-4-103(4), Colorado Revised Statutes (C.R.S.) for new and revised regulations.

Basis

Regulation Number 7 is designed to implement substantive regulatory programs authorized under the Colorado Air Pollution Prevention and Control Act (Act) including provisions of the State Implementation

Plan (SIP) addressed in C.R.S. Section 25-7-105(1)(a), emission control regulations addressed in C.R.S. Section 25-7-105(1)(b) and authorization of the development of a program for the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) in C.R.S. Section 25-7-301, as well as other authorized programs under the Act. The current revisions have been promulgated in order to facilitate this goal. The revisions were made to address the U.S. Environmental Protection Agency's ("EPA") partial disapproval of Colorado's ozone SIP. On August 5, 2011, EPA published the "Approval and Promulgation of State Implementation Plans; State of Colorado; Attainment Demonstration for the 1997 8-Hour Ozone Standard, and Approval of Related Revisions" (76 Fed. Reg. 47443, August 5, 2011). EPA partially approved and partially disapproved revisions to Colorado's SIP adopted by the Air Quality Control Commission (Commission) in December 2008 and submitted to the EPA in June 2009.

Statutory Authority

The statutory authority for these revisions is set forth in the Colorado Air Pollution Prevention and Control Act, C.R.S. Section 25-7-101, et seq., specifically, C.R.S. Section 25-7-105(12) (authorizing rules necessary to implement the provisions of the emission notice and construction permit programs and the minimum elements of the operating permit program), 109(1)(a), (2) and (3) (authorizing rules requiring effective practical air pollution controls for significant sources and categories of sources, including rules pertaining to nitrogen oxides and hydrocarbons, photochemical substances, as well as rules pertaining to the storage and transfer of petroleum products and any other VOCs), and Section 25-7-301 (authorizing the development of a program for the attainment and maintenance of the NAAQS).

Purpose

The Commission revised Regulation Number 7 to address the EPA's partial disapproval of Colorado's Ozone State Implementation Plan ("SIP'). On August 5, 2011, the EPA issued a final action on Colorado's June 2009, Ozone SIP submittal, both approving Colorado's attainment demonstration for the 1997 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) and disapproving specific revisions to Regulation Number 7. 76 Fed. Reg. 47443, August 5, 2011. Specifically, the EPA disapproved both the repeal of Regulation Number 7, Section II.D. and all revisions to Section XII. as adopted by the Commission in December 2008. As a basis for its action, the EPA stated that Colorado demonstrated attainment with the 1997 8-Hour Ozone NAAQS, however Colorado did not adequately provide an anti-backsliding demonstration for the revisions to Regulation Number 7 that were adopted by the AQCC in December 2008, and submitted to the EPA in June 2009.

The Commission intends that these 2012 revisions include both SIP and state-only revisions that address EPA's partial disapproval of SIP provisions in Sections II.D and XII., and make related state-only revisions to Section XVII. for consistency.

The Commission does not intend that these 2012 revisions add or strengthen emissions control measures of Section II.D., XII. or XVII. at this time. All SIP revisions are intended to specifically address those provisions that EPA included as part of its basis for disapproving revisions to Regulation Number 7.

While the EPA indicated general approval of the concept of the June 2009 SIP submittal, the EPA took exception to some of the details in the SIP revisions, characterized as "deficiencies," that formed the basis of EPA's disapproval during the SIP review process. EPA's objections to the 2009 SIP revisions and the Commission's responses are summarized as follows:

1. Section II.D. – Alternative Control Plans and Test Methods

EPA Objection: The EPA objected to the deletion of SIP approved language, allowing for alternative control plans and testing methods.

Commission Response: The Commission reinstated the SIP approved language.

2. Section XII.C.2. – Emission Factor Calculation Methodology for Condensate Tanks

EPA Objection: The EPA objected to the deletion of the term "gas-condensate-glycol separators" from the emission factor requirements for atmospheric condensate tanks.

Commission Response: The Commission made no revision to the rule text, and instead explained to EPA that this term was used in error as such a separator does not exist. The term used here is a misnomer, which the Commission believes refers to a flash tank located on a glycol dehydration unit, covered by Section XII.H. It is inappropriate to apply emission factor calculation methodology for atmospheric condensate tanks to glycol dehydrators because their emissions vary greatly.

3. Section XII.D.2.a. – System-wide Control Requirements for Condensate Tanks

EPA Objection: The EPA objected to the sunset of the system-wide control requirement in Section XII.D.2.a.(x), which ended the control requirement as of April 30, 2013.

Commission Response: The Commission revised the system-wide control requirements so that the system-wide control requirements do not sunset. Neither the Commission nor the parties to the December 2008 rulemaking intended for the system-wide control to end. The sunset was unintentionally caused when making other revisions to the rule text.

4. Section XII.E.3. – Monitoring Combustion Devices as Control for Condensate Tanks

EPA Objection: The EPA objected to providing a state-only monitoring option (electronic surveillance) as a substitution for the SIP required monitoring of combustion devices being used to control emissions from condensate tanks in accordance with Section XII.

Commission Response: The Commission removed the option of conducting state-only electronic monitoring in lieu of the SIP approved monitoring requirement. This allowance to substitute a SIP required monitoring provision for a state-only monitoring provision was unintentional. None of the sources employing electronic surveillance may use it in place of the SIP approved requirement. If conducted, the electronic surveillance monitoring option must occur in addition to the SIP approved monitoring requirement.

5. Section XII.F.3. – Recordkeeping for Condensate Tanks

EPA Objection: The EPA objected to the lack of SIP required recordkeeping for the control requirement in Section XII.D.1., which requires all condensate tanks at exploration and production sites to be controlled during the first 90 days of well production.

Commission Response: The Commission revised Section XII.D.1. to specify it is state-only. The Commission and parties to the December 2008 rulemaking intended for this first 90 day control requirement to be state-only, which corresponds to the state-only designation on the recordkeeping requirements under Section XII.F.3. Therefore, the Commission made no revision to Section XII.F.3., and instead revised Section XII.D.1. to alleviate this discrepancy.

6. Section XII.F.5. – Recordkeeping and Reporting Exemption for Compressor Stations and Drip Stations

EPA Objection: The EPA objected to the removal of a SIP approved provision that exempted natural gas compressors or drip stations from recordkeeping and reporting requirements, where total emissions from such facilities are less than 30 tons per year.

Commission Response: The Commission reinstated the SIP approved 30 ton per year provision.

7. Section XII.G.2. – Control Equipment Requirement for Natural Gas Processing Plants

EPA Objection: The EPA objected to two aspects of the revisions to this section. The first objection was replacement of the term "APEN de minimus levels" with "greater than or equal to two tons per year." The second objection was inclusion of a rolling 12-month averaging period for the 95% control requirement.

Commission Response: The Commission made no revision to the replacement of the term "APEN de minimus levels." The Commission explained to the EPA that the associated modeling relied on evaluating condensate tanks with emissions greater than or equal to two tons of volatile organic compounds per year. Therefore, the change in reference does not constitute a lessening of the stringency of the rule. In addition, the Commission removed the rolling 12-month averaging period.

8. Section XII.G.5. – Recordkeeping and Reporting for Alternative Compliance Option

EPA Objection: The EPA objected to the reliance on Title V or construction permits as the location for recordkeeping and reporting requirements for condensate tanks at natural gas compressor or drip stations.

Commission Response: The Commission revised this section to specify recordkeeping and reporting requirements for condensate tanks at natural gas compressor and drip stations.

9. Section XII.H. – Control Requirements for Glycol Dehydrators

EPA Objection: The EPA stated this entire section lacked clarity and contained redundant language.

Commission Response: The Commission revised the section in its entirety, while maintaining the intent and applicability of the requirements. Along with this revision, the Commission specified that this control requirement is applicable only to glycol dehydrators with emissions equal to or greater than one ton per year, but that all glycol dehydrators at a stationary source must be included for comparison to the 15 ton per year threshold. The term stationary source is defined in the Common Provisions. Further, the Commission revised the provision to include emission calculation methodology requirements in Section XII. H.

Items 1-9 are all SIP revisions.

In addition, the Commission is also revising the state-only Section XVII.D. for consistency with the 2012 SIP revisions. The Commission does not intend that this state-only revision change the applicability of the control requirements for glycol natural gas dehydrators.

Finally, the Commission made typographical, grammatical, and formatting revisions, as necessary.

XX.N. February 23, 2014 (Sections II., XVII., and XVIII.)

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the Colorado Administrative Procedure Act Sections 24-4-103(4), the Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-110 and 25-7-110.5., and the Air Quality Control Commission's ("Commission") Procedural Rules.

<u>Basis</u>

On October 18, 2012, the Commission partially adopted federal Standards of Performance for Crude Oil and Natural Gas Production, Transmission, and Distribution found in 40 CFR Part 60, Subpart OOOO

("NSPS OOOO") into Regulation Number 6, Part A. During the partial adoption of NSPS OOOO, the Commission requested the Air Pollution Control Division ("Division") to consider full adoption at a later date and directed the Division to identify additional oil and gas control measures that complement and expand upon NSPS OOOO. This rulemaking is the result and further addresses the volatile organic compound ("VOC"), an ozone precursor, and other hydrocarbon emissions, such as methane, from the oil and gas sector.

The Commission supports the EPA's development of NSPS OOOO and believes that additional hydrocarbon control measures are warranted in Colorado for several reasons. First, the Denver Metropolitan Area/North Front Range is in nonattainment with EPA's current 8-Hour Ozone National Ambient Air Quality Standard ("NAAQS"); it is likely that EPA will lower the ozone NAAQS in the near future, potentially expanding Colorado's nonattainment area; and Division air monitors and other sampling indicate elevated levels of oil and gas related air emissions in oil and gas development areas. Second, Colorado has seen substantial growth of oil and gas development in recent years, which is a significant source of VOC emissions, and expects that growth to continue in the foreseeable future. In particular, oil and gas storage tanks contribute significantly to the VOC emissions from oil and gas development. Further, oil and gas operations also emit methane, a negligibly reactive ozone precursor and potent greenhouse gas. Third, oil and gas operators have had difficulty meeting the current 95% control requirements in Regulation Number 7 established for condensate tanks in 2004 and 2006 due to "flash" emissions. Fourth, improved technologies and business practices, many already utilized by Colorado oil and gas operators, can reduce emissions of hydrocarbons such as VOCs and methane in a cost-effective manner. These technologies and practices include, without limitation, auto-igniters, low- or no-bleed pneumatic controllers, stabilized liquids or reduced tank pressures, flares achieving at least 98% destruction efficiency, and leak detection and repair (including the use of infrared ("IR") cameras).

For these reasons and more, the Commission believes additional control measures beyond the current requirements in Regulation Number 7 and NSPS OOOO are appropriate. Colorado's considerable experience with the regulation of oil and gas sources involves both SIP and state-only requirements. During the rulemaking process, various parties provided extensive evidence concerning whether the proposed revisions, in particular the STEM and LDAR requirements, should apply either statewide or only in the ozone nonattainment area. Based upon careful consideration of all the evidence provided during the rulemaking, the Commission determined it was appropriate to apply the proposed requirements statewide. Further, in addition to the extensive evidence concerning the benefits of statewide hydrocarbon emission reductions, the Commission believes that the tiered and phased nature of many of the requirements properly focuses on emissions. Under this tiered approach, lower emitting sources such as marginal, stripper, and coal bed methane wells will appropriately be subject to less rigorous and costly requirements. In addition, evidence in the rulemaking record and testimony of industry members supports the conclusion that the rules can be effectively implemented. Accordingly, the Commission concludes that the proposed rules are technologically feasible and cost-effective. Moreover, because these revisions apply on a state-wide, state-only basis, and are not a part of Colorado's SIP, the Commission, the Division, and stakeholders have the opportunity to further assess the implementation and effectiveness of these requirements, to better inform future actions.

Statutory Authority

The Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-101, et seq., ("Act"), C.R.S. § 25-7-105(1) directs the Commission to promulgate such rules and regulations as are consistent with the legislative declaration set forth in Section 25-7-102 and are necessary for the proper implementation and administration of Article 7. The Act broadly defines air pollutant and provides the Commission broad authority to regulate air pollutants. Section 25-7-106 provides the Commission maximum flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program. Section 25-7-106 also authorizes the Commission to promulgate emission control regulations applicable to the entire state, specified areas or zones, or a specified class of pollution. Sections 25-7-109(1)(a), (2), and (3) of the Act authorize the Commission to promulgate regulations requiring effective and practical air pollution controls for significant sources and categories of sources, emission control regulations pertaining to nitrogen oxides and hydrocarbons, and

emissions control regulations pertaining to the storage and transfer of petroleum products and other VOCs. Section 25-7-109(2)(c), in particular, provides broad authority to regulate hydrocarbons.

Purpose

The following section sets forth the Commission's purpose in adopting the revisions to Regulation Number 7, and includes the technological and scientific rational for the adoption of the revisions. The Commission adopts revisions to Regulation Number 7 to address hydrocarbon emissions from oil and gas facilities, including well production facilities and natural gas compressor stations. The Commission expands existing oil and gas control requirements and establishes additional monitoring, recordkeeping, and reporting requirements. For example, the revisions increase control requirements and improve capture efficiency requirements for oil and gas storage tanks. The Commission also seeks to minimize fugitive emissions from leaking components at natural gas compressor stations and well production facilities. Further, the Commission intends to minimize emissions at new and modified oil and gas wells and wells undergoing maintenance and during liquids unloading events. The Commission also expands control requirements for pneumatic devices and glycol natural gas dehydrators. The Commission believes that this combination of revisions is appropriate to complement the full adoption of NSPS OOOO, and to further reduce emissions produced by the oil and gas industry.

Among other things, these revisions:

- Expressly address hydrocarbon emissions in Section XVII. and XVIII.;
- Amend definitions in Section XVII.A. and XVIII.B.;
- Strengthen good air pollution control practices, require use of auto-igniters, remove the off-ramp for condensate tanks if subject to a NSPS, MACT, or BACT, and remove the leak detection and repair requirements off-ramp for glycol natural gas dehydrators and internal combustion engines if subject to a NSPS, MACT, or BACT in Section XVII.B.;
- Expand condensate tank control requirements to apply state-wide, to all hydrocarbon liquid storage tanks, and to smaller storage tanks in Section XVII.C.;
- Limit venting and establish a storage tank emissions monitoring system ("STEM"), and associated recordkeeping and reporting requirements in Section XVII.C.;
- Expand glycol natural gas dehydrator control requirements in Section XVII.D.;
- Establish a leak detection and repair program for natural gas compressor stations and well production facilities in Section XVII.F.;
- Establish control measures for oil and gas wells in Section XVII.G.;
- Limit venting during well maintenance and liquids unloading in Section XVII.H.; and
- Expand pneumatic device requirements in Section XVIII.

The revisions also correct typographical, grammatical, and formatting errors found through the regulation.

The following explanations provide further insight into the Commission's intention for certain revisions and, where appropriate, the technological or scientific rationale for the revision.

Joint Applicability of NSPS OOOO and Regulation Number 7, Sections XII. and XVII.

It is possible for storage tanks to be subject to NSPS OOOO and Regulation Number 7, Sections XII. and XVII. While this creates some overlap between the different requirements, the requirements secure different emissions reductions. Regulation Number 7, Section XII. applies to condensate storage tanks in the 8-Hour Ozone Nonattainment Area, whereas NSPS OOOO applies to storage vessels that contain more than just condensate, such as produced water and crude oil. NSPS OOOO also applies to individual storage vessels, whereas Regulation Number 7, Sections XII. and XVII. apply to single tanks and, if manifolded together, the series of tanks in tank batteries. In addition, NSPS OOOO applies to storage vessels with six (6) tons per year ("tpy") of controlled actual VOC emissions, whereas Regulation Number 7, Sections XII. and XVII. base applicability on uncontrolled actual emissions. For these reasons, and considering that portions of Regulation Number 7, Section XII. are approved in Colorado's SIP, the Commission intends for the federal and state rules to jointly apply to storage tanks in Colorado.

Furthermore, because NSPS OOOO allows oil and gas operators to avoid applicability by establishing enforceable emission limits below NSPS OOOO applicability thresholds through a state, federal, or local requirement, most storage tanks subject to Regulation Number 7 will not be subject to NSPS OOOO monitoring or recordkeeping requirements. It is the Commission's intent that compliance with Regulation Number 7, Sections XII. and XVII. shall serve to establish legally and practically enforceable limits for the purpose of estimating emissions from storage vessels under NSPS OOOO. In those limited cases where storage tanks are subject to both NSPS OOOO and Regulation Number 7 control requirements, Regulation Number 7 will require some additional emissions monitoring. However, joint applicability is anticipated to be limited to those storage tanks whose uncontrolled actual VOC emissions are one hundred and twenty (120) tpy, the equivalent of the NSPS OOOO six (6) tpy VOC on a controlled actual basis. While this means that more storage tanks are regulated under Regulation Number 7, Section XVII., they are regulated on a state-only basis, and are not federally enforceable like NSPS OOOO. Thus, the Commission believes joint applicability is necessary and intentionally removed storage tanks from the exemption in Section XVII.B.4. that allowed sources subject to an NSPS, MACT, or BACT control requirement to avoid having to comply with Section XVII.

It is also possible for glycol natural gas dehydrators and internal combustion engines to be subject to both federal and Regulation Number 7, Section XVII. leak detection and repair requirements. NESHAP HH and HHH require glycol natural gas dehydrators at major sources of hazardous air pollutants ("HAP") that utilize a closed-vent system to conduct annual visual inspections for leaks and defects that could result in air emissions. NESHAP HH and HHH also require detected leaks and defects be repaired within fifteen days, as long as it is technically feasible to do so without a shutdown. NESHAP HH also requires triethylene glycol ("TEG") natural gas dehydrators located at area sources of HAPs that utilize a closed-vent system to conduct annual visual inspections. However, the revisions to Regulation Number 7 require more frequent inspections of all types of glycol natural gas dehydrators at all facilities, resulting in more emissions reductions than NESHAP HH and HHH. Therefore, the Commission believes joint applicability concerning leak detection and repair requirements is necessary.

Applicability of Parts of Regulation Number 7 to Hydrocarbons

Many of the control measures set forth in these revisions have the benefit of reducing both VOC and other hydrocarbon emissions, such as methane. Sections XVII. and XVIII. have been revised to reflect the Commission's intent that the provisions contained therein reduce emissions of the broader category of hydrocarbons.

Visible Emissions

Regulation Number 7, Sections XII. and XVII. have historically contained a prohibition on visible emissions from combustion devices, such as flares. The Commission is not proposing to relax this requirement. To address comments from diverse stakeholders, the Commission is clarifying how Division inspectors and the regulated community are to determine compliance with the prohibition on visible emissions. The Commission has qualified that visible emissions are emissions of smoke that are observed for a period in duration of greater than or equal to one (1) minute during a fifteen (15) minute time period, pursuant to EPA Method 22. The Commission expects that both Division inspectors and the

regulated community will, if any smoke is observed, determine whether the emissions are considered visible emissions for purposes of Regulation Number 7. The regulated community may, alternatively, immediately shut-in the equipment to investigate the cause for smoke and perform repairs. While the presence of visible emissions constitutes a violation of the rules, the Commission recognizes that there may be instances where visible emissions occur notwithstanding the owner or operator's best efforts, such as when an upset or malfunction occurs. Accordingly, the Division should consider the owner or operator's efforts and whether the visible emissions resulted from factors outside the owner or operator's control in determining how to best enforce this requirement.

Definitions (Section XVII.A.)

The Commission has revised or added definitions for several terms. Further explanation for a few of these terms is set forth below.

"Approved instrument monitoring method" ("AIMM") means the methods and technologies utilized for monitoring storage tanks and components at well production facilities and natural gas compressor stations. The instrument being used for AIMM inspections must be capable of measuring hydrocarbon compounds at the applicable leak definition concentration specified in the revisions, and calibrated as appropriate. See EPA Method 21 at 6.0. In addition, while the definition lists EPA Method 21 and IR cameras, the Commission does not intend to limit industry to only EPA Method 21 and IR cameras as the Division may approve the use of additional monitoring devices and methods.

"Component" excludes compressor seals and open-ended valves and lines, which are defined separately, because they are designed to leak and are better addressed with equipment specific work practices, also included separately. Based on concerns that the requirements for small reciprocating compressors at well production facilities may not be cost-effective, the adopted work practices for reciprocating compressors are limited to reciprocating compressors located at natural gas compressor stations. Nevertheless, there is an issue as to whether compressors at well production facilities are a significant source of emissions. The Commission, therefore, directs the Division to investigate whether reciprocating compressors at well production facilities are a significant source of emissions, and if so, whether there may be appropriate, cost-effective work practices to reduce fugitive emissions from reciprocating compressors at well production facilities. The Commission further directs the Division to brief the Commission on this investigation in March, 2015.

"Date of first production" is meant to coincide with the date reported to the Colorado Oil and Gas Conservation Commission's ("COGCC") as the "date of first production," as currently used in COGCC Form 5A. The Commission intends for oil and gas sources to use only one date for compliance with both COGCC and Commission requirements.

"Natural gas compressor stations" are subject to leak detection and repair requirements. This definition is meant to exclude compressors at well production facilities and gas processing plants. This definition is also meant to exclude natural gas compressor stations that are downstream of the natural gas processing plant at this time.

"Normal operation" is considered to include all operation, including maintenance and other activities, as long as the operation does not meet the definition of "malfunction" as set forth in the Common Provision regulations.

"Storage tank," means a single storage tank or a storage tank battery if the storage tanks are manifolded together. In recent years, it has become more common for multiple storage tank batteries, sometimes containing different hydrocarbon liquids, to be manifolded at the emissions line and routed to a common control device. To further clarify the concept of manifolded within the definition of "storage tank," the Commission revises the definition of storage tank to specify that a storage tank battery must be manifolded by liquid line, and not just by gas or emission line. This revision is in keeping with the rationale that a single tank could have been used to capture liquids in place of multiple small storage tanks in a battery. The Commission's definition, and Colorado's approach to emissions reporting and

permitting for storage tanks, differs from EPA's definition of "storage vessel" and the description of an affected storage vessel facility in NSPS OOOO because EPA considers each individual tank, even those in a battery manifolded by liquid line, to be a storage vessel for comparison against the applicability threshold. The Commission intends to maintain this distinction and, therefore, deletes the previously used definition of "atmospheric condensate storage tank" and creates a new definition of "storage tank" which expands upon the definition of storage vessel in NSPS OOOO to include storage vessels manifolded together by liquid line.

"Well production facilities" are also subject to leak detection and repair requirements and storage tank maintenance requirements. This definition is meant to include all of the emission points, as well as any other equipment and associated piping and components, owned, operated, or leased by the producer located at the same stationary source (a defined term specific to permitting). The "owned, operated, or leased" qualifier in the definition is not meant to reduce the stringency of LDAR requirements in situations where there are multiple owners or operators of the well production facility. This definition is meant to exclude natural gas compressor stations from "well production facility" and avoid overlapping LDAR requirements. This definition is also meant to exclude natural gas storage wells.

Good Air Pollution Control Practices (Section XVII.B.)

The Commission intends that all oil and gas operations, including those below control thresholds or even below Regulation Number 3 APEN and permitting thresholds, adhere to good general air pollution control practices. Examples of what the Commission considers to be a good air pollution control practice include, but are not limited to:

- Keeping the thief hatch, pressure relief valve, or other access point on storage tanks closed and properly sealed during normal operation, unless being actively used during periods of maintenance or liquids loadout from the storage tank;

- Inspecting and repairing seals on thief hatches, access points, or other openings of storage tanks;

- Initiating timely action to address leaks or unpermitted emissions; and

- Maintaining equipment and the facility in good operating condition.

Venting vs. Leaking (Sections XVII.B., XVII.C., and XVII.F.)

The Commission believes that emissions caused by over pressurization of oil and gas equipment are foreseeable, are not adequately addressed by NSPS OOOO, and should be addressed in Colorado specific regulations. The Commission intends these revisions to address venting emissions from storage tank thief hatches, pressure relief valves, or other access points during normal operations. Access points are not limited to points of entry of liquids or gas into the storage tank but include any route from which emissions can escape. The Commission recognizes that pressure release valves and other devices are meant to operate as safety devices and that venting for safety purposes may occur due to sudden, unavoidable equipment failures or surges beyond normal or usual activities that could not have been reasonably foreseeable, avoided, or planned. For example, an unplanned third party outage resulting in increased pressure along the system may be the type of malfunction or scenario where venting may be necessary for safety purposes. The Commission does not intend to increase risk or compromise safety of personnel and equipment. However, inadequate design of a storage tank emissions capture system is not a legitimate reason for venting.

Therefore, the Commission intends that the malfunction affirmative defense in the Common Provisions regulation continue to be available to owners or operators, provided that the owners or operators demonstrate that the elements of the malfunction defense have been met. The Commission intends that the burden remain on the owner or operator to demonstrate that an emission should not be considered

venting as provided in Section XVII.C.2. The Commission further recognizes that meeting the no venting requirement may be challenging in some cases, and accordingly has adopted additional provisions requiring owners and operators to develop a STEM plan to help ensure compliance. In some cases, development and implementation of the STEM plan may be an iterative process involving ongoing improvements before continuous compliance with the no venting standard is achieved. With this in the mind, the Division should consider the efforts of owners and operators in developing and implementing their STEM plan as part of the Division's assessment about how best to enforce the no venting requirement.

In contrast with venting, leaking as used in Section XVII.F. more specifically relates to unintended emissions from components at well production facilities and natural gas compressor stations. Identification and repair of leaks in accordance with these revisions benefits the public, the environment, and the oil and gas industry. The Commission has determined that leaks discovered by the owner or operator or the Division inspector pursuant to the detection methods specified in Section XVII.F. shall not be subject to enforcement by the Division under certain circumstances. For example, if a leak is identified and the owner or operator is in the process of timely and properly addressing the leak in accordance with these revisions, the Division should afford the owner or operator the opportunity to fix the leak absent enforcement. However, by this provision, the Commission does not intend to exempt owners or operators from their obligation to operate without venting or to utilize good air pollution control practices at all times.

Storage Tanks Controls (Section XVII.C.)

EPA established a six (6) tpy VOC threshold on a controlled actual emissions basis for applying storage vessel controls. In contrast, Colorado uses the sum total emissions from a tank battery, where multiple tanks are manifolded together, on an uncontrolled actual emissions basis for applying reporting, permitting, and control requirements. This means that the EPA's six (6) tpy threshold on a controlled actual emissions basis applies to individual tanks having the equivalent of one hundred and twenty (120) tpy VOC on an uncontrolled actual basis. Thus, more storage tanks are regulated under Regulation Number 7, Section XVII. than under NSPS OOOO.

The Commission intends that under Regulation Number 7, Section XVII., air pollution control equipment may be removed if: (1) the storage tank (including manifolded tanks) emissions fall below the uncontrolled actual six (6) tpy threshold, on a rolling twelve month basis; and (2) those controls are not required by other applicable requirements. Conversely, if storage tank emissions increase above the uncontrolled actual six (6) tpy threshold on a rolling twelve month basis, air pollution control equipment must be installed within sixty (60) days of discovery of the increase.

The Commission does not intend for the storage tank control, or related, requirements to apply to frac tanks that are located at a well production facility for less than 180 consecutive days.

Control Efficiency (Section XVII.C.)

The Commission expands the 95% control efficiency requirement to apply to storage tanks containing any hydrocarbon liquids (including condensate, crude oil, produced water, and intermediate hydrocarbon liquids), for consistency with NSPS OOOO. Produced water and crude oil storage tanks, which in years past were thought to have insignificant emissions, can instead be significant sources of emissions. This rule change is also a result, in part, of the removal of the APEN exemption in 2008 for tanks containing crude oil and less than 1% crude. The Commission intends that the air pollution control equipment achieve an average hydrocarbon control efficiency of at least 95%, and if a combustion device is used the device must have a design destruction efficiency of at least 98%, with few exceptions. The Commission recognizes and expects that most flares can control hydrocarbon emissions by 98% or more when properly operated.

Audio, Visual, Olfactory ("AVO") and Visual Inspections (Section XVII.C.)

The Commission intends that owners and operators of subject storage tanks (including storage tanks during the first ninety (90) days of production and storage tanks containing only stabilized liquids) conduct applicable AVO and visual inspections for venting or leaking. Visual inspections are in addition to AVO monitoring and require further inspections of the storage tank and associated equipment, such as thief hatches and air pollution control equipment. These inspections are not required to occur at the same time as loadout. Instead, loadout triggers the requirement for AVO and visual inspection, and indicates the frequency at which inspection is required.

Storage Tank Emission Management System ("STEM") Plan, Monitoring, and Recordkeeping (Section XVII.C.)

Owners and operators of storage tanks with uncontrolled actual emissions equal to or greater than six (6) tpy must develop, certify, and implement a STEM plan designed to ensure compliance with the "without venting" requirement of Section XVII.C.2., among other requirements. Through STEM, owners and operators must evaluate and employ appropriate control technologies, monitoring, maintenance, and operational practices to avoid venting of emissions from storage tanks. The Commission intends that sources have flexibility to develop STEM plans on an individual basis for each storage tank or for multiple storage tanks. However, upon request, the owner or operator must be able to identify to the Division what STEM plan applies to a storage tank and make that plan available for review. Owners and operators of storage tanks controlled during the first ninety (90) days of production or containing only stabilized liquids are not required to develop and implement a STEM plan. However, owners or operators of such storage tanks must still comply with applicable control, capture, monitoring, and recordkeeping requirements.

For purposes of clarification, the STEM plan is intended to include, but is not limited to, the following elements:

- A monitoring strategy including, at a minimum, the applicable inspection frequencies and methodologies;

- An identification of the personnel conducting the monitoring, and any training program, materials, or training schedule for such personnel. This element does not require training, but ensures that any training be documented to permit the owner or operator to demonstrate the quality and achievements of the STEM plan;

- The calibration methodology and schedule for emission detection equipment used in the monitoring;

- An analysis of the engineering design of the storage tank and air pollution control equipment, and where applicable, the technological or operational methods employed to prevent venting;

- An identification of the procedures to be employed to evaluate ongoing capture performance after implementation of the STEM plan;

- A procedure to update the STEM plan when capture performance is not adequate, the STEM design is not operating properly, when otherwise desired by the owner or operator, or when required by the Division; and

- The certification made by the appropriate personnel with actual knowledge of the STEM design for each storage tank.

In addition to AVO and visual inspections for storage tanks, STEM plans must include AIMM inspections on a frequency schedule that is tied to the uncontrolled actual VOC emissions from the storage tank. The Commission intends that the AIMM inspection satisfy any simultaneous AVO and visual inspection requirement.

The STEM plan should be maintained by the owner or operator for the life of the storage tank, while records of applicable monitoring only need to be retained for a period of two years. Upon sale or transfer of ownership of a storage tank, the relevant documentation and records should be transferred with the ownership. Owners and operators are encouraged to reevaluate any existing STEM plan for the storage tank upon purchase or acquisition of the storage tank.

Unsafe, Difficult, or Inaccessible to Monitor (Sections XVII.C. and XVII.F.)

The Commission does not intend to require owners or operators to conduct either AVO or AIMM inspections of unsafe, difficult, or inaccessible components or storage tanks and associated equipment. The Commission acknowledges that, in limited circumstances, unsafe to monitor may include unsafe weather or travel conditions. However, in those limited circumstances, the Commission expects the owner or operator to resume monitoring once the weather or travel conditions cease to be unsafe. Importantly, the Commission does not intend to allow owners or operators to delay required monitoring for the entire winter season.

Glycol Natural Gas Dehydrators (Section XVII.D.)

The Commission expanded the state-wide control requirements for glycol natural gas dehydrators. This revision requires that all existing glycol natural gas dehydrators with uncontrolled actual VOC emissions of six (6) tpy or greater be controlled with air pollution control equipment achieving at least a 95% reduction. This revision also requires that existing glycol natural gas dehydrators with uncontrolled actual VOC emissions of two (2) tpy or greater be controlled if the dehydrator is located within 1,320 feet of a building unit or designated outside activity area. The definitions for building unit and designated outside activity area are taken from COGCC regulations. The Commission does not intend to apply this proximity requirement to the glycol natural gas dehydrator owner or operator's buildings, where public access to the building is also restricted. Further, because glycol natural gas dehydrators are different and unique sources, a similar proximity requirement for storage tanks is not appropriate at this time as storage tanks are more appropriately addressed based on emission thresholds. This revision also requires that all new glycol natural gas dehydrators with uncontrolled actual VOC emissions of two (2) tpy or greater be controlled with air pollution control equipment achieving at least 95% reduction. If a combustion device is used, it must have a design destruction efficiency of at least 98%, with few exceptions. The Commission recognizes and expects that most flares can control hydrocarbon emissions by 98% or more when properly operated.

Leak Detection and Repair Requirements (Section XVII.F.)

The Commission believes the detection and timely repair of leaks is important in the efforts to reduce hydrocarbon emissions. The use of appropriate inspection instruments and methods, such as IR cameras, enhances the detection and reduction of emissions. The leak detection and repair program more broadly targets leaks from components at natural gas compressor stations and well production facilities, even if such facilities do not include storage tanks. In contrast, STEM targets venting from storage tanks. The use of an AIMM as it relates to leak detection and repair frequency is generally intended to complement the STEM monitoring schedule. The Commission has created a phased schedule and tiered approach for leak detection and repair that is based on emissions, recognizing that smaller operators and facilities may have lower emissions and may need additional time to comply. Owners or operators have flexibility in how to meet the leak detection and repair requirements, including utilizing their own equipment and personnel or hiring a third party contractor. Owners or operators also have flexibility in timing the AVO and AIMM inspections to coordinate overlapping AVO and AIMM inspections, as well as inspections of facilities in the same area or on the same inspection frequency. The Commission intends that the AIMM inspection satisfy any simultaneous AVO inspection requirement. However, the Commission expects that owners and operators will also utilize this flexibility to ensure that inspections are appropriately spaced on the frequency schedule (e.g. quarterly inspections will occur every three months but not, for example, on March 31 and April 1).

The Commission distinguished between new and existing well production facilities by utilizing an October 1, 2014, commenced construction date and created an inspection phase-in schedule for existing facilities.

The Commission also distinguished the emissions thresholds for determining inspection frequencies for well production facilities with storage tanks and well production facilities without storage tanks. For well production facilities with storage tanks, the threshold determining inspection frequency is based on the uncontrolled actual VOC emissions from the highest emitting storage tank. For well production facilities without storage tanks, the threshold determining inspection frequency is based on "facility emissions." The Commission has determined that "facility emissions" means the controlled actual VOC emissions from all permanent equipment, including fugitive emissions calculated using the emission factors defined as less than 10,000 ppmv of Table 2-8 of the 1995 EPA Protocol for Equipment Leak Emission Estimates.

The Commission has defined a leak requiring repair in a manner that is dependent on the monitoring methodology. Leak detection methodologies have varied abilities to identify emission quantity and chemical makeup. EPA Method 21, for example, detects and quantifies hydrocarbon emission concentration, but does not speciate hydrocarbons (e.g., methane from other hydrocarbons) or identify the emission rate. Similarly, while IR cameras are becoming much more prevalent as a more affordable, time-saving, and user-friendly tool, they also do not speciate hydrocarbons or quantify the emission concentration. The Commission provides owners and operators flexibility in selecting a leak detection methodology.

If EPA Method 21 is utilized, the Commission set the threshold at which component leaks must be repaired at 2,000 parts per million ("ppm") hydrocarbons for existing natural gas compressor stations and 500 ppm for new (constructed after May 1, 2014) natural gas compressor stations and new and existing well production facilities. Where IR camera or AVO monitoring is utilized, a leak is any detectable emission not associated with normal equipment operation (e.g. the acceptable level of leaks from a component designed to leak). These values were determined based in part on a review of current federal or state leak detection and repair requirements for natural gas processing plants, refineries, and other oil and gas sources. Leak detection values have decreased over time, in recognition of improved technologies and business practices. NSPS OOOO identifies leaks at natural gas processing plants at 500 ppm. Prior to NSPS OOOO, leaks were identified in other New Source Performance Standards (NSPS KKK and NSPS VVa) at 10,000 ppm. In addition, California, Wyoming, and Pennsylvania have varying leak detection and repair requirements and approaches to defining a leak. Some California air quality districts generally define a minor leak as between 1,000 and 10,000 ppm. Wyoming does not have a numerical limit. Pennsylvania essentially defines a leak at a well pad as anything with detectable emissions utilizing Method 21, as more than 2.5% methane or 500 ppm VOC, or no visible leaks using an IR camera. Upon consideration of all of the evidence presented, the Commission chose to define component leak at the foregoing thresholds.

The Commission expects that leaks that are not located specifically at a component will be addressed and repaired, in accordance with the general requirements to minimize emissions and employ good air pollution control practices. Further, the Commission finds that the repair deadlines set forth in Section XVII.F.7. provide flexibility for operational differences, including the potential range of leaks and degrees of repair difficulty that may be encountered.

The Commission anticipates that many operators will choose to utilize IR cameras, in light of their relative ease of use and increased reliance by both by industry and regulators within Colorado and across the country.

The Commission expects that owners and operators will remonitor leaks requiring repair with either the approved instrument monitoring method the owner or operator used to identify the leak or any method approved for remonitoring of leaks under EPA Method 21.

The Commission expects that in most instances the leak detection and repair requirements of this regulation will apply in lieu of leak detection and repair requirements in permits existing as of the promulgation date of the revisions. The Commission recognizes that leak detection and repair

requirements in a few state permits may be federally enforceable, and this state-only regulation cannot supersede federal requirements. The Commission expects the Division and owners and operators to work cooperatively on the efficient implementation of leak detection and repair requirements, in those rare instances where there may be duplicative or competing requirements.

During the rulemaking, several parties requested more stringent requirements for all oil and gas operations located within 1,320 feet of a building unit or designated outside activity area. Residents living within close proximity to oil and gas operations, particularly those living within 1,320 feet of oil and gas operations, may understandably have heightened concerns regarding potential impacts of emissions from such facilities. It is the Commission's understanding that some oil and gas owners and operators implement practices beyond what is currently required under state law in order to minimize emissions and otherwise be good neighbors, including conducting increased site inspections. The Commission supports such practices.

Also during the rulemaking, various parties provided extensive evidence concerning the frequency of instrument monitoring method inspections, the timing of leak repair, and the costs and benefits associated with more or less frequent monitoring and repair. The Commission recognizes that additional information would benefit the Commission, Division, industry, and other stakeholders and therefore encourages the Division to work with energy companies, to evaluate the comparative effectiveness of various kinds of instrument based monitoring methods and program designs at a range of types, sizes, and frequencies at well production facilities and natural gas compressor stations.

The Commission also encourages the Division to work with industry and other stakeholders to evaluate emissions from and potential control strategies for downstream natural gas compressor stations and intermittent pneumatic controllers.

Lastly, several parties to the rulemaking requested greater transparency and public access to air quality information associated with oil and gas development. In particular, a coalition of local community organizations requested that owner and operators' annual reports as required by these rules be posted on the Division's website. The Commission believes these reports will provide important information when reviewing the efficacy of the inspection and maintenance program, as well as valuable information to interested citizens, particularly those who live in close proximity to oil and gas facilities. Therefore, the Commission requests that the Division make this information available in the most efficient means possible, which may include posting on the Division's website individual reports and/or a compilation summary. In addition, the Commission requests an annual briefing on these regulations. Such briefing will assist the Commission and interested stakeholders to understand the data and implementation issues relating to this new program, as well as other initiatives covered in this rulemaking. The Commission believes that this information would also be valuable to all parties.

Well Maintenance and Liquids Unloading (Section XVII.H.)

Over time, liquids build up inside a well and reduce flow out of the well. These liquids can slow and even block gas flow in wet gas wells and are removed during a well blowdown, also called liquids unloading. As a result of recent information, EPA has significantly increased their emission factor for liquids unloading. The uncontrolled emission factor is based upon fluid equilibrium calculations used to estimate the amount of gas needed to blow down a column of fluids blocking a well and Natural Gas STAR partner data on the amount of additional venting after a blowdown. Similar to the issues with well maintenance and well completion emissions, considerable uncertainty for liquid unloading emissions arises from the limited data sources used and the applicability of Natural Gas STAR program activities to calculate industry baseline emissions. This is especially important as liquid unloading emissions are estimated to comprise 33% of the uncontrolled methane emissions from the natural gas industry in the latest greenhouse gas inventory. EPA's Natural Gas STAR program advocates the use of a plunger lift system to reduce the need for liquids unloading, and indicates that such systems may pay for themselves in about one year. The Commission has determined that the use of technologies and practices to minimize venting, including plunger lift systems, are available and economically feasible, and encourages their use in Colorado.

Pneumatic Controllers (Section XVIII.)

The Commission recognized in a December 2008, rulemaking that pneumatic devices are a significant source of emissions. In addition, a 2013 University of Texas study concluded that methane emissions from pneumatics are higher than EPA previously estimated. Therefore, expanding the current low-bleed pneumatic device requirements statewide and further reducing emissions is appropriate and cost-effective. However, the Commission does not intend to expand the pneumatic device requirements to intermittent pneumatic controllers at this time. Further, while the use of low-bleed pneumatic controllers will result in a significant reduction of VOC and methane emissions from Colorado oil and gas facilities, no-bleed pneumatic controllers are currently commercially available to further reduce emissions from these sources. However, because these devices can only be used at facilities with adequate electric power, and given the high cost of electrifying a facility, the Commission is only requiring the use of no-bleed pneumatic controllers at facilities that are connected to the electric grid, using electricity to power equipment, and where technically and economically feasible.

Additional Considerations

In accordance with C.R.S. §§ 25-7-105.1 and 25-7-133(3) the Commission states the rules in Sections XVII. and XVIII. of Regulation Number 7 adopted in this rulemaking are state-only requirements and are not intended as additions or revisions to Colorado's SIP at this time.

In accordance with C.R.S. § 25-7-110.5(5)(b), the Commission determines:

(I) The revisions to Regulation Number 7 address VOC and other hydrocarbon emissions from oil and gas facilities, including storage tanks, glycol natural gas dehydrators, pneumatic controllers, well production facilities, and natural gas compressor stations. In addition to NSPS OOOO, NSPS Kb, and NSPS KKK, NESHAP HH, and NESHAP HHH may also apply to such oil and gas facilities. However, the Regulation Number 7 revisions apply on a broader basis to more storage tanks, glycol natural gas dehydrators, leaking components, and pneumatic controllers, and address more hydrocarbon emissions. For example, the Regulation Number 7 revisions address more glycol natural gas dehydrators than the major source provisions of NESHAP HH and HHH as well as more glycol natural gas dehydrators than the area source provisions of NESHAP HH, which are limited to TEG dehydrators. Similarly, the Regulation Number 7 revisions address more storage tanks than the major source provisions of NESHAP HH, as well as NSPS Kb, which exempt certain storage vessels storing condensate or petroleum prior to custody transfer. In addition, the Regulation Number 7 revisions address more component leaks than the major source provisions of NESHAP HH, as well as NSPS KKK, which has a 10,000 ppm leak threshold and only applies at natural gas processing plants.

Compared to NSPS OOOO, the revisions to Regulation Number 7 will apply a low- or no-bleed control requirement to more pneumatic controllers because NSPS OOOO only requires zero bleed pneumatic controllers at natural gas processing plants, while the Regulation Number 7 revisions no-bleed provision applies to all facilities. The revisions to Regulation Number 7 will also require a leak detection and repair program for more oil and gas operations because NSPS OOOO only requires leak detection and repair for natural gas processing plants, AVO inspections for storage vessels with controlled actual emissions greater than six (6) tpy, and annual visual inspections for leaks for subject centrifugal compressors. In contrast, the revisions to Regulation Number 7 require a leak detection and repair program for all components at all well production facilities and natural gas compressor stations. Further, the revisions to Regulation Number 7 will require storage tanks with uncontrolled actual emissions equal to or greater than 6 tpy VOC to control emissions with 95% efficiency, while NSPS OOOO's threshold is 6 tpy controlled actual emissions (i.e. 120 tpy uncontrolled actual emissions). It is the Commission's determination that, given the current and projected levels of oil and gas

development in Colorado combined with the advances in technology and business practices utilized by oil and gas operators, the revisions to Regulation Number 7 are appropriate to further address hydrocarbon emissions from this sector. Such emission reductions will, among other things, protect public health and the environment, address current and future ozone concerns specific to Colorado, reduce greenhouse gas emissions, and ensure the maximum beneficial use of a valuable natural resource.

(II) NSPS OOOO, and the other federal rules discussed in (I), are primarily technology-based in that they largely prescribe the use of specific technologies in order to comply. EPA has provided some flexibility in NSPS OOOO by allowing a storage vessel to avoid being subject to NSPS OOOO if the storage vessel is subject to any state, federal, or local requirement that brings the storage vessel's emissions below the NSPS OOOO threshold (greater than or equal to 6 tpy controlled actual VOCs). The Commission chose to set the revised Regulation Number 7 controls at 6 tpy on an uncontrolled actual emissions basis, and therefore provide Colorado's oil and gas operators a limit for calculating the controlled potential to emit of their storage vessels, which may be used to avoid NSPS OOOO applicability.

(III) Other federal requirements do not specifically and fully address the issues of concern to Colorado, or take into account concerns that are unique to Colorado. Specifically during the development of NSPS OOOO, Colorado submitted comments regarding, among other things, concerns with the storage vessel definition, storage vessel control requirements, and lack of leak detection and repair requirements. Colorado's concerns were not fully addressed in NSPS OOOO, therefore, the Commission believes the revisions to Regulation Number 7 are necessary to: (a) address hydrocarbon emissions in a more comprehensive manner; (b) address oil and gas operations and equipment at lower thresholds than NSPS OOOO thresholds, yet that collectively have significant VOC and other hydrocarbon emissions in Colorado; (c) address venting of emissions from storage tanks at oil and gas facilities caused primarily by over pressurization; and (d) address leaks of fugitive hydrocarbon emissions, particularly from well production facilities and natural gas compressor stations.

(IV) Compliance with the control requirements in the revisions to Regulation Number 7 provide Colorado's oil and gas operators a limit for calculating the controlled potential to emit of their storage vessels, thereby allowing many of these sources to avoid regulation under NSPS OOOO. Additionally, the revisions may prevent or reduce the need for more costly retrofits at a later date. Colorado may be required to comply with a lower ozone NAAQS in the near future and the Denver Metro/North Front Range area is currently in nonattainment with the ozone NAAQS, while other areas in the State are seeing elevated ozone levels, including areas of increasing oil and gas development. The revised rules are proactive and intended to reduce ozone levels now by utilizing controls and techniques already being used by some Colorado oil and gas operators, or that are readily available.

(V) Adoption of these revisions at this time allows many of Colorado's oil and gas operators to utilize the controls established in the revisions to Regulation Number 7 to avoid NSPS OOOO storage vessel requirements. Postponement of adoption would potentially subject these sources to compliance with NSPS OOOO and then compliance with State requirements once State controls become effective.

(VI) The revisions to Regulation Number 7 do not place limits on the growth of Colorado's oil and gas industry. Instead, the rules address hydrocarbon emissions from the oil and gas sector in a cost-effective manner, allowing for continued growth of Colorado's oil and gas industry. Indeed, the oil and gas industry has already grown in Colorado while utilizing many of the technologies and practices set forth in these revisions.

(VII) The revisions to Regulation Number 7 establish reasonable equity for oil and gas owners and operators subject to these rules by providing the same standards for similarly situated and sized sources. Rules of general applicability have been developed along with tiered requirements and exclusions that tailor the rules to the regulated sources within the oil and gas sector. Furthermore, the application of the Regulation Number 7 revisions to oil and gas owners and operators regardless of location in the ozone nonattainment or attainment areas is equitable because the nonattainment area is not the only area in Colorado with ozone issues. For example, the Rangely monitor in western Colorado shows violations of the 2008 ozone standard and existing modeling shows that either the nonattainment area has increased its contribution to background ozone or ozone concentrations in the attainment area flowing into the nonattainment area have increased. Notably, the Division's inventory shows that the oil and gas industry contributes more than 50% of the VOC emissions outside the nonattainment area. This monitoring, modeling, and inventory data, considered with the likelihood of a lower ozone NAAQS and the expected growth of the oil and gas sector state-wide, supports the application of the Regulation Number 7 revisions to oil and gas sources in both the nonattainment and attainment areas.

(VIII) The oil and gas industry is a large anthropogenic stationary source of VOCs, a precursor pollutant to ozone. If the revisions to Regulation Number 7 are not adopted, other aspects of oil and gas operations or other sectors may be looked to for additional emission reductions. In reductions must come from other operations or sectors at this time, the cost effectiveness would decrease because these revisions reduce emissions from the most significant contributors to VOC emissions and costs will be higher for less emissions reductions from less significant contributors.

(IX) The majority of sources subject to the revised rules in Regulation Number 7 will not be subject to federal procedural, reporting, or monitoring requirements. Those few sources subject to both NSPS OOOO (e.g. storage vessels emitting 120 tpy uncontrolled actual VOC emissions) or NESHAP HH and HHH (e.g. glycol natural gas dehydrators at major sources of HAPs and TEG glycol natural gas dehydrators at area sources of HAPs) and Regulation Number 7 will be required to comply with both regulations. The procedural, reporting, and monitoring requirements of Regulation Number 7, to the extent different than federal requirements, are necessary to ensure compliance with and document the effectiveness of the revisions.

(X) Demonstrated technology is available to comply with the revisions to Regulation Number 7. Some of the revisions expand upon requirements already applicable in the 8-Hour Ozone Nonattainment Area state-wide, such as the requirements for auto-igniters and pneumatic controllers. In addition, oil and gas owners and operators are already using many of the control devices and techniques intended to be used to comply with these revisions. The lead-in time provides owners and operators time to install control devices and develop plans for compliance. Should unanticipated events occur, such as a lack of availability of control devices, the revisions provide for Division approved extensions to compliance.

(XI) As set forth in the Economic Impact Analysis, the revisions to Regulation Number 7 will contribute to the prevention of hydrocarbon emissions in a cost-effective manner. Significantly, the Commission expressly finds that the cost-effectiveness of the VOC emission reductions alone supports the revisions to Regulation Number 7. The reductions of other hydrocarbon emissions, such as methane, add to the already cost-effective and appropriate emission reduction requirements.

(XII) Alternative rules, such as the alternative proposals provided by several parties during the rulemaking process, requiring differing or additional controls for oil and gas facilities could also provide reductions in hydrocarbon emissions. The Commission could have adopted

some or all of the proposed revisions or proposed alternatives. However, the proposed revisions to Regulation Number 7 were developed during a lengthy stakeholder process and provided a balanced approach, reducing emissions from the oil and gas industry while allowing the sector to continue to play a critical role in Colorado's economy and the nation's energy independence. The alternative proposals provided during the rulemaking process were primarily either more or less stringent versions of the proposed revisions, further illustrating the balanced approach of the proposed revisions. Furthermore, a no action alternative would very likely only delay future reductions in hydrocarbon emissions, including ozone precursor pollutants, necessary for reducing ozone in Colorado.

As part of adopting the revisions to Regulation Number 7, the Commission has taken into consideration each of the factors set forth in C.R.S. § 25-7-109(1)(b).

The incorporation by reference of NSPS OOOO in Regulation Number 6 does not affect the requirements of these revisions to Regulation Number 7. Instead, these revisions to Regulation Number 7 are designed and intended to address differences and overlaps between NSPS OOOO and current state requirements, and to include additional emission control measures for oil and gas production and equipment. To the extent that C.R.S. § 25-7-110.8 requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

(II) Evidence in the record supports the finding that the rules shall result in a demonstrable reduction of hydrocarbon emissions.

(III) Evidence in the record supports the finding that the rules shall being about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.

(IV) The rules are the most cost-effective to achieve the necessary and desired results, provide the regulated community flexibility, and achieve the necessary reduction in air pollution.

(V) The selected regulatory alternative will maximize the air quality benefits of regulation in the most cost-effective manner.

XX.O. November 17, 2016 (Sections I., X., XII., XIII., XVI., XIX.)

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the Colorado Administrative Procedure Act Sections 24-4-103(4), the Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-110 and 25-7-110.5., and the Air Quality Control Commission's ("Commission") Procedural Rules.

Basis

On May 21, 2012, the Denver Metro/North Front Range ("DMNFR") area was designated as Marginal nonattainment for the 2008 8-hour Ozone National Ambient Air Quality Standard ("NAAQS"), effective July 20, 2012 (77 Fed. Reg. 30088). On May 4, 2016, the U.S. Environmental Protection Agency's ("EPA") published a final rule that determined that DMNFR area failed to attain the 2008 8-hour Ozone NAAQS by the applicable Marginal attainment deadline and therefore reclassified the DMNFR area to Moderate and required attainment of the NAAQS no later than July 20, 2018, based on 2015-2017 ozone season data. Due to the reclassification, additional planning requirements were triggered, including the requirement to submit revisions to the State Implementation Plan ("SIP") that address the Clean Air Act's

("CAA") Moderate nonattainment area requirements, as set forth in CAA Section 182(b) and the final SIP Requirements Rule for the 2008 Ozone NAAQS (*See* 80 Fed. Reg. 12264 (March 6, 2015)).

Statutory Authority

The Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-101, et seq., ("Act"), Section 25-7-105(1)(a) directs the Commission to promulgate such rules and regulations necessary for the proper implementation and administration of a comprehensive state implementation plan that will assure attainment and maintenance of national ambient air quality standards. Section 25-7-301 directs the Commission to develop a program providing for the attainment and maintenance of each national ambient air quality standard in each nonattainment area of the state. Section 25-7-106 provides the Commission flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program. Section 25-7-106(1)(c) and (2) also authorize the Commission to promulgate emission control regulations applicable to the entire state, specified areas or zones, or a specified class of pollution, and monitoring and recordkeeping requirements. Section 25-7-109(1)(a) authorizes the Commission to promulgate regulations requiring effective and practical air pollution controls for significant sources and categories of sources of air pollutants.

Purpose

The Regional Air Quality Council ("RAQC") and the Colorado Department of Public Health and Environment, Air Pollution Control Division ("Division") conducted a public process to develop the associated SIP and supporting rule revisions. Separately, EPA had expressed concerns with approving previous Regulation Number 7 revisions related to oil and gas control requirements and submitted in 2009 and 2013 for inclusion in Colorado's ozone SIP.

In response to these related but separate issues, the Commission revised Regulation Number 7 to strengthen Colorado's ozone SIP; and include reasonably available control technology ("RACT") requirements for lithographic and letterpress printing, industrial cleaning solvents, and major sources of volatile organic compounds ("VOC") or nitrogen oxides ("NOx"). More specifically, the Commission revised the applicability of Regulation Number 7 in Section I.A.1.; included the existing combustion device auto-igniter requirements in Section XII.C.1.e. and XII.E.2. in Colorado's ozone SIP; included existing audio, visual, olfactory ("AVO") storage tank inspection requirements for condensate storage tanks in Colorado's ozone SIP in Section XII.E.4.e.; added requirements for lithographic and letterpress printing in Section XIII.B.; added requirements for industrial cleaning solvents in Section X.E.; and added requirements for major sources in Sections XVI. and XIX.

Apart from the Moderate nonattainment area ozone SIP, the Commission revised Regulation Number 7 to address EPA's monitoring, recordkeeping, reporting, and other concerns with previously submitted Regulation Number 7 revisions. The Commission updated federal rule references for natural gas processing plants in Section XII.G.1.; renumbered the current Sections XII.G.5. and XII.G.6. under Section XII.I.; added monitoring, recordkeeping, and reporting requirements for glycol natural gas dehydrators in Sections XII.H.5. and XII.H.6.; and addressed other EPA concerns in Sections XII.C.1.c., XII.C.1.d., XII.C.2.a.(ii)(B), XII.E.3., and XII.H.4.

The revisions also correct typographical, grammatical, and formatting errors found through the regulation.

The following explanations provide further insight into the Commission's intention for certain revisions and, where appropriate, the technological or scientific rationale for the revision.

Ozone reclassification SIP revisions

8-hour ozone control area

All provisions of Regulation Number 7 currently apply to the Denver 1-hour ozone nonattainment and attainment/maintenance area. The 1-hour ozone area does not include all of Adams and Arapahoe counties or the portions of Larimer and Weld counties included in the 8-hour ozone control hour. Therefore, to ensure that all sources in the 8-hour ozone nonattainment area are subject to applicable RACT requirements in Regulation Number 7 on a federally enforceable basis, the Commission revised Regulation Number 7, Section I.A.1.a. to state that all provisions apply to both the 1-hour and 8-hour ozone areas. The Commission intends that provisions clearly marked "state-only" continue to be enforceable only on a state-only basis, and are not included in the SIP.

Auto-igniter and storage tank AVO

Regulation Number 7, Section XII.C.1.e. includes auto-igniter requirements for combustion devices used to control emissions of VOCs. Pursuant to Section XII.E., the auto-igniter must be inspected weekly to ensure it is properly functioning. Prior to the revision, these requirements were "state-only". The Commission revised these provisions to include the auto-igniter installation, operation, and monitoring requirements in the SIP.

Regulation Number 7, Section XII.E. includes requirements for owners or operators of condensate storage tanks subject to Section XII.D. to inspect combustion devices, vapor recovery units, control devices, and thief hatches. These are SIP requirements. Regulation Number 7, Section XVII.C.1.d. also requires of owners or operators of storage tanks subject to Section XVII. to conduct AVO and additional visual inspection at the same frequency as liquids load-out. The requirements of Section XVI.C.1.d. are enforceable on a "state-only" basis. The Commission revised Section XII. to include in the SIP the requirement that owners and operators conduct AVO inspections of condensate storage tanks with uncontrolled actual VOC emissions of 6 tons per year ("tpy") or greater, making them federally enforceable.

Lithographic and letterpress printing RACT

Pursuant to CAA Section 182(b), Colorado's ozone SIP must provide for implementation of RACT at sources of VOC for which EPA has issued a Control Technique Guideline ("CTG"). EPA's Offset Lithographic Printing and Letterpress Printing CTG ("Printing CTG") addresses VOC emissions from the use of fountain solutions, cleaning materials, and inks at lithographic and letterpress printing operations. The Printing CTG recommends controlling VOC emissions from heatset printing with dryer emissions of at least 25 tpy of VOC from heatset inks with add-on control technology. The Printing CTG recommends controlling VOC emissions from cleaning materials and fountain solutions at printing operations with facility emissions equal to or greater than 15 lb/day by limiting the VOC content of cleaning materials and fountain solutions. The Printing CTG also recommends work practices for printing operations with facility emissions equal to or greater than 15 lb/day.

Colorado has sources in the ozone nonattainment area in this CTG VOC source category not currently subject to regulatory RACT requirements. Therefore, the Commission included these requirements in Section XIII.B. as RACT for these sources. However, rather than an applicability threshold of 15 lbs/day, the Commission adopted an applicability threshold of 3 tpy. This is roughly equivalent to the 15lbs/day threshold recommended in the Printing CTG. Based on the Printing CTG, the Commission added language to Section XIII.B.1.b. clarifying that fountain solutions, cleaning materials, inks (which include varnishes) and coatings used in lithographic and letterpress printing presses are considered part of the printing process and are not subject to the surface coating or industrial cleaning solvent requirements in Regulation Number 7. With respect to the compliance threshold for Section XIII.B., if the preceding 2 calendar year average indicates that a source meets or exceeds the 3 tpy threshold, then the source must comply with Section X.E. for the current calendar year. Only emissions from the printing operation and cleaning thereof should be considered in determining if emissions exceed 3 tpy.

The Commission included additional work practices, a VOC content limit for inks and monitoring, recordkeeping and performance testing requirements that are not specified in the Printing CTG but are intended to correspond to current permit requirements and ensure the enforceability of the requirements.

With respect to the work practice requirements contained in Section XIII.B.1.c., the Commission applied these requirements to all lithographic and letterpress printing operations, regardless of potential or actual VOC emissions, because they are minimally burdensome, good housekeeping requirements that reduce emissions and correspond to current permit requirements. With respect to the VOC content limit for inks, the Commission included a 40% limit for heatset web offset and heatset web letterpress printing operations that require higher VOC content ink, and a 30% limit for all other lithographic and letterpress printing operations that are commonly already using low VOC inks. Compliance with the VOC content requirement for inks is demonstrated using a weighted average which takes into account the amount of the different inks used and their respective VOC contents.

For consistency with the Printing CTG, cleaning solutions are subject to VOC content or vapor pressure requirements, except that sources using less than 110 gallons of non-compliant cleaning materials per calendar year are exempt from the VOC content or vapor pressure requirements. Larger heatset printing operations, whose maximum allowable emissions before controls from petroleum inks are 25 tpy VOC or more, are subject to a control requirement (not capture and control). Printing operations' emissions are more difficult to capture, and so capture is not considered in the percent control requirements. However, good air pollution control practices apply at all times.

Industrial cleaning solvents RACT

EPA's CTG for Industrial Cleaning Solvent ("Cleaning Solvent CTG") addresses solvent use in cleaning operations such as spray gun cleaning, spray booth cleaning, large manufactured components cleaning, parts cleaning, equipment cleaning, line cleaning, floor cleaning, tank cleaning, and small manufactured components cleaning. The Cleaning Solvent CTG applies to facilities with VOC emissions from the use of industrial cleaning solvents equal to or greater than 15 lb/day of VOC. The Cleaning Solvent CTG recommends a cleaning solvent VOC content limit and work practices.

Colorado has sources in the ozone nonattainment area in this Cleaning Solvent CTG VOC source category not currently subject to regulatory RACT requirements. Therefore, the Commission included requirements in Section X.E. as RACT. However, rather than an applicability threshold of 15 lbs/day, the Commission adopted an applicability threshold of 3 tpy on a calendar basis. This is roughly equivalent to the 15lbs/day threshold recommended in the CTG. The Commission intended for the term "industrial cleaning solvent operation" to be broad and apply to a wide range of work areas where manufacturing or repair activities are performed, but not to residential or janitorial cleaning.

The Commission included language to clarify that VOC emissions that are exempt from the industrial cleaning solvent rule do not count toward this 3 tpy threshold. Therefore, when determining whether a facility meets the applicability threshold of 3 tpy, a source should include facility-wide emissions from all industrial cleaning solvent operations and subtract those emissions that are exempt under Section X.E.4. In adopting the VOC content limit in Section X.E.1.a. and the vapor pressure limit in Section X.E.1.b., the Commission intended for these to be straight, as-applied limits for all industrial cleaning solvents used and not a weighted average. Additionally, in adopting the 90% control efficiency compliance option in Section X.E.1.c., the Commission did not intend for this control efficiency to include capture efficiency. The Commission acknowledged that capture efficiency may be lower than the control efficiency because industrial cleaning solvents are often used over large industrial complexes and result in relatively small VOC emissions.

With respect to the compliance threshold for Section X., if the preceding 2 calendar year average indicates that a source meets or exceeds the 3 tpy threshold, then the source must comply with Section X.E. for the current calendar year. The Commission also included monitoring, recordkeeping and reporting requirements that are not specified in the Cleaning Solvent CTG but are intended to align with current permit recordkeeping requirements and ensure the enforceability of the requirements.

The Commission included language in Section X.E.4.a.(ii) providing that industrial cleaning solvent operations subject to a work practice or emission control requirement in another federally enforceable section of Regulation Number 7 that establishes RACT are exempt from the requirements of Section X.

This provision was included so as not to subject sources to overlapping, duplicative, or contradictory RACT requirements. Therefore, if an industrial cleaning solvent operation is subject to a work practice or emission control requirement contained in another, federally approved section of Regulation Number 7, including but not limited to Sections IX. (surface coating operations), X.B. through X.D. (solvent cold-cleaners, non-conveyorized degreasers, and conveyorized degreasers), and XIII. (graphic arts and printing), then that operation would not also be subject to the requirements of Section X.E.4. However, this provision is not intended to exempt an industrial cleaning solvent operation from Section X. when the operation is subject to the restriction on disposal of VOCs by evaporation or spillage contained in to Section V.A. (and RACT is determined to be nothing). Therefore, if an industrial cleaning solvent operation is subject to Section V.A. and RACT is determined to be nothing, the operator must comply with Section X. Conversely, if an industrial cleaning solvent operation is subject to Section V.A. and RACT is determined to be a work practice or emission control requirement, then the operation is exempt from Section X. Lastly, the Commission adopted additional exemptions recommended in the Cleaning Solvent CTG in Section X.E.4.b. as well as an alternative compliance option for area source aerospace facilities in Section X.E.4.c. due to the unique solvent cleaning needs of those source categories.

Control requirements do not account for capture and control. General industrial solvent use emissions are more difficult to capture, and so capture is not considered in the percent control requirements. However, good air pollution control practices apply at all times.

Major VOC and NOx source RACT

Colorado has major sources of VOC or NOx (sources that emit or have the potential to emit greater than 100 tpy) in the DMNFR. While many of these sources are currently subject to regulatory RACT requirements in Colorado's SIP, some of the sources or emissions points are subject to RACT requirements in federally enforceable permits or New Source Performance Standard ("NSPS") or National Emission Standard for Hazardous Air Pollutants ("NESHAP"). However, as a Moderate nonattainment area, Colorado is submitting a SIP revision to include provisions requiring the implementation of RACT for major sources of NOx or VOC in the DMNFR. Therefore, the Commission included a work practice for combustion equipment at major sources of NOx emissions in Section XVI., a requirement for specific major sources to provide RACT analyses to the Division in Section XIX.B., and incorporated by reference applicable requirements of a NSPS or NESHAP in Sections XIX.C-G.

Specifically, the Commission adopted a combustion process adjustment requirement for individual pieces of combustion equipment at major sources of NOx in Section XVI.D., expanding on work practices currently required in federal NESHAP. The combustion process adjustment was modeled after NESHAP DDDDD, which applies to boilers and process heaters at major HAP sources, and NESHAP ZZZZ, which establishes various requirements for stationary reciprocating internal combustion engines. Section XVI.D. is intended to apply to some equipment that is not subject to work practices under the NESHAPs (e.g., natural gas fired boilers at area sources of HAPs) that have uncontrolled actual NOx emissions (annual emission rate corresponding to the annual process rate listed on the Air Pollutant Emission Notice without consideration of any emission control equipment or procedures) equal to or greater than 5 tpy. The Commission intended major NOx sources to use the most recent APEN submitted to the Division as of January 1, 2017, to determine whether the combustion equipment is subject to the requirement to conduct an initial combustion process adjustment by April 1, 2017, or alternatively document reliance on an allowed, alternative adjustment. Subsequent determinations will be based on the most recent APEN submitted to the Division as of the year the combustion equipment may be subject to the combustion process adjustment requirements (e.g., most recent APEN submitted to the Division as of January 1, 2018, to determine whether a combustion process adjustment is required in 2018). In addition to the specific adjustment requirements, the Commission intended owners and operators to operate and maintain subject equipment consistent with manufacturer specifications or best combustion engineering practices.

The Commission also established RACT requirements for emission points at major sources of VOC or NOx in the DMNFR area in Section XIX. In Section XIX.A., the Commission listed all major sources of VOC or NOx at the time of adoption of the Moderate nonattainment area RACT SIP. The Commission

determined that not all emission points above permitting thresholds at major sources were necessarily subject to existing regulatory RACT requirements in Regulation Number 7 or federally enforceable emission limits in Colorado's Regional Haze SIP. Therefore, in Sections XIX.C. through XIX.G., the Commission incorporated federal NSPS or NESHAP requirements, including monitoring, recordkeeping, and reporting requirements, for some sources to further satisfy Colorado's RACT obligation for Colorado's major VOC and NOx sources. The Commission acknowledges concerns over potential EPA revisions to NSPS and NESHAP incorporated by reference in Sections XIX.C.through XIX.G., and intended that sources comply with applicable requirements in the most up-to-date version of the federal rule, or alternative requirements approved by EPA in accordance with the NSPS or NESHAP. The Commission also directs the Division to initiate efforts to update the incorporation by reference in the SIP, as necessary and with all due diligence. Sources identified in Section XIX.A. but not specifically included in Sections XIX.B. through XIX.G., were determined to be subject to other, existing regulatory RACT requirements in Colorado's SIP (see the Moderate ozone SIP revision, RACT Chapter 6 and the Technical Support Document for Reasonably Available Control Technology for Major Sources for additional detail). Concerning major sources or source emission points not subject to other, existing regulatory RACT requirements in Colorado's SIP or specified in Sections XIX.C. through XIX.G., the Commission required owners or operators to submit RACT analyses for the facility or specific emission points to the Division by December 31, 2017. The RACT analyses should identify potential options to reduce NOx and/or VOC emissions from the facility or emission point(s), propose RACT for that facility or point, propose associated monitoring, propose a schedule for implementation, and include economic and technical information showing why the RACT proposal is RACT for the particular facility or point. These RACT analyses are not to be limited by a January 1, 2017, implementation date.

CoorsTek submitted a permit application to limit permitted emissions of VOC below 100 tpy. Metro Wastewater Reclamation District submitted an application for minor modification to its Title V permit to correct inconsistencies and remove obsolete limits, which lowered the combined Metro Wastewater/Suez Denver Metro permitted NOx emission limit below 100 tpy. Consequently, the Commission determined that the facilities no longer met the definition of a major source, and therefore were not included in Section XIX. Should either source fail to obtain such federally enforceable permits by July 1, 2018, the Commission directs the Division, with all due diligence, to initiate efforts to establish RACT requirements for that source in Colorado's ozone SIP.

Current SIP review

In 2009, the Commission submitted revisions to Regulation Number 7, Section XII. to EPA related to the 1997 ozone NAAQS attainment plan. In 2011, EPA approved the attainment demonstration but disapproved portions of the Regulation Number 7 revisions. In 2013, the Commission submitted revisions to Regulation 7, Section XII. to EPA to address EPA's disapproval. During the review of the 2013 submittal, EPA noted additional concerns with the monitoring, recordkeeping, and reporting requirements for natural gas processing plants and glycol natural gas dehydrators, as well as other concerns unrelated to the attainment demonstration for the SIP revision required following the reclassification of the DMNFR area to Moderate.

Natural gas processing plants

Regulation Number 7, Section XII.G.1. identifies a leak detection and repair ("LDAR") program applicable to natural gas processing plants. This "LDAR program" includes all applicable requirements in NSPS KKK. EPA has promulgated new LDAR programs for natural gas processing plants in NSPS OOOO and NSPS OOOOa. Therefore, the Commission updated references to applicable federal NSPS (i.e., NSPS OOOO and NSPS OOOOa) monitoring, recordkeeping, and reporting requirements for natural gas processing plants in the SIP.

Glycol natural gas dehydrators

Regulation Number 7, Section XII.H. already includes a 90% control requirement for glycol natural gas dehydrators. This is a SIP requirement. During the review of the 2013 submittal, EPA noted practical

enforceability concerns with the monitoring, recordkeeping, and reporting requirements for glycol natural gas dehydrators. Therefore, the Commission added monitoring, recordkeeping, and reporting requirements for glycol natural gas dehydrators in the SIP to address EPA's concerns with ensuring compliance with the control requirement. The Commission based these requirements off of the Division's glycol natural gas dehydrator Operation and Maintenance Plan template to align the Section XII.H. monitoring, recordkeeping, and reporting requirements with the Operation and Maintenance Plan template, where possible. For any glycol dehydration system monitoring, recordkeeping and reporting requirement adopted for inclusion in the SIP during this hearing that conflicts with a similar provision in a Division approved Operation and Maintenance Plan, the Commission intends that sources only have to comply with the provision adopted for inclusion in the SIP and not the competing requirement in the approved Operation and Maintenance Plan. Further, the Commission directs the Division to work with industry to revise the Division's glycol dehydration systems Operating and Maintenance Plan template to remove requirements that are duplicative of the Section XII.H. monitoring, recordkeeping, and reporting requirements, to alleviate competing requirements with Section XII.H., as necessary.

EPA requested revisions

EPA also noted concerns with other previously submitted provisions in Section XII. EPA requested minor changes to Section XII.C.1.c., and a reversion to previously approved SIP language in Sections XII.C.1.d. and XIII.E.3.a. to address concerns with discretionary language. In response, the Commission revised Section XII.C.1.c. and reverted to previously approved SIP language in Sections XII.C.1.d. and XII.E.3.a., as requested by EPA.

Incorporation By Reference in Section XIX

Section 24-4-103(12.5) of the Colorado Administrative Procedure Act allows the Commission to incorporate by reference federal regulations. The criteria of §24-4-103(12.5) are met by including specific information, making the regulations available and because repeating the full text of each of the federal regulations incorporated would be unduly cumbersome and inexpedient. However, these regulations are included in the SIP in order to establish RACT, which must be included in the SIP to satisfy CAA Sections 172(c) and 182(b). Therefore, in order to comply with Part D of the CAA, the Commission has incorporated federal regulations in Section XIX.C through H by reference.

Additional Considerations

Colorado must revise Colorado's ozone SIP to address the ozone Moderate nonattainment area requirements. The CAA does not expressly address all of the provisions adopted by the Commission. Rather, federal law establishes the 8-hour ozone NAAQS and requires Colorado to develop a SIP adequate to attain the NAAQS. Therefore, the Commission adopted certain revisions to Regulation Number 7 to ensure attainment with the 2008 8-hour ozone NAAQS and satisfy Colorado's Moderate nonattainment area obligations, including those related to RACT. The Commission also adopted revisions to Regulation Number 7 to address EPA concerns that are unrelated to the reclassification to Moderate. These revisions do not exceed or differ from the federal act due to state flexibility in developing nonattainment area SIPs; however, in accordance with C.R.S. § 25-7-110.5(5)(b), the Commission nonetheless determines:

(I) The revisions to Regulation Number 7 address combustion device auto-igniters, condensate storage tank inspections, and glycol natural gas dehydrators at oil and gas facilities and equipment leaks at natural gas processing plants. NSPS OOOO, NSPS OOOOa, NSPS Kb, NSPS KKK, NESHAP HH, and NESHAP HHH may also apply to such oil and gas facilities. However, the Regulation Number 7 revisions apply on a broader basis to more storage tanks and glycol natural gas dehydrators. For example, Regulation Number 7 addresses more glycol natural gas dehydrators than the major source provisions of NESHAP HH and HHH as well as more glycol natural gas dehydrators than the area source provisions of NESHAP HH, which are limited to tri ethylene glycol ("TEG") dehydrators. The Commission revised Regulation Number 7 to

include glycol natural gas dehydrator monitoring, recordkeeping, and reporting requirements to ensure compliance with the current 90% system-wide control requirement in Section XII.D. Similarly, Regulation Number 7 addresses more storage tanks than the major source provisions of NESHAP HH, as well as NSPS Kb, which exempt certain storage vessels storing condensate or petroleum prior to custody transfer. Regulation Number 7 also addresses a broader set of storage tanks than NSPS OOOO and NSPS OOOOa, which address only those storage tanks with emissions greater than 6 tpy controlled actual emissions (i.e., 120 tpy uncontrolled actual emissions) and do not require auto-igniters on combustion devices. The Commission revised Regulation Number 7 to include the auto-igniter and condensate storage tank AVO inspections in Colorado's SIP to strengthen Colorado's SIP and support Colorado's 2017 emissions inventory. In addition, Regulation Number 7 addresses more equipment leaks at natural gas processing plants than NSPS KKK, which only applies to natural gas processing plants constructed, reconstructed, or modified after January 20, 1984. The Commission revised Regulation Number 7 to reference the more recent equipment leak detection and repair requirements in NSPS OOOO and NSPS OOOOa.

The revisions to Regulation Number 7 also address RACT requirements for lithographic and letterpress printing, industrial cleaning solvents, and major sources of VOC and NOx in Colorado's ozone nonattainment area. EPA published CTGs for lithographic and letterpress printing and industrial cleaning solvents in 2006. The Commission revised Regulation Number 7 to include regulatory RACT requirements for these VOC source categories. Colorado's major sources of VOC and NOx are subject to various and numerous NSPS or NESHAP, Regulation Number 7 RACT requirements, or RACT/beyond RACT analyses. The Commission revised Regulation Number 7 to include regulatory RACT requirements for Colorado's major sources of VOC and NOx in the SIP. Specifically, the Commission revised Regulation Number 7, Sections XVI. and XIX. to include source specific regulatory RACT requirements and a combustion process adjustment for combustion equipment at major sources of NOx. MACT DDDDD, MACT JJJJJJ, MACT ZZZZ, MACT YYYY, NSPS GG, NSPS KKKK, NSPS IIII, and NSPS JJJJ may apply to such combustion equipment. However, the Regulation Number 7 revisions apply on a broader basis to more combustion equipment.

(II) The federal rules discussed in (I), are primarily technology-based in that they largely prescribe the use of specific technologies in order to comply. EPA has provided some flexibility in NSPS OOOO and NSPS OOOOa by allowing a storage vessel to avoid being subject to NSPS OOOO if the storage vessel is subject to any state, federal, or local requirement that brings the storage vessel's emissions below the NSPS OOOO threshold.

(III) The CAA establishes the 8-hour ozone NAAQS and requires Colorado to develop SIP revisions that will ensure attainment of the NAAQS. The ozone NAAQS was not determined taking into account concerns unique to Colorado. In addition, Colorado cannot rely exclusively on a federally enforceable permit or federally enforceable NSPS or NESHAP to satisfy Colorado's Moderate nonattainment area RACT obligations. Instead, Colorado can adopt applicable provisions into its SIP directly, as the Commission has done here.

(IV) Colorado will be required to comply with a lower ozone NAAQS in the near future. These current revisions may improve the ability of the regulated community to comply with new requirements needed to attain the lower NAAQS insofar as RACT analyses and efforts conducted to support the revisions adopted by the Commission may prevent or reduce the need to conduct additional RACT analyses for the more stringent NAAQS.

(V) EPA has established a January 1, 2017, deadline for this SIP submission. There is no timing issue that might justify changing the time frame for implementation of federal requirements.

(VI) The revisions to Regulation Number 7 Section XII. strengthen Colorado's SIP, which currently addresses emissions from the oil and gas sector in a cost-effective manner, allowing for continued growth of Colorado's oil and gas industry. The revisions to Regulation Number 7 Sections X. and XIII. recognize products and practices currently utilized by printing and industrial cleaning solvent operations. The revisions to Regulation Number 7 Sections XVI. and XIX. are also specific to existing emission points at major sources of VOC and NOx, allowing for continued growth at Colorado's major sources.

(VII) The revisions to Regulation Number 7 Section XII. establish reasonable equity for oil and gas owners and operators subject to these rules by providing the same standards for similarly situated and sized sources. The revisions to Regulation Number 7 Sections X., XIII., and XVI. similarly establish the categorical RACT requirements for similarly situated and sized sources. Where a source is not subject to a categorical RACT requirement, RACT is, by its nature, determined on a case-by-case basis.

(VIII) If Colorado does not attain the 2008 ozone NAAQS by July 20, 2018, EPA will likely reclassify Colorado as a serious ozone nonattainment area, which automatically reduces the major source thresholds from 100 tons per year of VOC and NOx to 50 tons per year; thus subjecting more sources to major source requirements. If EPA does not approve Colorado's SIP, EPA may promulgate a Federal Implementation Plan; thus potentially determining RACT for Colorado's sources. Either of these outcomes may subject others to increased costs.

(IX) Where necessary, the revisions to Regulation Number 7 include minimal monitoring, recordkeeping, and reporting requirements that correlate, where possible, to similar federal or state requirements.

(X) Demonstrated technology is available to comply with the revisions to Regulation Number 7. Some of the revisions expand upon requirements already applicable, such as the requirements for auto-igniters, condensate storage tank inspections, and equipment leaks at natural gas processing plants. Other revisions reflect changes in industry practice and market forces, such as the VOC content of printing materials and cleaning solvents. Similarly, the revisions concerning major sources of VOC and NOx generally reflect current emission controls and work practices.

(XI) As set forth in the Economic Impact Analysis, the revisions to Regulation Number 7 contribute to the prevention of ozone in a cost-effective manner.

(XII) Alternative rules could also provide reductions in ozone and help to attain the NAAQS. The Commission determined that the Division's proposal was reasonable and cost-effective. However, a no action alternative would very likely result in an unapprovable SIP.

As part of adopting the revisions to Regulation Number 7, the Commission has taken into consideration each of the factors set forth in C.R.S. § 25-7-109(1)(b).

Colorado must revise Colorado's ozone SIP to address the Moderate Nonattainment area requirements. However, to the extent that C.R.S. § 25-7-110.8 requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

(II) Evidence in the record supports the finding that the rules shall result in a demonstrable reduction of the ozone precursors VOC and NOx.

(III) Evidence in the record supports the finding that the rules shall being about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.

(IV) The rules are the most cost-effective to achieve the necessary and desired results, provide the regulated community flexibility, and achieve the necessary reduction in air pollution.

(IV) The selected regulatory alternative will maximize the air quality benefits of regulation in the most cost-effective manner.

XX.P. Revisions to Section II., XII., Section XVII., and Section XVIII.

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the Colorado Administrative Procedure Act Sections 24-4-103, C.R.S. and the Colorado Air Pollution Prevention and Control Act Sections 25-7-110 and 25-7-110.5, C.R.S. ("the Act").

Basis

On May 4, 2016, the U.S. Environmental Protection Agency's ("EPA") published a final rule that determined that Colorado's Marginal ozone nonattainment area failed to attain the 2008 8-hour Ozone National Ambient Air Quality Standard ("NAAQS"). EPA, therefore, reclassified the Denver Metro North Front Range ("DMNFR") area to Moderate and required attainment of the NAAQS no later than July 20, 2018, based on 2015-2017 ozone data.

As a result of the reclassification, on May 31, 2017, Colorado submitted to EPA revisions to its State Implementation Plan ("SIP") to address the Clean Air Act's ("CAA") Moderate nonattainment area requirements, as set forth in CAA § 182(b) and the final SIP Requirements Rule for the 2008 Ozone NAAQS (*See* 80 Fed. Reg. 12264 (March 6, 2015)). As a Moderate nonattainment area, Colorado must revise its SIP to include Reasonably Available Control Technology ("RACT") requirements for each category of volatile organic compound ("VOC") sources covered by a Control Technique Guideline ("CTG") for which Colorado has sources in the DMNFR that EPA finalized prior to a nonattainment area's attainment date. EPA finalized the Control Techniques Guidelines for the Oil and Natural Gas Industry ("Oil and Gas CTG") on October 27, 2016, with a state SIP submittal deadline of October 27, 2018. Given this timing, the November 2016, SIP revisions did not include RACT for the oil and natural gas source category and Colorado must further revise its SIP.

The Oil and Gas CTG recommends controls that are presumptively approvable as RACT and provide guidance to states in developing RACT for their specific sources. In many cases, Colorado has similar, or more stringent, regulations comparable to the recommendations in the Oil and Gas CTG, though many of these provisions are not currently in Colorado's Ozone SIP. Therefore, the Commission is adopting RACT for the oil and gas sources covered by the Oil and Gas CTG (CTG as of October 27, 2016) into the Ozone SIP (Sections XII. and XVIII.). In order to make additional progress towards attainment of the NAAQS, the Commission is also adopting State Only revisions to require owners or operators of natural gas-driven pneumatic controllers in the DMNFR area to inspect and maintain pneumatic controllers.

Further, the Commission is making clarifying revisions and typographical, grammatical, and formatting corrections throughout Regulation Number 7.

Specific Statutory Authority

Section 25-7-105(1) of the Act directs the Commission to promulgate such rules and regulations as are consistent with the legislative declaration set forth in Section 25-7-102 and are necessary for the proper implementation and administration of the Act. The Act broadly defines air pollutant and provides the Commission broad authority to regulate air pollutants. Section 25-7-301 directs the Commission to develop a program providing for the attainment and maintenance of each national ambient air quality standard in each nonattainment area of the state. Section 25-7-106 provides the Commission maximum flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program. Section 25-7-106 also authorizes the Commission to promulgate emission control regulations applicable to the entire state, specified areas or zones, or a specified class of pollution. Sections 25-7-109(1)(a), (2), and (3) of the Act authorize the Commission to promulgate regulations requiring effective and practical air pollution controls for significant sources and categories of sources, emission control regulations pertaining to nitrogen oxides and hydrocarbons, and emissions control regulations pertaining to the storage and transfer of petroleum products and other VOCs. Section 25-7-109(2)(c), in particular, provides the Commission broad authority to regulate hydrocarbons.

Purpose

As discussed above, Colorado must adopt RACT into its Ozone SIP for sources covered by the Oil and Gas CTG. While the Oil and Gas CTG recommends presumptive RACT, it does allow states the flexibility to determine what constitutes RACT for the state's covered sources. Further, while EPA's Oil and Gas CTG implementation memorandum provides guidance that the emission controls determined by the state to be RACT for the sources covered by the Oil and Gas CTG must be implemented as soon as practicable but in no case later than January 1, 2021, states also have the flexibility to determine the appropriate implementation timeframe for the sources within the state's ozone nonattainment area. The Commission determined that some of Colorado's existing regulations (*i.e.,* the "system-wide" control program for condensate tanks in Section XII.D.2.) achieve greater emission reductions than the RACT recommended by the Oil and Gas CTG. The Commission determined that some sources covered by the Oil and Gas CTG were not addressed in existing regulations (*i.e.,* pneumatic pumps). The Commission also determined that some sources addressed in the Oil and Gas CTG (*i.e.,* components at well production facilities and natural gas compressor stations, compressors, pneumatic controllers) are already subject to existing regulations that were not yet part of Colorado's Ozone SIP. The Commission adopted many of these rules in 2014, and intends to preserve the substance of these rules, where possible, in moving them into the Ozone SIP, while making a few adjustments and improvements in response to recommendations in the Oil and Gas CTG. The Commission also adopted correlating revisions to the applicability provisions of Sections II. and XII.

The Commission relied on existing regulations in the Ozone SIP for RACT for condensate storage tank controls to satisfy Colorado's obligation to address storage vessels under the Oil and Gas CTG. The Commission adopted requirements for pneumatic pumps in Section XII. to address recommendations in the Oil and Gas CTG. The Commission revised the existing SIP requirements in Section XII.G. for equipment leaks at natural gas processing plants to address recommendations in the Oil and Gas CTG. The Commission duplicated into the Ozone SIP from Section XVII. provisions for compressors and leak detection and repair ("LDAR") for components at well production facilities and natural gas compressor stations. The Commission adjusted these LDAR requirements to address recommendations in the Oil and Gas CTG, along with updates to the recordkeeping and reporting requirements. Corresponding revisions to the LDAR program in Section XVII. are made on a State Only basis. The Commission also revised Section XVIII. to include existing State Only requirements for continuous bleed, natural gas-driven pneumatic controllers in the Ozone SIP and specify that continuous bleed, natural gas-driven pneumatic controllers located at natural gas processing plants maintain a natural gas bleed rate of zero scfh.

The Commission adopted State Only provisions for the inspection and maintenance of natural gas-driven pneumatic controllers in Section XVIII.

The Commission also made clarifying revisions and corrected typographical, grammatical, and formatting errors found within the regulation.

The following explanations provide further insight into the Commission's intention for certain revisions and, where appropriate, the technological or scientific rationale for the revision.

Oil and Gas CTG, generally

The Oil and Gas CTG provides recommendations for states to consider in determining RACT for certain oil and natural gas industry emission sources. EPA included storage vessels, pneumatic controllers, pneumatic pumps, compressors, equipment leaks, and fugitive emissions in the Oil and Gas CTG because EPA determined that these sources are significant sources of VOC emissions. EPA defines RACT as "the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility." States may implement approaches that differ from the recommendations in the Oil and Gas CTG so long as they are consistent with the CAA, EPA's implementing regulations, and policies on interpreting RACT.

Applicability to hydrocarbons (Section II.B.)

Section II.B. currently exempts negligibly reactive volatile organic compounds, such as methane and ethane, from requirements of the SIP, while making hydrocarbon emissions, including methane and ethane, subject to State Only regulation under Sections XVII. and XVIII. Section XVII. sets a threshold for leaks requiring repair that is based on the concentration of hydrocarbons, as determined using EPA Method 21. Section XII.L. applies the same EPA Method 21 hydrocarbon threshold for leaks requiring repair. The Commission revised Section II.B. to clarify that the Section XII.L. hydrocarbon threshold and Section XVIII. natural gas emission standards serve only as VOC indicators and the SIP does not regulate hydrocarbon emissions. The continuous bleed, natural gas-driven pneumatic controller requirements in Section XVIII. reduce natural gas emissions, which consists of other pollutants in addition to VOCs. Despite the presence of other constituents, natural gas is principally methane and the Commission intends to regulate emissions of natural gas as hydrocarbons, including methane and ethane, on a State Only basis as described in Sections II.B. and XVIII. The Oil and Gas CTG also utilizes a natural gas bleed rate standard for continuous bleed pneumatic controllers and the Oil and Gas CTG LDAR program employs a methane-based threshold for EPA Method 21 leak detection. Therefore, these revisions are consistent with the Oil and Gas CTG and the CAA.

While the revisions to Sections XII. and XVIII. to include provisions in Colorado's Ozone SIP are limited to the DMNFR, the Commission acknowledges the importance of reducing hydrocarbon emissions from the oil and gas sector (*i.e.*, upstream, midstream, and transmission) statewide. Therefore, without prescribing any particular outcome, the Commission directs the Division to initiate and lead a stakeholder process over the 2018-2019 timeframe to evaluate potential areas for cost-effective hydrocarbon emission reductions. Stakeholders will nominate topics for evaluation, which may include, but are not limited to, the frequency of LDAR inspections, transmission segment compressor emissions, natural gas-driven and zero emission pneumatic controllers outside the DMNFR (to be informed by the pneumatic study and inspection program), and potential expansion of the requirements adopted in the DMNFR as part of this rulemaking. The Division will brief the Commission on the stakeholder process in January 2019 and present recommendations for any new proposals for emission reductions by no later than January 2020. The Commission intends that one representative of industry, local government, and the environmental community each will have the opportunity to speak during the briefings.

Applicability of Section XII. (Section XII.A.)

The Commission is clarifying the applicability of Section XII. Historically, Section XII. has applied to operations that involve the collection, storage, or handling of condensate in the DMNFR. While this remains the case, the requirements in Section XII.J. for compressors, Section XII.K. for pneumatic pumps, and Section XII.L. for components at well production facilities and natural gas compressor

stations also apply to those facilities and equipment collecting, storing, or handling other hydrocarbon liquids.

Section XII.A.5. further provides that subject well production facilities are those with uncontrolled actual VOC emissions greater than or equal to one ton per year ("tpy"). This applicability threshold addresses the Oil and Gas CTG's recommended barrels of oil equivalent ("BOE") exemption. EPA crafted the BOE exemption believing that well production facilities with an average production less than 15 BOE per well per day were inherently low emitting facilities. EPA later determined that information submitted on the draft CTG and proposed NSPS OOOOa did not support this conclusion. Therefore, in addition to the complications concerning tracking BOE, the Commission chose to rely upon an uncontrolled actual VOC tpy threshold for well production facility applicability. The use of a tpy threshold is also consistent with Colorado's current air pollutant reporting and permitting thresholds.

Further, Section XII.A. historically exempted from the requirements of Section XII. those operations reflecting a total of less than 30 tons-per-year of actual uncontrolled emissions of VOCs in the DMNFR area. That exemption continues to apply to Sections XII.B. through XII.I., but is not extended to Sections XII.J., XII.K., and XII.L.

Definitions (Sections XII.B. and XVII.A.)

The Commission is adopting definitions into Section XII.B., most of which are consistent with the existing definitions of Section XVII.

In the definition of "component", the Commission is clarifying both in Section XII.B. and in Section XVII.A., that thief hatches and other openings on storage tanks are included in the definition as a pressure relief device. This revision clarifies that leaks can occur from the thief hatch (*e.g.*, faulty or dirty seals) that are different than vented emissions under the standard in Section XVII.C.2.a., and that such leaks are subject to the LDAR program. The Commission anticipates that emissions from storage tanks identified as leaks requiring repair through the LDAR inspections under Sections XII.L. or XVIII.F. will be recorded and reported as leaks starting in 2018 for the 2019 annual report.

The Commission is adding a definition of "custody transfer" that applies to custody transfers of both natural gas and oil products. The Commission is also adding definitions for "natural gas driven diaphragm pump" and "natural gas processing plant" that correspond to federal definitions.

Operate without venting clarification (Section XVII.C.2.a.)

The Commission is providing additional detail concerning provisions adopted in 2014 that established an "operate without venting" standard for storage tanks. In response to industry concern that Section XVII. does not sufficiently define "venting" or delineate "venting" from "leaking," the Commission is adopting provisions clarifying which emissions from storage tanks are considered "venting". Section XVII.F. defines "leaking" in terms of infra-red camera or EPA Method 21 inspections of components. While storage tanks may also have leaks, as the Commission recognizes by including thief hatches or other openings on storage tanks in the definition of component, the Commission now further clarifies the "venting" standard by specifying that "venting" is emissions that are primarily the result of over-pressurization or that are from an open or visibly unseated pressure relief device (*e.g.*, thief hatch). The Commission intends that "visibly unseated" means visible from the outside of the pressure relief device and does not require an owner or operator to open a pressure relief device to determine if the seal is proper. The Commission also authorizes the Division to request a demonstration from the owner or operator that "venting" emissions observed by the Division were not primarily the result of over-pressurization. The Commission intends that such demonstration request allow an owner or operator to provide case specific information or other sufficient details that the design, operation, and maintenance of the facility is adequate to prevent over-pressurization. In clarifying a difference between "leaking" and "venting," the Commission does not prohibit component leaks, per se, so long as leaks are repaired under the applicable repair time frames but does continue to prohibit "venting" from storage tanks.

Ozone season clarification (Sections XII.F.4. and XII.H.6.)

In October 2015, the EPA finalized a revision to the ozone NAAQS. (80 Fed. Reg. 65292 (Oct. 26, 2015)). In publishing its final rule, the EPA revised the length of Colorado's ozone season. Colorado's ozone season is now year-round, rather than the months of May through September. The Commission therefore revised references to "ozone season" in Sections XII.F.4. and XII.H.6. to reflect that the requirements now apply during the months of May to September. There are no substantive changes to the underlying requirements resulting from this revision.

Equipment leaks at natural gas processing plants (Section XII.G.)

The Commission is updating the LDAR program applicable to equipment leaks at natural gas processing plants in the DMNFR by requiring owners or operators to comply with 40 C.F.R. Part 60 (NSPS), Subparts OOOO or OOOOa instead of complying with NSPS Subpart KKK, which is an earlier NSPS and less stringent. Subpart KKK requires sources to implement a NSPS Subpart VV level LDAR program, while Subpart OOOO requires sources to implement a NSPS Subpart VVa level LDAR program. A Subpart VVa level LDAR program is recommended for equipment at natural gas processing plants in the Oil and Gas CTG. The Commission determined that a 2019 implementation date would provide owners and operators of existing natural gas processing plants a reasonable period of time to establish and obtain the necessary resources to transition from Subpart KKK to Subpart OOOO LDAR requirements.

Compressors (Section XII.J.)

The Commission is adopting the centrifugal and reciprocating compressor provisions from existing Section XVII.B.3. into new Section XII.J. in order to include the requirements in Colorado's Ozone SIP. The Commission is expanding the existing reciprocating compressor requirements to reciprocating compressors located at natural gas processing plants to address recommendations in the Oil and Gas CTG. Owners or operators of existing reciprocating compressors at natural gas processing plants must begin monitoring the reciprocating compressor hours of operation on January 1, 2018, starting at zero, in relation to the rod packing replacement requirement, conduct the first rod packing replacement prior to January 1, 2021, or route emissions to a process beginning May 1, 2018.

The Commission intends to allow owners or operators the option to reduce VOC emissions by routing centrifugal compressor emissions to a process or control and reciprocating compressor emissions to a process, consistent with the recommendations in the Oil and Gas CTG. With respect to centrifugal compressors, the Oil and Gas CTG and related federal requirements reveal that "process" generally refers to routing emissions via a closed vent system to any enclosed portion of a process unit (*e.g.*, compressor or fuel gas system) where the emissions are predominantly recycled, consumed in the same manner as a material that fulfills the same function in the process, transformed by chemical reaction into materials that are not regulated materials, incorporated into a product, or recovered. Similarly, with respect to reciprocating compressors, routing to a process includes using a rod packing emissions collection system that operates under negative pressure and meets cover and closed vent system requirements. The negative pressure requirement ensures that all emissions are conveyed to the process and avoids inducing back pressure on the rod packing and resultant safety concerns. The Commission recognizes that there may a distinction between air pollution control equipment and process equipment (see e.g., U.S. EPA Letter to Timothy J. Mohin RE: Criteria for Determining Whether Equipment is Air Pollution Control Equipment or Process Equipment (Nov. 27, 1995)). For example, as noted in the Oil and Gas CTG, vapor recovery units and flow lines that "route emissions to a process" may be considered part of the process and not a control device, however, a related cover and closed vent system, if present, are still subject to applicable requirements. Further, components (as defined in these rules) located within a process or that are part of process equipment are subject to the Section XII.L. LDAR requirements. The Commission intends that owners or operators will follow similar procedures when complying with centrifugal and reciprocating compressor requirements in Section XII.J.

The Commission has adopted an inspection program for compressors, but also intends to provide owners or operators with the alternative of complying with other requirements, including the LDAR program

adopted into Section XII.L. While the requirements of the LDAR program would replace the annual visual inspections and EPA Method 21 inspections of the cover and closed vent systems for defects and leaks, owners or operators would still need to conduct monthly inspections of their combustion devices. Compliance with the LDAR program is not limited to the inspection frequency and methods specified therein; owners or operators will also need to maintain records of the inspections and submit reports to the Division, consistent with the requirements of the LDAR program.

The Commission has specified an inspection and repair schedule for compressors, but has recognized that there may be reasons that a system is unsafe or difficult to inspect, or where a repair may not be feasible. Owners or operators will need to maintain records of each cover or closed vent system that is unsafe or difficult to inspect and schedule for inspection when circumstances allow. Similarly, when a repair is infeasible, insofar as it would require a shutdown of the equipment, repair can be delayed until the next scheduled shutdown but must be completed within two years after discovery. The Commission expects owners or operators to attempt to confirm repair before starting up operation after shutdown, to the extent practicable. The Commission also expects that if the repair attempt can be made during an unplanned shutdown, it will be.

The Commission adopts the monitoring and recordkeeping requirements to ensure and demonstrate compliance with the control requirements.

As an alternative to complying with the control, monitoring, and recordkeeping requirements in Section XII.J., owners or operators may instead comply with centrifugal or reciprocating compressor control, monitoring, recordkeeping, and reporting requirements in a NSPS, including Subparts OOOO, OOOOa, or future standards.

Natural gas driven diaphragm pumps (Section XII.K.)

The Oil and Gas CTG contains recommendations for RACT for natural gas-driven diaphragm pumps. The Commission has not previously adopted regulations specifically directed at this type of equipment, and does so in Section XII.K.

The Oil and Gas CTG recommends that the pumps located at a natural gas processing plant have zero VOC emissions. The Oil and Gas CTG also recommends that owners or operators of pumps located at well sites route VOC emissions from the pneumatic pump to an onsite control device or process, unless the pneumatic pump operates on fewer than 90 days or an engineering assessment shows that routing the pneumatic pump emissions to a control device or process is technically infeasible. The assessment of technical feasibility may include safety considerations, distance from the control device, pressure losses and differentials in the closed vent system, gas pressure, and the capacity of the control device, among other things. The Commission acknowledges that RACT, by EPA definition, includes both technological and economic feasibility elements. The Commission determined that the cost of routing pneumatic pump emissions to an existing control device or process is reasonable and is, therefore, only providing an exemption from the emission control requirement based on technical infeasibility. However, the Commission does not intend to limit future RACT determinations due to limiting the pneumatic pump infeasibility analysis to technical ability. In addition, the 90 day exemption for pumps was included to address intermittently used or portable pumps. Consistent with the Oil and Gas CTG, the Commission intends that if a pump operates on any period of a calendar day, that day would be included in the calculation for applicability of the 90 day exemption. The Commission does not expect an owner or operator to install new equipment specifically to route pneumatic pump emissions to a control or process but intends that when an owner or operator subsequently otherwise installs a control device or it becomes technically feasible to route pump emissions to a process, then the owner or operator will capture the emissions from the pneumatic pump and route the emissions to the newly installed control device or feasible process. Routing to a control or process generally refers to routing the emissions through a closed vent system to a vapor recovery unit, combustion device, or enclosed portion of a process where emissions are recycled and/or consumed.

The Commission has applied the same flexibility for pneumatic pumps as it has for compressors; owners or operators may comply with the inspection requirements in Section XII.K. or may follow the LDAR program in Section XII.L. Also similar to compressors, owners or operators may delay subsequent repair attempts of equipment where, during a scheduled shutdown, the owner or operator unsuccessfully repaired the leak or equipment requiring repair so long as repair is completed within two years after discovery. As with compressors, the Commission expects owners or operators to attempt to confirm repair before starting up operation after a shutdown and make an attempt to repair during unscheduled shutdowns, to the extent practicable.

As an alternative to complying with the control, monitoring, recordkeeping, and reporting requirements in Section XII.K., owners or operators may instead comply with pneumatic pump emission control, monitoring, recordkeeping, and reporting requirements in a NSPS, including Subparts OOOO, OOOOa, or future standards.

Fugitive emissions at well production facilities and natural gas compressor stations (Section XII.L.)

The Oil and Gas CTG recommends LDAR programs at well sites *(i.e.*, well production facilities) and gathering and boosting stations (*i.e.*, natural gas compressor stations), including inspection frequencies, recordkeeping, and reporting. The Commission established Colorado's well production facility and natural gas compressor station LDAR program in 2014 in Section XVII.F., which is not part of the Ozone SIP. In creating a LDAR program in the Ozone SIP, the Commission intends to maintain as much of the current program as feasible. Where the Commission adopted revisions in Section XII.L. that differ from language currently found in the State Only LDAR program, the Commission in most cases made the same or similar revisions to the corresponding provisions in Section XVII.F.

Inspection, repair, and remonitoring

The Oil and Gas CTG recommends LDAR inspections at a minimum quarterly frequency for gathering and boosting stations and a minimum semi-annual frequency for well sites. The Commission is adopting inspection frequencies to address those recommendations in Section XII.L. The Commission is not modifying the LDAR schedules in Section XVII.F. The Commission intends that for those sources required by Section XVII.F. to conduct more frequent LDAR monitoring than specified in Section XII.L., the owner or operator may comply with Sections XII L.1. and XII.L.2. by complying with Sections XVII.F.3. and XVII.F.4. As with the LDAR inspection frequency in Section XVII.F., the Commission expects that owners or operators will ensure that inspections are appropriately spaced on the frequency schedules (*e.g.,* quarterly inspections will occur every three months but not, for example, on March 31 and April 1).

The Oil and Gas CTG does not recommend a semi-annual LDAR inspection frequency at well sites with a gas to oil ratio less than 300 and which produce, on average, less than or equal to 15 BOE per well per day. The Commission recognizes that a component of RACT is balancing the emission reductions with the cost of the controls, and agrees that there should be a floor below which the recommended minimum frequency does not apply. The Commission determined a threshold of one tpy VOC emissions addresses this balance and the recommendation in the Oil and Gas CTG. Adopting an emissions based threshold maintains consistency with the current Regulation Number 7 applicability program and promotes the clarity and effectiveness of the regulation. The Commission determined that annual LDAR inspections of well production facilities with uncontrolled actual VOC emissions greater than or equal to one tpy and equal to or less than six tpy and semi-annual LDAR inspections of well production facilities with uncontrolled actual VOC emissions greater than six tpy address the Oil and Gas CTG's recommendations.

The Commission understands that the revised inspection frequencies will result in a significant number of new inspections. However, annual LDAR inspections of well production facilities with uncontrolled actual VOC emissions greater than or equal to one tpy and equal to or less than six tpy will be less burdensome than semi-annual inspections. The Commission has determined that the emission reductions achieved by this program will improve the ability of the DMNFR area to attain the ozone standard and are cost-effective. While the rule specifies that the new inspection frequencies begin to apply as of June 30, 2018,

the rule does not require that the first periodic inspection be completed by June 30, 2018. The Commission also does not require that monitoring be conducted in advance of this date; however, inspections done after January 1, 2018, that are in addition to current required LDAR monitoring frequencies may count towards the first annual or semi-annual inspection, or inspections done in the previous quarter at natural gas compressor stations. The Commission encourages owners or operators to conduct inspections prior to the 2018 summer ozone months to more effectively take advantage of the resulting emission reductions.

To ensure that the Ozone SIP LDAR program in Section XII.L. works with the existing State Only LDAR program in Section XVII.F., the Commission has maintained the same thresholds for identifying leaks that require repair. While the Oil and Gas CTG employs a methane concentration threshold when detected with EPA Method 21, Colorado's LDAR program uses a hydrocarbon concentration threshold. The Commission has also revised Section II. to clarify that Section XII.L. includes the use of hydrocarbons as an indicator of VOC emission reductions.

Concerning the use of non-quantitative instrument monitoring methods, the Commission adopted a quality assurance requirement that owners or operators maintain and operate such devices according to manufacturer recommendations. This requirement corresponds to recommendations in the Oil and Gas CTG concerning the maintenance and operation of OGI uses to detect fugitive emission components. The Commission intends for the Division to work with owners or operator to address any concerns that arise from manufacturer specifications for the maintenance of non-quantitative instrument monitoring methods.

Consistent with the current LDAR program in Section XVII.F., the Commission adopted a requirement to make a first attempt to repair an identified leak within five working (*i.e.,* business) days of discovery. In both Section XII.L. and in Section XVII.F., the Commission has included a requirement that repairs be completed within 30 days unless one of the existing justifications for delay of repair applies. As with compressors and pneumatic pumps, owners or operators may delay subsequent repair attempts of equipment where, during a scheduled shutdown, the owner or operator unsuccessfully repaired the leak requiring repair so long as repair is completed within two years of discovery. The Commission has also maintained the flexibility of the State Only LDAR program in the SIP by giving owners or operators detecting leaks with a non-quantitative method (*e.g.,* IR camera) the ability to quantify the leaks within five working days. If the quantification shows that the leak must be repaired under Section XII.L.5., the deadline to repair runs from the date of discovery, not from the date of quantification.

As it did for Section XVII.F.7.c. in 2014, the Commission has also memorialized its intent, in Section XII.L.5.c., that operators not be subject to enforcement for leaks so long as operators are complying with the LDAR program requirements. However, as it also explained in 2014, the Commission does not intend to relieve owners or operators of the obligation to comply with the general requirements of Section XII.C. For example, closing an open thief hatch within five days of an LDAR inspection does not shield an owner or operator from a possible violation of the requirement to minimize emissions to the maximum extent practicable. Similarly, the Commission does not intend to relieve owners or operators of the obligation, on a State Only basis, to comply with the requirements of Section XVII., including the requirements in Sections XVII.B. and XVII.C.2. to minimize leakage to the extent reasonably practicable and operate without venting, respectively. However, the Commission does not intend these State Only provisions be enforceable under the Ozone SIP.

Recordkeeping and reporting

The Commission has determined that the current requirements did not adequately incentivize owners or operators to make all reasonable good faith efforts to obtain parts necessary to complete repairs. As a result, some leaks continued on delay of repair lists for an unreasonable length of time. Therefore, the Commission has determined that a review and record of such delays by a representative of the owner or operator is necessary for those occasions where unavailable parts have resulted in a delay of repair beyond 30 days.

The Commission expanded the recordkeeping for repair dates to include records of the type of repair method applied. The Commission determined this recordkeeping element aligns with recommendations in the Oil and Gas CTG and will more accurately inform repair activities. The Commission intends for the Division to work with owners and operators to establish a generally standardized set of different types of repair to ensure that owners and operators are consistently recording the information required.

The Commission also expanded the requirements for the annual LDAR report to ensure that the data submitted to the Division more accurately represents and summarizes the activities and effectiveness of the LDAR program. The Commission intends that the LDAR reports include the number of inspections, leaks requiring repair, leaking component type, and monitoring method by which the leaks were found – broken out by facility type (*i.e.,* inspection frequency tier of well production facility or natural gas compressor station).

The Commission intends that both the SIP and State Only LDAR reporting requirement can be satisfied by one report. The Commission expects that the first annual report containing the information required by these revisions will be submitted by May 31, 2019 (*i.e.,* no changes are expected to current requirements for the May 31, 2018, annual report representing leak detection and repair activities conducted during 2017).

Alternative approved instrument monitoring method ("AIMM")

The Commission has adopted a process for the review and approval of alternative instrument monitoring methods. The CAA prohibits a state from modifying SIP requirements except through specified CAA processes. EPA interprets this CAA provision to allow EPA approval of SIP provisions that include state authority to approve alternative requirements when the SIP provisions are sufficiently specific, provide for sufficient public process, and are adequately bounded such that EPA can determine, when approving the SIP provision, how the provision will actually be applied and whether there are adverse impacts. (State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction, 80 Fed. Reg. 33917-33918, 33927 (June 12, 2015)) Therefore, the Commission includes an application and review process in the SIP for the potential approval of instrument monitoring methods as alternatives to an infra-red camera or EPA's Method 21. The approval may also include modified recordkeeping and reporting requirements based on the capabilities of the potential alternative instrument monitoring method. This proposed process does not alter the stringency of Colorado's well production facility and natural gas compressor station LDAR program because an alternative AIMM must be capable of reducing emissions through the detection and repair of leaks comparable to the leaks detected and repaired as specified in the SIP to be potentially approvable.

The Commission received comments from stakeholders requesting that the Commission explicitly provide for the ability to employ certain alternatives not equipped with the leak detection capabilities of infra-red cameras or Method 21. These stakeholders emphasized that monitoring technologies are evolving rapidly and new technologies and monitoring programs are being developed that, when used on their own or in conjunction with other methods, may provide the same or better leak detection and repair results, at potentially lower costs. The process outlined in Section XII.L.8. requires an applicant to demonstrate that the proposed alternative monitoring achieves emission reductions that are at least as effective as the leak detection and repair program in Section XII.L. The Commission intends that the rule be flexible enough to allow the Division to consider such alternative monitoring methods or programs, as long as the applicant can demonstrate that the proposed method or program achieves emission reductions that are as effective as other approved technologies or methods. To make this demonstration, an applicant may consider demonstrating that a program of alternative inspection frequencies, pollutants detected, or leak thresholds for repair achieves emission reductions comparable to the inspection frequencies and leaks requiring repair thresholds in Section XII.L., thus the consideration of an alternative leak detection program. The Commission recognizes that current, established approaches or methodologies to evaluate the performance of alternative monitoring technologies and programs as compared to baseline monitoring technologies (infra-red camera, EPA Method 21) do not yet exist. However, such methodologies are

being developed. For example, the Interstate Technology and Regulatory Council (ITRC), in which Colorado participates, is developing, but has not yet published, a guidance document to establish, if possible, a consensus for evaluating and comparing the effectiveness of leak detection technologies. While the criteria for evaluating the effectiveness of an alternative program as compared to the base program is being developed, alternative monitoring method applicants may submit an application for approval of an alternative monitoring method but must be prepared to present a robust and complete evaluation of the technology or program's performance that allows for comparison to the base technologies in the SIP. It is possible the Division may delay consideration and final determination regarding an alternative monitoring method or program application until established comparison criteria are developed or submitted. Taking into account the deliberations of the ITRC process, the Commission expects that the Division will consider complete applications in a timely manner.

The Commission also received comments from stakeholders requesting that the Commission clarify EPA's participation regarding potential alternative monitoring methods. As discussed above, the Commission believes that the process to review and potentially approve alternative monitoring methods is sufficiently constrained such that EPA, when approving the process, can be assured as to what emission reductions any such alternative monitoring will achieve in the context of the Section XII.L. LDAR program. However, the Commission also recognizes EPA's technical knowledge and is requiring the Division to continue to engage with EPA concerning alternative monitoring methods. Specifically, the Division must provide complete applications to EPA early in the review process, which has previously ranged from three to nine months. The Division must also provide EPA six (6) months after approval of an alternative for further EPA review. The Commission believes this process provides sufficient time for meaningful engagement with EPA.

Clarifications

The Commission is clarifying, both in Section XII.L. and Section XVII.F., that all detected emissions are leaks, but that only those leaks above specified thresholds require repair. The Commission did not intend that leaks falling below the specified thresholds would not be considered "leaks," only that those leaks did not require repair in accordance with the prescribed schedules. The Commission has further clarified that only records of leaks requiring repair need to be maintained.

Regulation Number 7 already requires that owners or operators remonitor repaired leaks with an AIMM. AIMM includes EPA Method 21, which includes the soapy water method, and the Commission further clarifies that an owner or operator may use the soapy water method in EPA Method 21 to remonitor a repaired leak.

Some stakeholders asked the Commission to "clarify" that the LDAR repair, remonitoring, recordkeeping, and reporting requirements applied only to those leaks discovered by the owner or operator, and not those discovered by the Division. The Commission believes that would not be a clarification, but a change to the current program, and does not make that requested revision at this time. Therefore, the repair, remonitoring, recordkeeping, and reporting requirements continue to apply to leaks discovered by the Division.

<u>Pneumatic controllers (Section XVIII.)</u>

The Commission is adopting both Ozone SIP and State Only revisions to Section XVIII.

The Commission added definitions of continuous bleed and intermittent pneumatic controller. The Commission also added "continuous bleed" to several provisions throughout Sections XVIII.C. through XVIII.E. to clarify that the provisions adopted in 2014 primarily applied to continuous bleed pneumatic controllers (which emit continuously) as opposed to intermittent pneumatic controllers (which emit only when actuating).

Pneumatic controllers at or upstream of natural gas processing plants

Section XVIII. already requires that owners or operators install low-bleed pneumatic controllers at or upstream of natural gas processing plants, unless a high-bleed pneumatic controller is required for safety or process purposes. This requirement is consistent with the Oil and Gas CTG and the Commission intends that these provisions be included in Colorado's Ozone SIP.

The Commission adopts additional requirements, consistent with the Oil and Gas CTG, related to pneumatic controllers at natural gas processing plants. The Commission is requiring that all continuous bleed, natural gas-driven pneumatic controllers at a natural gas processing plant have a bleed rate of zero (*i.e.,* no VOC emissions), unless a pneumatic controller with a bleed rate greater than zero is necessary due to safety and process reasons. To satisfy this requirement, owners or operators of natural gas processing plants could, for example, drive pneumatic controllers with instrument air, use mechanical or electrically powered pneumatic controllers, or use self-contained pneumatic controllers that release natural gas to a downstream pipeline instead of to the atmosphere. The requirements to submit a justification for a pneumatic controller exceeding the emission standard to the Division, as well as the requirements for tagging and records, duplicate and are intended to be consistent with existing requirements related to high-bleed pneumatic controllers. The requirement to maintain pneumatic controllers exceeding the applicable emission standard are also duplicated from the existing high-bleed maintenance requirement, but revised to include the suggested maintenance actions specifically in the applicable provisions, instead of referring to an "enhanced maintenance" definition. The Commission revised the maintenance requirement in this manner to separate the actions taken to maintain a pneumatic controller exceeding the applicable emission standard from the, potentially very similar, actions taken to return a pneumatic controller to proper operation. For example, the owner or operator of a high-bleed pneumatic controller or a pneumatic controller with a bleed rate greater than zero at a natural gas processing plant is required to perform specified maintenance on the pneumatic controller regardless of whether or not the pneumatic controller is determined to be properly operating. In contrast, the owner or operator of a pneumatic controller inspected under Section XVIII.F. must conduct enhanced response to return that pneumatic controller to proper operation.

Additionally, the Commission is requiring owners or operators to maintain records demonstrating their continuous bleed, natural gas-driven pneumatic controllers meet the applicable low-bleed or bleed rate of zero standards. These records are also intended to inform the extent to which continuous bleed pneumatic controllers are used in the DMNFR. The Commission understands that the number of continuous bleed, natural gas-driven pneumatic controllers in use by an operator can change frequently, and is not requiring a running log or count of each individual pneumatic controller. The Commission adopted these recordkeeping requirements with the expectation that owners or operators can keep records including, but not limited to, site-specific documentation of continuous bleed, natural gas-driven pneumatic controllers such as manufacturer specifications, engineering calculations, field test data, or documentation of a company's continuous bleed, natural gas-driven pneumatic controller purchase and installation program ensuring that any such pneumatic controller meets the applicable bleed rate standard.

Clarification

The Commission is also clarifying the intent behind provisions adopted in 2014 regarding the use of pneumatic controllers powered by instrument air (as opposed to natural gas) when grid power is being used. In 2014, the Commission intended that when a pneumatic controller was proposed for installation, owners or operators would power the pneumatic controller via electrical power instead of natural gas when electrical grid power was being used on-site. The provisions adopted in 2014 allowed owners or operators to install a pneumatic controller with VOC emissions equal to or less than a low-bleed pneumatic controller in some situations. The Commission has learned that some owners or operators interpret the rule as providing the option of installing either no-bleed or low-bleed pneumatic controllers in all situations. Even though the Commission believes its intent was clear, the Commission recognizes that the rule could fairly be described as ambiguous and that there is a good faith legal argument for the alternative interpretation. The Commission is revising the rule to clarify that where electric grid power is being used on site and it is technically and economically feasible to install no-bleed pneumatic controllers, any newly installed pneumatic controllers must be no-bleed. Where the owner or operator determines it is

not technically and economically feasible to install a no-bleed pneumatic controller, the owner or operator may install a low-bleed or intermittent pneumatic controller.

The Commission recognizes that the installation of an electrically-powered controller may have been feasible in 2014, but may not be feasible to retrofit at this time. The Commission nonetheless encourages owners or operators statewide who, based on a misreading of the regulation, did not install a no-bleed pneumatic controller to evaluate whether retrofitting controllers – with no-bleed or self-contained pneumatic controllers – at this time is technically and economically feasible. The Commission also encourages owners and operators statewide to install, or retrofit with, no-bleed or self-contained pneumatic controllers at locations across the state, even where on site electrical grid power is not available to the extent there is no significant air quality disbenefit in doing so.

Natural gas driven pneumatic controller inspection and enhanced response (State Only)

Following the 2014 rulemaking, the Commission requested that the Division continue its investigation into potential regulations for intermittent pneumatic controllers. During the recent 2016 ozone rulemaking, stakeholders again asked the Commission to address intermittent pneumatic controllers. In response, the Commission again directed the Division to evaluate potential emission reduction measures for intermittent pneumatic controllers.

The Commission is adopting an inspection and enhanced response (*e.g.*, maintenance) program for natural gas-driven pneumatic controllers. While the Oil and Gas CTG notes the value of pneumatic controller inspection and maintenance, the Oil and Gas CTG does not specify a pneumatic controller inspection and maintenance as presumptive RACT. Therefore, while the Commission determined that these revisions are technically and economically feasible, the revisions are proposed as State Only in the DMNFR and are not made part of the Ozone SIP at this time. Natural gas-driven pneumatic controllers include continuous bleed, intermittent, and self-contained pneumatic controllers. Recent studies of pneumatic controllers have found that malfunctioning devices contribute a significant amount of hydrocarbon emissions to the atmosphere. The Oil and Gas CTG suggests that maintenance of pneumatic controllers, including cleaning and tuning, can eliminate excess emissions from the devices. While the Oil and Gas CTG's recommended RACT (low-bleed or zero emissions) applies to continuous bleed, natural gas-driven pneumatic controllers, the discussion concerning enhanced maintenance of pneumatic controllers builds on earlier EPA discussions, such as EPA's 2014 Pneumatic Controller White Paper, and is not limited to continuous bleed pneumatic controllers. The Commission recognizes that continuous bleed and intermittent pneumatic controllers are designed to have emissions, however these pneumatic controllers can also have excess emissions when not operating properly. As a result, the Commission believes that a pneumatic controller inspection and response program will reduce the excess emissions from such pneumatic controllers.

The Commission intends to apply the same find and fix approach used in the LDAR requirements in Sections XII.L. and XVII.F. to all natural gas-driven pneumatic controllers in the DMNFR. The Commission is requiring that natural gas-driven pneumatic controllers at well production facilities and natural gas compressor stations in the DMNFR be inspected periodically to determine whether the pneumatic controller is operating properly, in contrast to quantitatively comparing pneumatic controller emissions to a regulatory threshold. The Commission is requiring that owners or operators inspect pneumatic controllers at well production facilities annually, semi-annually, quarterly, or monthly, depending on the well production facility VOC emissions, and at natural gas compressor stations quarterly or monthly, depending on the natural gas compressor station fugitive emissions. The Commission expects that owners or operators will inspect their pneumatic controllers during the same LDAR inspections, and using the same AIMM, conducted for compliance with Sections XII.L. or XVII.F.

The pneumatic controller inspection and enhanced response process is intended to be a multi-step process. First, the owner or operator must inspect all natural gas-driven pneumatic controller using AIMM to screen for detectable emissions. This first step allows owners or operators to narrow potential response efforts to only those pneumatic controllers with detected emissions. Second, the owner or operator must determine whether the pneumatic controllers with detected emissions are operating properly. Use of an

AIMM is not required during this second step; the Commission does not at this time intend to mandate to owners or operators how to determine if their pneumatic controllers are operating properly. During this second step, if an owner or operator determines that the pneumatic controller is operating properly, no further action is necessary. Third, where an owner or operator determines the pneumatic controller is not operating properly, the owner or operator must take actions to return an improperly operating pneumatic controller to proper operation. Fourth, general recordkeeping and reporting requirements apply broadly to the number of facilities inspected and number of inspections. More detailed recordkeeping and reporting is required for those pneumatic controllers that the owner or operator determined not to be operating properly. Similar to the LDAR records, owners or operators must keep records of the date the pneumatic controller was returned to proper operation and a description of the types of actions taken. As with well production facility and natural gas compressor station LDAR records, the Commission intends for the Division to work with owners and operators to establish a generally standardized set of different types of response actions to ensure that owners and operators are consistently recording the information required. The Commission expects that owners or operators will include the pneumatic controller information as State Only information in their LDAR annual reports. In returning a pneumatic controller to proper operation, the Commission relies upon the previously defined term, now enhanced response, found in Section XVIII.B. related to maintaining high-bleed pneumatic controllers. The Commission has expanded this definition to guide responsive activities concerning all natural gas-driven pneumatic controllers. Recognizing that the function and potential maintenance or repair of pneumatic controllers can be variable, owners or operators are not restricted to using an AIMM to determine proper operation or verify the return to proper operation.

The Commission has adopted a “reassessment” provision for this inspection and enhanced response program following a Division led study of pneumatic controller emission reduction options, including the rate, type, application, and causes of pneumatic controllers found operating improperly; inspection and repair techniques and costs; available preventative maintenance methods; appropriateness of the definitions of enhanced response, intermittent pneumatic controller, no-bleed pneumatic controller, self-contained pneumatic controller, and pneumatic controller; and other related information. The Commission also recognizes that owners and operators may currently have limited information on “good engineering and maintenance practices” for pneumatic controllers and intends that more information on these practices will be gathered during the pneumatic study and implementation of Section XVIII.F. to inform the reassessment of the inspection and enhanced response program. The data collection effort will include data from a representative cross-section of well production facilities and natural gas compressor stations in the DMNFR. In accordance with industry’s proposal, a task force will be convened by January 30, 2018, consisting of representatives from industry, the Division, local governments, environmental groups, and other interested parties. Data collection will begin no later than by May 1, 2018. The task force will brief the Commission annually and make any recommendations on its findings in a report to the Commission, due May 1, 2020. The Commission intends that the Division, industry, local government, and environmental group task force participants each have the opportunity to contribute to the final report and provide one representative to speak during the briefings to the Commission. The Commission intends that this information be used to reassess the natural gas-driven pneumatic controller requirements of Section XVIII.F. Section XVIII.F. will remain in effect until rescinded, superseded, or revised.

The Commission recognizes that there is much to learn about the inspection and maintenance of natural gas-driven pneumatic controllers, which highlights the need for the reassessment of Section XVIII.F. as well as enforcement discretion. The Commission intends that while the task force is actively working on data collection and the 2020 report to the Commission, the determination of whether a pneumatic controller is operating properly will be made by the owner or operator. Any information gathered through the task force, including on preventative, good engineering, and maintenance practices, will be used to reassess Section XVIII.F. and will not be used for enforcement purpose through 2020.

Additional Considerations

Colorado must revise Colorado’s Ozone SIP to address the ozone Moderate nonattainment area requirements. The CAA does not expressly address all of the provisions adopted by the Commission. Rather, federal law establishes the 8-hour ozone NAAQS and requires Colorado to develop a SIP

adequate to attain the NAAQS. The Commission carefully considered what provisions to include in Colorado's Ozone SIP, especially given Colorado's pre-existing emission control requirements that address most of the same sources addressed by the Oil and Gas CTG, yet do so differently. Some of these pre-existing requirements were adopted into Colorado's SIP and some will remain as State Only requirements. In determining what existing provisions would be included in Colorado's Ozone SIP, the Commission considered: 1) whether or not Colorado had existing emission control measures for the same sources covered by the Oil and Gas CTG; 2) whether these existing requirements were already adopted for inclusion in the Ozone SIP; and 3) the degree of emissions reductions achieved by any existing Colorado emission control measures in comparison to the Oil and Gas CTG. In resolving differences between existing Colorado provisions and the Oil and Gas CTG, preference was given to existing Colorado provisions, especially those already incorporated into Colorado's Ozone SIP and Colorado's existing regulatory framework. For example, the Commission relied upon existing storage tank requirements already adopted into Colorado's Ozone SIP. In the case of well production facility LDAR, the Commission adopted a tpy applicability threshold in place of the Oil and Gas CTG's BOE threshold, which applies to more sources than the Oil and Gas CTG, yet adopted a less frequent inspection frequency into the Ozone SIP for the smaller facilities than the Oil and Gas CTG. In determining whether or not any additional requirements would be relied upon in establishing RACT in Colorado's Ozone SIP for the oil and gas sector, the Commission determined whether or not the emission control measures were necessary for the ozone attainment demonstration. In the case of LDAR for pneumatic controllers at well production facilities and natural gas compressor stations, the Commission adopted emission control measures as State Only measures given the need to obtain emission reductions as well as more information on this source type. These examples illustrate the Commission's careful consideration of what provisions to include in Colorado's Ozone SIP.

The CAA requires that Colorado's Ozone SIP include RACT for all sources covered by a CTG, such as the emission sources addressed in the Oil and Gas CTG. Therefore, the Commission adopted certain revisions to Regulation Number 7 to ensure attainment with the 2008 8-hour ozone NAAQS and satisfy Colorado's Moderate nonattainment area obligations, including those related to RACT. These revisions do not exceed or differ from the federal act due to state flexibility in developing nonattainment area SIPs.

The Commission is also revising certain State Only regulations to reduce emissions and promote attainment of current federal ozone standards. Specifically, the Commission is adopting requirements related to the inspection of natural gas-driven pneumatic controllers at oil and gas facilities. As discussed above, malfunctioning pneumatic controllers can result in significant hydrocarbon emissions. The DMNFR ozone nonattainment area is currently classified as a Moderate nonattainment area under the 2008 ozone NAAQS. The deadline for the DMNFR to attain the 2008 ozone NAAQS is July 2, 2018. If the DMNFR does not attain the standard or does not receive an extension, EPA may reclassify the DMNFR as a Serious nonattainment area under the 2008 ozone NAAQS. In addition, the Commission approved a designation recommendation for the DMNFR under the 2015 ozone NAAQS in September 2016. While EPA has not yet acted on this recommendation, the Commission expects the DMNFR will be designated as nonattainment under the 2015 ozone NAAQS and is taking action to promote attainment of the more stringent standard. Given both the potential for a reclassification to Serious under the 2008 ozone NAAQS and the need to reduce ozone to meet the more stringent 2015 ozone NAAQS, the Commission is adopting the State Only pneumatic controller inspection requirements that further reduce ozone precursors emissions, notwithstanding the fact that a pneumatic controller inspection program is not specified as presumptive RACT in the Oil and Gas CTG.

In accordance with C.R.S. § 25-7-110.5(5)(b), the Commission determines:

(I) CAA Sections 172(c) and 182(b) require that Colorado submit a SIP that includes provisions requiring the implementation of RACT at sources covered by a CTG. The EPA issued the final Oil and Gas CTG in October 2016, leading to the revisions to the Ozone SIP adopted by the Commission. The EPA revised the ozone NAAQS in 2015 and the DMNFR must attain the new standard or face additional requirements. The revisions to Regulation Number 7 address RACT for compressors, pneumatic pumps, pneumatic controllers, natural gas processing plants, natural gas compressor stations, and well

production facilities. The revisions apply to equipment already regulated by Colorado on a State Only basis and apply to equipment not previously subject to regulation. NSPS OOOO, NSPS OOOOa, NSPS Kb, NSPS KKK, NESHAP HH, and NESHAP HHH may also apply to the regulated equipment. The Commission determined that the adopted RACT SIP requirements are comparable to the Oil and Gas CTG's recommendations. The Commission also determined that there are not comparable federal rules requiring the inspection and maintenance of natural gas-driven pneumatic controllers.

(II) The federal rules discussed in (I), are primarily technology-based in that they largely prescribe the use of specific technologies in order to comply. EPA has provided some flexibility in NSPS OOOO and NSPS OOOOa by allowing a storage vessel to avoid being subject to NSPS OOOO if the storage vessel is subject to any state, federal, or local requirement that brings the storage vessel's emissions below the NSPS OOOO threshold. EPA has also provided some flexibility in NSPS OOOOa to allow an owner or operator to request EPA approve compliance with an alternate emission limitation (e.g., alternative monitoring, state program) instead of related requirements in NSPS OOOOa.

(III) The CAA establishes the 8-hour ozone NAAQS and requires Colorado to develop SIP revisions that will ensure timely attainment of the NAAQS. The ozone NAAQS was not determined taking into account concerns unique to Colorado. In addition, Colorado cannot rely exclusively on a federally enforceable permit or federally enforceable NSPS or NESHAP to satisfy Colorado's Moderate nonattainment area RACT obligations. Instead, Colorado can adopt applicable provisions into its SIP directly, as the Commission has done here. Further, the State Only pneumatic controller inspection requirements address the lack of federal requirements concerning emissions from malfunctioning pneumatic controllers.

(IV) Unless federal law changes, Colorado will be required to comply with the more stringent 2015 ozone NAAQS in the near future and may be required to comply with the more stringent requirements for a Serious nonattainment area. These current SIP and State Only revisions may improve the ability of the regulated community to comply with new, more stringent, future requirements. In addition, these revisions build upon the existing regulatory programs being implemented by Colorado's oil and gas industry, which is more efficient and cost-effective than a wholesale adoption of EPA's recommended oil and gas RACT provisions.

(V) EPA has established October 27, 2018, deadline for this SIP submission. EPA has not yet established deadlines for the DMNFR to attain the 2015 ozone NAAQS. However, given the potential reclassification of the DMNFR to Serious under the 2008 ozone NAAQS, the Commission determined that taking action to reduce ozone precursor emissions as soon as practicable, either as part of the SIP or on a State Only basis, is warranted.

(VI) The revisions to Regulation Number 7 Sections XII. and XVIII. strengthen Colorado's SIP and State Only provisions, which currently addresses emissions from the oil and gas sector in a cost-effective manner, allowing for continued growth of Colorado's oil and gas industry.

(VII) The revisions to Regulation Number 7 Sections XII. and XVIII., including the State Only provisions, establish reasonable equity for oil and gas owners and operators subject to these rules by providing the same standards for similarly situated and sized sources.

(VIII) If Colorado does not attain the 2008 ozone NAAQS by July 20, 2018, or qualify for an extension of the attainment deadline, EPA will likely reclassify Colorado as a Serious ozone nonattainment area, which automatically reduces the major source thresholds from 100 tons per year of VOC and NOx to 50 tons per year; thus subjecting more sources to

major source requirements. If EPA does not approve Colorado's SIP, EPA may promulgate a Federal Implementation Plan; thus potentially determining RACT for Colorado's sources. Either of these outcomes may subject others to increased costs. The State Only rule revisions are expected to reduce future costs by achieving emissions reductions that will assist the DMNFR in attaining both the 2008 and 2015 ozone NAAQS thus avoiding additional ozone nonattainment area CAA requirements.

(IX) Where necessary, the revisions to Regulation Number 7 include minimal monitoring, recordkeeping, and reporting requirements that correlate, where possible, to similar federal or state requirements. The State Only pneumatic controller inspection program is tailored to be consistent with the SIP required LDAR program, thereby reducing costs related to pneumatic controller inspections.

(X) Demonstrated technology is available to comply with the revisions to Regulation Number 7. Some of the revisions expand upon requirements already applicable, such as the requirements for compressors, pneumatic controllers, leak detection and repair at well production facilities and natural gas compressor stations, and equipment leaks at natural gas processing plants. Further, pneumatic controller inspections will be conducted using accepted technologies and some owners or operators already repair and maintain pneumatic controllers.

(XI) As set forth in the Economic Impact Analysis, the revisions to Regulation Number 7 contribute to the prevention of ozone in a cost-effective manner.

(XII) Alternative rules could also provide reductions in ozone and help to attain the NAAQS. However, a no action alternative would very likely result in an unapprovable SIP. The Commission determined that the Division's proposal was reasonable and cost-effective. The Commission further determined the State Only natural gas-driven pneumatic controller inspection program is reasonable and cost-effective, given the potential for reducing emissions from malfunctioning pneumatic controllers and the absence of federal requirements addressing pneumatic controller emissions.

As part of adopting the revisions to Regulation Number 7, the Commission has taken into consideration each of the factors set forth in C.R.S. § 25-7-109(1)(b).

Colorado must revise Colorado's Ozone SIP to address the Moderate nonattainment area requirements. Colorado must also continue to reduce ozone concentrations to address both the possibility of reclassification under the 2008 ozone NAAQS and the 2015 ozone NAAQS. However, to the extent that C.R.S. § 25-7-110.8 requirements apply to this rulemaking, including regulatory changes made on a State Only basis, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

(II) Evidence in the record supports the finding that the rules shall result in a demonstrable reduction of the ozone precursors VOC.

(III) Evidence in the record supports the finding that the rules shall bring about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.

(IV) The rules are the most cost-effective to achieve the necessary and desired results, provide the regulated community flexibility, and achieve the necessary reduction in air pollution.

(V) The selected regulatory alternative will maximize the air quality benefits of regulation in the most cost-effective manner.

Appendix A Colorado Ozone Nonattainment or Attainment Maintenance Areas

I. Chronology of Attainment Status

Denver Metropolitan Area Only

1978 Denver 1-hour Ozone Nonattainment Area designation first becomes effective in 7-county Denver Metropolitan Area

10/11/01 Denver 1-hour Ozone Attainment Maintenance Area designation replaces non-attainment designation and becomes effective in 7-county Denver Metropolitan Area

9/2/05 1-hour Ozone National Ambient Air Quality Standard is Revoked in Colorado except for the Denver 1-hour Ozone Attainment Maintenance Area.

Denver Metropolitan Area and North Front Range

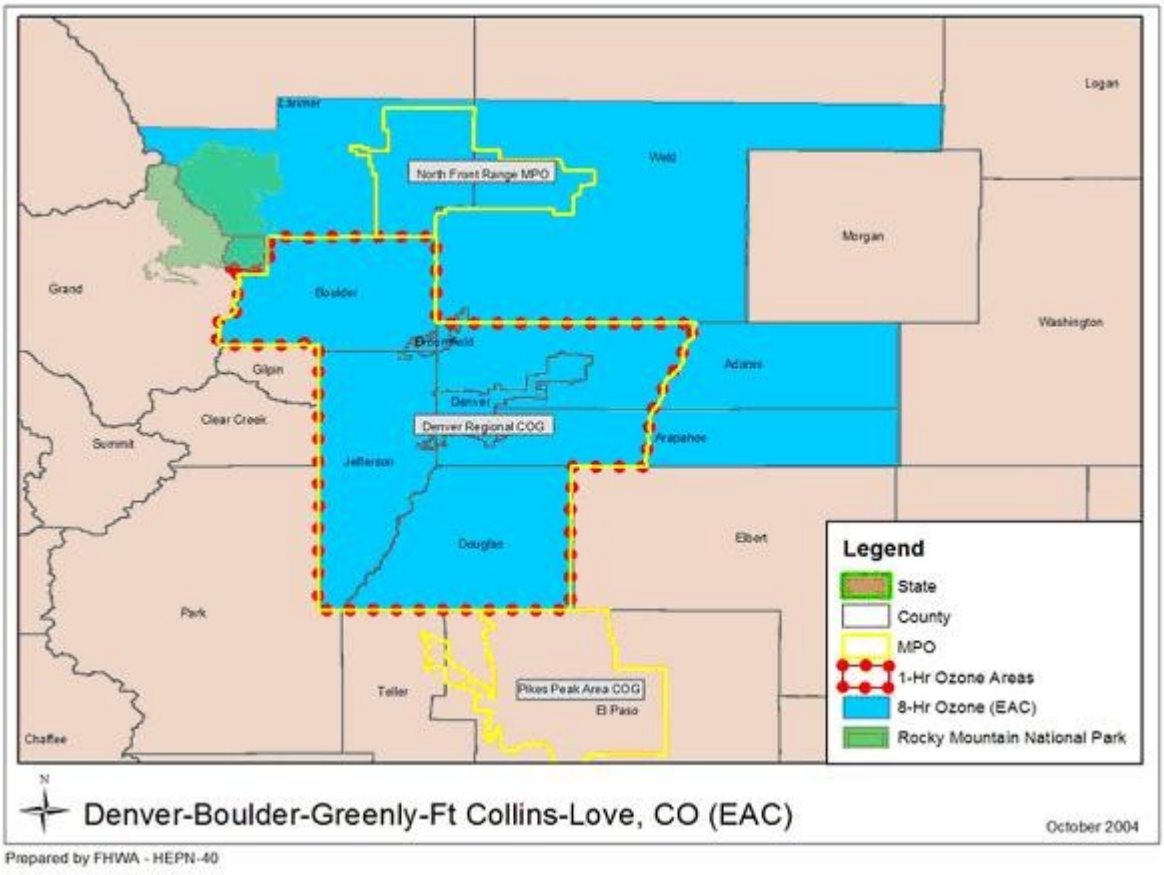
10/11/01 1-hour attainment maintenance area replaces non-attainment designation for the Denver Metro Area/North Front Range Area

4/15/04 EPA designates the Denver Metro Area/North Front Range region as an 8-hour ozone non-attainment area, designation deferred due to the implementation of the Early Action Compact

11/20/07 Denver 8-hour ozone non-attainment designation becomes effective in 9 county Denver Metropolitan Area

II. Maps

Denver Metropolitan Area and North Front Range



Appendix B Criteria for Control of Vapors from Gasoline Transfer to Storage Tanks

I. Drop Tube Specifications. Submerged fill is specifically required. The drop tube must extend to within 15.24 cm (6 in.) of the tank bottom.

II. Vapor Hose Return. Vapor return line and any manifold must be minimum 7.6 cm (3 in.) ID. All tanks must be provided with individual overfill protection. (Liquid must not be allowed in the vent line or vapor recovery line.) Disconnect on liquid line should assure that all liquid in the hose is drained into the storage tank. The requirements for overfill protection as specified may be waived for existing storage tanks when it is demonstrated to the satisfaction of the appropriate local Fire Marshal, and where applicable, the State Oil Inspection Office that the installation of overfill protection devices on existing tanks is physically not possible.

III. Size of Vapor Line Connections. For separate vapor lines, nominal three inch (7.6 cm) or larger connections must be utilized at the storage tank and truck. However, short lengths of 2-inch (5.1 cm) vertical pipe no greater than 91.4 cm (3 ft.) long are permissible if the fuel delivery rate is less than 400 gallons per minute.

Where concentric (coaxial) connections are utilized, a 45 cm2 (7 sq. in.) area for vapor return shall be provided. Four-inch concentric designs are acceptable only when using a venturi-shaped outer tube or where normal drop rate of 1,700 liters per minute (450 gpm) is reduced by at least 25%. Six-inch (15.24 cm) risers should be installed in new stations with concentric connections.

IV. Type of Liquid Fill Connection. Vapor tight caps are required for the liquid fill connection for all systems. A positive closure utilizing a gasket is necessary to prevent vapors from being emitted at ground level. Cam-lock closures meet this requirement. Dry break closures are preferred.

V. Tank Truck Inspection. Tank trucks are specifically required to be vapor-tight and to have valid leak-tight certification. The visual inspection procedure must be conducted at least once every six months to ensure properly operating manifolding and relief valves, using the test procedure of Appendix D.B.

VI. Dry Break on Underground Tank Vapor Riser. Dry-break closures are required to assure transfer of displaced vapors to the truck and to prevent ground-level, gasoline-vapor emissions caused by failure to connect the vapor return line to the underground tanks (closure on riser to mate with opening on hose). These devices keep the tank sealed until the hose is connected to the underground tank. Concentric couplers without dry-breaks are required to have a dry-break on the vapor line connection to the coupler itself, rather than on the rise pipe from the storage tank. The liquid fill riser should be provided with a gap having a positive closure (threaded or latched).

VII. Equipment Ensuring Vapor-Hose Connection During Gasoline Deliveries. An equipment system aboard the tank truck shall insure (barring deliberate tampering) that a vapor return hose is connected from the truck's vapor return line to the tank receiving gasoline.

VIII. Vent Line Restriction Devices. Vent line restriction devices are required. They both improve recovery efficiency and, as an integral part of any system, assure that the vapor return line is connected during transfer. If the liquid fill line were attached to the underground tank and the vapor return line were disconnected, then dry break closures would seal the vapor return path to the truck, forcing all vapors out the vent line. In such instances, a restriction device on this vent line greatly reduces fill rate, warning the operator that the vapor line is not connected. Both of the following devices must be used.

(a) An orifice of one-half to three-fourth inch (1.25 - 1.9 cm) ID.

(b) A pressure/vacuum relief valve set to open at (1) a positive gauge-pressure greater or equal to five inches of water (9 torr) and at (2) a negative gauge-pressure greater or equal to five inches of water (9 torr).

IX. Fire and Safety Regulations. All new or modified installations must comply in their entirety with all code requirements including NFPA, Pamphlet 30 (fiberglass is preferred for new manifold lines). For any questions concerning compliance, please contact State Oil Inspection or your local Fire Marshal.

X. State Oil Inspection. Requirements of the State Oil Inspection office make accurate measurements of the liquid in the underground tank necessary. Vapor-tight gauging devices will be required in all systems designed such that a pressure other than atmospheric will be held or maintained in the storage tank. The volume of liquid in the tanks maintained at atmospheric pressure may be determined with a stick through the submerged drop tube or through a separate submerged gauging tube extending to within 15.24 cm (6 in.) of the tank bottom.

Appendix C Criteria for Control of Vapors From Gasoline Transfer at Bulk Plants (Vapor Balance System)

I. Storage Tank Requirements:

A. Drop Tube Specification: Underground tanks must contain a drop tube that extends to within six inches (15.24 cm) of the tank bottom. All top loaded above-ground tanks must

contain a similar drop tube. Above-ground tanks using bottom loading, where the inlet is flush with the tank bottom, must meet the submerged fill requirement.

B. Size of Vapor Lines from Storage Tanks to Loading Rack: See nomograph (Attachment 1). NOTE: Affected sources are free to choose a pipe diameter different from the one suggested by the nomograph if sufficient justification and documentation is presented.

C. Pressure Relief Valves: All pressure relief valves and valve connections must be checked periodically for leaks, and be repaired as required. The relief valve pressures should be set in accordance with Sections 2-2.5.1 and 2-2.7.1 inclusive of the current National Fire Protection Agency Pamphlet Number 30.

D. Liquid Level Check Port: Access for checking liquid level by other than a vapor-tight gauging system shall be vapor-tight when not being used. Tank level shall be checked prior to filling to avoid overfills.

E. Miscellaneous Tank Openings: All other tank openings, e.g., tank inspection hatches, must be vapor tight when not being used, and must be closed at all times during transfer of fuel.

F. Storage Tank Overfill Protection: Except for concentric (coaxial) delivery systems, underground tanks must have ball check valves (stainless steel ball). Tanks with concentric delivery systems must have Division-approved overfill protection, (e.g., cutoff pressure-switch in vent line).

II. Loading Rack Requirements:

A. Loading Specification: A vapor-tight bottom-loading or top-loading system using submerged fill with a positive seal, e.g., the Wiggins (tm) system, is required. NOTE: Bulk plants delivering solely to exempt accounts are required to have submerged fill, but loading need not be vapor-tight.

B. Dry-Break on Storage Tank Vapor Return Line: A dry-break is required to prevent ground-level gasoline vapor emissions during periods when gasoline transfer is not being made. This device keeps the tank sealed until the vapor return hose is connected.

III. Tank Truck* Requirements:

A. Vapor Return Modification: Tank trucks must be modified to recover vapors during loading and unloading operations. NOTE: Tank trucks making deliveries solely to exempt accounts do not require this modification. However, 97% submerged fill is required when top loading.

B. Loading Specifications: Bottom loading or top loading using submerged fill with a positive seal is required for tank trucks modified for vapor recovery. NOTE: When loading a tank truck with this modification without the vapor return hose connected (this is allowed at bulk plants servicing exempt accounts returning without collected vapors in the tank), the requirements of National Fire Protection Agency Pamphlet Number 385, "Loading and Unloading Venting Protection in Tank Vehicles, Section 2219, Paragraph c", must be met.

C. Vapor Return Hose Size: A minimum three-inch (7.6 cm) ID vapor return hose is required.

D. Tank Truck Inspection: Tank trucks are required to be vapor-tight and have valid leak-tight certification. Periodic visual inspection is necessary to insure properly operating manifolding and relief valves.

* The term "tank truck" is meant to include all trucks with tanks used for the transport of gasoline, such as tank wagons, account trucks and transport trucks.

Appendix D Minimum Cooling Capacities for Refrigerated Freeboard Chillers on Vapor Degreasers

The specifications in this Appendix apply only to vapor degreasers that have both condenser coils and refrigerated freeboard chillers. (The coolant in the condenser coils is normally water.) The amount of refrigeration capacity is expressed in Calories/Hour per meter of perimeter. This perimeter is measured at the air/vapor interface.

For refrigerated chillers operated below 0°C., the following requirements apply:

DEGREASER WIDTH	*CALORIES/HR METER OF PERIMETER	BTU/HR FOOT OF PERIMETER
Less than 1.1 meters (3.5 ft.)	165	200
1.1 - 1.8 meters (3.5 - 6.0 ft.)	250	300
1.8 - 2.4 meters (6.0 - 8.0 ft.)	335	400
2.4 - 3.0 meters (8.0 - 10.0 ft.)	145	500
Greater than 3.0 meters (10 ft.)	500	600

* Kilocalories (1 Kilocalorie = 4184.0 joules)

For refrigerated chillers operating above 0°C., there shall be at least 415 Calories/Hr. - meter of perimeter (500 BTU/Hr-ft.), regardless of size.

Definition:

"Air/Vapor Interface" - means the surface defined by the top of the solvent vapor layer within the confines of a vapor degreaser.

Appendix E Test Procedures for Annual Pressure/Vacuum Testing of Gasoline Transport Tanks

A. Testing

The delivery tank, mounted on either the truck or trailer, is pressurized isolated from the pressure source, and the pressure drop recorded to determine the rate of pressure change. A vacuum test is to be conducted in a similar manner. The Division shall provide forms which designate all required information to be recorded by the testing agency.

B. Visual Inspection

The entire tank, including domes, dome vents, cargo tank, piping, hose connections, hoses and delivery elbows, shall be inspected for wear, damage, or misadjustment that could be a potential leak source. Inspect all rubber fittings except those in piping which are not accessible. Any part found to be defective shall be adjusted, repaired, or replaced as necessary. (Safety note: it is strongly recommended that

testing be done outside, unless tank is first degassed (e.g., steamcleaned). No "hot work" or spark-producing procedures should be undertaken without first degassing).

C. Equipment Requirements

1. Necessary equipment.

a. Source of air or inert gas of sufficient quantity to pressurize tanks to 27.7 inches of water (1.0 psi; 52 torr) above atmospheric pressure.

b. Water manometer with 0 to 25 inch range (0-50 torr); with scale readings of 0.1 inch (or 0.2 torr).

c. Test cap for vapor line with a shut-off valve for connection to the pressure and vacuum supply hoses. The test cap is to be equipped with a separate tap for connecting with manometer.

d. Cap for the gasoline delivery hose.

e. Vacuum device (aspirator, pump, etc.) of sufficient capacity to evacuate tank to ten (10) inches of water (20 torr).

2. Recommended equipment

a. In-line, pressure-vacuum relief valve set to activate at one (1) psi (52 torr) with a capacity equal to the pressurizing or evacuating pumps. (Note: This is a safety measure to preclude the possibility of rupturing the tank).

b. Low pressure (5 psi (250 torr) divisions) regulator for controlling pressurization of tank.

D. Vacuum and Pressure Tests of Tanks

1. Pressure Test

a. The dome covers are to be opened and closed.

b. The tank shall be purged of gasoline vapor and tested empty. The tank may be purged by any safe method such as flushing with diesel fuel, or heating oil. (For major repairs it is recommended that the tank be degassed by steam cleaning, etc.)

c. Connect static electrical ground connections to tank. Attach the delivery and vapor hoses, remove the delivery elbows and plug the liquid delivery fittings. (The latter can normally be accomplished by shutting the delivery valves).

d. Attach the test cap to the vapor recovery line of the delivery tank.

e. Connect the pressure (or vacuum) supply hose and, optionally, the pressure-vacuum relief valve to the shut-off valve. Attach a manometer to the pressure tap on the vapor-hose cap. Attach pressure source to the hose.

f. Connect compartments of the tank internally to each other if possible.

g. Open shut-off valve in the vapor recovery hose cap. Applying air pressure slowly, pressurize the tank, or alternatively the first compartment, to 18 inches of water (35 torr).

h. Close the shut-off valve, allow the pressure in the delivery tank to stabilize (adjust the pressure if necessary to maintain 18 inches of water (35 torr), record the time and initial pressure; begin the test period.

i. At the end of five (5) minutes, record the final time, pressure, and pressure change. Disconnect the pressure source from the pressure/vacuum supply hose, and slowly open the shut-off valve to bring the tank to atmospheric pressure.

j. Repeat for each compartment if they were not interconnected.

2. Vacuum Test

a. Connect vacuum source to pressure and vacuum supply hose.

b. Slowly evacuate the tank, or alternatively the first compartment, to six (6) inches of water (12 torr). Close the shut-off valve, allow the pressure in the delivery tank to stabilize (adjust the pressure if necessary to maintain six (6) inches of water (12 torr) vacuum), record the initial pressure and time; begin the test period. At the end of five (5) minutes, record the final pressure, time, and pressure change.

c. Repeat for each compartment if they were not interconnected.

E. Leak Check of Vapor Return Valve

1. After passing the vacuum and pressure tests, by making any needed repairs, pressurize the tank as in Appendix E, paragraph D.1. to eighteen (18) inches of water (35 torr).

2. Close the internal valve(s) including the vapor valve(s) and "fire valves."

3. Relieve the pressure in the vapor return line to atmospheric pressure, leaving relief valve open to atmospheric pressure.

4. After five (5) minutes, seal the vapor return line by closing relief valve(s). Then open the internal valves including the vapor valve(s) and record the pressure, time, and pressure change. (To trace a leaking vapor valve it may be advantageous to open each vapor valve one at a time and record the pressure after each.)

5. The leak rate attributed to the vapor return valve shall be calculated by subtracting the pressure change in the most recent pressure test per Appendix E, paragraph D.1.i. from the pressure change in E.4.

Appendix F Emission Limit Conversion Procedure

The following procedure shall be used to convert emission limits expressed as lb VOC/gallon coating less water and exempt solvents to limits expressed as lb VOC/gallon solids. This example uses the emission limit of 3.7 lb VOC/gallon coating.

Assume VOC density of the `Presumptive' RACT coating is 7.36 pounds per gallon because this same value was used to determine the "Presumptive" recommended RACT emission limits from volume solids data.

(3.7) LB VOC / GAL COATING LESS WATER x l GAL VOC x 100 / 7.36 LB VOC = (50) V0L% VOC

100 - (50) V0L% VOC = (50) V0L% SOLIDS

(3.7) LB VOC / GAL COATING LESS H2O x 100 GAL COATING / (50) GAL SOLIDS = (7.4) LB VOC / GAL SOLIDS

See "A Guideline For Surface Coating Calculations" EPA - 340/1-86-0l6 for additional examples.

The following table lists equivalent mass VOC/volume solids emission limits for various coating operations.

Equivalency Data for Surface Coating Processes

(VOC Density = 7.36 lb/gal)

Industrial Finishing Categories	Lb VOC per Gallon Coating less water	Lb VOC per Gallon of Solids	Kg VOC per Liter of Solids
Can Industry			
Sheet Basecoat (Exterior and Interior) and over-varnish; two-piece can exterior (base-coat and over-varnish)	2.8	4.5	0.55
Two- and three-piece can interior body spray, two-piece can exterior end spray or roll coat	4.2	9.8	1.19
Three-piece can side-seam spray	5.5	21.7	2.61
End sealing compound	3.7	7.4	0.88
Any additional coats	4.2	9.8	1.19
Coil Coating			
Any coat	2.6	4.0	0.48
Fabric Coating			
Fabric coating line	2.9	4.8	0.58
Vinyl coating line	3.8	7.9	0.93
Paper Coating			
Coating line	2.9	4.8	0.58

Automotive and Light-Duty Truck Assembly Plant			
Primer (electrodeposition) application, flashoff area and oven	1.9	2.6	0.31
Topcoat application, flashoff area and oven	2.8	4.5	0.55
Final repair application, flashoff area and oven	4.8	13.8	1.67
Metal Furniture			
Coating line	3.0	5.1	0.61
Magnet Wire			
Wire coating operation	1.7	2.2	0.26
Large Appliances			
Prime, single, or topcoat application area, flashoff area and oven	2.8	4.5	0.55
Miscellaneous Metal Parts and Products			
Air-dried items	3.5	6.7	0.80
Clear-coated items	4.3	10.3	1.25
Extreme performance coatings	3.5	6.7	0.80
Other coatings and systems	3.0	5.1	0.61
Plastic Film Coating			
Plastic film coating line	2.9	4.8	0.58

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Tracking number: 2017-00298

Opinion of the Attorney General rendered in connection with the rules adopted by the

Air Quality Control Commission

on 11/17/2017

5 CCR 1001-9

REGULATION NUMBER 7 CONTROL OF OZONE VIA OZONE PRECURSORS AND CONTROL OF HYDROCARBONS VIA OIL AND GAS EMISSIONS

The above-referenced rules were submitted to this office on 11/17/2017 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

November 21, 2017 14:35:15

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Water Quality Control Commission (1002 Series)

CCR number

5 CCR 1002-31

Rule title

5 CCR 1002-31 REGULATION NO. 31 - THE BASIC STANDARDS AND METHODOLOGIES FOR SURFACE WATER 1 - eff 12/30/2017

Effective date

12/30/2017

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Water Quality Control Commission

REGULATION NO. 31 - THE BASIC STANDARDS AND METHODOLOGIES FOR SURFACE WATER

5 CCR 1002-31

. . . .

31.17 NUTRIENTS

(a) Overview

This section establishes interim numeric values for phosphorus, nitrogen and chlorophyll *a* and also sets forth provisions regarding the use of these numeric values for the adoption of water quality standards.

(b) Interim Phosphorus Values

Table 1 Interim Total Phosphorus Values	
Lakes and Reservoirs, cold, > 25 acres	25 ug/L [1]
Lakes and Reservoirs, warm > 25 acres	83 ug/L [1]
Lakes and Reservoirs, < = 25 acres	RESERVED
Rivers and Streams - cold	110 ug/L [2]
Rivers and Streams - warm	170 ug/L [2]
[1] summer (July 1-September 30) average Total Phosphorus (ug/L) in the mixed layer of lakes (median of multiple depths), allowable exceedance frequency 1-in-5 years. [2] annual median Total Phosphorus (ug/L), allowable exceedance frequency 1-in-5 years.	

(c) Interim Nitrogen Values (Effective December 31, 2027)

Table 2 Interim Total Nitrogen Values	
Lakes and Reservoirs, cold, > 25 acres	426 ug/L [1]
Lakes and Reservoirs, warm, > 25 acres	910 ug/L [1]
Lakes and Reservoirs, < = 25 acres	RESERVED
Rivers and Streams - cold	1,250 ug/L [2]
Rivers and Streams - warm	2,010 ug/L [2]
[1] summer (July 1–September 30) average Total Nitrogen (ug/L) in the mixed layer of lakes (median of multiple depths), allowable exceedance frequency 1-in-5 years. [2] annual median Total Nitrogen (ug/L), allowable exceedance frequency 1-in-5 years.	

(d) Interim Chlorophyll *a* Values

Table 3 Interim Chlorophyll *a* Values		
Waterbody type	.	DUWS
Lakes and Reservoirs, cold, > 25 acres	8 ug/L [a]	5 ug/L [c]
Lakes and Reservoirs, warm, > 25 acres	20 ug/L [a]	5 ug/L [c]
Lakes and Reservoirs, < = 25 acres	RESERVED	5 ug/L [c]
Rivers and Streams - cold	150 mg/m2 [b]	

Rivers and Streams - warm	150 mg/m2 [b]

[a] summer (July 1- September 30) average chlorophyll a (ug/L) in the mixed layer of lakes (median of multiple depths), allowable exceedance frequency 1-in-5 years.

[b] summer (July 1-September 30) maximum attached algae, not to exceed.

[c] March 1-November 30 average chlorophyll a (ug/L) in the mixed layer of lakes (median of multiple depths), allowable exceedance frequency 1-in-5 years.

(e) Use of Interim Phosphorus Values for Standards Adoption

Prior to December 31, 2027 the values set forth in subsection (b) above will be considered for the adoption of water quality standards for specific water bodies in Colorado in the following circumstances.

(i) Waters located upstream of

(A) all permitted domestic wastewater treatment facilities discharging prior to May 31, 2012 or with preliminary effluent limits requested prior to May 31, 2012,

(B) cooling tower discharges, and

(C) any non-domestic facility subject to Regulation #85 effluent limits and discharging prior to May 31, 2012.

(ii) Circumstances where the commission has determined that adoption of numerical standards is necessary to address existing or potential nutrient pollution because the provisions of Regulation #85 will not result in adequate control of such pollution.

(f) Chlorophyll *a* Values for Standards Adoption

Prior to December 31, 2022, the values set forth in subsection (d) above will be considered for the adoption of water quality standards for specific water bodies in Colorado in the following circumstances.

(i) Waters located upstream of

(A) all permitted domestic wastewater treatment facilities discharging prior to May 31, 2012, or with preliminary effluent limits requested prior to May 31, 2012,

(B) cooling tower discharges, and

(C) any non-domestic facility subject to Regulation #85 effluent limits and discharging prior to May 31, 2012.

(ii) Discretionary Application of the Values for Direct Use Water Supply (DUWS) Lakes and Reservoirs. The commission may determine that a numerical chlorophyll standard is appropriate for specific water bodies with this sub-classification after consideration of the following factors:

(A) Whether the public water system using the lake or reservoir as a raw water supply experiences impacts attributed to algae on an intermittent or continual basis;

(B) Whether there are lake or reservoir use restrictions in place that recognize the importance of the reservoir as a water supply;

(C) Whether application of this value appropriately balances protection of all classified uses of the lake or reservoir;

(D) Other site specific considerations which affect the need for a more protective value.

(iii) Circumstances where the commission has determined that adoption of numerical standards is necessary to address existing or potential nutrient pollution because the provisions of Regulation #85 will not result in adequate control of such pollution.

(g) Use of Interim Nitrogen Values for Standards Adoption

After December 31, 2027, the values set forth in subsection (c) above will be considered for the adoption of water quality standards for specific water bodies in Colorado in the circumstances identified in subsection (e)(i) and (ii) above.

(h) Phase 2 Application of Numeric Standards

After December 31, 2022, the values set forth in subsection (d) will be considered by the commission when applying numeric standards to individual segments. After December 31, 2022, the values set forth in subsections (b) and (c) for lakes and reservoirs will be considered by the commission when applying numeric standards to Direct Use Water Supply (DUWS) reservoirs and lakes or lakes and reservoirs with public swim beaches that meet the definition of natural swimming areas in C.R.S. § 25-5-801. After December 31, 2027, the values set forth in subsection (b) and (c) will be considered by the commission when applying numeric standards to individual segments where total phosphorus and total nitrogen standards have not yet been adopted.

For each individual segment where numeric standards for total phosphorus, total nitrogen, and chlorophyll *a* have not yet been adopted, numeric standards will be adopted by the commission where necessary to:

(i) protect the assigned use classifications, and

(ii) comply with the Colorado Water Quality Control Act and the Federal Act.

(i) Site-Specific Flexibility to Consider Alternatives to the Interim Values

In accordance with the preceding subsection, both before and after December 31, 2027, in considering adoption of numeric standards for specific water bodies in Colorado, the commission may review relevant site-specific factors and conditions in determining what numeric standards are most appropriate, and may adopt standards, either more or less stringent than the 31.17(b)(c) and (d) interim values.

(i) Where evidence demonstrates that an alternative numeric standard would be more appropriate for the protection of use classifications, the commission may consider assigning ambient quality-based standards or site-specific criteria based standards as outlined in 31.7(1)(b)(ii-iii).

(ii) Where it has been demonstrated that interim values are not feasible to achieve, the commission may consider modifying the use classification as outlined in Section 31.6(2).

(iii) Where the conditions established in Section 31.7(3)(a) are met, the commission may consider granting a temporary modification.

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31.55 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE; OCTOBER 10, 2017 RULEMAKING; EFFECTIVE DECEMBER 30, 2017

The provisions of sections 25-8-202(1)(b), 25-8-204; and 25-8-402, C.R.S., provide the specific statutory authority for adoption. The commission also adopted, in compliance with section 24-4-103(4) C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE:

Phase 2 of Colorado's Nutrients Management Program: In this rulemaking, the commission took action to put into place the second phase of Colorado's strategy to address current and potential future nutrient pollution of Colorado surface waters.

In 2012, the commission adopted interim numerical values for phosphorus, nitrogen, and chlorophyll *a* as one part of a two-part strategy. Since 2012, the commission has adopted phosphorus numeric values upstream of domestic discharges, cooling tower discharges, and non-domestic discharges subject to Regulation #85 effluent limitations in segments throughout the state in accordance with 31.17. The commission has also adopted the direct use water supply classification and standard in accordance with 31.17. In 2016, EPA approved the interim numeric values for chlorophyll *a*, approved with recommendations the numeric values for phosphorus and nitrogen for lakes and reservoirs, and took no action with respect to the interim numeric values for phosphorus and nitrogen for rivers and streams or the delayed effective dates.

In 2012, the commission envisioned that the interim numeric values in 31.17 could be used for the adoption of water quality standards for any surface waters in Colorado following May 31, 2022. However, EPA's action in 2016 has led the commission to consider modifications to its nutrients reduction strategy.

First, the commission noted that EPA had approved the interim numeric values for chlorophyll *a*, and the commission determined that the 2022 timeframe is appropriate for adoption of chlorophyll *a* standards. The adoption of chlorophyll *a* standards throughout the state in the 2022 timeframe is included in Colorado's nutrients management plan that was discussed during the proceedings for this hearing. Also discussed in that plan is the commission's anticipation that during Phase 2 of Colorado's nutrients management approach, the chlorophyll *a* standards will be implemented through the TMDL process for waters listed on the 303(d) list for impaired waters.

Second, the commission noted that EPA approved with recommendations the numeric values for phosphorus and nitrogen for lakes and reservoirs. Because of the EPA recommendations regarding the interim phosphorus and nitrogen values for lakes and reservoirs, additional analysis is needed before applying the interim values, particularly for warm-water lakes and reservoirs. The commission determined that the division should revisit the phosphorus and nitrogen values for lakes and reservoirs, and should prioritize the development of numeric phosphorus and nitrogen standards based on protection of public health. Therefore, as reflected in the nutrients management plan, the commission anticipates that in the 2022 timeframe the division will propose phosphorus and nitrogen standards for lakes and reservoirs that are direct use water supply reservoirs and where there are public swim beaches. With the exception of direct use water supply reservoirs and lakes and reservoirs with public swim beaches, the commission has decided to further delay the effective dates of the phosphorus and nitrogen numeric values below dischargers to 2027.

Third, the commission noted that EPA took no action with respect to the interim numeric values for phosphorus and nitrogen for rivers and streams. The commission determined more time is needed to revisit the numeric values for phosphorus and nitrogen for rivers and streams, and anticipates that revised standards will be developed and considered in the 2027 timeframe. The commission acknowledges that removing organic nitrogen to low levels is a current technological challenge. The commission recognizes this

issue will need to be considered in future policy reviews and rulemaking hearings regarding nutrients along with future technological advances.

The commission also anticipates that a hearing will be held in 2020 to consider impacts from nonpoint sources and potential strategies for nonpoint source control. As part of implementing the provisions of Regulation 85 at subsection 85.5(5), Nonpoint Source Discharges, the commission determined that considerable progress has been made to date by the division, the Colorado Monitoring Framework Agricultural Task Force, the Lower Arkansas Valley Water Conservancy District, and other partnering entities through dissemination of nutrient control-related information and tools for voluntary use by the agricultural community. This model of collaborative outreach, education, and engagement has been made possible through division leadership and funding to support these efforts, as well as the proactive responsiveness of entities who work directly with agricultural producers. The commission encouraged these collaborative activities to continue with a goal of documenting measurable results for presentation at the next triennial review.

In addition, while the commission's traditional approach would have meant that the commission would have considered updated standards for ammonia and selenium in 2021, the current intent of the commission is to delay adoption of revised standards for selenium and ammonia until 2027 as well. The long-term strategy is that the commission will consider the adoption of revised standards for all of these constituents for all water bodies in the state in rulemaking hearings in 2027. The commission anticipates that over the course of the next 10 years, the division will work to revise the standards for ammonia, selenium, nitrogen and phosphorus for rivers and streams, while at the same time will develop feasibility information to assist dischargers with proposing discharger specific variances, which will also take into consideration the treatment challenges of treating for nutrients, selenium, and ammonia, as well as temperature. In order to implement standards as soon as practical, the commission will not rely on the basin review process for adoption of site-specific standards over the course of several years. Instead, in hearings in 2027, the commission will consider site-specific standards and discharger-specific variances for all of these parameters for all waters bodies of the state. After adoption of revised numeric nutrient standards in 2027 in rivers and streams, the commission intends that water quality based effluent limits will be implemented into permits after December 31, 2027.

While the commission has decided to delay the adoption of numeric nutrient values to 2027, it is committed to making additional progress towards nutrient reductions in Colorado during this second phase. The commission believes that the best way to make progress at this time is through an incentives program to encourage early reductions of nutrients. The incentives program will encourage facilities to make voluntary reductions of nutrients, and in exchange the facility will receive an extended compliance schedule as well as certainty about the year in which the facility will need to meet water quality based effluent limits. An extended compliance schedule means the facility will be given additional time to comply with water quality based effluent limits that would be based on the numeric values adopted in 2027. The commission believes that more progress can be made through an incentives program than through mandating reductions by medium sized facilities or facilities in a low priority watershed. For example, the commission believes that even if only the 15 largest dischargers took advantage of the incentives program, and if each of those facilities reduced its nitrogen 20% below the Regulation #85 effluent limits, the resulting load reduction in the state would be three times larger than what would be achieved if the Regulation #85 effluent limits were applied to all domestic wastewater treatment facilities with delayed implementation as identified in 85.5(1)(a)(ii). The commission believes this is the best current policy option to make effective progress in addressing nutrients management in Colorado at this time. The commission believes that reducing the phosphorus or nitrogen effluent limits in Regulation #85, or to apply those effluent limits to more facilities would result in substantially less progress in controlling nutrients in the next 10 years than will the incentive program. However, the commission does intend to evaluate the amount of improvement that occurs through the incentive program, and may revisit this approach and make additional modifications to its nutrients reduction strategy if this voluntary incentives program does not result in reductions as anticipated.

To achieve this goal of early nutrient reduction, the commission has adopted a voluntary incentive program. Participation in the program is entirely voluntary. The program does not require wastewater

treatment facilities to implement a specific treatment technology, but it is anticipated that nutrient reductions will be achieved through BNR optimization, a water quality trade, a source reduction plan, watershed nutrient reductions, or capital improvements. A facility that achieves early reduction of nutrients will be offered an incentive in the form of an extended CDPS permit compliance schedule, which increases the number of years that the wastewater facility has to meet the water quality based effluent limits after 2027. The commission expects that the incentive will provide wastewater treatment facilities additional time to identify funding sources necessary to make the capital infrastructure investment in tertiary treatment after 2027.

Regulatory framework for voluntary incentive program: The voluntary incentive program is outlined in Regulation 85.5(1.5). The commission intends that implementation of this program will be accomplished in conjunction with Commission Policy 17-1 that was adopted concurrent with this hearing. Permittees who wish to participate in the incentive program are required to submit a nutrient reduction plan on or before December 31, 2019, and annual nutrient monitoring reports to the division on or before March 31st of each year beginning in 2020. In order to qualify for the incentive program, the permittee must reduce nitrogen and/or phosphorus discharges to levels below those in Regulation #85 by December 31, 2026.

The annual reporting requirement provides the division with an opportunity to review a permittee's progress in reducing nutrient levels below those in Regulation #85 and to assess how those reductions relate to the incentives offered in Commission Policy 17-1. If a permittee is able to make early reductions in its discharge of nutrients, the permittee will qualify for an incentive which gives it additional time to comply with numeric nutrient values in Regulation #31, and Regulations #32 through 38 that are anticipated to be adopted in 2027. The amount of additional time granted will depend on the amount of nutrient concentration reduction that the wastewater facility achieves between 2019 and 2026.

The commission considered whether permittees subject to TMDLs should still be able to participate in the incentive program due to the fact that there is an impaired waterbody and the incentive program will result in participants receiving an extended period of time to meet their wasteload allocations. In particular, the commission heard concerns about participation by the dischargers subject to the Barr Milton TMDL. The commission ultimately decided that dischargers subject to a TMDL should still be able to participate in the incentive program because it will help drive earlier reductions. However, in the case of the dischargers subject to the Barr Milton TMDL, the commission decided that in order to continue to incentivize early nutrient reductions by those dischargers but yet address concerns about additional delay in implementation of the phosphorus wasteload allocations, that the method for earning incentive credit for total phosphorus reduction would be focused on further phosphorus reductions in line with the Barr Milton TMDL phosphorus targets. During the first review of Policy 17-1 which would typically take place in 2020, the commission will consider whether to extend the method that applies to the dischargers with a wasteload allocation pursuant to the Barr Milton TMDL to other dischargers within the Barr Milton watershed or even potentially more broadly. Should any entity determine that consideration of this change should occur prior to the deadline for opting into the incentive program on December 31, 2019, any entity can request that the commission consider changes prior to December 31, 2019.

The division will use Commission Policy 17-1 to make a determination about the amount of time that a permittee participating in the incentive program should be granted when it renews the permittee's CDPS permit after 2027. The division will rely on the nutrient incentives program annual reports in making this determination. If a permittee achieves early reduction of nutrients, it will be granted a compliance schedule in accordance with Commission Policy 17-1. Such compliance schedule may be revised or terminated if the division determines, under section 25-8-307, C.R.S., that the discharge or continued discharge of nutrients by an incentive program participant constitutes a "clear present and immediate danger to the health or livelihood of members of the public," or, under section 61.8(8)(a)(iv) of Regulation #61, that the "permitted activity endangers human health or the classified or existing uses of state waters and can only be regulated to acceptable levels by permit modification or termination. Examples of situations that could trigger the division's exercise of this authority could include but are not limited to a toxic algae bloom in receiving waters downstream of a wastewater treatment facility or the presence of pollutants that cause or contribute to unacceptably high concentrations of disinfection byproducts in drinking water treatment facilities with intake locations downstream of a wastewater treatment facility.

They could also include situations where nutrient levels in receiving/downstream waters have reached extreme highs or have increased two or threefold since 2017, where streams or reservoirs have repeated algae blooms producing toxins in multiple years, or where there is demonstrable and significant impact to aquatic life or other animals that is attributable to nutrients.

Based on the environmental benefit anticipated from the voluntary nutrient reductions under the incentive program, the commission expects these circumstances to be rare. The commission recognizes that the voluntary nutrient reductions that will result from the incentive program participants may reduce the severity of the event by reducing nutrient concentrations below those that would otherwise have been permitted. The commission anticipates that in such a circumstance the division will evaluate all of the sources and work to control all of the sources concurrently or in succession, depending on the most appropriate approach in that particular case.

A permittee or other interested parties can challenge the division's determination implementing the voluntary incentive compliance schedule as part of the CDPS permit renewal schedule. If the annual nutrient monitoring reports demonstrate that a permittee has achieved early nutrient reductions in accordance with Commission Policy 17-1, there will be a presumption that a permittee is entitled to the additional time allotted.

It is the commission's determination that this approach will achieve the maximum practical degree of water quality in state waters consistent with the welfare of the state, and that this approach maximizes the beneficial uses of state waters while bearing a reasonable relationship to the economic, environmental, energy, and public health costs and impacts to the public. The commission intends that the incentive program as adopted in 2017 will be maintained for the participants through 2027. The commission will review the incentive program as part of its triennial process in 2022. If the commission determines that additional nutrient reductions beyond those that result from the incentive program are necessary during the program period, the commission intends that these additional reductions will be accomplished first through alternative regulatory mechanisms and only as a last resort will the commission change the incentive program.

Headwaters: In 2012, the commission adopted language in section 31.17(e)(i) indicating that the interim phosphorus and chlorophyll *a* values would only be considered for adoption in "headwaters located upstream of" certain domestic and non-domestic wastewater treatment facilities. The use of the term "headwaters" led to discussion in the 2013 basin hearing. In 2013, the commission determined that there was no need for a demonstration that waters are "high quality" headwaters in order to adopt phosphorus standards. In 2014, the commission made a policy determination not to apply the interim values below a facility with a cooling tower operated by Tri-State Generation and Transmission. The commission made changes to section 31.17(e)(i) in order to reflect these policy decisions as well as to avoid confusion by continuing to use the term "headwaters," which carries with it meaning and connotation in other contexts.

PARTIES TO THE RULEMAKING

1. City of Boulder, Centennial Water and Sanitation District, Littleton-Englewood Wastewater Treatment Plant, Metro Wastewater Reclamation District and Colorado Wastewater Utilities Council
2. AF CURE
3. City of Black Hawk and Black Hawk/Central City Sanitation District
4. Colorado Monitoring Framework
5. Eagle River Water and Sanitation District
6. Supervisory Committee of the Littleton/Englewood Wastewater Treatment Plant
7. Colorado Springs Utilities
8. North Front Range Water Quality Planning Association
9. Farmer's Reservoir and Irrigation Company
10. City of Fort Collins
11. Town of Fraser
12. MillerCoors, LLC
13. Plum Creek Water Reclamation Authority

14. Public Service Company of Colorado
15. City of Pueblo
16. Silverthorne/Dillon Joint Sewer Authority
17. Town of Telluride
18. Tri-Lakes Wastewater Treatment Facility
19. Tri-State Generation and Transmission Association, Inc.
20. Upper Blue Sanitation District
21. Dominion Water and Sanitation District
22. Parker Water and Sanitation District
23. City and County of Broomfield
24. Leprino Foods Company
25. Swift Beef Company

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Office of the Attorney General

Tracking number: 2017-00234

Opinion of the Attorney General rendered in connection with the rules adopted by the

Water Quality Control Commission (1002 Series)

on 11/13/2017

5 CCR 1002-31

REGULATION NO. 31 - THE BASIC STANDARDS AND METHODOLOGIES FOR SURFACE WATER

The above-referenced rules were submitted to this office on 11/13/2017 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.

November 29, 2017 12:49:43

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Water Quality Control Commission (1002 Series)

CCR number

5 CCR 1002-42

Rule title

5 CCR 1002-42 REGULATION NO. 42 - SITE-SPECIFIC WATER QUALITY CLASSIFICATIONS AND STANDARDS FOR GROUND WATER 1 - eff 12/31/2017

Effective date

12/31/2017

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Water Quality Control Commission

REGULATION NO. 42 - SITE-SPECIFIC WATER QUALITY CLASSIFICATIONS AND STANDARDS FOR GROUND WATER

5 CCR 1002-42

. . . .

42.7 SITE-SPECIFIC GROUND WATER CLASSIFICATIONS AND WATER QUALITY STANDARDS

. . . .

(54) FORMER LOWRY AIR FORCE BASE, CITY AND COUNTY OF DENVER AND CITY OF AURORA, ARAPAHOE COUNTY, COLORADO

. . . .

DESCRIPTION - FIGURE 54B
FTZ Plume (North)

A part of the Southeast Quarter of Section 10, Township 4 South, Range 67 West of the Sixth Principal Meridian, City and County of Denver, State of Colorado, more particularly described as follows:

Commencing at the East Quarter Corner of said Section 10;
thence South 87°25'19" West a distance of 1374.75 feet to a point 50.00 feet west of the east line of the Northwest Quarter of said Southeast Quarter of Section 10 and the **Point of Beginning**;

Thence South 00°06'26'' West, parallel with and 50.00 west of said east line, a distance of 300.00 feet;
thence North 89°53'34" West a distance of 275.00 feet;
thence North 00°06'26" East a distance of 300.00 feet;

thence South 89°53'34" East a distance of 275.00 feet to the **Point of Beginning**.

Containing 82,500 square feet or 1.894 acres, more or less.

. . . .

42.36 STATEMENT OF BASIS SPECIFIC STATUTORY AUTHORITY AND PURPOSE: NOVEMBER 13, 2017 RULEMAKING; EFFECTIVE DATE DECEMBER 31, 2017

The provisions of sections 25-8-202(1)(a), (b) and (2); 25-8-203; and 25-8-204; C.R.S., provide the specific statutory authority for adoption. The Commission also adopted, in compliance with section 24-4-103(4) the following statement of basis and purpose.

BASIS AND PURPOSE

In today's action, the Commission updated the written legal description for the FTZ North Plume which was originally adopted by the Commission for the Former Lowry Air Force Base, City and County of Denver and City of Aurora, Arapahoe County, Colorado. The previous legal description for the FTZ North

Plume, effective on July 14, 2014, included, in error, a distance of 50,000 feet west of the east line of the Northwest Quarter of said Southeast Quarter of Section 10 and the Point of Beginning. The correct legal description is for a distance of 50.00 feet west of the east line of the Northwest Quarter of said Southeast Quarter of Section 10 and the Point of Beginning. This change was necessary to accurately identify the correct boundaries in which Regulation 42 applies.

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Tracking number: 2017-00424

Opinion of the Attorney General rendered in connection with the rules adopted by the

Water Quality Control Commission (1002 Series)

on 11/13/2017

5 CCR 1002-42

REGULATION NO. 42 - SITE-SPECIFIC WATER QUALITY CLASSIFICATIONS AND STANDARDS FOR GROUND WATER

The above-referenced rules were submitted to this office on 11/13/2017 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

November 29, 2017 12:50:29

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Water Quality Control Commission (1002 Series)

CCR number

5 CCR 1002-55

Rule title

5 CCR 1002-55 REGULATION NO. 55 - STATE FUNDED WATER AND WASTEWATER INFRASTRUCTURE PROGRAMS 1 - eff 12/31/2017

Effective date

12/31/2017

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Water Quality Control Commission

REGULATION NO. 55 - STATE FUNDED WATER AND WASTEWATER INFRASTRUCTURE PROGRAMS

5 CCR 1002-55

55.1 AUTHORITY, SCOPE AND PURPOSE

(1) Water Quality Improvement Fund

House Bill 06-1337 created the Water Quality Improvement Fund codified in section 25-8-608, C.R.S., of the Colorado Water Quality Control Act. House Bill 11-1026 amended the statute to authorize grants for stormwater management training and best practices training to prevent or reduce the pollution of state waters. House Bill 17-1306 amended the statute to authorize grants for lead testing in public schools. Section 25-8-608(1.7)(c), C.R.S. provides the Water Quality Control Commission ("commission") with the authority to promulgate, implement and administer this regulation.

Funding is dependent upon annual appropriations by the Colorado General Assembly and is based on violations that were committed on or after May 26, 2006. The resulting penalties collected by the Water Quality Control Division ("division") are transmitted to the state treasurer for deposit to the credit of the fund.

The purpose of the fund is to improve water quality in Colorado by providing grant funds for water quality improvement projects and voluntary lead testing in public schools using civil penalties from water quality violations.

(2) Nutrients Management Grant Fund

During the 2013 legislative session the General Assembly created a new program under House Bill 13-1191 entitled the Nutrient Grant Fund. Codified in section 25-8-608.5, C.R.S., HB 13-1191 authorizes the commission to promulgate rules necessary to administer the program as an amendment to Regulation #55, the Water Quality Improvement Fund.

The purpose of the fund is to provide assistance to Phase One Domestic Wastewater Treatment Works as defined in Regulation #85.

(3) Natural Disaster Grant Fund

House Bill 14-1002 created the Natural Disaster Grant Fund to be codified in section 25-8-608.7, C.R.S. – concerning the establishment of a grant program under the Colorado Water Quality Control Act to repair water infrastructure impacted by a natural disaster. The purpose of the fund is to award grants to local governments, including local governments accepting grants on behalf of and in coordination with not-for-profit public water systems, under rules promulgated by the commission for the planning, design, construction, improvement, renovation or reconstruction of domestic wastewater treatment works and public drinking water systems that have been impacted, damaged or destroyed in connection with a natural disaster. The division may only award grants to be used in counties for which the governor has declared a disaster emergency by executive order or proclamation under section 24-33.5-704, C.R.S.

Section 25-8-608.7(3), C.R.S. provides the Water Quality Control Commission with the authority to promulgate rules necessary to implement and administer the Natural Disaster Grant Fund.

(4) Small Communities Water and Wastewater Grant Fund

Senate Bill 14-025 revised and consolidated the Small Communities Water and Wastewater Grant Fund to be codified in section 25-1.5-208, C.R.S. – concerning the establishment of a grant program under the Colorado Water Quality Control Act to assist suppliers of water and domestic wastewater treatment works that serve a population of not more than five thousand people with meeting their responsibilities with respect to the protection of public health and water quality.

Continuous funding for the Small Communities Water and Wastewater Grant Fund is provided in section 39-29-109(2)(a)(III) C.R.S., through money transferred to the fund pursuant to section 39-29-109(2)(a)(II) C.R.S. and any other moneys transferred to the fund by the General Assembly. Moneys for the fund originate from the severance tax perpetual base fund, up to $10 million, and will be applied to both drinking water projects and wastewater projects.

Section 25-1.5-208(2), C.R.S. provides the commission with the authority to promulgate rules necessary to implement and administer the Small Communities Water and Wastewater Grant Program.

55.2 DEFINITIONS

(1) "Beneficial Use" - means the use of water treatment plant sludge in conjunction with wastewater treatment plant sludge to act as a soil conditioner or low grade fertilizer for the promotion of vegetative growth on land and that meets the requirements of the state Biosolids Regulations.

(2) Best Management Practices" - means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "state waters". Best Management Practices also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(3) "Consolidation" - means a proposed new construction or expansion of a drinking water supply system that will eliminate one or more existing water supply or treatment works. A letter of intent or a resolution adopted by the project participants must be provided to the division to guarantee the facilities will consolidate.

(4) "Elementary school" – a public school that includes any or all of the following: preschool, kindergarten, and grades one through five.

(5) "Governmental Agency" – means any municipality, regional commission, county (or county on behalf of unincorporated areas), metropolitan district offering sanitation service, sanitation district used for funding a domestic wastewater treatment works project, water and sanitation district, water conservancy district, metropolitan sewage disposal district, other special district used for funding a project under this regulation.

(6) "Impacted Water Body" – means a water body in which the designated use(s) of recreation, aquatic life, water supply, agriculture, and/or wetlands have been affected by pollutants associated with a violation of the Act, permit, control regulation, or final cease and desist order or clean-up order.

(7) "Nonpoint source" – means a diffused pollution source that is not regulated as a point source, including, but not limited to, sources that are often associated with agriculture, inactive or abandoned mining, silviculture, urban runoff, or runoff from construction activities. Nonpoint

source pollution does not emanate from a discernible, confined, and discrete conveyance (such as a single pipe) but generally results from land runoff, precipitation, atmospheric deposition, or percolation.

(8) "Pollution" – means the man-made, man-induced, or natural alteration of the physical, chemical, biological, and radiological integrity of water.

(9) "Public school" – means a school that derives its support, in whole or in part, from moneys raised by a general state, county, or district tax. Public school includes a public school district; charter school, as that term is defined in section 22-30.5-103(2), C.R.S., including an institute charter school, as that term is defined in section 22-30.5-502 (6), C.R.S.; and a board of cooperative services, as that term is defined in section 22-5-103(2), C.R.S.

(10) "Public water system" - 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.

(11) "Waterborne Disease Outbreak" – means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment, as determined by the appropriate local or State agency.

55.3 WATER QUALITY IMPROVEMENT FUND CRITERIA

(1) Entity Eligibility

Entities eligible for grants in Categories 1 thru 4 include: 1) governmental agencies; 2) publicly owned water systems; 3) private not- for- profit public water systems; 4) not- for- profit watershed groups; 5) not- for- profit stormwater program administrator in accordance with 25-8-802 C.R.S.; 6) not- for- profit training provider; and 7) private landowners impacted by a water quality violation.

Entities eligible for grants in Category 5 include public schools that are not subject to the federal lead and copper rule, 40 CRF part 141, subpart I, and public schools that have not tested or are not in the process of testing their drinking water for lead.

Entities who pay a Colorado Water Quality Control Act civil penalty are prohibited from receiving a grant from this fund for a period of 5 years from the date of the payment of the penalty.

(2) Project Eligibility

As provided for under section 25-8-608 (1.7) (a), C.R.S., the fund will provide grants to the following project categories:

Category 1 – Stormwater management training and best management practices training to reduce the pollution of state waters.

Category 2 - Projects that improve the water quality in the community or water body which has been impacted by a water quality violation that resulted in a penalty being imposed.

Category 3 – Planning, design, construction, or repair of stormwater projects and domestic wastewater treatment facilities identified on the current fiscal year's Water Pollution Control Revolving Fund Intended Use Plan.

Category 4 - Nonfederal match funding for the current fiscal year's nonpoint source projects as approved by the commission.

Category 5 – Voluntary lead testing in public schools to detect the presence and concentration of lead in drinking water.

(3) Funding Allocation

All civil penalties collected by the division shall be transmitted to the state treasurer for deposit to the credit of the fund created by section 25-8-502, C.R.S., for violations committed on or after May 26, 2006 and shall be subject to annual appropriations by the Colorado General Assembly. The division will post on its web page a list of violators that have paid into the Water Quality Improvement Fund. The following allocations from the fund will be made:

Category 1 – for State Fiscal Year 2012-2013 the division will allocate up to $150,000 of available funds with no one project initially receiving more than $50,000. If the entire $150,000 has not been fully utilized, the division will allocate the remaining Category 1 funds within the year per its prioritization procedures to eligible Category 1 project(s) which may result in certain projects ultimately receiving more than $50,000.

For subsequent years thereafter, up to $100,000 of available funds will be allocated.

Category 2 – 10% of available funds following allocations to Category 1 projects.

Category 3 – 60% of available funds following allocations to Category 1 projects; no one project can receive more than 25% of the available funds allocated to this category.

Category 4 – 30% of available funds following allocations to Category 1 projects.

Category 5 – After Categories 1 thru 4 are fully funded, up to $300,000 for State Fiscal Year 2017-2018, up to $300,000 for State Fiscal Year 2018-2019, and up to $300,000 for State Fiscal Year 2019-2020. This Category is subject to fund availability. Public schools can apply for reimbursement up to 100 samples per school or to a maximum amount of $5,000 per school.

For Categories 1 thru 4, any funds not utilized in one category will be redistributed among the remaining categories based on their relative percentage of funding. The division will retain five percent (5%) of the moneys allocated annually to the fund to cover the cost of administering Categories 1 thru 4. Funds may be carried over from previous years' appropriations and reallocated based upon the above distribution on an annual basis. For Category 5 the division will retain funds to cover the cost of 1.3 full time equivalent for the administration of the category.

(4) Project Prioritization Criteria

If the fund lacks sufficient funds to cover all requests within each category, Priority 1 projects will be funded prior to Priority 2 projects, which will be funded prior to Priority 3 projects, which will be funded prior to Priority 4 projects. If it is determined that there are insufficient funds, further prioritization criteria will be applied as identified under each category in this section. The division may reallocate funding among categories based upon lack of requests or eligible projects within any category.

Criteria for funding project proposals within each category as described in Section 55.3 are as follows:

Category 1 – stormwater management training and best management practices training to reduce the pollution of state waters.

Priority 1 – Projects that implement stormwater management and best management practices training not previously available in Colorado, or previously limited in accessibility.

Priority 2 – Projects that will expand the content or availability of existing stormwater management and best management practices training.

Priority will be given to training providers that can demonstrate that training content will be relevant to implementation in Colorado with regards to Colorado's hydrology, climate and water rights, as applicable.

Priority will also be given to training providers that provide no– or low-cost training.

Additional prioritization criteria will include the expected water quality benefits, total population receiving training, availability of match, and readiness to proceed. Specific points available in each of these categories and tie breaking criteria will be included as an attachment to the request for application.

Category 2 - Projects that improve the water quality in the community or water body which has been impacted by a water quality violation.

Priority 1 – Projects that address impacts to a water supply designated use.

Priority 2 – Projects that address impacts to a recreation designated use.

Priority 3 – Projects that address impacts to an aquatic life designated use.

Priority 4 – Projects that address impacts to an agricultural or wetlands designated use.

Additional prioritization criteria will include financial/affordability, water quality benefits, permit compliance, readiness to proceed, and availability of match. Specific points available in each of these categories and tie breaking criteria will be included as an attachment to the request for application.

Category 3 - Planning, design, construction, or repair of stormwater projects and domestic wastewater treatment facilities identified on the current fiscal year's Water Pollution Control Revolving Fund Intended Use Plan.

Priority 1 – Projects that improve water quality in the community or water body impacted by a violation.

Priority 2 – Planning, design, construction, or repair of stormwater projects.

Priority 3 – Projects identified on the current year's Water Pollution Control Revolving Fund Intended Use Plan.

Additional prioritization criteria will include financial/affordability, water quality benefits, permit compliance, readiness to proceed, and availability of match. Specific points available in each of these categories and tie breaking criteria will be included as an attachment to the request for application.

Category 4 - Nonfederal match funding for nonpoint source projects.

Priority 1 – Projects that reduce or eliminate water quality impairments identified in Regulation #93 (5 CCR 1002-93), Colorado's Section 303(d) List.

Priority 2 – Projects that protect any established designated water quality use.

Category 5 – Public school lead testing projects.

Priority 1 – Testing conducted in the oldest public elementary schools.

Priority 2 – Testing conducted in the oldest public schools that are not elementary schools.

Priority 3 – Testing conducted in all other public schools.

Prioritization criteria will include the age of the original constructed building. Tie breaking criteria will include financial/affordability, school district median household income, and readiness to proceed. Specific points available in each of these categories will be included as an attachment to the request for application.

The financial/affordability criterion relates to the percentage of students eligible for the Free and Reduced Lunch Program. Points were developed relative to the percentage of students eligible for the Free and Reduced Lunch Program based on the state average for free and reduced lunch eligibility, giving priority to schools who are equal to or higher than the current average. Data collected by Colorado Department of Education will be used to determine the percentage of students within each school who are eligible for free and reduced lunch. Schools will be ranked from highest to lowest with the highest percentage of student eligibility for the Free and Reduced Lunch Program receiving the most points.

The school district median household income (MHI) will be based on the American Community Survey data published by the United States Census Bureau. Schools will be ranked from lowest district MHI to the highest district MHI with the lowest taking priority. Since actual district MHI data is being used in the ranking, no points will be assigned in this category, rather, the school with the lowest district MHI will rank higher.

The readiness to proceed criterion will be based upon the time in which the school can start its lead testing. Schools that can start the lead testing within 4-weeks of the date of the award letter will receive higher priority.

(5) Notification and Reporting

Applications for all of the Categories will be noticed and accepted by the division after the division determines availability of appropriation. For Categories 1 thru 3, applicants will be responsible for demonstrating the impacts of the violation on the affected water body or community, and the related water quality improvement project benefits. The division will accept applications for Category 4 projects in accordance with the annual nonpoint source project schedule. Category 5 projects may be notified and accepted at different times than Categories 1 thru 4.

The division will evaluate all applications and determine the grant award(s) for each category based on the criteria in the Entity Eligibility Section, Project Eligibility Section, Funding Allocation Section and Project Prioritization Section.

Grant recipients for Categories 1 thru 4 will provide a final project report within 60 days of completion of the project. Final project reports shall include a detailed description of the project as implemented, all problems encountered and the solutions thereto, itemized project costs, a declaration that the project has been fully implemented as approved, and a description of the environmental and public health benefits

resulting from implementation of the project. Information on the grant recipients, including project description and grant award, will be reported in the division's Annual Report to the commission, in accordance with section 25-8-305, C.R.S.

Grant recipients for Category 5 shall follow the division's lead testing protocol and shall provide the test samples to the Department of Public Health and Environment's laboratory or a laboratory certified by the department. The public school shall provide the test results to its local public health agency, its public water system, its school board, and the division.

. . . .

55.7-10 RESERVED

. . . .

55.32 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING STATE FUNDED WATER AND WASTEWATER INFRASTRUCTURE PROGRAMS, NOVEMBER 13, 2017 RULEMAKING, EFFECTIVE DECEMBER 31, 2017

The provisions of Sections 25-8-202, 25-8-308, and 25-8-608, C.R.S. provide the specific statutory authority for adoption and implementation of the attached regulations. The Commission, in compliance with section 24-4-103(4), C.R.S., has adopted the following statement of basis and purpose.

BASIS AND PURPOSE

During the 2017 legislative session, the General Assembly increased the spending authority for the Water Quality Improvement Fund by $50,000 to continue to support Category 1 projects (stormwater management training and best management practices training to reduce the pollution of state waters). Accordingly, the commission took action to revise section 55.3(3) to increase the funding allocation for Category 1 projects to $100,000.

Also in 2017, the General Assembly created a new program under HB17-1306 titled the "Safe Water in Schools Act". HB17-1306 establishes a grant program to assist public schools as defined in sections 22-1-101(1) and 25-1.5-203(1)(f) C.R.S. with lead testing for their drinking water. Eligible public schools include public schools that are not a registered public water system and public schools that have not already tested for lead under the requirements of the 1991 federal Lead and Copper Rule or are not currently testing for lead. HB17-1306 provides the appropriation from the Water Quality Improvement Fund after the original four categories are fully appropriated.

In order to assist parties submitting applications for funding, and in order to provide a transparent process for allocation and award of the funds, the commission revised multiple sections in Regulation No. 55. The revised sections include 55.1; 55.2; and 55.3.

- Section 55.1(1) (Authority, Scope and Purpose) was revised to include the public school lead testing program under the ambit of the Water Quality Improvement Fund.

- Section 55.2 (Definitions) was revised to add definitions for the terms public school, elementary school, and public water system as included in HB17-1306.

- Section 55.3 (Water Quality Improvement Fund Criteria) was revised to establish a new project category - Category 5 - for lead testing in public schools in section 55.3(2)(Project Eligibility). Revisions were also included to clarify requirements for the public school lead testing program pertaining to entity eligibility, funding allocation, project prioritization criteria, and notification and reporting requirements, as discussed below.

- Section 55.3(1) – The commission reiterated the eligibility requirements in HB17-1306 by stating eligible entities are limited to public schools that are not subject to the federal Lead and Copper Rule, and those public schools that have not tested for lead pursuant to that rule or are not currently testing for lead.

- Section 55.3(3) - The commission determined that adding a fifth project category in section 55.3(2) allows public school lead testing projects to be funded, but only after categories 1 through 4 are fully appropriated. As indicated in HB17-1306, the commission agreed to allocate for grants up to $300,000 for State Fiscal Year 2017-2018, up to $300,000 for State Fiscal Year 2018-2019, and up to $300,000 for State Fiscal Year 2019-2020, but subject to fund availability. In order to maximize funding to eligible public schools, the commission established a maximum of 100 samples per school, or a maximum grant amount of $5,000 per school.

- Section 53.3(4) - The project prioritization criteria that were developed for the lead testing in public schools program in section 55.3(4) were designed to reflect language contained in HB17-1306 which emphasized funding priority in the following order: oldest public elementary schools; oldest public schools that are not elementary schools; and all other public schools. In the event there is a tie when prioritizing by using the above criteria, the commission felt it was important to have three tie breaking criteria in the following priority order: financial/ affordability; school district median household income; and readiness to proceed. The commission recognizes that the division will include point values and priority associated with these criteria in the Request for Application.

- Section 53.3(5) – In accordance with HB17-1306, the commission also included certain criteria for conducting testing under the grant program. These include utilizing the division's lead testing protocol and using the department's lab or a lab certified by the state for analysis of the samples collected. The regulations also state, consistent with the bill, that grant recipients must provide the lead testing results to the public school's local public health agency, its supplier of water, its school board, and the division.

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Opinion of the Attorney General rendered in connection with the rules adopted by the

Water Quality Control Commission (1002 Series)

on 11/13/2017

5 CCR 1002-55

REGULATION NO. 55 - STATE FUNDED WATER AND WASTEWATER INFRASTRUCTURE PROGRAMS

The above-referenced rules were submitted to this office on 11/13/2017 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.

November 29, 2017 12:50:13

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Water Quality Control Commission (1002 Series)

CCR number

5 CCR 1002-85

Rule title

5 CCR 1002-85 REGULATION NO. 85 - NUTRIENTS MANAGEMENT CONTROL REGULATION 1 - eff 12/30/2017

Effective date

12/30/2017

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Water Quality Control Commission

REGULATION NO. 85 - NUTRIENTS MANAGEMENT CONTROL REGULATION

5 CCR 1002-85

85.1 AUTHORITY

The Water Quality Control Commission is authorized by section 25-8-205 C.R.S., to promulgate control regulations to describe prohibitions, standards, concentrations, and effluent limitations on the extent of specifically identified pollutants that any person may discharge into any specific class of state waters.

Materials incorporated by reference are available for public inspection during normal business hours, or copies may be obtained at a reasonable cost, from the Administrator, Water Quality Control Commission, 4300 Cherry Creek Drive South, Denver, Colorado 80246. Unless expressly stated otherwise, materials incorporated by reference are those editions in existence as of the date this regulation is promulgated or revised by the Water Quality Control Commission and references do not include later amendments to or editions of the incorporated material. All material incorporated by reference may be examined at any state publications depository library.

85.2 APPLICABILITY

This regulation applies to point sources and nonpoint sources of nutrients to surface water as identified in this regulation.

85.3 SEVERABILITY

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

85.4 DEFINITIONS

See the Colorado Water Quality Control Act and the Water Quality Control Commission codified regulations for additional definitions.

(1) "BEST MANAGEMENT PRACTICE (BMP)" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "state waters." BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(2) "DISADVANTAGED COMMUNITY" means a community that meets the criteria for disadvantaged community as defined in section 85.7.

(3) “EXISTING TREATMENT FACILITY” means any existing domestic wastewater treatment facility that commenced discharge or received PELs or site approval prior to May 31, 2012 for groundwater discharge, surface water discharge, or a non-discharging facility; or that applied for a Notice of Authorization for the application of reclaimed water prior to May 31, 2012. Existing

treatment facilities also include non-domestic wastewater treatment facilities that commenced discharge to state waters prior to May 31, 2013.

(4) "LOCAL GOVERNMENT" means a city, town, county, district, association, or other public body created by or under State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or a designated and approved management agency under section 208 of the federal Clean Water Act.

(5) "MS4" means a municipal separate storm sewer system.

(6) "MUNICIPAL SCREENER" means the average total annualized cost per household of pollution control including the cost of meeting the effluent limitations at 85.5 and other costs of complying with Regulation 85, divided by the median annual household income, on a percentage basis [i.e. (average total annual pollution control cost per household / median household income)*100].

(7) “NEW TREATMENT FACILITY” means any domestic wastewater treatment facility on a new site that is not an “existing treatment facility” and commences discharge to surface water, or receives PELs, after May 31, 2012, or any non-domestic wastewater treatment facility on a new site that is not an “existing treatment facility” and commences discharge to surface water or receives PELs after May 31, 2013.

(8) "NONPOINT SOURCE" means any activity or facility other than a point source from which pollutants are or may be discharged. For the purposes of this regulation, nonpoint source includes all runoff that is not subject to the requirements provided under Regulation #61, section 61.3(2)(e), (f), or (g), including those designated by the division under section 61.3(2)(f)(iii), whether sheet flows or collected and conveyed through channels, conduits, pipes or other discrete conveyances.

(9) “SITE” means as defined in Regulation #61, 5 CCR 1002-61.

(10) "STORMWATER" means stormwater runoff, snow melt runoff, and surface runoff and drainage.

85.5 SPECIFIC LIMITATIONS FOR DISCHARGERS OF NUTRIENTS

The effluent limitations and stormwater management practices in this section shall be implemented in the Colorado Discharge Permit System (CDPS) and National Pollutant Discharge Elimination System (NPDES) permits authorizing the discharge to surface water beginning no sooner than July 1, 2013. Monitoring requirements are included in Section 85.6. All facilities should refer to section 85.6 regardless of the determination of applicable permit limits.

(1) Numeric Limitations for Domestic Wastewater Treatment Works (DWWTW)

(a) Existing Treatment Facilities:

(i) Exclusions

The numeric limits in subsections (iii)(a) and (b) below will not be included in CDPS and NPDES permits and will only be included in preliminary effluent limitations for Site Location and Design Approvals upon request and with a delayed effective date for the following categories of dischargers:

(A) Any DWWTW with a design capacity of less than or equal to 1.0 million gallons per day.

(B) Any DWWTW owned by a disadvantaged community.

(ii) Delayed Implementation of Effluent Limits

The numeric limits in subsections (iii)(a) and (b) below or division approved alternative or modified effluent limits consistent with 85.5(3)(b)(iv) or 85.5(3)(d) will be included in preliminary effluent limitations with a delayed effective date for Site Location and Design Approvals and will not be included in effluent limitations in CDPS permits prior to December 31, 2027 for the following categories of dischargers:

(A) Any currently permitted DWWTW subject to Watershed Protection Control Regulations 71-74 (5 CCR 1002-71, 5 CCR 1002-72, 5 CCR 1002-73, and 5 CCR 1002-74).

(B) Any existing permitted DWWTW with a design capacity of less than or equal to 2.0 million gallons per day.

(C) Any existing permitted facility discharging into low priority 8-digit hydrologic units code watersheds [Purgatoire - 11020010, Upper Arkansas-John Martin Reservoir - 11020009, Upper San Juan - 14080101, Upper Arkansas-Lake Meredith - 11020005, Upper White - 14050005, San Luis - 13010003, Chico - 11020004, Kiowa - 10190010, Middle South Platte-Sterling - 10190012, San Miguel - 14030003, Alamosa-Trinchera -13010002, McElmo - 14080202, Lower Gunnison - 14020005, Arkansas Headwaters - 11020001, Upper Yampa - 14050001, Upper Gunnison - 14020002, and Uncompahgre - 14020006].

(iii) All Others

For all Domestic Wastewater Treatment Works not identified in subsections (a)(i) or (ii) above and discharging prior to May 31, 2012 or for which a complete request for preliminary effluent limits has been submitted to the division prior to May 31, 2012, the following numeric limits shall apply:

PARAMETER	PARAMETER LIMITATIONS	PARAMETER LIMITATIONS
.	Annual Median [1]	95th Percentile [2]
(a) Total Phosphorus	1.0 mg/L	2.5 mg/L
(b) Total Inorganic Nitrogen as N [3]	15 mg/L	20 mg/L

1 Rolling Annual Median: The median of all samples taken in the most recent 12 calendar months.

2 The 95th percentile of all samples taken in the most recent 12 calendar months.

3 Determined as the sum of nitrate as N, nitrite as N, and ammonia as N.

(b) New Treatment Facility:

PARAMETER	PARAMETER LIMITATIONS	PARAMETER LIMITATIONS
.	Annual Median [1]	95th Percentile [2]
(a) Total Phosphorus	0.7 mg/L	1.75 mg/L

(b) Total Inorganic Nitrogen as N 3	7 mg/L	14 mg/L

1 Rolling Annual Median: The median of all samples taken in the most recent 12 calendar months.

2 The 95th percentile of all samples taken in the most recent 12 calendar months.

3 Determined as the sum of nitrate as N, nitrite as N, and ammonia as N.

(1.5) Voluntary Incentive Program for Early Nutrient Reduction for Domestic and Non-Domestic Wastewater Treatment Works

(a) The commission has created a voluntary incentive program for facilities that voluntarily reduce phosphorus and/or nitrogen nutrient concentrations below concentrations allowed by Regulation #85 effluent limits.

(b) To participate in the voluntary incentive program, a permittee is required to submit a nutrient reduction plan and annual nutrient monitoring reports to the division.

(c) The voluntary incentive program is a performance based program. The program provides incentives for early reductions in nutrient concentrations below the concentrations allowed by the Regulation 85 effluent limits. The incentive that a permittee receives after 2027 is a discharge permit compliance schedule to provide additional time to meet nitrogen and/or phosphorus water quality-based effluent limits, limits derived from waste load allocations, or alternative effluent limits pursuant to Section 31.7(4). The additional time provided under the compliance schedule would be beyond that which would be otherwise be granted to a permittee not participating in the incentive program and would be based on additional effort made by the participating permittee to achieve early reduction of nutrients concentrations. The duration of the additional time in the discharge permit compliance schedule will be based on voluntary nutrient concentration reductions, as recorded in annual nutrient monitoring reports and submitted to the division. Participating facilities will begin accruing additional time for their discharge permit compliance schedules beginning on January 1, 2018 and ending on December 31, 2027

(d) The division will include an extended permit compliance schedule in the first renewal permit after the commission adopts numeric nutrient values in Regulation #31 and Regulations #32 through #38 to any permittee who, through participation in the voluntary incentive program, demonstrates success in reducing phosphorus and/or nitrogen nutrient concentrations below the concentrations allowed by Regulation #85.

(e) <u>Nothing in this subsection (1.5) precludes the division from exercising its authority under section 25-8-307, C.R.S. to address public health emergencies or Regulation #61, section 61.8(8)(a)(iv) to address a division determination that the permitted activity endangers human health or the classified uses of state waters and can only be regulated to acceptable levels by permit modifications or termination. The division may exercise such authority with respect to participants in the voluntary incentive program, as well as other sources of nutrients, as may be appropriate.</u>

(2) Numeric Limitations for Non-Domestic Wastewater Treatment Works

(a) The following effluent limits apply to non-domestic existing treatment facilities:

(i) Delayed Implementation of Effluent Limits

The numeric limits in section 85.5(2) will not be included in effluent limitations in CDPS permits prior to December 31, 2027 for any existing permitted facility

discharging into low priority 8-digit hydrologic units code watersheds [Purgatoire - 11020010, Upper Arkansas-John Martin Reservoir - 11020009, Upper San Juan - 14080101, Upper Arkansas-Lake Meredith - 11020005, Upper White - 14050005, San Luis - 13010003, Chico - 11020004, Kiowa - 10190010, Middle South Platte-Sterling - 10190012, San Miguel - 14030003, Alamosa-Trinchera - 13010002, McElmo - 14080202, Lower Gunnison - 14020005, Arkansas Headwaters - 11020001, Upper Yampa - 14050001, Upper Gunnison - 14020002, and Uncompahgre - 14020006] except for dischargers that are discharging effluent concentrations of TN or TP that are greater than 53 mg/L and 6 mg/L, respectively.

(ii) All Others

The following effluent limits apply to non-domestic existing treatment facilities not covered by the delay provided in section 85.5(2)(a)(i):

(A) Non-domestic dischargers with a Standard Industrial Classification code in the Major Group 20 (SIC 20).

PARAMETER	PARAMETER LIMITATIONS	PARAMETER LIMITATIONS
.	Annual Median [1]	95th Percentile [2]
(a) Total Phosphorus	10 mg/L	25 mg/L
(b) Total Inorganic Nitrogen as N [3]	20 mg/L	27 mg/L

1 Rolling Annual Median: The median of all samples taken in the most recent 12 calendar months.

2 The 95th percentile of all samples taken in the most recent 12 calendar months.

3 Determined as the sum of nitrate as N, nitrite as N, and ammonia as N.

(B) Any other non-domestic dischargers for which the division has determined, based on credible information that the facility is expected, without treatment for nutrients, to discharge total inorganic nitrogen or total phosphorus concentrations to surface waters in excess of the following effluent limits.

PARAMETER	PARAMETER LIMITATIONS	PARAMETER LIMITATIONS
.	Annual Median [1]	95th Percentile [2]
(a) Total Phosphorus	1.0 mg/L	2.5 mg/L
(b) Total Inorganic Nitrogen as N [3]	15 mg/L	20 mg/L

1 Rolling Annual Median: The median of all samples taken in the most recent 12 calendar months.

2 The 95th percentile of all samples taken in the most recent 12 calendar months.

3 Determined as the sum of nitrate as N, nitrite as N, and ammonia as N.

(b) The following effluent limits apply to non-domestic new treatment facilities:

(i) Non-domestic dischargers within SIC 20.

PARAMETER	PARAMETER LIMITATIONS	PARAMETER LIMITATIONS

.	Annual Median [1]	95th Percentile [2]
(a) Total Phosphorus	5 mg/L	13 mg/L
(b) Total Inorganic Nitrogen as N [3]	10 mg/L	20 mg/L

1 Rolling Annual Median: The median of all samples taken in the most recent 12 calendar months.

2 The 95th percentile of all samples taken in the most recent 12 calendar months.

3 Determined as the sum of nitrate as N, nitrite as N, and ammonia as N.

(ii) Any other non-domestic dischargers for which the division has determined, based on credible information that the facility is expected, without treatment for nutrients, to discharge total inorganic nitrogen or total phosphorus concentrations to surface waters in excess of the following effluent limitations.

PARAMETER	PARAMETER LIMITATIONS	PARAMETER LIMITATIONS
.	Annual Median [1]	95th Percentile [2]
(a) Total Phosphorus	0.7 mg/L	1.75 mg/L
(b) Total Inorganic Nitrogen as N [3]	7 mg/L	14 mg/L

1 Rolling Annual Median: The median of all samples taken in the most recent 12 calendar months.

2 The 95th percentile of all samples taken in the most recent 12 calendar months.

3 Determined as the sum of nitrate as N, nitrite as N, and ammonia as N.

(3) Additional Provisions Applicable to Domestic and Non-Domestic Wastewater Treatment Works

(a) Compliance Schedules

A permit shall not be issued which allows a violation of the provisions of this control regulation unless it contains a schedule of compliance requiring specific steps needed to modify or install treatment facilities, operations or other measures and deadlines for completion of those steps. Factors that the division shall consider in developing the deadlines to be included in a compliance schedule, based on information that may be provided by the permittee or is otherwise known, shall include:

(i) Availability of resources needed to modify or install treatment facilities, adjust operations or other measures, including any in-house resources, the availability of consultants and contractors in the area with the appropriate expertise, and the availability of financing for any identified facility construction or other capital project, including the Water Pollution Control Revolving Fund;

(ii) Current conditions at the site, including existing treatment processes, the physical characteristics of the property, and the layout of the facility on the property;

(iii) Sufficient time for operational startup, new plant optimization, and operator training;

(iv) Factors identified by the permittee that might significantly affect the time necessary to complete one or more of the steps necessary to attain compliance;

(v) Sufficient time for the permittee to execute and implement a trade pursuant to section 85.5(3)(d);

(vi) Sufficient time in the event the permittee undertakes a pilot project to develop and/or test new treatment technology for reduction of total inorganic nitrogen or total phosphorus; and

(vii) Other site specific factors affecting the cost and timing of construction activities.

(b) Exceptions

The numerical effluent limitations set forth in sections 85.5(1)(a)(iii), 85.5(1)(b), and 85.5(2) shall not apply under the following circumstances:

(i) Where a discharger demonstrates to the satisfaction of the division that its discharge is unlikely to cause or contribute to ambient nutrient concentrations in its receiving waters that exceed the relevant numeric levels for total phosphorus and total nitrogen set forth in section 31.17 of Regulation #31;

(ii) Where noncontact cooling water discharges contain nutrients (phosphorus or nitrogen) and nutrients in the discharge originate from the receiving water as intake water or through use of chemicals shown to be necessary for proper operation of the cooling tower;

(iii) Where discharges consist solely of ground water that is pumped for the purpose of dewatering a construction site or for building sumps so long as no phosphorus or nitrogen is added to the ground water being discharged; or

(iv) If effluent concentrations higher than the applicable numerical limitations under this Control Regulation are adequate to achieve the total phosphorus and total nitrogen instream values set forth in section 31.17 of Regulation #31, then those alternative concentrations will apply as effluent limitations under Regulation #85 rather than the numerical limitations set forth in sections 85.5(1) and 85.5(2) hereof.

(c) Variances

(i) Variances from the numerical effluent limits set forth in sections 85.5(1)(a)(iii), 85.5(1)(b) and 85.5(2) of this control regulation may be granted by the division where it is demonstrated by the permittee to the division's satisfaction that the nutrient reduction benefits of meeting the section 85.5 effluent limitations do not bear a reasonable relationship to the economic, environmental, or energy impacts resulting from meeting those effluent limitations. Meeting the effluent limitations in section 85.5 shall be presumed not to bear a reasonable relationship to the associated economic, environmental, or energy impacts where:

(A) Greater than 50% of the median annual TN or TP incremental load within the 8-digit Hydrologic Unit Code (HUC) watershed results from permitted process wastewater point source discharges, if

- for public sector entities, the Municipal Screener value is 2 or greater.

- for private sector entities, the required increase in treatment will cause more than 10 percent change in the entity's level profitability, or similar effect on liquidity, solvency, and leverage.

(B) 20-50% of the median annual TN or TP incremental load of the 8-digit HUC watershed results from permitted process wastewater point source discharges if:

- for public sector entities, the Municipal Screener value is 1.5 or greater.

- for private sector entities, the required increase in treatment will cause 5 to 10 percent change in the entity's level of profitability, or a similar effect on liquidity, solvency, and leverage.

(C) < 20% of the median annual TN or TP incremental load of the 8-digit HUC watershed results from permitted process wastewater point source discharges if:

- for public sector entities, the Municipal Screener value is 1 or greater.

- for private sector entities, the required increase in treatment will cause less than 5 percent change in the entity's profitability, or a similar effect on liquidity, solvency, and leverage.

(ii) A request for a variance shall be accompanied by proposed alternate effluent limits that represent the highest degree of nutrient removal that is consistent with the reasonable relationship test.

(iii) Variances shall be granted, denied, or revised as appropriate at the time of permit issuance or renewal.

(d) Nutrient Trading

(i) Point Source to Point Source Nutrient Trading. The numerical effluent limitations set forth in sections 85.5(1)(a)(iii), 85.5(1)(b) and 85.5(2) may be modified for individual discharge permits pursuant to a trade of nitrogen or phosphorus between point sources where the division has determined that the trade will result in equal or better instream water quality for that parameter at all locations and at all times.

Point source to point source nutrient trades shall be based on a 1:1 ratio.

(ii) Nonpoint Source to Point Source Nutrient Trading. The numerical effluent limitations set forth in sections 85.5(1)(a)(iii), 85.5(1)(b) and 85.5(2) may be modified for individual discharge permits pursuant to a trade of nitrogen or phosphorus credits from a nonpoint source to a point source on a stream segment or watershed basis where the division has determined that the trade achieves a net water quality or environmental benefit and does not cause adverse localized impacts.

Nonpoint source to point source trades shall be based on a minimum 2:1 ratio, but may be revised based on site-specific data that demonstrates a lower ratio achieves the criteria specified in the paragraph above.

(4) MS4 Permit Requirements for Nutrient Source Reductions

The following requirements, at a minimum, shall be incorporated into a CDPS Permit for discharges from a Municipal Separate Storm Sewer System (MS4) required to obtain a CDPS Permit pursuant to Regulation #61.

(a) Public education and outreach on stormwater impacts associated with nutrients. The MS4 permittee must develop, document, and implement a public education program to reduce water quality impacts associated with nitrogen and phosphorus in stormwater runoff and illicit discharges and distribute educational materials or equivalent outreach to targeted sources (e.g., residential, industrial, agricultural, or commercial) that are contributing to, or have the potential to contribute, nutrients to the waters receiving the discharge authorized under the MS4 permit.

CDPS Permits shall authorize MS4 permittees to meet the requirements of this section through contribution to a collaborative program to evaluate, identify, target and provide outreach that addresses sources state-wide or within the specific region or watershed that includes the receiving waters impacted by the MS4 permittee's discharge(s).

(b) Pollution Prevention/Good Housekeeping for Municipal Operations associated with nutrients. The permittee must develop and implement a municipal operations program that has the ultimate goal of preventing or reducing nitrogen and phosphorus in stormwater runoff associated with the MS4 permittee's operations.

Written procedures for an operation and maintenance program to prevent or reduce nitrogen and phosphorus in stormwater runoff associated with the MS4 permittee's operations shall be developed. The program must specifically list the municipal operations (i.e., activities and facilities) that are impacted by this operation and maintenance program.

CDPS Permits shall authorize MS4 permittees to meet the requirements of this section through contribution to a collaborative program to evaluate, identify, and target sources state-wide or within the specific region or watershed that includes the receiving waters impacted by the MS4 permittees discharge(s).

(5) Nonpoint Source Discharges

(a) Best Management Practice Implementation

(i) Governmental entities, individuals, corporations, partnerships, associations, agencies, and other entities with responsibility for activities or facilities that cause or could reasonably be expected to cause nonpoint source nutrient pollution of waters are encouraged to adopt and implement/install BMPs to the maximum extent practicable to reduce nutrient loads from such sources.

(ii) Agricultural operations that apply supplemental nutrients as part of crop production activities are encouraged to develop and implement nutrient management plans to the maximum extent practicable to reduce nutrient loads from such sources. Nutrient planning should be based on current soil, manure, and plant tissue test results developed in accordance with guidance or industry practice, such as that developed or recognized by Colorado State University.

(iii) The choice of which type of voluntary nonpoint source control measures shall be made by the entities identified in paragraphs (i) and (ii) above.

(iv) The division shall collaborate with owners/operators of agricultural operations in pursuing incentive, grant, and cooperative programs to control nonpoint source pollution related to agricultural and silvicultural practices.

(b) Public Information and Education

(i) Thedivision and entities identified in Section 85.5(5)(a)(i) are encouraged to develop and implement a public information and education program. This program will focus on the prevention of pollution from sources that could be mobilized from present and future activities as well as measures that could abate known nonpoint source pollution. Areas for abatement include, but are not limited to, general agricultural and silvicultural practices, landscaping activities, and other nonpoint sources of nutrients.

(ii) The program will be consistent with the voluntary, incentive-based approach and focus on the general public, and agricultural and local government sectors.

(c) Additional Nonpoint Source Actions

(i) During the triennial review of this control regulation, the division shall report to the commission on the progress implementing the activities addressed under this section.

(ii) If voluntary nonpoint source BMPs are not effective in managing nutrients by May 31, 2022, the commission may consider the adoption of prohibitions or precautionary measures to further limit nutrient concentrations.

(iii) Pursuant to section 25-8-205(5), C.R.S., after May 31, 2022 the commission may consider adopting, in consultation with the commissioner of agriculture, control regulations specific to agricultural and silvicultural practices if the commission determines that sufficient progress has not been demonstrated in agricultural nonpoint source nutrient management.

85.6 MONITORING REQUIREMENTS

(1) Monitoring requirements are established by this Control Regulation to evaluate the effectiveness of this control regulation and to determine the sources and load of nutrients at selected locations, and eventual implementation of appropriate and necessary source controls.

(2) Point Source Monitoring - Process Wastewater Dischargers

(a) Applicability. The requirements of this section apply to all DWWTW including federal facilities, and to any non-domestic dischargers in SIC Major Category 20 or that are identified by the division pursuant to section 85.5(2), except that facilities that are excluded from effluent limits as described in Section 85.5(1)(a)(i) are only required to conduct effluent monitoring as described below in Section 85.6(2)(b)(i). Facilities that discharge to lakes may have modified monitoring requirements.

(b) Nutrient Monitoring Program: Facilities identified in subsection (2)(a), above, shall develop, implement, and document a routine water quality monitoring program. The monitoring program shall be designed to characterize the load (coincident flow and concentration) of nutrients in the discharge, the concentrations in the receiving water above the discharge, and the load of nutrients at selected locations in the rivers and streams below the discharge. The monitoring program shall include the following information:

(i) Effluent Monitoring:

(A) Locations: Sampling for nutrients is required in the effluent before it is discharged into the receiving water body at the location where monitoring is performed to satisfy other CDPS and NPDES permit requirements.

(B) Parameters: At a minimum, sufficient data shall be collected to calculate TN, TIN, and TP load. Samples of treated effluent shall be analyzed for total nitrogen (or the components to calculate total nitrogen such as total Kjeldahl nitrogen plus nitrate-nitrite) and total phosphorus (or the components to calculate total phosphorus). Daily average effluent discharge shall be collected at the same time as the nutrient concentrations are measured.

(C) Frequency: Samples shall be collected a minimum of six times a year (every two months) for minor discharges and monthly for major discharges. Should there be no discharge due to the plant being offline or other reasons, zero discharge will be reported for that monitoring event.

(ii) Stream Nutrient Monitoring:

(A) Locations: Sampling for nutrients is required in the receiving water body:

- upstream of the discharge; and

- at the closest active Colorado Division of Water Resources or United States Geological Survey (USGS) gaging station with daily flow available throughout the year downstream of the discharge's mixing zone; or

- In lieu of the closest downstream Division of Water Resources or USGS gaging station, facilities may take part in collaborative watershed-based monitoring efforts if the parameters and frequency follow sections (B) and (C) below.

(B) Parameters: At a minimum, samples shall be analyzed for total inorganic nitrogen, total nitrogen (total Kjeldahl nitrogen plus nitrate-nitrite, or the components to calculate total nitrogen) and total phosphorus (or the components to calculate total phosphorus). Daily streamflow record will be collected where an established gaging station is present. Where an established gaging station is not available, an alternative streamflow calculation methodology may be approved by the division.

(C) Frequency: Samples shall be collected a minimum of six times a year (every two months) for minor discharges and monthly for major discharges.

(iii) Lake/Reservoir Monitoring: RESERVED

(iv) Timing: Entities shall commence data collection no later than March 1, 2013. Data collection will continue through December 31, 2027.

(3) Data Quality Requirements

(a) The entities collecting the samples will document, and make publicly available the sampling methods, analytical methods, method detection limits, required field condition and physical parameters to be recorded at each sampling event, and quality control and quality assurance protocols in a sampling and analysis plan.

(b) The information required under subsection (a) above, may be evaluated by the division for compatibility with the objectives of this section. Where the division identifies deficiencies in the protocols/methods being used to meet the objectives of subsection (a) above, the entities shall make appropriate revisions such that the division-identified deficiencies are addressed.

(c) All sampling and analysis shall be performed by the entities according to specified methods in 40 C.F.R. Part 136; methods approved by EPA pursuant to 40 C.F.R. Part 136; or methods approved by the division. The analytical method for all ambient monitoring conducted in accordance with this regulation shall be capable of reporting results at or below the following method detection limits (MDL):

Total Phosphorus	0.01 mg/L
Nitrate + Nitrite	0.02 mg N /L
Total Kjeldahl Nitrogen	0.1 mg N /L
Total Nitrogen	0.1 mg/L

All results above the MDL must be reported for ambient samples. The analytical method for all effluent monitoring conducted in accordance with this Regulation shall be capable of reporting results at or below the practical quantitation limit (PQL)

(d) The permittee shall submit a certification to the division that the sampling and analysis plan is in place and that monitoring is taking place. This certification is due to the division by 6 months after permit issuance or by March 2013 if the permit was in place prior to March 2013.

(4) Nonpoint Source and Unpermitted Point Source Monitoring

(a) Entities responsible for nonpoint sources and unregulated point sources of nutrients are encouraged to monitor and assess surface water resource quality as identified in Section 85.6(2) to determine the extent and magnitude of nutrient impacts. In addition, the commission recognizes state water conservation, water conservancy, and special irrigation districts as entities that monitor and assess surface water resource quality and encourages making this data publicly available for use in nonpoint source management efforts.

(b) The division shall collaborate with these entities in developing and implementing a nutrients nonpoint source monitoring program to meet the requirements of this control regulation.

(c) Future monitoring activities are encouraged to coordinate with point source nutrient monitoring, the Colorado Agricultural Chemicals Program, and other relevant local, state, and federal monitoring efforts.

(d) The responsible entities are encouraged to identify potential funding sources and pursue options for monitoring in areas that do not have a current or future nutrient monitoring program.

(5) Availability and Reporting of Data

All data collected under Section 85.6 shall be maintained by the facility for 5 years after submission in an electronic form. All data collected pursuant to this control regulation shall be submitted to the division by April 15th of each year. The submission shall include geographic location of sampling, CDPS or NPDES permit number (if appropriate), name and identification of the stream flow gage, as follows:

(a) In electronic data deliverable as specified for receipt by the division; or

(b) Electronic submission to an alternative publicly available data repository. If this option is selected, the facility must notify the division by April 15 and the division will make all relevant data accessible to the public.

85.7 DISADVANTAGED COMMUNITIES

(1) Disadvantaged community ("DAC") means a community that has a population of 10,000 or less and meets the required combination of primary and secondary factors specified in section (3) below.

(2) For purposes of determining whether a community meets the definition of a disadvantaged community, the following definitions apply:

(a) "10-YEAR CHANGE IN POPULATION" means the average annual change for a location spanning ten years.

(b) "ASSESSED VALUE/HOUSEHOLD" means taxable resources on a household basis.

(c) "COMMUNITY MEDIAN HOUSEHOLD INCOME" means data that divides local households into two parts with half earning more than the median income and the other half earning less. An income survey completed for another state or federal program can substitute for data that is determined to be unreliable or unavailable.

(d) "COMMUNITY MEDIAN HOME VALUE" means data that divides the value distribution of homes into two parts with half of the homes falling below the median value and half falling above the median value. When data is unreliable or unavailable, the county assessor's list of homes can be substituted.

(e) "COUNTY 10-YEAR CHANGE IN JOBS" means the increase or decrease in total jobs which is comprised of wage and salary jobs as well as self-employed proprietor jobs.

(f) "COUNTY MEDIAN HOUSEHOLD INCOME" means data that divides county households into two parts with half earning more than the median income and the other half earning less than the median income.

(3) A community that meets the required combination of primary and secondary factors as specified below is a disadvantaged community for purposes of this Regulation:

Primary and Secondary DAC Factors

Primary Factors	Benchmark
P1 Community Median Household Income (MHI)	Less than or equal to 80 percent of the state MHI
P2 Community Median Home Value (MHV)	Less than 100 percent of the state MHV

P3 County 10-Year Change in Jobs	Loss in total jobs in the county over a 10 year period
Secondary Factors	**Benchmark**
S1 County Median Household Income (MHI)	Less than or equal to 80 percent of the state MHI
S2 10-Year Change in Population	Community has lost population over a ten year period
S3 Assessed Value/Household	Community's total assessed value per household is less than the median Colorado municipality assessed value per household

DAC Scenarios

Scenario	Primary Factors	Results	Secondary Factors	Results
1 (P1) MHI and	(P2) MHV or (P3) Change in Jobs	DAC	Unnecessary	
2 (P1) MHI Only	Neither (P2) MHV nor (P3) Change in Jobs	Test secondary	Meet at least two of three	DAC
3 (P1) Unreliable MHI but	Both (P2) MHV and (P3) Change in Jobs	Test secondary	Meet at least two of three	DAC

(4) At the time of submitting a permit application, a community may request that the division make a determination of whether or not the community is a disadvantaged community.

(5) In the event a community's primary or secondary factor data does not represent recent, significant economic distress, or a scenario is marginally disqualifying, a business case may be presented for determination of disadvantaged community status. The business case should be qualitatively based on the factors the community has determined as not reflective of the community's current socio-economic condition. The business case should be submitted to the division, who will review the business case regarding the disadvantaged community status. The division will determine whether the business case presented provides compelling evidence that the community is a disadvantaged community.

85.8 – 85.14 RESERVED

. . . .

85.16 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE: OCTOBER 10, 2017 RULEMAKING, FINAL ACTION NOVEMBER 13, 2017; EFFECTIVE DATE OF DECEMBER 30, 2017

The provisions of sections 25-8-202; 25-8-205; 25-8-304; 25-8-401; 25-8-402; and 25-8-501, C.R.S., provide the specific statutory authority for the adoption of this Control Regulation. The commission has also adopted, in compliance with section 24-4-103(4) C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

Phase 2 of Colorado's Nutrients Management Program: In this rulemaking, the commission took action to put into place the second phase of Colorado's strategy to address current and potential future nutrient pollution of Colorado surface waters.

In 2012, the commission adopted interim numerical values for phosphorus, nitrogen, and chlorophyll *a* as one part of a two-part strategy. Since 2012, the commission has adopted phosphorus numeric values upstream of domestic discharges, cooling tower discharges, and non-domestic discharges subject to Regulation #85 effluent limitations in segments throughout the state in accordance with 31.17. The commission has also adopted the direct use water supply classification and standard in accordance with 31.17. In 2016, EPA approved the interim numeric values for chlorophyll *a*, approved with recommendations the numeric values for phosphorus and nitrogen for lakes and reservoirs, and took no action with respect to the interim numeric values for phosphorus and nitrogen for rivers and streams or the delayed effective dates.

In 2012, the commission envisioned that the interim numeric values in 31.17 could be used for the adoption of water quality standards for any surface waters in Colorado following May 31, 2022. However, EPA's action in 2016 has led the commission to consider modifications to its nutrients reduction strategy.

First, the commission noted that EPA had approved the interim numeric values for chlorophyll *a*, and the commission determined that the 2022 timeframe is appropriate for adoption of chlorophyll *a* standards. The adoption of chlorophyll *a* standards throughout the state in the 2022 timeframe is included in Colorado's nutrients management plan that was discussed during the proceedings for this hearing. Also discussed in that plan is the commission's anticipation that during Phase 2 of Colorado's nutrients management approach, the chlorophyll *a* standards will be implemented through the TMDL process for waters listed on the 303(d) list for impaired waters.

Second, the commission noted that EPA approved with recommendations the numeric values for phosphorus and nitrogen for lakes and reservoirs. Because of the EPA recommendations regarding the interim phosphorus and nitrogen values for lakes and reservoirs, additional analysis is needed before applying the interim values, particularly for warm-water lakes and reservoirs. The commission determined that the division should revisit the phosphorus and nitrogen values for lakes and reservoirs, and should prioritize the development of numeric phosphorus and nitrogen standards based on protection of public health. Therefore, as reflected in the nutrients management plan, the commission anticipates that in the 2022 timeframe the division will propose phosphorus and nitrogen standards for lakes and reservoirs that are direct use water supply reservoirs and where there are public swim beaches. With the exception of direct use water supply reservoirs and lakes and reservoirs with public swim beaches, the commission has decided to further delay the effective dates of the phosphorus and nitrogen numeric values below dischargers to 2027.

Third, the commission noted that EPA took no action with respect to the interim numeric values for phosphorus and nitrogen for rivers and streams. The commission determined more time is needed to revisit the numeric values for phosphorus and nitrogen for rivers and streams, and anticipates that revised standards will be developed and considered in the 2027 timeframe. The commission acknowledges that removing organic nitrogen to low levels is a current technological challenge. The commission recognizes this issue will need to be considered in future policy reviews and rulemaking hearings regarding nutrients along with future technological advances.

The commission also anticipates that a hearing will be held in 2020 to consider impacts from nonpoint sources and potential strategies for nonpoint source control. As part of implementing the provisions of Regulation 85 at subsection 85.5(5), Nonpoint Source Discharges, the commission determined that considerable progress has been made to date by the division, the Colorado Monitoring Framework Agricultural Task Force, the Lower Arkansas Valley Water Conservancy District, and other partnering entities through dissemination of nutrient control-related information and tools for voluntary use by the agricultural community. This model of collaborative outreach, education, and engagement has been made

possible through division leadership and funding to support these efforts, as well as the proactive responsiveness of entities who work directly with agricultural producers. The commission encouraged these collaborative activities to continue with a goal of documenting measurable results for presentation at the next triennial review.

In addition, while the commission's traditional approach would have meant that the commission would have considered updated standards for ammonia and selenium in 2021, the current intent of the commission is to delay adoption of revised standards for selenium and ammonia until 2027 as well. The long-term strategy is that the commission will consider the adoption of revised standards for all of these constituents for all water bodies in the state in rulemaking hearings in 2027. The commission anticipates that over the course of the next 10 years, the division will work to revise the standards for ammonia, selenium, nitrogen and phosphorus for rivers and streams, while at the same time will develop feasibility information to assist dischargers with proposing discharger specific variances, which will also take into consideration the treatment challenges of treating for nutrients, selenium, and ammonia, as well as temperature. In order to implement standards as soon as practical, the commission will not rely on the basin review process for adoption of site-specific standards over the course of several years. Instead, in hearings in 2027, the commission will consider site-specific standards and discharger-specific variances for all of these parameters for all waters bodies of the state. After adoption of revised numeric nutrient standards in 2027 in rivers and streams, the commission intends that water quality based effluent limits will be implemented into permits after December 31, 2027.

While the commission has decided to delay the adoption of numeric nutrient values to 2027, it is committed to making additional progress towards nutrient reductions in Colorado during this second phase. The commission believes that the best way to make progress at this time is through an incentives program to encourage early reductions of nutrients by domestic and non-domestic wastewater treatment works. The incentives program will encourage facilities to make voluntary reductions of nutrients, and in exchange the facility will receive an extended compliance schedule as well as certainty about the year in which the facility will need to meet water quality based effluent limits. An extended compliance schedule means the facility will be given additional time to comply with effluent limits that would be based on water quality standards or variances adopted in 2027. The commission believes that more progress can be made through an incentives program than through mandating reductions by medium sized facilities or facilities in a low priority watershed. For example, the commission believes that even if only the 15 largest dischargers took advantage of the incentives program, and if each of those facilities reduced its nitrogen 20% below the Regulation #85 effluent limits, the resulting load reduction in the state would be three times larger than what would be achieved if the Regulation #85 effluent limits were applied to all domestic wastewater treatment facilities with delayed implementation as identified in 85.5(1)(a)(ii). The commission believes this is the best current policy option to make effective progress in addressing nutrients management in Colorado at this time. The commission believes that reducing the phosphorus or nitrogen effluent limits in Regulation #85, or to apply those effluent limits to more facilities would result in substantially less progress in controlling nutrients in the next 10 years than will the incentive program. However, the commission does intend to evaluate the amount of improvement that occurs through the incentive program, and may revisit this approach and make additional modifications to its nutrients reduction strategy if this voluntary incentives program does not result in reductions as anticipated.

To achieve this goal of early nutrient reduction, the commission has adopted a voluntary incentive program. Participation in the program is entirely voluntary. The program does not require wastewater treatment facilities to implement a specific treatment technology, but it is anticipated that nutrient reductions will be achieved through BNR optimization, a water quality trade, a source reduction plan, watershed nutrient reductions, or capital improvements. A facility that achieves early reduction of nutrients will be offered an incentive in the form of an extended CDPS permit compliance schedule, which increases the number of years that the wastewater facility has to meet the water quality based effluent limits after 2027. The commission expects that the incentive will provide wastewater treatment facilities additional time to identify funding sources necessary to make the capital infrastructure investment in tertiary treatment after 2027. Regulatory framework for voluntary incentive program: The voluntary incentive program is outlined in Regulation 85.5(1.5). The commission intends that implementation of this program will be accomplished in conjunction with Commission Policy 17-1 that was adopted concurrent

with this hearing. Permittees who wish to participate in the incentive program are required to submit a nutrient reduction plan and annual nutrient monitoring reports to the division by December 31, 2019. In order to qualify for the incentive program, the permittee must reduce nitrogen and/or phosphorus discharge concentrations to levels below those in Regulation #85 by December 31, 2026.

The annual reporting requirement provides the division with an opportunity to review a permittee's progress in reducing nutrient levels below those in Regulation #85 and to assess how those reductions relate to the incentives offered in Commission Policy 17-1. If a permittee is able to make early reductions in its discharge of nutrients, the permittee will qualify for an incentive which gives it additional time to comply with numeric nutrient values in Regulation #31, and Regulations #32 through 38 that are anticipated to be adopted in 2027. The amount of additional time granted will depend on the amount of nutrient concentration reduction that the wastewater facility achieves between 2019 and 2026.

The commission considered whether permittees subject to TMDLs should still be able to participate in the incentive program due to the fact that there is an impaired waterbody and the incentive program will result in participants receiving an extended period of time to meet their wasteload allocations. In particular, the commission heard concerns about participation by the dischargers subject to the Barr Milton TMDL. The commission ultimately decided that dischargers subject to a TMDL should still be able to participate in the incentive program because it will help drive earlier reductions. However, in the case of the dischargers subject to the Barr Milton TMDL, the commission decided that in order to continue to incentivize early nutrient reductions by those dischargers but yet address concerns about additional delay in implementation of the phosphorus wasteload allocations, that the method for earning incentive credit for total phosphorus reduction would be focused on further phosphorus reductions in line with the Barr Milton TMDL phosphorus targets. During the first review of Policy 17-1 which would typically take place in 2020, the commission will consider whether to extend the method that applies to the dischargers with a wasteload allocation pursuant to the Barr Milton TMDL to other dischargers within the Barr Milton watershed or even potentially more broadly. Should any entity determine that consideration of this change should occur prior to the deadline for opting into the incentive program on December 31, 2019, any entity can request that the commission consider changes prior to December 31, 2019.

The division will use Commission Policy 17-1 to make a determination about the amount of time that a permittee participating in the incentive program should be granted when it renews the permittee's CDPS permit after 2027. The division will rely on the nutrient incentives program annual reports in making this determination. If a permittee achieves early reduction of nutrients, it will be granted a compliance schedule in accordance with Commission Policy 17-1 Such compliance schedule may be revised or terminated if the division determines, under section 25-8-307, C.R.S., that the discharge or continued discharge of nutrients by an incentive program participant constitutes a "clear present and immediate danger to the health or livelihood of members of the public," or, under section 61.8(8)(a)(iv) of Regulation #61, that the "permitted activity endangers human health or the classified or existing uses of state waters and can only be regulated to acceptable levels by permit modification or termination." Examples of situations that could trigger the division's exercise of this authority could include, but are not limited to, a toxic algae bloom in receiving waters downstream of a wastewater treatment facility or the presence of pollutants that cause or contribute to unacceptably high concentrations of disinfection byproducts in drinking water treatment facilities with intake locations downstream of a wastewater treatment facility. They could also include situations where nutrient levels in receiving/downstream waters have reached extreme highs or have increased two or threefold since 2017, where streams or reservoirs have repeated algae blooms producing toxins in multiple years, or where there is demonstrable and significant impact to aquatic life or other animals attributable to nutrients.

Based on the environmental benefit anticipated from the voluntary nutrient reductions under the incentive program, the commission expects these circumstances to be rare. The commission recognizes that the voluntary nutrient reductions that will result from the incentive program participants may reduce the severity of the event by reducing nutrient concentrations below those that would otherwise have been permitted. The commission anticipates that in such a circumstance the division will evaluate all of the sources and work to control all of the sources concurrently or in succession, depending on the most appropriate approach in that particular case.

A permittee or other interested parties can challenge the division's determination implementing the voluntary incentive compliance schedule as part of the CDPS permit renewal schedule. If the annual nutrient monitoring reports demonstrate that a permittee has achieved early nutrient reductions in accordance with Commission Policy 17-1, there will be a presumption that a permittee is entitled to the additional time allotted.

It is the commission's determination that this approach will achieve the maximum practical degree of water quality in state waters consistent with the welfare of the state, and that this approach maximizes the beneficial uses of state waters while bearing a reasonable relationship to the economic, environmental, energy, and public health costs and impacts to the public. The commission intends that the incentive program as adopted in 2017 will be maintained for the participants through 2027. The commission will review the incentive program as part of its triennial process in 2022. If the commission determines that additional nutrient reductions beyond those that result from the incentive program are necessary during the program period, the commission intends that these additional reductions will be accomplished first through alternative regulatory mechanisms and only as a last resort will the commission change the incentive program.

Definition of New and Existing Treatment Facilities: The commission modified section 85.4 DEFINITIONS by adding the terms New Treatment Facility and Existing Treatment Facility and renumbering all definitions based on alphabetic ordering. These terms were added to clarify the commission's previously stated intent that the technology based effluent limits for new treatment facilities were not to apply to expansions or other improvements to existing facilities in the same location. The previous regulatory language did not clearly indicate that the technology based effluent nutrient limits apply to discharges to surface water only. The new definitions clarify that existing domestic facilities include any treatment facility that commences discharge or receives PELs or site approval for groundwater discharge or surface water discharge or who applies for a Notice of Authorization for the application of reclaimed water prior to May 31, 2012, even if the facility was discharging without a permit. The new definitions also clarify that a change in a treatment facility's site location will result in application of the effluent limits for new facilities. A cross-reference to the definition of the term "site" in Regulation #61 was also added. The definitions do not change existing implementation practices, but merely reinforce current interpretations to prevent any future misunderstanding or misapplication.

Preliminary Effluent Limits: The commission modified section 85.5(1)(a) to allow a standard practice of including Regulation #85 effluent limits in preliminary effluent limits (PELs), with a delayed effective date, for the facilities covered by Section 85.5(1)(a)(ii). While some effluent limits will mirror the limits in Sections 85.5(1)(a)(iii) or (1)(b), in the course of evaluating the Regulation #85 limits for PELS, the division would also be evaluating whether any of the additional exceptions from Section 85.5(3)(b) would apply or whether a trade has been executed pursuant to Section 85.5(3)(d), resulting either in no effluent limit or a less stringent effluent limit than those contained in Sections 85.5(1)(a)(iii) or (1)(b). This will allow a facility to plan and design the facility to meet the Regulation #85 effluent limits if they choose to do so. In addition, the facility would be able to obtain Site Location and Design Approval for that design. This type of information would be helpful, for example, in a situation where a facility is planning other facility upgrades or is interested in leveraging funding opportunities.

The commission also modified section 85.5(1)(a)(i) to allow preliminary effluent limits, with delayed effective dates, to be included for small and disadvantaged communities upon request by the facility.

Disadvantaged Communities: Section 85.5 states that the numeric effluent limits do not apply to any domestic wastewater treatment works owned by a disadvantaged community. The commission did not change this exclusion in this hearing. However, the commission did update the definition of disadvantaged communities in order to better examine the socio economic condition of a community and to be more aligned with the State Revolving Loan Fund program definition. First, the commission changed the population threshold from 5,000 to 10,000. Then, multiple criteria are evaluated to determine whether the community is disadvantaged. There are three primary factors that a community will be evaluated against: median household income, median home value, and unemployment rate or job loss. There are three secondary factors that will also be evaluated. Section 85.7 contains a table that outlines which

factors must be met in order for a community to be determined to be a disadvantaged community. In the event a community is determined not to be disadvantaged, but the community believes there is an error in the data, the community may present a business case to the division for review. The division will then determine whether a business case has been made such that the community should be determined a disadvantaged community and therefore excluded from application of the effluent limits.

The commission also clarified that if a community wants the division to conduct an evaluation of whether it meets the criteria in section 85.7, the community must request that analysis be conducted at the time of submitting its permit application.

Monitoring and reporting requirements: A two year monitoring requirement for cooling tower discharges existed in Section 85.6(2)(a). This monitoring requirement resulted in the data collection and reporting of nutrient data from inflow, discharge and nutrient added to cooling processes from November 1, 2012 through October 31, 2014. This monitoring requirement was fulfilled and therefore the commission deleted that provision.

A reporting requirement for municipal separate storm sewer system discharges existed in Section 85.6(3). The data was compiled into a report and submitted to the division. This reporting requirement was fulfilled and therefore the commission deleted that provision.

The commission added the requirement to monitor and report total inorganic nitrogen at stream monitoring locations. This change will allow the direct comparison of effluent and instream total inorganic nitrogen concentrations and loads, and thus, a better understanding of the change due to the implementation of total inorganic nitrogen effluent limits.

The commission notes that applicable PQLs can be found in WQC Policy CW6.

In order to provide certainty to monitoring facilities, the commission added an end date of December 31, 2027 to the monitoring requirements. This date will allow the division to amass substantial data regarding nutrient loading into Colorado's waters and will provide for an understanding of how that load may change as nutrient effluent limits are implemented. Furthermore, the commission anticipates there will be continued nutrient monitoring data from the division's (and others') routine monitoring as well as from discharge monitoring requirements as effluent limits are implemented into permits. However, understanding the impacts to water quality from the implementation of the incentive program, water quality based effluent limits based on Regulation #31 criteria, and related DSVs may necessitate collection of additional instream data. Therefore, the commission will reevaluate the appropriateness of this end date at future rulemaking hearings.

In order to reduce confusion, the commission added a sentence to the opening paragraph of Section 85.5 to call attention to the monitoring requiements of 85.6 regardless of whether the effluent limitations in 85.5 apply.

Federal Facilities: The commission modified 85.5 and 85.6 to clarify that Regulation #85 applies to federally operated domestic wastewater treatment facilities that receive National Pollutant Discharge System Elimination System (NDPES) permits from EPA as Colorado has not been delegated authority to issue permits to federal facilities. Other control regulation requirements apply to federal facilities in Colorado and it makes sense for this control regulation to stand on equal ground in terms of its applicability to federal facilities. The commission added language to clarify that section 85.5 requirements apply to Colorado Discharge Permit System (CDPS) and NPDES permits. In addition, the commission clarified in 85.6 that monitoring requirements apply to federal facilities.

Typos and corrections: In addition to the substantive changes described above, numerous editorial changes have been made in the regulation to provide clarity. Several minor changes were made to further define priority watersheds, delete references that were no longer relevant, and to clarify the monitoring

requirements. In addition, several typographical errors have been corrected including a reference in the trading section.

Standard Industrial Classification code in the Major Group 20

Numeric Limitations for Non-Domestic Wastewater Treatment Works: The commission modified Section 85.5(2) to include TIN and TP limitations specific to non-domestic dischargers with a Standard Industrial Classification code in the Major Group 20 (SIC 20). Several of the SIC 20 dischargers presented information to the commission regarding their specific challenges in treating to the Regulation 85 limitations. The SIC 20 industries treat wastewater that has influent concentrations of total nitrogen in the range of 500 to 900 mg/L (4,170 to 7,500 lbs/MG) and total phosphorus concentrations of 60 to 80 mg/L (500 to 670 lbs/MG). These influent concentrations are an order of magnitude higher than the influent concentrations experienced by typical domestic wastewater treatment works. While most of the existing SIC 20 wastewater treatment works are configured to treat these higher influent nutrient loadings, the influent nutrient and organic ratios do not allow these wastewater treatment works to achieve biological nutrient removal to the same technology based effluent limits as typical domestic wastewater treatment works.

For consistency with the requirements for domestic facilities, new and existing SIC 20 facilities were assigned different technology based effluent limits. These limits were based on the capability of biological treatment systems, and the difficulty of retrofitting existing systems versus the ability to design and install enhanced treatment on an undeveloped site. The commission decided to require existing SIC 20 facilities to achieve treatment commensurate with BNR removal for the more significant influent loading. For new SIC 20 facilities, the technology based nutrient effluent limits were based on the biological treatment capabilities of enhanced BNR (eBNR) treatment systems at these anticipated higher influent loads. Based on the expected influent loadings of the SIC 20 facilities and the domestic wastewater facilities, the adopted technology based effluent limits for SIC 20 facilities reflect similar percent removals for total phosphorus, but significantly higher percent removals for total inorganic nitrogen.

PARTIES TO THE RULEMAKING

1. City of Boulder, Centennial Water and Sanitation District, Littleton-Englewood Wastewater Treatment Plant, Metro Wastewater Reclamation District and Colorado Wastewater Utilities Council
2. AF CURE
3. City of Black Hawk and Black Hawk/Central City Sanitation District
4. Colorado Monitoring Framework
5. Eagle River Water and Sanitation District
6. Supervisory Committee of the Littleton/Englewood Wastewater Treatment Plant
7. Colorado Springs Utilities
8. North Front Range Water Quality Planning Association
9. Farmer's Reservoir and Irrigation Company
10. City of Fort Collins
11. Town of Fraser
12. MillerCoors, LLC
13. Plum Creek Water Reclamation Authority
14. Public Service Company of Colorado
15. City of Pueblo
16. Silverthorne/Dillon Joint Sewer Authority
17. Town of Telluride
18. Tri-Lakes Wastewater Treatment Facility
19. Tri-State Generation and Transmission Association, Inc.
20. Upper Blue Sanitation District
21. Dominion Water and Sanitation District
22. Parker Water and Sanitation District
23. City and County of Broomfield

24. Leprino Foods Company
25. Swift Beef Company

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Tracking number: 2017-00236

Opinion of the Attorney General rendered in connection with the rules adopted by the

Water Quality Control Commission (1002 Series)

on 11/13/2017

5 CCR 1002-85

REGULATION NO. 85 - NUTRIENTS MANAGEMENT CONTROL REGULATION

The above-referenced rules were submitted to this office on 11/13/2017 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

November 29, 2017 12:49:56

Permanent Rules Adopted

Department

Department of Labor and Employment

Agency

Division of Unemployment Insurance

CCR number

7 CCR 1101-2

Rule title

7 CCR 1101-2 REGULATIONS CONCERNING EMPLOYMENT SECURITY 1 - eff 12/30/2017

Effective date

12/30/2017

PART XI REDETERMINATIONS AND APPEALS

11.2 APPEALS PROCEDURE

11.2.1 Statutory References: 8-72-108, 8-74-101 to 8-74-109, 8-76-103 (4), 8-76-113, and 8-80-102, C.R.S.

11.2.13 Failure to Appear.

.1 Appealing Party. If the appealing party fails to appear at the time of the hearing before the hearing officer, the appeal shall be dismissed and the decision that was the subject of the appeal shall become final. Written notice that the appeal has been dismissed shall be provided to the interested parties named in the caption. The appealing party may request that the appeal be reinstated and the hearing be rescheduled pursuant to the procedures set forth in part XII of the regulations. The request must be received by the division within twenty calendar days after the date the dismissal notice was mailed by the division. An untimely request that a hearing be rescheduled may be permitted by the division for good cause shown, pursuant to the procedure set forth in part XII of the regulations.

.2 Nonappealing Party. If any other interested party fails to appear for a scheduled hearing, and a decision is issued by a hearing officer on the merits of the appeal, the party who failed to appear may request that a new hearing be scheduled either by filing a written request with the panel or filing a written appeal from the hearing officer's decision. The written statement shall include details, pursuant to part XII of the regulations, to establish that he or she had good cause for the failure to appear for the appeal hearing. The request for a new hearing shall be filed with the panel in person, by mail, by facsimile machine, by panel-approved electronic means, or at a public employment office, the central office of the division, the office where the hearing officer is located, or by division-approved electronic means and shall be received by the panel within twenty calendar days after the date mailed on the hearing officer’s decision. An untimely request for a new hearing may be permitted by the panel for good cause shown, pursuant to the procedure set forth in part XII of the regulations. If it is determined that the party has shown good cause for the failure to appear, the hearing officer's decision that was issued on the merits of the appeal shall be vacated and a new hearing scheduled forthwith.

.3 Representative of a Party. When an interested party's attorney or other designated representative appears for and participates in the scheduled hearing on the party's behalf, the party shall be deemed to have appeared for the hearing, for the purposes of this part XI of the regulations.

PART XII GOOD CAUSE

12.1 DETERMINATION OF GOOD CAUSE

12.1.1 Statutory References: 8-73-107 (1)(h), 8-73-108 (5)(e)(XVIII)(XIX), 8-74-102, 8-74-106, 8-76-110 (2)(g), 8-76-110 (4)(e), 8-76-113, and 8-79-104 (1)(d), C.R.S.

12.1.3 Procedure.

.1 Whenever an interested party files an untimely appeal from a deputy's decision, a rebuttable presumption of good cause shall be established and a hearing shall be scheduled unless the appeal was received more than 180 days beyond the expiration of the timely filing period. The notice of hearing shall contain a statement indicating that the appeal was filed beyond the expiration of the timely filing period and that the nonappealing party may object to the hearing being granted at the time of the new hearing. If the nonappealing party fails at the time of the hearing to object to the hearing proceeding, that party waives the opportunity to object to the hearing going forward. If the nonappealing party objects at the time of the hearing to the matter being scheduled, the hearing officer shall determine whether good cause has been shown, pursuant to section 12.1.8, for permitting the untimely appeal. If the hearing officer determines that good cause has been shown for permitting the untimely appeal, the hearing shall proceed. If the hearing officer determines that good cause has not been shown for permitting the untimely appeal, the appeal shall be dismissed.

.2 In the event an interested party files an untimely appeal from a deputy's decision or makes a request for a new hearing and the appeal or hearing request is received more than 180 days beyond the expiration of the timely filing period, good cause may not be established, a hearing shall not be scheduled, the appeal shall be dismissed, and the deputy's decision shall become final.

.3 Whenever an interested party files an untimely appeal from a hearing officer's decision, or fails to appear for a hearing held on an appeal from a deputy's decision and has filed a request for a new hearing, the panel shall determine if good cause has been shown, pursuant to section 12.1.8, for permitting the untimely appeal or excusing the failure to appear. The panel shall make a determination of good cause only if the untimely appeal or request for new hearing contains a statement of the reasons for which the party failed to act in a timely manner or if information within the appeal file supports a determination of good cause. If the party's untimely appeal or request for a new hearing does not establish good cause, the

panel may request an explanation in writing, by postal mail, by approved electronic means, or by telephone. The party shall respond to any such request within ten days.

.4 Whenever an appeal from a deputy's decision has been dismissed because the appealing party failed to appear for a scheduled hearing before a hearing officer and the appealing party requests that a new hearing be scheduled, a rebuttable presumption of good cause shall be established and a new hearing shall be scheduled. The notice of the new hearing shall contain a statement indicating that the hearing is being rescheduled because the appealing party did not appear for the prior hearing and that the nonappealing party may object at the beginning of the new hearing to the matter being rescheduled. If, at the time of the new hearing, the nonappealing party objects to the matter being rescheduled, the hearing officer shall determine whether good cause has been shown, pursuant to section 12.1.8, to excuse the failure to appear. If, at the time of the hearing, the nonappealing party fails to object to the hearing proceeding, that party waives the opportunity to object to the hearing going forward. If the hearing officer determines that good cause has been shown to excuse the failure to appear, the hearing on the deputy's decision shall proceed. If the hearing officer determines that good cause has not been shown to excuse the failure to appear, the appeal shall be dismissed.

.5 Notwithstanding these provisions, good cause may not be established for the failure of an appealing party to appear for a second hearing which was set because that party failed to appear for the first hearing. In the event that the appealing party fails to appear for the first setting of a hearing on a deputy's decision and then subsequently fails to appear for the second setting of a hearing, the appeal shall be dismissed and the deputy's decision shall become final. Under such circumstances, the division shall issue a notice to all interested parties that the appeal has been dismissed and that no further rescheduled hearings shall be granted.

12.1.4 Written Statement. All statements provided for the purpose of part XII of these regulations shall be in writing and identify the person submitting the statement. The statement may be submitted in person, by postal mail, by facsimile machine, by telephone, by division-approved electronic means, or if submitted to the panel, by panel-approved electronic means.

12.1.5 Determination by Panel. Upon receipt of the statement, the panel shall determine whether good cause has been shown for permitting an untimely appeal from a hearing officer's decision or for excusing the failure of a nonappealing party to appear for a hearing. Such determination shall be in writing with supporting findings of fact and shall be provided to all interested parties in person, by mail, by facsimile machine, or by electronic means. If the

panel determines that good cause exists for permitting a late appeal, the decision shall contain a written notification that the other-named interested parties may object to the good-cause determination by raising their objections in their written arguments as permitted by regulation 12.1.3. The panel shall consider any objections and conduct further appropriate proceedings to reconsider the good-cause determination.

12.1.6 Additional Evidence. In making a determination of whether good cause has been shown for permitting an untimely appeal from a hearing officer's decision or for excusing the failure to appear for a hearing, the panel may request or accept additional written evidence, may obtain additional evidence by other reliable means as shall be deemed appropriate, or may order that a hearing be conducted by a hearing officer to obtain such evidence and to make findings of fact deemed necessary to resolve this issue.

12.1.7 Appeals. Any interested party may present its objections at the hearing scheduled on the issues in dispute if the interested party objects to a determination of the chief hearing officer or designee or the panel that a rebuttable presumption of good cause exists for an untimely appeal from a deputy's decision; that excuses the failure to appear for a hearing; or that good cause exists for an untimely request for a new hearing. The hearing officer shall consider all information in support of or in opposition to the good cause determination presented by the interested parties, including all objections and responses and supporting evidence. The hearing officer shall determine if good cause exists for permitting the untimely appeal or excusing the failure to appear or excusing the untimely request for a new hearing based on the evidence presented. However, if the hearing officer does not find the facts to be different than those already considered, the hearing officer shall not disturb the prior determination of good cause, and the hearing will proceed on the merits of the issues in dispute. If good cause is overturned, the hearing will be terminated and any previously vacated hearing officer's decision on the merits of the appeal shall be reinstated.

CYNTHIA H. COFFMAN
Attorney General

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Chief Deputy Attorney General

LEORA JOSEPH
Chief of Staff

FREDERICK R. YARGER
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Office of the Attorney General

Tracking number: 2017-00470

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Unemployment Insurance

on 10/30/2017

7 CCR 1101-2

REGULATIONS CONCERNING EMPLOYMENT SECURITY

The above-referenced rules were submitted to this office on 10/31/2017 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.

November 17, 2017 10:50:19

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Labor and Employment

Agency

Division of Labor Standards and Statistics (Includes 1103 Series)

CCR number

7 CCR 1103-1

Rule title

7 CCR 1103-1 COLORADO MINIMUM WAGE ORDER NUMBER 34 1 - eff 01/01/2018

Effective date

01/01/2018

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Labor Standards and Statistics

COLORADO MINIMUM WAGE ORDER NUMBER 34

7 CCR 1103-1

Authority:

This Colorado Minimum Wage Order Number 34 is promulgated under the authority vested by C.R.S. Title 8, Articles 1, 4, 6, and 12 (2017). This Wage Order shall supersede all previous Wage Orders.

Important Information on Minimum Wage:

Colorado Minimum Wage Order Number 34 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.

2018 Colorado State Minimum Wage:

Pursuant to 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 $10.20 state minimum wage or the $7.18 state tipped employee minimum wage, effective January 1, 2018:

1. The employee is covered by the minimum wage provisions of Colorado Minimum Wage Order Number 34.

2. The employee is covered by the minimum wage provisions of the Fair Labor Standards Act.

The Division accepts complaints for minimum wage violations involving employees who receive the state or federal minimum wage.

Table of Contents:

Section

1. Coverage:

This Colorado Minimum Wage Order Number 34 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

(B) Commercial Support Service

(C) Food and Beverage

(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 standards and statistics.

Division: the division of labor standards and statistics 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 $10.20 effective January 1, 2018, 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 $7.18 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 $7.18 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. 34: 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. 34:

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, C.R.S. § 8-4-105 (2017).

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, C.R.S. § 8-4-103(6) (2017).

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 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, C.R.S. § 8-4-101, et seq. (2017). Violations of this Wage Order may be subject to the administrative procedure as described in the Colorado Wage Act, C.R.S. § 8-4-101, et seq.

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 C.R.S. § 8-6-118 (2017). Alternatively, an employee may elect to pursue a minimum wage complaint through the division's administrative procedure as described in the Colorado Wage Act, C.R.S. § 8-4-101, et seq. (2017).

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 C.R.S. § 8-6-115 (2017).

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 C.R.S. § 8-6-116 (2017).

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 unpractical, 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.

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*

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Office of the Attorney General

Tracking number: 2017-00469

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Labor Standards and Statistics (Includes 1103 Series)

on 11/09/2017

7 CCR 1103-1

COLORADO MINIMUM WAGE ORDER NUMBER 34

The above-referenced rules were submitted to this office on 11/09/2017 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.

November 27, 2017 16:58:55

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Agriculture

Agency

Animal Health Division

CCR number

8 CCR 1201-19

Rule title

8 CCR 1201-19 LIVESTOCK DISEASE CONTROL 1 - eff 12/30/2017

Effective date

12/30/2017

COLORADO DEPARTMENT OF AGRICULTURE

Animal Health Division

8 CCR 1201-19

LIVESTOCK DISEASE CONTROL

Part 1. Definitions

The following definitions apply to all parts of 8 CCR 1201-19 below except where any part has a definition that is more specific in which case the specific controls over the general.

1.1. “Accredited Veterinarian” means an individual who is currently licensed and in good standing with a veterinary licensing board or agency in any state of the United States or the District of Columbia to practice veterinary medicine and is accredited by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services.

1.2. “Administrator” means The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

1.3. “Animal and Plant Health Inspection Services (APHIS)” means the agency in the United States Department of Agriculture known as the Animal and Plant Health Inspection Service.

1.4. “Certificate of veterinary inspection (CVI)” means an official document issued by an accredited veterinarian at the point of origin of a shipment of livestock. The document shall include the date, the physical location of origin, the name and mailing address of the consignor; the physical location of destination, the name and mailing address of the consignee; the age, sex, number, and breed of the livestock; sufficient identifying marks, tags or other identification as may be approved by the State Veterinarian, to positively identify livestock; and the results of all required tests. Such document shall also include a statement verifying that the livestock identified on the document have been inspected and that they are free from clinical signs of any contagious, infectious, or communicable diseases and that the livestock do not originate from an area of quarantine, infestation, or infection. A certificate of veterinary inspection is valid for thirty (30) days after the date of issuance.

1.5. “Colorado Approved Feedlot" means a confined feedlot area approved and recorded by the State Veterinarian or his or her authorized agent. The approved feedlot shall be maintained for growing and/or finish-feeding of animals in dry lot with no provisions for pasturing or grazing. Animals leaving such a feedlot must move directly to slaughter or to another Colorado Approved Feedlot and must be accompanied by a current brand inspection certificate where and when applicable.

1.6. “Hold Order” means a temporary order issued by the state veterinarian when an infectious or contagious disease is suspected in livestock to isolate any specific livestock, premises, county, district, or section of the state; restrict the movement of livestock; and specify sanitary measures, pending completion of testing.

1.7. “Import permit” means a permit issued by the State Veterinarian to an accredited veterinarian at the livestock’s point of origin and used for the interstate import into Colorado or intrastate movement of livestock within Colorado.

1.8. “Location identification number (LID)” means a nationally unique number issued by a state, tribal, or federal animal health authority to a location as determined by the state or tribe in which it is issued. The LID number may be used in conjunction with a producer's own unique livestock production numbering system to provide a nationally unique and herd unique identification

number for an animal. It may also be used as a component of a group/lot identification number (GIN).

1.9. “Official eartag” means an identification tag approved by APHIS that bears an official identification number for individual animals. Beginning March 11, 2014, all official eartags manufactured must bear an official eartag shield. Beginning March 11, 2015, all official eartags applied to animals must bear an official eartag shield. The design, size, shape, color, and other characteristics of the official eartag will depend on the needs of the users, subject to the approval of the Administrator. The official eartag must be tamper-resistant and have a high retention rate in the animal.

1.10. “Official eartag shield” means the shield-shaped graphic of the U.S. Route Shield with “U.S.” or the State postal abbreviation or Tribal alpha code imprinted within the shield.

1.11. “Official identification device or method” means a means approved by the Administrator of USDA APHIS for applying an official identification number to an animal of a specific species or associating an official identification number with an animal or group of animals of a specific species or otherwise officially identifying an animal or group of animals.

1.12. “Official identification number” means a nationally unique number that is permanently associated with an animal or group of animals and that adheres to one of the following systems:

1.12.1. National Uniform Eartagging System (NUES).

1.12.2. Animal identification number (AIN).

1.12.3. Location-based number system.

1.12.4. Flock-based number system.

1.12.5. Any other numbering system approved by the Administrator for the official identification of animals.

1.13. “Officially identified” means identified by means of an official identification device or method approved by the Administrator.

1.14. "Owner” means the person or entity owning the livestock or property and the owner's officers, members, employees, agents, attorneys, and representatives.

1.15. “Premises identification number (PIN)” means a nationally unique number assigned by a state, tribal, or Federal animal health authority to a premises that is, in the judgment of the state, tribal, or Federal animal health authority, a geographically distinct location from other premises. The premises identification number is associated with an address, geospatial coordinates, or location descriptors that provide a verifiably unique location. The premises identification number may be used in conjunction with a producer’s own livestock production numbering system to provide a unique identification number for an animal. It may also be used as a component of a group or lot identification number.

1.16. “Quarantine” means an order issued by the Commissioner of Agriculture or his designee when testing has confirmed the presence of an infectious or contagious disease in livestock, which order isolates specific livestock , premises, counties, districts, or sections of the state; restricts the movement of livestock; and specifies sanitary measures. 1.17. “Reportable Disease” means an infectious or contagious disease that the State Veterinarian has determined must be reported when suspected or diagnosed by any person or veterinarian.

1.18. “RFID” means a radio frequency identification device used as individual identification of livestock.

1.19. "State or federal veterinarian" means a veterinarian employed by a state or federal regulatory agency.

1.20. “State Veterinarian” means the veterinarian designated by the Commissioner of the Colorado Department of Agriculture as the director of the Division of Animal Health, Colorado Department of Agriculture.

1.21. “VS Form 1-27 permit” means the official USDA Veterinary Services form used in transportation under sealed conveyance. A state or federal animal health official seals the conveyance at its origin and breaks the seal only at destination.

1.22. “Zoological park” means any park, building, cage, enclosure, or other structure or premises in which a live animal or animals are kept for public exhibition or viewing, regardless of compensation.

Part 2. Standards for Livestock Certificates of Veterinary Inspection

2.1. Requirements for Certificates of Veterinary Inspection

2.1.1. An official CVI is the legibly completed official form both written and electronically generated and approved by the State Veterinarian of the state of origin and issued by a licensed accredited veterinarian.

2.1.2. Such CVI shall include the date, the physical location of origin, the name and mailing address of the consignor; the physical location of destination, the name and mailing address of the consignee; the age, sex, number, and breed of the livestock; sufficient identifying marks, tags or other identification as may be approved by the State Veterinarian, to positively identify livestock; and the results of all required tests.

2.1.3. Such CVI shall indicate the applicable area, herd, or flock disease status, and required disease test results necessary for importation to the state of destination.

2.1.4. Such CVI shall identify the type of carrier and their name and address. Such CVI shall show the permit number when a permit is required.

2.1.5. The CVI shall also contain a statement by the accredited veterinarian that such livestock are free from clinical signs of all contagious, infectious, or communicable diseases and do not originate from a premises, district or state of quarantine, infestation or infection. Such statement shall substantially comply with the following: “I certify, as an accredited veterinarian that the above described animals have been inspected by me and that they are not showing signs of infections, contagious, or communicable disease (except where noted). The vaccinations and results of tests are as indicated on the certificate. To the best of my knowledge, the animals listed on this certificate meet the state of destination’s and federal interstate requirements. No further warranty is made or implied.”

2.1.6. A CVI shall be void thirty (30) days after the date of its issuance.

2.1.7. One copy of such certificate shall accompany the livestock. Within seven days after the date of issue, the accredited veterinarian who issued the CVI shall forward a copy of such CVI to the State Veterinarian.

2.1.8. Livestock shall also meet all of USDA’s animal disease traceability requirements.

2.2. Colorado Livestock Import Requirements

2.2.1. Livestock imported into Colorado must comply either with the destination state's regulations or USDA's animal and disease traceability requirements.

2.2.2. The State Veterinarian may require a statement by the issuing veterinarian concerning certain designated or reportable diseases that may be occurring in the livestock's state of origin.

2.3. Colorado Livestock Import Requirements: Exception to Certificate of Veterinary Inspection

2.3.1. Livestock that are imported into Colorado and consigned directly to a federally inspected slaughtering establishment or those moving directly to an approved market in Colorado from a farm of origin that is within the normal trade area for that market may enter into Colorado without a certificate of veterinary inspection.

2.3.2. Except when imported directly to slaughter, all shipments of chickens, turkeys, and ducks, including hatching eggs, baby chicks, or turkey poults may be imported into Colorado when:

2.3.2.1. The shipment originates from flocks or flocks from farms that are actively participating in the National Poultry Improvement Plan; or

2.3.2.2. The shipment originates from flocks actively participating in a comparable Pullorum disease control plan administered by the state of origin; or

2.3.2.3. The shipment is accompanied by a certificate of veterinary inspection that indicates compliance with all required testing.

2.4. Colorado Livestock Export Requirements

2.4.1. Official identification will be required as import regulations of the state of destination or USDA's animal disease traceability requirements.

2.4.2. Livestock exported from Colorado must comply either with the destination state's regulations or USDA's animal and disease traceability requirements.

2.5. Non-Livestock, Zoological Park Animals, and Wildlife

2.5.1. Animals consigned to zoological parks in Colorado must be accompanied by a certificate of veterinary inspection.

2.5.2. The State Veterinarian may require any testing or post-entry quarantine requirements, as he deems necessary, for any animal consigned directly to a zoological park.

2.5.3. Dogs and cats imported into Colorado must be accompanied by a certificate of veterinary inspection which, for such animals over three months of age, must indicate a current rabies immunization.

2.5.4. Any non-livestock animal, including wildlife or animal consigned to a zoological park, must also meet any requirements of the United States Fish and Wildlife Service and the Colorado Division of Parks and Wildlife.

2.6. Quarantine for Animals Illegally Entering into Colorado

2.6.1. Animals entering Colorado without a valid CVI or permit number, or both if required, may be held in quarantine at the owner's expense until released by an authorized representative of the State Veterinarian. Animals under quarantine for noncompliance with this Rule may be released only

after the State Veterinarian is satisfied by inspection, testing, treatment, or through observation over time, that the animals are not a threat to Colorado's livestock industry.

2.6.2. The State Veterinarian may order that an imported animal failing to meet import requirements be returned to its state of origin; consigned directly to slaughter; or confined to a Colorado Approved Feedlot. The person responsible for the livestock at the time of entry shall comply with the State Veterinarian's order within five working days of its issuance. Any extension to the five-day deadline may be approved in writing and only by the State Veterinarian.

2.6.3. If the owner or owner's agent fails to comply with an order to return livestock to the livestock's state of origin within the time-frame set forth in Section V.B of this Part 1, the Department may require that the livestock be immediately gathered at the owner's expense to avoid exposure of Colorado livestock. The isolation of said livestock shall be managed according to requirements approved by the State Veterinarian to limit potential disease spread to Colorado livestock.

2.6.4. The State Veterinarian may require that livestock ordered returned to their state of origin be returned by a commercial livestock conveyance.

Part 3. Commuter Agreement

3.1. Definitions

3.1.1. "Commuter agreement" means a form, approved by the Colorado State Veterinarian and the state veterinarian of the contiguous state, that establishes an agreement between Colorado and a contiguous state to enable livestock owners, managers, or operators to move livestock across state borders for grazing purposes and to return to the state of origin.

3.1.2. "Official Calfhood Vaccinate (OCV)" means a female bovine that has been vaccinated with Brucella abortus RB-51 vaccine when the female bovine is between 4 and 12 months of age and when the female bovine identified as provided for in the Uniform Methods & Rules for Brucellosis Eradication.

3.1.3. "Uniform Methods and Rules (UM&R) for Brucellosis Eradication" shall mean the standards set forth in APHIS Bulletin No. 91-45-013, which are effective October 1, 2003. This rule incorporates by reference APHIS Bulletin No. 91-45-013. This rule does not adopt any later amendments to or editions of this bulletin. Additionally, anyone seeking to review a copy of the referenced material may contact the Animal Health Division of the Department of Agriculture located at 305 Interlocken Parkway, Broomfield, Colorado, to learn how this information may be obtained or reviewed. This and any other material that is incorporated by reference may be examined at any state publications depository library.

3.2. Commuter Agreement Testing Requirements

3.2.1. A commuter agreement may be obtained by herd owners, managers, or operators for the purposes of moving livestock into Colorado from a contiguous border state and for the purpose of returning the livestock to the state of origin or for moving livestock from Colorado to a border contiguous state and then returning the livestock to Colorado.

3.2.2. Commuter agreements between states may allow for the exception from normal import testing requirements or testing accomplished in normal production cycles in that:

3.2.2.1. testing may be completed upon return to Colorado or;

3.2.2.2. testing may be required prior to movement of livestock.

3.3. Commuter Agreement Form Requirements

3.3.1. The State Veterinarian or the state veterinarian from the state of origin will issue permit numbers on forms that they provide and that meet the following criteria:

3.3.1.1. A commuter agreement form shall list the approximate dates of departure and return; the type and number of livestock to be moved; and the livestock's location of origin and location of destination identified by address, section, township and range location, or legal description.

3.3.1.2. The herd owner, operator, or manager shall identify, on the commuter agreement form, the veterinarian responsible for providing veterinary services for the herd in the state of origin.

3.3.1.3. The commuter agreement form shall be signed by the herd owner, operator, or manager and by the state veterinarians or by designees from both participating states.

3.3.1.4. The livestock shall be from a breeding herd or flock assembled for at least one year, which may include sires, dams, and their offspring. Purchased feeder or other temporary use livestock are not allowed to be included on the commuter agreement.

3.3.1.5. An accredited veterinarian and a brand inspector shall inspect such livestock prior to movement. A CVI will be issued with the commuter permit number identified on the CVI prior to the livestock's movement. Both the Brand Certificate and the CVI will accompany the movement to either state.

3.3.1.6. All female cattle older than 12 months of age that are intended to commute shall be Brucellosis Official Calfhood Vaccinates.

3.3.1.7. All commuting bulls shall be tested for T. fetus upon return of the herd to the state of origin after having been separated from female cattle for any period of time in excess of 30 days.

3.3.1.8. All breeding bulls shall test negative for T. fetus prior to shipment into Colorado. In the event that breeding bulls are not available for T. fetus testing, the State Veterinarian may require quarantine and pregnancy testing of the cows in the appropriate herd.

3.3.1.9. All Colorado origin rams may be required to be tested with a test approved by the State Veterinarian for Brucella ovis 60 to 120 days after returning to Colorado.

3.3.1.10. When livestock are moved to states with higher disease incidence status or risk for diseases such as tuberculosis or brucellosis, the State Veterinarian may require other or additional testing as stated on the commuter agreement, either prior to movement or upon return to the state of origin.

3.3.2. Nothing within this Part 3 of these Rules eliminates any state or federal requirement for a health or brand inspection.

3.4. Non Compliance with Commuter Agreements

3.4.1. In the event that a livestock owner fails to comply with any disease-testing requirements set forth on a signed commuter agreement when moving a herd or flock, the State Veterinarian may exercise any or all of the following authorities:

3.4.1.1. The present commuter agreement may be immediately canceled. When a commuter agreement is canceled, the herd shall meet all Colorado's livestock import requirements prior to return to the Colorado premises.

3.4.1.2. The commuter agreement requested in the following year may not be approved until the previously agreed testing has been completed.

3.4.1.3. The livestock may be placed under quarantine until the previously agreed testing has been completed.

Part 4. Standards for Colorado Approved Feedlots

4.1. Definitions

4.1.1. “Colorado Approved Feedlot" means a confined feedlot area approved and recorded by the State Veterinarian or his or her authorized agent. The approved feedlot shall be maintained for growing and/or finish-feeding of animals in dry lot with no provisions for pasturing or grazing. Animals leaving such a feedlot must move directly to slaughter or to another Colorado Approved Feedlot and must be accompanied by a current brand inspection certificate where and when applicable.

4.2. Approved Feedlot Purpose and Facility Requirements

4.2.1. Colorado Approved Feedlots may import cattle from states or areas within a state that have increased disease risk as determined by the State Veterinarian without required import tests, vaccinations, official IDs, or any other requirements according to USDA’s animal disease traceability requirements upon obtaining a CVI, import permit, and other necessary import requirements.

4.2.2. Colorado Approved Feedlot Facility Requirements:

4.2.2.1. The entire Colorado Approved Feedlot shall prevent pasturing or grazing of any livestock. The Approved Feedlot shall be dry-lot feeding only.

4.2.2.2. The Colorado Approved Feedlot shall have no perimeter fence line contact with livestock outside the feedlot.

4.2.2.3. The entire feedlot shall be a Colorado Approved Feedlot except when the State Veterinarian approves portions therein that are segregated and have separate provisions for loading, unloading, processing, feeding, watering, and treatment of livestock therein.

4.2.2.4. The end disposition of all cattle within Colorado Approved Feedlots shall be slaughter only. Upon approval of the State Veterinarian a Colorado Approved Feedlot may move cattle to another Colorado Approved Feedlot. All cattle exiting an Approved Feedlot may not be moved without a current Brand Inspection certificate, when and where required, and shall only be moved to a USDA Food Safety Inspection Service or other slaughter plant approved by the State Veterinarian or to another Colorado Approved Feedlot.

4.3. Livestock Facility and Individual Animal Identification Requirements

4.3.1. All Colorado Approved Feedlots shall have a USDA Premises Identification Number.

4.3.2. All cattle contained within Colorado Approved Feedlots shall be identified with an official identification device or other individual ear tag approved by the State Veterinarian.

4.3.3. All cattle imported from other states shall have either an official identification device that denotes the state of origin or any other identification device, approved by the State Veterinarian that enables approved feedlot inventory records to adequately denote the state of origin and the previous owner or previous location of the livestock.

4.4. Approved Feedlot Registration

4.4.1. A feedlot may apply to the State Veterinarian to be registered as a Colorado Approved Feedlot. The application shall be on a form designated by the State Veterinarian.

4.4.2. The Colorado Approved Feedlot may not become registered until the Colorado Department of Agriculture has received and approved the feedlot's application and until a representative of the State Veterinarian has performed an on-site inspection of the applicant's facility. Such on-site inspection shall insure that the feedlot meets the facility requirements and demonstrates the ability to comply with the individual animal identification requirements and approved feedlot facility record-keeping requirements as set forth herein.

4.4.3. The registration of an approved feedlot shall remain active from the date of issuance unless:

4.4.3.1. The feedlot fails to meet the minimum facility, animal identification, record-keeping or other requirements in which case the State Veterinarian may rescind the Colorado Approved Feedlot registration; or

4.4.3.2. The approved feedlot voluntarily relinquishes its Colorado Approved Feedlot registration. In the event the Approved Feedlot voluntarily relinquishes its registration, the Approved Feedlot shall be required to meet all minimum requirements of this rule until all livestock the Approved Feedlot at the time of relinquishment have exited the facility to approved slaughter facilities or to other Colorado Approved Feedlot.

4.4.4. Colorado Approved Feedlots shall be inspected for appropriate record keeping and other compliance annually or as deemed necessary by the State Veterinarian.

4.5. Colorado Approved Feedlot Record-Keeping Requirements

4.5.1. Colorado Approved Feedlots shall keep an inventory of all livestock confined on the registered facility.

4.5.2. Colorado Approved feedlots shall keep records through brand inspection of all cattle exiting the facility to approved slaughter facilities.

4.5.3. Colorado Approved Feedlots shall reconcile inventories of cattle to include cattle that enter the feedlot, mortalities, realizer cattle, and cattle that exit the facility to approved slaughter facilities or to other Colorado Approved Feedlots.

4.5.4. Records shall be made available to a representative of the State Veterinarian annually or as requested by the State Veterinarian.

Part 5. Bovine Tuberculosis

5.1. Definitions

5.1.1. "Accredited free state" means a state that maintains full compliance with all of the provisions of the United States Department of Agriculture (USDA) Uniform Methods and Rules for bovine tuberculosis eradication and has been classified by the USDA as Accredited Free.

5.1.2. "Accredited herd" means a herd that initially tests negative for at least two (2) consecutive caudal fold tuberculosis tests at an interval of not less than nine (9) months nor more than fifteen (15) months and that subsequently tests negative for caudal fold tuberculosis tests every thirty three (33) to thirty nine (39) months.

5.1.3. "Adjacent herd" means a group or groups of animals having potential direct contact with the affected herd. Herds separated by a single fence are considered adjacent herds.

5.1.4. "Affected herd" means a herd of cattle, bison or dairy goats that contains an animal that tests positive to Mycobacterium bovis through histopathology, polymerase chain reaction (PCR) assay, or bacterial isolation.

5.1.5. "Annual tests" means those tests conducted at intervals of not less than ten (10) months nor more than fourteen (14) months.

5.1.6. "Bison" means a bovine-like animal (genus Bison) commonly referred to as American buffalo or buffalo.

5.1.7. "Bovine Tuberculosis" means a disease in cattle, bison or dairy goats caused by Mycobacterium bovis.

5.1.8. "Caudal Fold Tuberculin (CFT) Test" means the intradermal injection of 0.1 milliliter of USDA bovine purified protein derivative (PPD) tuberculin into either side of the caudal fold, with reading by visual observation and palpation seventy-two (72) hours (+ or − 6 hours) following injection. .

5.1.9. "Commission firm" means a person, partnership or corporation that buys and/or sells livestock as a third party and reports to the seller and/or to the buyer details of the transactions. This includes any such person or group regardless of whether or not a fee is charged for the services.

5.1.10. "Comparative Cervical Tuberculin (CCT) Test" means the intradermal injection of 0.1 milliliter biologically balanced bovine PPD tuberculin and avian PPD tuberculin at separate sites in the cervical area and a determination as to the probable presence of bovine tuberculosis (M. bovis) by comparing the responses of the two (2) tuberculins seventy-two (72) hours (+ or − 6 hours) following injection.

5.1.11. "Dairy goats" means domestic caprine (genus Capra) kept for the purpose of producing milk for human consumption.

5.1.12. "Dealer" means any person, firm or partnership engaged in the business of buying or selling cattle, bison or dairy goats in commerce, either on his or her own account or as the employee or agent of the vendor and/or purchaser or any person engaged in the business of buying or selling cattle, bison, or dairy goats in commerce on a commission basis. The term shall not include a person who: (1) buys or sells cattle, bison or dairy goats as a part of his or her own bona fide breeding, feeding or dairy operation; (2) is not engaged in negotiating the transfer of cattle, bison or dairy goats; or, (3) receives cattle, bison or dairy goats exclusively for immediate slaughter on his or her own premise.

5.1.13. "Exposed animals" means cattle, bison or dairy goats that have had direct contact or are epidemiologically linked to bovine tuberculosis.

5.1.14. "Feedlot" means a confined dry lot area for the finish feeding of animals on a concentrated feed with no facilities for pasturing or grazing.

5.1.15. "Herd" means a group of cattle, bison or dairy goats maintained on common ground or two (2) or more groups of cattle, bison or dairy goats under common ownership or supervision that are geographically separated but can have an interchange or movement without regard to health status. (A group is construed to mean one (1) or more animals.)

5.1.16. "Herd plan" means a herd management and testing plan designed by the State Veterinarian and the herd owner that will control and eventually eradicate bovine tuberculosis from an affected, adjacent or exposed herd.

5.1.17. "Natural additions" means animals born and raised in a herd.

5.1.18. "Negative animal" means any test-eligible animal that tests negative to an official tuberculosis test.

5.1.19. "No Gross Lesion (NGL) Animal" means any test-eligible animal that does not reveal a lesion(s) of bovine tuberculosis upon postmortem inspection.

5.1.20. "Official Tuberculosis Test" means a test for tuberculosis applied and reported by approved personnel in accordance with this Part and the USDA Code of Federal Regulations (CFR) for bovine tuberculosis eradication. The official tuberculin tests are the caudal fold test, the comparative cervical test, the single cervical test or any other test that is approved by the USDA.

5.1.21. "VS Form1-27" means the Permit for Movement of Restricted Animals, which is an official document (USDA Form VS1-27) issued by an authorized agent of the Department of Agriculture, a representative of the Animal and Plant Health Inspection Service Veterinary Services (APHIS VS) or an accredited veterinarian that is required to accompany reactor, suspect, or exposed animals to slaughter. The permit will list the reactor tag or, in the case of suspect animals, an official eartag number; the owner's name and address; origin and destination locations; number of animals covered and the purpose of the movement. If a change in destination becomes necessary, a new permit must be issued by authorized personnel. No diversion from the destination on the permit is allowed.

5.1.22. “RFID” means a radio frequency identification device used as individual identification of livestock.

5.1.23. "Reactor" means any cattle, bison or goat that shows a response to a tuberculin test and is classified as a reactor on the basis of histopathological examination, PCR assay, and/or culture of selected tissues collected by the Federal or State veterinarian performing or supervising the slaughter inspection or necropsy.

5.1.24. "Responder" means any livestock officially skin tested for tuberculosis that has a visible or palpable response at the site of tuberculin injection.

5.1.25. "Single cervical tuberculin test" means the intradermal injection of 0.1 milliliter USDA bovine single cervical PPD tuberculin in the cervical (neck) region with reading by visual observation and palpation in seventy-two (72) hours (+ or − 6 hours) following injection.

5.1.26. "Suspect" means any cattle, bison or goats that have been classified as a suspect by a comparative cervical test.

5.1.27. "Tuberculin" means a product that is approved by and produced under USDA license for injection into cattle, bison or goats for the purpose of detecting bovine tuberculosis.

5.1.28. “Uniform Methods and Rules (UM&R) for Bovine Tuberculosis Eradication” means the standards set forth by the USDA Animal and Plant Health Inspection Service (APHIS Bulletin No. 91-45-011) which are effective January 1, 2005. This rule does not adopt any later amendments to or editions of this bulletin. Additionally, anyone seeking to review a copy of the referenced material may contact the Animal Health Division of the Department of Agriculture located at 305 Interlocken Parkway, Broomfield, Colorado, to learn how this information may be obtained or reviewed. This and any other material that is incorporated by reference may be examined at any state publications depository library.

5.2. Authority to Require Test

5.2.1. The State Veterinarian upon epidemiological evidence resulting in reliable information that tuberculosis may exist in any bovine, bison or any other animal, may require tuberculosis testing to be applied to such animals.

5.2.2. Should the owner or caretaker refuse or neglect to comply with the instructions of the accredited veterinarian, the State Veterinarian or his/her duly authorized representative or authorized agent, said animals shall be placed under a hold order to prohibit the movement of any animals from said premises.

5.2.2.1. The hold order shall be issued by an authorized agent of the Colorado Department of Agriculture showing the boundaries of the area or premises affected, the animals restricted and the conditions.

5.2.2.2. The livestock shall be held under a hold order until testing has been completed at which time animals will be released from the hold order or quarantined based on the test results.

5.2.3. The State Veterinarian may supervise, or provide oversight on any tuberculosis testing conducted by an accredited veterinarian.

5.3. Personnel Authorized to Apply Tuberculosis Tests

5.3.1. Tuberculosis tests shall be applied by a veterinarian employed as a state or federal regulatory veterinarian or by an accredited veterinarian.

5.4. Reporting of Tests

5.4.1. A TB test report shall be submitted within ten (10) days of the date of the test to the USDA. The report shall include the official USDA test form of all tuberculin tests, including the date of injecting and palpating, individual identification of each animal by eartag number, electronic identification, individual permanent numerical brand, or registration tattoo, age, sex, and breed and a record of the size of the response and test interpretation.

5.5. Approved Laboratories

5.5.1. The official laboratory for all tuberculosis diagnostic purposes shall be the National Veterinary Services Laboratories (NVSL), Ames, Iowa.

5.6. Identification

5.6.1. All animals tested shall be officially identified at the time of the initial test.

5.6.2. All premises where testing for tuberculosis occurs shall have a LID.

5.7. Record Keeping

5.7.1. All livestock dealers, livestock auction markets and commission firms shall keep sufficient records for a minimum of five (5) years of all animals purchased for resale to enable any authorized agent to trace such animals satisfactorily to their herd of origin and to their disposition at the time of sale.

5.7.2. These records shall be made available to any authorized agent of the Colorado Department of Agriculture for the purpose of inspection or photocopying during normal business hours.

5.7.3. Failure to maintain or provide adequate records shall constitute a violation of this Rule.

5.8. Initial Diagnostic Tests

5.8.1. The caudal fold test, or any other screening test approved by the USDA, is the official tuberculosis test for routine use in individual cattle, bison or dairy goats in herds of such animals where the tuberculosis status of the animals is unknown.

5.8.2. Animals that respond to the caudal fold test shall be placed under a hold order until the responding animals are tested with a supplemental test.

5.8.3. No animal with a response to a caudal fold test is eligible for intrastate or interstate movement unless said animal is subsequently classified "negative for M. bovis" based on an official comparative cervical test or other new testing technology as stated in Section XII.D. or accompanied by a VSForm 1-27 permit and consigned direct to slaughter with no diversion from the approved destination, or by special permit granted by the State Veterinarian.

5.9. Caudal Fold Test Interpretation

5.9.1. When testing herds not known to be infected with Mycobacterium bovis, Accredited Veterinarians using the caudal fold test shall classify the animals as "responders" if the test produces a response. The animal(s) shall be retested by a state or federal veterinarian.

5.9.2. Decisions regarding tuberculosis test interpretations will be based upon the professional judgment of the testing veterinarian in accordance with policies established by the cooperating state and federal officials.

5.9.3. The injection site on each animal shall be observed and palpated. Observation without palpation is not acceptable and shall constitute a violation of these Rules.

5.10. Supplemental Diagnostic Tests

5.10.1. The comparative cervical test (CCT), or any other test approved by the USDA and State Veterinarian, is the official tuberculosis test for retesting of responders.

5.10.2. The CCT shall be applied only by a state or federal regulatory veterinarian and shall not be used in known infected herds.

5.10.3. The CCT shall not be used as a primary test for animals of unknown status.

5.10.4. The Gamma Interferon test may be used as a confirmatory test when approved by the State Veterinarian.

5.11. Classification of Supplemental Testing in Cattle, Bison and Goats

5.11.1. Animals classified as reactors shall not be retested or reclassified.

5.11.2. Animals classified as suspects to the comparative cervical test shall be reclassified as reactors when included in a herd test that results in the confirmation of bovine tuberculosis in the herd.

5.11.3. Animals classified as reactor shall have, and suspects may have a post mortem performed and witnessed by a regulatory veterinarian. Appropriate tissue samples shall be submitted for laboratory examination at the NVSL. If the animal fails to demonstrate infection based on the lack of gross or microscopic evidence of bovine tuberculosis or other approved diagnostic tests, the animal and possibly the herd may be considered free of bovine tuberculosis.

5.11.4. In the event new technology and advancements provide alternative testing procedures, which are approved by the USDA, the State Veterinarian may alter testing procedures listed above to utilize the new approved methods and tests.

5.12. Disposition of Supplemental Test Responding Cattle, Bison and Goats

5.12.1. Suspect and reactor animals shall remain on the premises where they were disclosed until a VSForm 1-27 permit for movement has been obtained.

5.12.2. Movement for immediate slaughter will be directly to a slaughtering establishment where approved state or federal inspection is maintained within fifteen (15) days of classification.

5.12.3. Alternatively, the animals may be destroyed on site under the direct supervision of a regulatory veterinarian to insure that a proper post mortem examination can be conducted and that the carcass is disposed of according to methods approved of in the tuberculosis Code of Federal Regulations.

5.12.4. Suspects to the comparative cervical test shall remain under a hold order until:

5.12.4.1. They are retested by the comparative cervical test in sixty (60) days, or

5.12.4.2. Shipped under VSForm 1-27 permit directly to slaughter.

5.13. Movement Restrictions

5.13.1. Herds where only responder or suspect animals are disclosed shall be held on the premises until retested and classified negative, or shipped under a VS Form 1-27 permit directly to slaughter where a state or federal veterinarian will collect samples.

5.13.2. All herds in which reactor animals are shown to be infected through confirmatory tests shall be quarantined. Movement for immediate slaughter must be directly to an approved slaughtering establishment, under a VSForm 1-27 permit, where federal inspection is administered. Animals must be identified by official eartags or other individual unique identification as may be required by the State Veterinarian. Addition of animals shall be allowed only upon the approval of the State Veterinarian.

5.13.3. The sale of calves from quarantined herds shall be restricted. All calves that test negative to a caudal fold tuberculosis test within sixty (60) days may be permitted to move intrastate to an approved feedlot.

5.13.4. Herds in which only NGL reactor(s) occur and in which no evidence of Mycobacterium bovis infection has been disclosed may be released from quarantine.

5.14. Minimum Standards for Accreditation and Reaccreditation of Tuberculosis Accredited Cattle, Dairy Herds or Bison Herds

5.14.1. The minimum standards for accreditation and reaccreditation of tuberculosis accredited cattle and bison herds are as follows:

5.14.1.1. All test eligible animals must test negative to two (2) consecutive official tuberculosis tests not less than ten (10) months nor more than fourteen (14) months apart. Test eligible animals include all cattle or bison twelve (12) months of age and older and all animals other than natural additions under twelve (12) months of age. Natural additions become test eligible at twelve (12) months.

5.14.1.2. All test eligible animals in the accredited herd must have an official animal ID eartag.

5.14.1.3. Accurate records on each individual animal must be kept, including disposal and/or death of each animal, natural additions and purchased additions.

5.14.1.4. Accreditation, except for a bovine dairy herd, is valid for a twelve (12) month period. The original date of accreditation will serve as the herd's official accreditation date.

5.14.1.5. Reaccreditation for all herds other than bovine dairies shall require a negative test of all test eligible herd members not less than ten (10) nor more than fourteen (14) months from the official accreditation date. All animals must be bona fide members of the herd.

5.14.2. All dairy herds must be tuberculosis accredited or reaccredited between 33 and 39 months after any initial accreditation. The minimum standards for accreditation and reaccreditation of tuberculosis accredited dairy herds are as follows:

5.14.21. Initial tuberculosis accreditation involves testing all cattle in the dairy herd, including any beef cattle and calves comingling, greater than 12 months of age.

5.14.22. All test eligible animals in the accredited herd must have an official animal ID eartag.

5.14.2.3. Accurate records on each individual animal must be kept, including disposal and/or death of each animal, natural additions and purchased additions.

5.14.2.4. Accreditation is valid for three years unless tuberculosis is diagnosed in the herd after any initial accreditation. The Department may issue a TB Accreditation certificate to any bovine dairy herd owner whose herd meets these standards of TB Accreditation.

5.15. Minimum Standards for Accreditation and Reaccreditation of Tuberculosis Accredited Non-Bovine Dairy Herds

5.15.1. Minimum standards for accreditation and reaccreditation of tuberculosis accredited non-bovine dairy herds are as follows:

5.15.1.1. Testing of herds for accreditation or reaccreditation shall include all dairy animals over six (6) months of age and any dairy animals other than natural additions under six (6) months of age. All natural additions shall have an official animal ID eartag and be recorded on the test report as members of the herd at the time of the annual test.

5.15.1.2. Reaccreditation shall require a negative test of all test eligible herd members not less than ten (10) nor more than fourteen (14) months from the official accreditation date.

5.16. Interstate TB Import Requirements

5.16.1. All dairy animals (such as cattle, goats, sheep, camels, water buffalo) six (6) months and older shall be tested and negative for tuberculosis prior to entry into Colorado.

5.16.2. Sexually intact beef cattle six (6) months and older from states or areas with less than an Accredited free status shall be tuberculosis tested and negative to the test prior to entry into Colorado.

5.17. Importation of Steers and Spayed Heifers from Mexico

5.17.1. All imported Mexico origin cattle are required to be officially identified and TB tested prior to or at the US border crossing. A second negative tuberculosis test is required for all Mexico origin cattle that do not enter Approved Feedlots. The second test is required 60-120 days after entry into Colorado.

5.17.2. TB Test records shall be with any owner, manager, agent or anyone in possession of Mexico origin cattle at all times with all official ID numbers listed and matching the cattle in possession.

5.18. Importation of Rodeo and Roping Stock from the US

5.18.1. A negative tuberculosis test is required for roping calves, bucking bulls, and all other rodeo cattle that are 6 months of age or older within 12 months of import into Colorado. A negative tuberculosis test is required for all rodeo cattle on an annual basis after import into Colorado. TB Test records shall be with any owner, manager, agent or anyone in possession of rodeo cattle at all times with all official ID numbers listed and matching the rodeo cattle in possession.

Part 6. Sheep Brucellosis

6.1. Definitions

6.1.1. “Approved laboratory” means a laboratory approved by the State Veterinarian to conduct testing for Brucella ovis.

6.1.2. “Approved test” means a test approved by the State Veterinarian for the diagnosis of Brucella ovis in test eligible rams.

6.1.3. “Brucella ovis exposed ram” means any test negative or untested test eligible ram which has been in contact with a ram that tests positive to approved test within the last 30 days.

6.1.4. “Brucella ovis reactor eartag” means an eartag used to identify rams that test positive to an approved Brucella ovis test. The design and color of the Brucella ovis slaughter only eartag shall be approved by the State Veterinarian and shall be supplied through the Colorado Department of Agriculture.

6.1.5. “Brucella ovis reactor ram” means a ram that tests positive to an approved Brucella ovis test.

6.1.6. “Brucella ovis slaughter only eartag” means an eartag used to identify Brucella ovis exposed rams or untested rams. The design and color of the Brucella ovis slaughter only eartag shall be approved by the State Veterinarian and shall be supplied through the Colorado Department of Agriculture.

6.1.7. “Scrapie tag” means the official tag issued by USDA APHIS for use in the Scrapie Disease Eradication Program. These tags are unique for the premises of origin and unique for individual animal identification. These tags are required for change of ownership and movement across state lines and should also be used in B. ovis disease testing and eradication.

6.1.8. “Test eligible ram” means any ram six months of age and older.

6.2. Requirements for Laboratory Testing

6.2.1. All test eligible rams that are transferred, leased, or loaned for breeding purposes, shall be tested prior to any such transfer, lease, or loan.

6.2.2. All blood samples must be submitted to an approved laboratory for testing.

6.2.3. Official identification of the rams must be recorded and accompany all blood samples to the approved laboratory whether for official or unofficial testing.

6.2.4. Official tests for Brucella ovis: All sample collection for interstate or intrastate sale or transfer of breeding rams must be performed by or under the supervision of an accredited veterinarian.

6.2.5. Unofficial tests for Brucella ovis: An owner may collect blood samples from rams and have the samples tested at an approved laboratory. This method of sample collection cannot be used for sale or transfer of breeding rams or to qualify rams.

6.2.6. The test methodology shall be approved by the State Veterinarian.

6.3. Requirements for Sale or Transfer, Lease, or Loan

6.3.1. No person may transfer, lease, or loan a ram six months or older for breeding purposes in the state of Colorado, unless said ram has been tested for Brucella ovis within 30 days prior to the date of the transfer, lease, or loan and unless such test result is negative. It shall be the responsibility of the owner to provide necessary official test records to the recipient at the time of transfer, lease, or loan.

6.3.2. No Brucella ovis exposed ram may be transferred, leased, or loaned for breeding purposes within Colorado unless all exposed rams in the flock test negative, are sent to slaughter, or are castrated in accordance with provisions of Part 6.5.2 of these rules.

6.4. Livestock Auction Market Sales

6.4.1. All test eligible rams that arrive at market without proof of an official negative Brucella ovis test, as in Part 6.2.4. completed within 30 days of the sale date, shall be identified with an official Brucella ovis slaughter only eartag supplied by the Colorado Department of Agriculture or with a paint brand on the top of the back. This brand shall be a “Q” not less than 4 inches in height.

6.4.2. Rams arriving at market without official identification shall have an official identification device applied. The market veterinarian or designee shall apply a standard USDA scrapie tag as a second form of positive identification when the *Brucella ovis* slaughter only eartag is applied.

6.5. Quarantine of Test Positive Rams and Premises

6.5.1. All confirmed test positive Brucella ovis rams and all exposed rams shall be immediately placed under quarantine and remain under quarantine until such positive rams are castrated, are sent to slaughter or transferred to a slaughter channel feedlot. Exposed rams remaining on the premises shall stay under quarantine until they have had two negative tests that are at least 45 days apart and after last exposure to positive rams.

6.5.2. Upon completion of the above requirements and receipt of the following information the State Veterinarian may release the quarantine.

6.5.2.1. Official test results of negative tests at least 45 days after isolation from all positive rams; or

6.5.2.2. Permits where exposed rams were transported directly to slaughter or to a sale for direct slaughter; or

6.5.2.3. A written statement from the owner, manager, operator, or the flock veterinarian, stating that all reactor or exposed rams were castrated. The written statement shall include the identification numbers of the castrated rams.

6.6. Requirements for the Identification and Disposition of Exposed or Infected Rams

6.6.1. Prior to transfer, lease, or loan any *Brucella ovis* exposed rams, and all untested rams six months of age or older shall be identified by the following methods:

6.6.1.1. With an official Brucella ovis slaughter only eartag or

6.6.1.2. With a paint brand on the top of the back. This brand shall be a "Q" not less than 4 inches in height.

6.6.2. Any ram found to be positive on an approved test for Brucella ovis shall be identified with an official Brucella ovis reactor eartag or with a paint brand on top of the back. This brand shall be a “Q” not less than 4 inches in height. All reactor rams shall be sold directly to slaughter or slaughter channel feedlots or be castrated and then may be sold or moved without restriction.

Part 7. Cattle and Bison Brucellosis

7.1. Definitions

7.1.1. "Adjacent herd" means a group or groups of animals having potential direct contact with the affected herd. Herds separated by a single fence are considered adjacent herds.

7.1.2. "Affected herd" means a herd of cattle, bison that contains, or has recently contained, one (1) or more animals infected with Brucella abortus and that has not completed the required tests necessary for release from quarantine.

7.1.3. "Annual test" means a test conducted at intervals of not less than ten (10) months nor more than fourteen (14) months.

7.1.4. “Approved test” means a laboratory test used in the diagnosis of Brucella abortus approved by the State Veterinarian.

7.1.5. "Bison" means a bovine-like animal (genus Bison) commonly referred to as American buffalo or buffalo.

7.1.6. "Cattle" means all domestic bovine (genus Bos).

7.1.7. “Certified free herd” means a herd of cattle or bison that has qualified for and has been issued a Certified Brucellosis-Free Herd certificate issued by the State Veterinarian or state animal health official in the state of origin. The Certified Brucellosis-Free Herd status is valid for 12 months unless evidence of brucellosis is disclosed.

7.1.8. “Class free state” means a state classified by VS/APHIS, as set forth in the UM&R, based upon the incidence of brucellosis infection existing in said state.

7.1.9. "Commission" means the Colorado Agricultural Commission.

7.1.10. "Commissioner" means the Colorado Commissioner of Agriculture.

7.1.11. “Import permit” means a permit obtained through the Colorado Department of Agriculture for the interstate import or intrastate movement of livestock into Colorado.

7.1.12. “Exposed Animals" means cattle or bison that have been exposed to brucellosis by reason of associating with known infected animals.

7.1.13. "Natural Additions" means animals born into a herd.

7.1.14. “Non-free State” means a state classified by VS/APHIS, as set forth in the UM&R, based upon the incidence of brucellosis infection existing in said state.

7.1.15. "Official calfhood vaccinate (OCV)" means a female bovine or bison animal vaccinated against brucellosis with RB-51 brucellosis vaccine between four and twelve (12) months of age. All vaccination must be conducted under the supervision of a federal or state veterinary official or accredited veterinarian. Vaccinated animals must be permanently identified as vaccinates and reported at the time of vaccination to the appropriate state or federal agency cooperating in the eradication of brucellosis.

7.1.16. "Reactor" means any cattle or bison that shows a positive result to an approved test for brucellosis.

7.1.17. “Uniform Methods and Rules (UM&R)” for Cattle and Bison Brucellosis means the standards set forth by the USDA Animal Plant and Health Inspection Service (APHIS Bulletin No. 91-45-013), effective October 1, 2003.

7.2. Certified Free Herd Requirements

7.2.1. Initial certification of the certified free herd may be accomplished by the following method:

7.2.1.1. At least two consecutive negative approved blood tests of all test eligible cattle or bison not less than 10 months, nor more than 14 months apart, are required for initial certification.

7.2.2. The following requirements apply to recertification of a Certified Free Herd:

7.2.2.1. A negative herd test of all test eligible animals conducted within 60 days of each anniversary date is required for continuous certification.

7.2.2.2. If the herd certification test is conducted within 60 days following the anniversary date the certification period will be 12 months from the anniversary and not 12 months from the date of the recertifying test.

7.2.2.3. If a herd test for recertification is not conducted within 60 days following the anniversary date, then certification requirements are the same as for initial certification.

7.3. Certified Free Herd Import Requirements

7.3.1. Cattle from Certified Free Herds may be imported into Colorado without a test for brucellosis. A herd of cattle or bison may qualify as Certified Brucellosis-Free by meeting the applicable requirements that follow:

7.3.1.1. There has been a whole herd test within 12 months, in which all test eligible cattle or bison have tested negative to an approved test.

7.3.1.2. Additions to a certified free herd may originate from other certified free herds that are approved by the animal health officials from the state of origin.

7.3.1.3. Additions to a certified free herd may originate from Class Free States that have tested negative to an approved test within 30 days of entry.

7.3.1.4. Additions to a certified free herd from Non-free States must test negative to an approved brucellosis test within 30 days prior to shipment and be isolated on the certified free herd premises and retested within 45 to 120 days after arrival.

7.3.1.5. Herd inventory verification of certified free herds must be approved by the animal health or brand officials from the state of origin.

7.3.1.6. The certified free herd number, issued by the state animal health officials in the state of origin, must be listed on the certificate of veterinary inspection.

7.4. Import Requirements

7.4.1. There are no Brucellosis test or vaccination requirements for imports from free states/areas.

7.4.2. Non-free states/areas or Designated Surveillance Area Import Test Requirements:

7.4.2.1. All imports will require the following:

7.4.2.1.1. Import Permit

7.4.2.1.2. testing, vaccination, and other import requirements may be required and shall be approved by the State Veterinarian.

7.5. Colorado Cattle and Bison Vaccination Requirements

7.5.1. Vaccination of beef, dairy and bison heifer calves shall be administered by an accredited veterinarian.

7.5.2. All heifers shall be vaccinated with strain RB-51 administered between 4 and 12 months of age. These cattle shall have Brucellosis vaccination tattoos, official eartags and shall be reported on an official vaccination certificate (VS Form 4-24) within 30 days.

7.6. Diagnostic Testing

7.6.1. All brucellosis official tests needed for movement, or change of ownership, shall be forwarded to the Rocky Mountain Regional Animal Health Laboratory (RMRAHL) whenever any livestock are tested, the livestock shall be officially identified.

7.7. Movement Restrictions

7.7.1. In herds where a reactor animal is disclosed, all cattle or bison in the herd shall be quarantined on the premises.

7.7.2. The preferred method of disease eradication response in a quarantined herd shall be depopulation, provided state or federal indemnity funding is available.

7.7.3. The herd owner has the option of shipping suspect or reactor cattle or bison, or other animals within the quarantined herd direct to slaughter under a VS Form 1-27 permit.

7.7.4. Affected herds shall remain under quarantine until such time that they are depopulated or all reactor or suspect cattle or bison have been removed from the herd and the remaining cattle or bison test and retest negative in accordance with the requirements of the State Veterinarian.

Part 8 Equine Infectious Anemia

8.1. Definitions

8.1.1. "Adjacent herds" means a group or groups of Equidae having any direct contact with an affected herd or positive animal. Herds separated by a distance of less than two hundred (200) yards are adjacent herds.

8.1.2. "Affected herd" means a herd of Equidae that contains or has contained one or more animals infected with equine infectious anemia and that has not tested negative for all required follow-up tests for release from quarantine.

8.1.3. "Approved laboratory" means a laboratory approved prior to operating by the State Veterinarian and USDA APHIS VS.

8.1.4. "Equidae" means all members of the genus Equus which includes but is not limited to horses, asses, hinnies, mules, donkeys, burros, ponies, and zebras.

8.1.5. "Equine infectious anemia (EIA)" means a blood borne viral infectious disease of Equidae caused by a lentivirus. The infection is characterized by three distinct forms: acute, chronic (both associated with clinical signs of disease), and in apparent.

8.1.6. "Exposed animals" means Equidae that have been in contact with, associated with, or adjacent to animals known to be equine infectious anemia positive.

8.1.7. "Herd" means one or more Equidae maintained on common ground under single or multiple ownership or supervision that are geographically separated but can have an interchange or movement without regard to health status.

8.1.8. "Herd plan" means a herd management and testing agreement designed by a state or federal veterinarian and a herd owner to control and eradicate equine infectious anemia from an affected, adjacent, or exposed herd of Equidae.

8.1.9. “Index case” means the first disclosed case of EIA on a premises or area.

8.1.10. “NVSL” means the USDA, National Veterinary Services Laboratory in Ames, Iowa.

8.1.11. "Official test" means the agar gel immunodiffusion (AGID) or "Coggins" test, the enzyme-linked immunosorbent assay (ELISA) test any USDA licensed tests, and/ or any other diagnostic test approved by the State Veterinarian.

8.1.12. "Positive" means any Equidae which discloses a positive reaction to an official test for equine infectious anemia.

8.1.13. "Test eligible" means all Equidae other than foals less than six (6) months of age accompanied by their negative tested dam.

8.1.14. “Uniform Methods and Rules (UM&R) for Equine Infectious Anemia” shall mean the standards set forth by the USDA Animal and Plant Health Inspection Service (APHIS Bulletin No. 91-55-064) which are effective March 1, 2002.

8.1.15. “VS Form 10-11” means the official USDA Veterinary Services laboratory submission form used in testing equidae for Equine Infectious Anemia.

8.2. Authority to Require Test

8.2.1. Under authority of the State Veterinarian, a state or federal veterinarian, or an accredited veterinarian may conduct an official test on any test eligible Equidae known or suspected to be infected with or exposed to EIA.

8.3. Authority to Enter Premises

8.3.1. An authorized agent of the Colorado Department of Agriculture shall have the authority to enter any premises, place, building, or enclosure, upon consent of the equine owner or agent, for the

purpose of inspecting, testing, identifying, and examining Equidae found or suspected to be exposed or infected with EIA.

8.4. Reporting of Test Results

8.4.1. Approved laboratories shall notify the State Veterinarian's office and the individual submitting the sample for testing within twenty four (24) hours of all positive test results.

8.4.2. Approved laboratories shall report test results only when samples are properly submitted and accompanied by a completed VS Form 10-11 or other electronic form approved by the State Veterinarian.

8.5. Testing and Classification of Equidae

8.5.1. All Equidae tested for EIA pursuant to an official test shall be classified as negative or positive.

8.5.2. Positive Equidae and retests.

8.5.2.1. A positive is any Equidae which discloses a positive reaction to an official test.

8.5.2.2. Equidae classified as positive shall be retested no more than seven (7) days following the date of the original test.

8.5.2.3. Any Equidae found to be positive to a USDA approved test for equine infectious anemia shall be placed under quarantine by the State Veterinarian or his authorized representative.

8.5.2.4. The NVSL results shall determine the Equidae’s true EIA status.

8.5.2.5. All positive Equidae shall be held in isolation, as described in Part 8.9 and under quarantine until the retest results are received.

8.5.2.6. All other Equidae on the premises shall be placed under a hold order until the retest results are received.

8.5.2.7. All other Equidae on the premises shall be EIA tested if an index positive case is confirmed.

8.5.2.7.1. All Equidaes on the premises shall be retested not sooner than 60 days but not longer than 120 days after the last known exposure to an EIA positive Equidae.

8.5.2.7.2. Foals nursing EIA positive mares shall be tested not less than sixty (60) days nor more than one hundred twenty (120) days after weaning and isolation from any positive animal. If positive, foals may remain under quarantine for additional testing at the discretion of the State Veterinarian.

8.5.2.7.3.. All exposed Equidae shall be required to have two consecutive negative tests to be classified as negative for EIA.

8.5.3. Testing in Contact and Adjacent Herds

8.5.3.1. All test eligible Equidae epidemiologically determined to have been exposed to an EIA positive Equidae shall be placed under a hold order and tested by a state or federal veterinarian, or an accredited veterinarian.

8.5.3.2. All test eligible animals within exposed, contact, or adjacent herds within the state shall be tested within thirty (30) days of notification.

8.5.3.3. All Equidaes on the premises shall be retested not sooner than 60 days but not longer than 120 days after the last known exposure to an EIA positive Equidae.

8.5.3.4. Exposed, contact, or adjacent herds tested by state or federal veterinarians shall be tested at state or federal expense providing funds are available.

8.5.3.5. Exposed, contact, or adjacent herds tested by accredited veterinarians shall be tested at the owner's expense unless state or federal funds are available.

8.5.3.6. Epidemiologic data may be considered in the testing requirements and release of quarantine for exposed, contact, and adjacent herds.

8.6. Quarantines and Hold Orders

8.6.1. Any Equidae confirmed positive by an official test shall be quarantined.

8.6.2. The quarantine shall include the positive Equidae and other exposed Equidae on the premises.

8.6.3. A hold order shall be placed on all premises within 200 yards of the premises of the index case and on exposed herds based on epidemiologic evidence.

8.7. Identification of Positive Equidae

8.7.1. Any Equidae that has been confirmed positive, as in Part 8.5, shall be permanently identified with an ISO-compliant microchip or other electronic identification device, or other methods approved by the State Veterinarian no more than fifteen (15) days after the date of the official test. The information pertaining to the electronic identification shall be reported to the State Veterinarian.

8.8. Disposition of EIA Positive Equidae

8.8.1. Confirmed positive EIA Equidae may be euthanized, or isolated as described in Part 8.9.4. if approved by the State Veterinarian.

8.8.2. All Equidae euthanized prior to permanent identification shall be reported immediately to the State Veterinarian and then described in a written statement by the accredited veterinarian or authorized agent certifying the euthanasia.

8.9. Movement and Stabling of Positive Exposed Animals

8.9.1. All positive and exposed Equidae shall be accompanied by a VS Form 1-27 permit when moved from any quarantined premises.

8.9.2. Any change in location of positive or exposed Equidae to an alternate quarantined premises shall be approved in advance following an epidemiological investigation of the receiving premises by the State Veterinarian.

8.9.3. No diversion from the destination identified on the permit is allowed.

8.9.4. All positive Equidae shall be stabled at a distance of at least 200 yards from any other Equidae on the owner’s premises and Equidae on adjacent premises.

8.9.5. All positive Equidae shall be stabled within a screened stable, during the vector season, as approved by the State Veterinarian. The owner shall also be required to abide by a herd plan approved by the State Veterinarian for the remainder of the affected herd.

8.10. Release of Quarantine

8.10.1. No Equidae held under quarantine shall be moved or released until either a VS Form 1-27 permit or quarantine release has been issued by an authorized agent of the Colorado Department of Agriculture or the USDA.

8.10.2. The EIA quarantine may be released after all remaining Equidae are classified negative in the affected herd following the identification and removal of the last EIA positive animal.

8.10.3. When evaluating the release of the quarantine, the vector season may be considered when reviewing epidemiologic factors.

Part 9 Swine Health, Pseudorabies, and Brucellosis

9.1. Definitions

9.1.1. “Breeding swine” means all swine six (6) months of age or older being kept for reproductive purposes.

9.1.2. “Brucellosis” means a disease in swine caused by Brucella suis.

9.1.3. “Cooked garbage” means garbage that has been heated throughout to boiling or equivalent temperature for a period of 30 minutes or heated according to any other method specifically approved by the Department.

9.1.4. "Feeder swine" means swine intended to be fed to a finished slaughter weight and not intended for breeding or exhibition.

9.1.5. “Garbage” means waste consisting in whole or in part of animal waste resulting from handling, preparing, cooking, and consuming of food, including the offal from animal carcasses or parts thereof, but excluding such waste from ordinary household operations which is fed directly to swine on the same premises.

9.1.6. "Herd" means one or more swine maintained on common ground and includes all swine under common ownership or supervision that are geographically separated.

9.1.7. “Infected herd" means a herd in which an animal has been determined to be infected with pseudorabies using an official pseudorabies test.

9.1.8. "Official pseudorabies test" means a test approved by the USDA to be conducted on swine for the diagnosis of pseudorabies and performed in a laboratory approved by the State Veterinarian.

9.1.9. "Pseudorabies" means the infectious and communicable disease of livestock and other animals also known as Aujeszky's disease, mad itch, or infectious bulbar paralysis.

9.1.10. “Raw garbage” means garbage that has not been heated throughout to boiling or equivalent temperature for 30 minutes, or heated according to a method specifically approved by the Department.

9.1.11. “Stage V Free status” means a state or area that has been designated as free of pseudorabies.

9.1.12. “Uniform Methods and Rules (UM&R)” for Swine Brucellosis Control/Eradication shall mean the standards set forth by the USDA Animal and Plant Health Inspection Service (APHIS Bulletin No. 91-55-042) issued April 1, 1998.

9.1.13. “Uniform Methods and Rules (UM&R)” for Pseudorabies Eradication shall mean the standards set forth by the USDA Animal and Plant Health Inspection Service (APHIS Bulletin No. 91-55-071) which are effective November 1, 2003.

9.2. Test Positive Swine, Quarantine and Disposition

9.2.1. Any swine herd found to have positive animals to the serum neutralization test or any other approved recognized test for pseudorabies or brucellosis shall be placed under quarantine by the State Veterinarian or his authorized representative.

9.2.2. A hold order shall be placed on any herd when epidemiological evidence indicates that adjacent or epidemiologically linked, movements have occurred from an infected herd.

9.2.3. Pseudorabies and brucellosis positive swine and herd mates shall be managed in accordance with the UM&R and Program Standards.

9.3. Swine Imports into Colorado

9.3.1. An import permit number and certificate of veterinary inspection are required on all shipments of swine except for swine consigned for immediate slaughter. Only an accredited veterinarian may obtain a swine import permit.

9.3.2. Breeding swine that originate from states that have a significant feral swine population, as determined by the State Veterinarian, may be required to be negative to an approved pseudorabies or brucellosis test within 30 days of entry into Colorado.

9.4. Cooking of Garbage to Prevent Swine Disease

9.4.1. No person may feed garbage to swine without approval from the state veterinarian. Guidelines for cooking garbage are as follows:

9.4.1.1. Entire mass must be brought to the boiling point and held at that temperature for a period of not less than 30 minutes.

9.4.1.2. A recording thermometer shall be used and maintained with dated charts for examination by a representative of the Department, and be kept on file for a period of not less than 90 days. Each chart shall bear thereon the name and address of person for whom the garbage was cooked. There shall be no retracing of charts.

9.4.2. The Department may make periodic inspections of garbage-cooking facilities and premises.

9.4.3. Premises must be open for inspection by a designated representative of the Department, including cooking operations, equipment, and animals, at any reasonable time.

Part 10. Trichomoniasis

10.1. Definitions

10.1.1. “Acceptable Specimen” means a specimen determined satisfactory for diagnostic testing by the approved laboratory, including complete documentation.

10.1.2. “Approved Laboratory” means any laboratory designated and approved by the State Veterinarian for testing T. fetus samples.

10.1.3. “Bovine” means any sexually intact male or female animal of the genus Bos.

10.1.4. “Colorado Commuter Permit” means a permit issued by the Colorado State Veterinarian’s Office to Colorado livestock producers who use pasture lands and other livestock operations in one or more states that are contiguous to Colorado.

10.1.5. “Commingle” means having both male and female bovines in the same enclosure or pasture where such animals would have a reasonable opportunity for sexual contact.

10.1.6. “Complete Herd Test” means an official T. fetus test of all breeding-age bulls as determined by the State Veterinarian.

10.1.7. “Directly to Slaughter” means transporting an animal to a slaughter plant after loading into a transit device without unloading prior to arrival at the destination slaughter plant.

10.1.8. “Herd” means a group of bovines (male and female) that have commingled for any period of time during the last 12 months.

10.1.9. “Official T. Fetus Bull Test” means the sampling of the preputial content of a bull by an accredited veterinarian or a veterinarian employed by USDA or Colorado Department of Agriculture in order to perform an official T. Fetus PCR test. The bull and sample must be individually identified and documented for laboratory submission.

10.1.10. “Official T. Fetus PCR test (Polymerase Chain Reaction)” means a method approved by the State Veterinarian that detects, through in vitro amplification, the presence of T. fetus DNA.

10.1.11. “Positive T. Fetus Bull” means a bull that has had a positive T. fetus test.

10.1.12. “Positive T. Fetus Herd” means the group of all bovines that have commingled and in which group any bovine (male or female) has had a positive diagnosis for T. fetus.

10.1.13. “Negative T. Fetus Bull” means a bull that qualifies by one of the following: a) originates from a herd not known to be infected and which herd has had a negative official T. fetus bull test within the last year; b) originates from a positive herd but has had a series of two negative official T. fetus PCR bull tests at intervals of at least one week; or c) has an import permit and a negative in-state official T. fetus PCR test.

10.1.14. “Regulatory Veterinarian” means the State Veterinarian or his or her designee. This may be a state or USDA employed veterinarian or any accredited veterinarian holding a current state license to practice veterinary medicine.

10.1.15. “Suspect T. Fetus Bull” means a bull from a positive T. fetus herd that has not yet had two consecutive negative official T. fetus PCR bull tests.

10.1.16. “Trichomonas Fetus (or T. Fetus)” means a contagious venereal protozoan parasite disease of the Tritrichomonas foetus species that causes infertility, pyometra, abortions, and reproductive inefficiency in female bovine.

10.1.17. “Unacceptable Sample” means a sample that is deemed not diagnostic by the approved testing laboratory.

10.2. Import Rules

10.2.1. Bulls

10.2.1.1. All bulls 18 months of age and older that are entering into Colorado must be accompanied by a CVI, an import permit, and a negative official T. fetus PCR test within 60 days prior to entry. Exemptions to the requirement for having a negative official *T. fetus* PCR test 60 days prior to import are the following:

10.2.1.1.1. transient rodeo or exhibition (show) bulls that will have no sexual contact with a female bovine and that will be held in a secure facility to prevent such contact (does not include pasture) while in Colorado;

10.2.1.1.2. bulls consigned directly to slaughter; or

10.2.1.1.3. bulls consigned to an Approved Feedlot for feeding purposes where they will be isolated from all females. Any known positive *T. fetus* bull quarantined in a feedlot shall go directly to slaughter from such feedlot.

10.2.1.2. If the pre-entry test is conducted at a facility other than a laboratory approved by the American Association of Veterinary Laboratory Diagnosticians (AAVLD) or the Colorado State Veterinarian, an in-state, post-entry official T. fetus PCR test shall be required within 10 days of entry into Colorado.

10.2.1.3. No bull that has ever previously tested positive for T. fetus shall enter Colorado unless the bull is consigned directly to slaughter.

10.2.1.4. No bull from a known positive *T. fetus* herd shall enter Colorado unless the bull has two consecutive negative official *T. fetus* PCR tests at least a week apart within 30 days prior to entry and an in-state, post-entry official *T.* fetus PCR test within 10 days of entry into Colorado. Bulls must be isolated from all females until the in-state test results are known.

10.2.2. Reproductive Bovine Female

10.2.2.1. No female bovine originating from a known positive *T. fetus* herd will be allowed to enter Colorado. Exceptions include the following:

10.2.2.1.1. Those on the premises of origin in which there were two consecutive negative official *T. fetus* PCR tests of the entire bull population, and the only allowed females are those that:

10.2.2.1.1.1. have a calf at side and no exposure to other than known negative bulls since parturition;

10.2.2.1.1.2. are at least 120 days pregnant;

10.2.2.1.1.3. are known virgin heifers; or

10.2.2.1.1.4. are documented to have had at least 120 days of sexual isolation.

10.2.2.1.2. Those consigned directly to slaughter or to an Approved Feedlot.

10.2.2.1.3. No other female will be allowed entry into Colorado for breeding purposes from such herds.

10.2.2.2. Bovine breeding females must have the following statement placed on the CVI and signed by the owner, manager, or operator of the herd of origin.

10.2.2.2.1. “The cows listed on this CVI did not originate from a known positive Trichomonas fetus herd”; or

10.2.2.2.2. “The cows listed on this CVI are at least 120 days pregnant”; or

10.2.2.2.3. “The heifers listed on this CVI were exposed for their first breeding only to a known negative T. fetus bull or artificially inseminated and are not yet 120 days pregnant”; or

10.2.2.2.4. “The females listed on this CVI have had at least 120 days of sexual isolation immediately preceding the date of their movement into Colorado.”; or

10.2.2.2.5. “The cows listed on this CVI originated from a positive Trichomonas fetus herd and are consigned for slaughter”.

10.2.3. Commuter Permitted Cattle

10.2.3.1. Bulls must be tested annually after a separation of at least 30 days from all female bovine. All bulls must be negative to an official *T. fetus* PCR test to be eligible to have a commuter permit issued for the following year. All purchased bulls added to the herd shall comply with test provisions.

10.2.4. Import Permit

10.2.4.1. All bulls 12 months of age and older must obtain an import permit, which will be recorded on the CVI.

10.2.4.2. All non-OCV breeding cows must obtain an import permit, which will be recorded on the CVI.

10.2.5. Public Livestock Sales (Auctions)

10.2.5.1. All out-of-state bulls 12 months of age and older must be accompanied by an import permit.

10.2.5.2. All bulls that are 18 months of age and older shall be accompanied by a negative official T. fetus PCR test, conducted within 30 days prior to sale. Any bull 18 months or older presented for sale without test report may be placed under quarantine and tested at the livestock sale premises or at the Colorado purchaser’s premises within 10 days of sale. Bulls shall be isolated from all females until the in-state test results are known.10.2.5.3. All bulls not qualifying as above (Part 10.2.5.2) will be announced in the sale ring as “slaughter only” and so designated on the buyer’s documents. Such bulls shall be identified with a back tag or reasonable method approved by the State Veterinarian designating them as having no T. fetus test prior to being offered for sale. All bulls not qualifying as above in Part 10.2.5.2 (bulls at a livestock sale premises without an official *T. fetus* PCR test) shall be sold directly to slaughter or to an Approved Feedlot.

10.2.5.4. Bovine breeding females shall be accompanied by one of the following statements signed by the owner, manager, or operator of the herd of origin, on the CVI or other suitable document. In the absence of one of these statements, any female bovine over the age of 12 months shall be consigned and sold to slaughter (or quarantined feed for slaughter) only.

10.2.5.4.1. “The cows listed on this document did not originate from a known positive Trichomonas fetus herd”; or

10.2.5.4.2. “The heifers on this document have been exposed to only known negative bulls, and are not yet 120 days pregnant”; or

10.2.5.4.3. “The cows listed on this document are at least 120 days pregnant”; or

10.2.5.4.4. “The females offered for sale have had at least 120 days of sexual isolation immediately preceding the date of their transfer of ownership”; or

10.2.5.4.5. “The cows listed on this document originate from a positive Trichomonas fetus herd and are consigned for slaughter.”

10.2.6. Identification Requirements

10.2.6.1. Bulls that must be separated and identified for purposes of this section shall be identified consistent with procedures set forth in Part 10.5 of these rules.

10.3. Intrastate Breeding bulls

10.3.1. All bulls 18 months and older must have a negative official *T.* fetus PCR test within 60 days prior to change of ownership or change of possession under lease. Bulls shall not be exposed to females at the new premises until the results of the test are known. Any bull with a positive test shall be immediately quarantined. The quarantine shall be in effect until the bull is sent to slaughter. The positive *T. fetus* bull’s herd of origin will be placed under a hold order. The hold or quarantine order will be released in accordance with the regulatory section of this rule.

10.4. Regulatory Action

10.4.1. Public Grazing & Grazing Associations

10.4.1.1. All breeding bulls commingling in grazing associations, regardless of whether public or private associations, or on public lands, regardless if private or multiple user permits, shall have the official T. fetus bull test conducted annually. Negative bulls shall be identified as in Part 10.5.1 below.

10.4.1.1.1. If any bull is found positive, the entire bull population, regardless of owner, manager, or operator, will be required to have two consecutive negative official *T. fetus* PCR tests prior to turn out time. Any stray bull from an untested group that enters the grazing area of tested animals may be held under quarantine until the bull has one or more official *T. fetus* PCR test(s) conducted. The test(s) shall be the responsibility of the bull’s owner. The conditions of the quarantine and number of tests will be determined by the State Veterinarian.

10.4.2. Positive *T. Fetus* Bull & Herd

10.4.2.1. Any confirmed *T. fetus* bovine and its herd (as defined by state animal health officials) shall immediately be placed under quarantine, and will remain under quarantine as follows:

10.4.2.1.1. Positive T. fetus bulls shall be identified with an official Positive T. fetus test tag by an approved veterinarian within 5 days of diagnosis.

10.4.2.1.2. Positive T. fetus bulls shall be quarantined then sent directly to slaughter or to public livestock market for slaughter or to an Approved Feedlot.

10.4.2.1.3. All other bulls in a positive *T. fetus* herd shall remain quarantined until they have tested negative to two consecutive official *T.* fetus PCR tests at least one

week apart. The initial negative official *T. fetus* PCR test is included in the series of negative tests required.

10.4.3. Reproductive Bovine Females from a Positive *T. fetus* Herd

10.4.3.1. Females over 12 months of age (not known to be virgin heifers) from a positive *T. fetus* herd may be sold directly to slaughter or quarantined on the premises of origin. Individual females will be released from quarantine when there are two consecutive negative official *T. fetus* PCR tests of the entire bull population and the cow(s) has a calf at side (with no exposure to other than known negative *T. fetus* bulls since parturition), has documented 120 days of sexual isolation, or is determined by an accredited veterinarian to be at least 120 days pregnant.

10.4.3.2. Heifers known to be virgin at the time of turnout, or heifers exposed only to known negative T. fetus bulls and not yet 120 days pregnant, may remain within the herd.

10.4.3.3. Open females shall be sold to slaughter, moved to an Approved Feedlot, or held in isolation from all bulls for 120 days. Any female sold to slaughter through a livestock market shall be identified with an official Colorado positive T. fetus tag during the quarantine period.

10.4.3.4. Breeding by artificial insemination with semen from a known negative bull is allowed during the quarantine period.

10.4.4. Management Procedures of *T. fetus* Positive herds

10.4.4.1. The State Veterinarian may require additional testing of bulls, pregnancy testing of females, segregation of cattle within a herd, and may hold or quarantine a herd until the owner, lessor, or manager of the herd has complied with any additional requirements set forth by the State Veterinarian.

10.4.5. Management Procedures Regarding Stray Bulls

10.4.5.1. Any stray bull found on public or private land, from a known or unknown herd of origin, may be confined and placed under a hold order until the bull has one or more official *T. fetus* PCR test(s) conducted. The test(s) shall be the responsibility of the bull's owner. The conditions of the hold or quarantine orders and number of tests will be determined by the State Veterinarian.

10.5. Identification

10.5.1. Bulls that are determined official T. fetus PCR test negative by an official test shall be identified with an official Colorado negative T. fetus tag. The official tag shall be embossed with "Colorado Negative T. fetus" and a number. Tags will be supplied by the Colorado Department of Agriculture and be assigned to accredited veterinarians who shall apply such tags at the time samples are collected. The official negative T. fetus tag color shall be changed annually.

10.5.2. Bulls identified pending negative test results shall be isolated from all females until the test result is reported negative.

10.5.3. The accredited veterinarian shall record the bull's official identification device on the T. fetus test submission form or apply an official identification device to any bull that does not have one and record it on the T. fetus test submission form.

10.5.4. Positive T. fetus bulls shall be identified with an official red positive *T. fetus* tag supplied by the Colorado Department of Agriculture.

10.5.5. Any quarantined cows moved from the original premises of quarantine shall be identified with an official red positive *T. fetus* ear tag.

10.6. Specimen Collection Facilities

10.6.1. The bull's owner must provide adequate corrals and restraint to protect the animal and veterinarian from undue injury and risk. The accredited veterinarian shall determine the adequacy of such facilities and may require the bulls be delivered to a mutually agreed facility if the owner's facility is deemed inadequate for specimen collection purposes.

10.7. Approved Laboratory Responsibilities

10.7.1. An approved laboratory is required to immediately report any positive specimen to the State Veterinarian's Office. Such report should include the official identification device, brand, owner name, address, telephone number and the submitting veterinarian's name, address, and telephone number.

10.7.2. In order for T. fetus testing results to be considered official test results, the packaging and transportation of samples for T. fetus testing must explicitly follow the approved laboratory's protocol for transport of specimens. Failure to follow the appropriate submission protocol and policy may result in an unacceptable sample.

10.7.3. The laboratory shall report unacceptable samples to the State Veterinarian. If any sample is deemed unacceptable the submitting veterinarian shall submit a retest specimen. The State Veterinarian may report the unacceptable samples and the name of the veterinarian who took the unacceptable standards to the USDA Assistant District Director who may report the information to the APHIS Administrator, who shall retain authority to suspend or revoke a veterinarian's accreditation pursuant to 9 C.F.R. §161.

Part 11. Equine Viral Arteritis

11.1. Definitions

11.1.1. "Approved laboratory" means a laboratory approved by the State Veterinarian to conduct official testing for equine viral arteritis.

11.1.2. "Book" or "booking" means the contracting or scheduling of a mare to be bred to a stallion.

11.1.3. "Carrier" means a stallion that has a positive EAV virus isolation test or polymerase chain reaction (PCR) test from semen.

11.1.4. "EAV" means equine arteritis virus, the organism that causes the disease equine viral arteritis.

11.1.5. "Equidae" means all members of the genus Equus which includes but is not limited to horses, asses, hinnies, mules, donkeys, burros, ponies, and zebras.

11.1.6. "EVA" means equine viral arteritis, a communicable disease in equine resulting in abortion in pregnant mares, illness and death in young foals, and potential establishment of the carrier state in stallions.

11.1.7. "Isolated" means the protocols to prevent the transfer of EAV through the appropriate separation, movement controls, and biosecurity procedures approved by the State Veterinarian.

11.1.8. "ISO compliant microchip" means a microchip used to identify individual Equidae that are compliant with the International Organization of Standardization and the USDA's animal disease traceability requirements.

11.1.9. "Owner" means any person with the legal right of possession or having legal control over any Equidae, and shall include but not be limited to agents, caretakers, and other persons acting on behalf of that person.

11.1.10. “PCR test” Polymerase chain reaction test to detect EAV in samples.

11.1.11. “Semen” Secretion or ejaculate from the reproductive tract of a stallion containing spermatozoa and seminal fluid from the accessory sex glands.

11.1.12. “Sero-negative test mare” means a mare that has been tested sero-negative (SN titer <1:4) and has been isolated from other horses prior to being bred.

11.1.13. "Sero-negative" means a horse that has reacted negatively (SN titer <1:4) to a blood test for antibodies to EAV.

11.1.14. "Sero-positive" means a horse has demonstrated a positive reaction in serum neutralization with a titer of equal to or greater than one (1) to four (4) to a blood test for antibodies to EAV.

11.1.15. "Shedder" or "shedding" means an equine has been determined to have EAV in its body and has potential of transmitting the EAV to other equine.

11.1.16. “Stallion” means a sexually intact male equine.

11.1.17. “Standard insemination volume” means 10 ml of semen.

11.1.18. “Test breeding” means breeding a suspect carrier stallion to 2 sero-negative mares a minimum of twice a day for two (2) – to four (4) days in the same estrus period.

11.1.19. "Vaccinated" or "vaccination" means an equine has been vaccinated with the approved EVA modified live virus vaccine and the vaccination status has been kept current in accordance with the manufacturer's recommendations.

11.1.20. “Vaccinated sero-positive stallion” means a stallion that was sero-negative prior to being vacinated against EVA and which has a positive titer (>1:4) post vaccination.

11.2. General EVA Information

11.2.1. All laboratory samples pertaining to this rule shall be submitted by an accredited veterinarian to an approved laboratory.

11.2.2.. It is recommended that all breeding stallions be tested for EAV prior to use as a breeding stud or collection for artificial insemination.

11.2.3. It is recommended that frozen semen or semen from unknown stallions be tested negative by virus isolation or PCR prior to being used for artificial insemination.

11.3. EVA Shedding Stallions

11.3.1. A stallion is considered to be a carrier if any of the following apply: the virus can be cultured from his semen, if the virus can be detected in his semen by PCR test or if sero-negative mares seroconvert to sero-positive status within 28 days following breeding or insemination.

11.3.2. A stallion known to be a carrier shall not be permitted to breed or be collected for artificial insemination until the State Veterinarian determines that the stallion does not pose a risk of transmitting EAV. In making this determination, the State Veterinarian shall consider whether the

requirements of Parts 11.3.2.2. and 11.3.2.3. of this section will be complied with by the premises on which the carrier stallion is located. The following restrictions shall apply to a carrier stallion that is permitted to breed or be collected for artificial insemination:

11.3.2.1. The owner or agent of an EAV carrier stallion shall notify in writing the owner or agent of a mare booked or seeking to book a mare to that stallion that has been classified as an EAV carrier. A written copy of the booking confirmation shall be sent to the State Veterinarian.

11.3.2.2. A carrier stallion shall be housed, handled and bred or collected for artificial insemination in a facility isolated from non-shedding stallions.

11.3.2.3. A carrier stallion shall be bred to a mare(s) that:

11.3.2.3.1. Have been vaccinated against EVA at least twenty-one (21) days and not more than 1 year prior to being bred; or

11.3.2.3.2. Has an existing EAV titer from vaccination or natural exposure to EAV, if the serological for EVA test was performed prior to date of breeding.

11.4. Sero-Positive Non-shedding Stallions

11.4.1. A stallion may be considered to be a 'vaccinated sero-positive stallion' if a blood sample collected within 10 days prior to administration of an approved vaccine was negative (SN titer <1:4) for antibodies to EAV. See Section VIII for recommended vaccination protocols.

11.4.2. It is required that a sero-positive vaccinated stallion that did not have an EVA negative test prior to vaccination comply with one of the following testing procedures to ensure that the stallion is not at risk of transmitting the virus:

11.4.2.1. A standard insemination volume (10ml) of semen should be collected and either virus isolation tested for EAV or evaluated using a PCR test; or

11.4.2.2. The stallion should be bred to two (2) mares negative for EAV antibodies. The two (2) mares should have blood collected for an EVA test twenty-eight (28) days after breeding or artificially inseminated from two ejaculates, separately collected.

The sero-positive stallion would be considered a non-carrier if the semen virus isolation tested, semen PCR or test-breeding results are negative.

11.4.3. A stallion may be considered a 'non-vaccinated sero-positive stallion' if the stallion has seroconverted following a natural exposure to the virus. It is required that a non-vaccinated sero-positive stallion be tested as outlined below prior to breeding to ensure that he is not at risk of transmitting the virus.

11.4.3.1. Semen should be collected and either tested by virus isolation or evaluated using a PCR test for EAV; or

11.4.3.2. The stallion should be bred to two (2) mares negative for EAV antibodies. The two (2) mares should have blood collected for an EVA test twenty-eight (28) days after breeding or artificial insemination.

11.4.3.3. The sero-positive stallion will be considered a non-carrier if the semen by virus isolation, PCR, or test breeding results is negative.

11.4.4. A stallion previously classified as a carrier stallion may be re-classified as a non-carrier stallion if the following criteria are met:

11.4.4.1. During the first breeding season following the stallion's classification as a non-carrier, the first five (5) sero-negative mares bred or artificially inseminated using semen collected from separate ejaculates from this stallion shall be test negative to a blood sample collected for an EVA test twenty-eight (28) days after breeding or artificial insemination.

11.4.4.2. During the second breeding season, the stallion shall be bred to two (2) mares negative for EAV antibodies that will be tested twenty-eight (28) days after breeding or have its semen collected and be virus isolation negative for EAV or have the semen tested negative by PCR for EAV. If the semen virus isolation test or PCR test and blood samples are negative for EAV, there shall not be restrictions placed on a future breeding season.

11.4.5. The final determination that a stallion is not an EAV carrier shall be made based on scientific procedures described in this section and approved by the State Veterinarian. Until this determination is made the stallion shall be considered as an EAV carrier.

11.5. Requirements for Breeding Mares to a Carrier Stallion or Inseminating Mares with Known EAV Infected Semen

11.5.1. The following guidelines are required when breeding mares to a carrier stallion or inseminating mares with known EAV infected semen.

11.5.1.1. If a sero-negative mare is to be bred to a carrier stallion for the first time.

11.5.1.1.1. It is required that the mare be vaccinated a minimum of twenty-one (21) days prior to the first breeding or artificial insemination by an EAV carrier stallion and subsequently isolated a minimum of twenty-one (21) days after the first breeding or artificial insemination.

11.5.1.1.1.1. During isolation, the mare shall be physically separated from other equine in a separate isolation area approved by the State Veterinarian or designated personnel.

11.5.1.1.1.2. After the isolation period, the mare may move without restriction.

11.5.1.2. Mares that have been vaccinated against EAV or have been bred to an EAV carrier stallion within the previous two (2) years may be re-bred to a carrier stallion but should be isolated for a minimum of twenty-one (21) days after breeding as noted above.

11.5.1.3. When a mare bred to a carrier stallion is returned to the premises of origin within 21 days of breeding, it shall be in a transport vehicle or trailer by herself or with other sero-positive horses. Upon returning to the premises of origin, the transport vehicle or trailer and equipment used to move the mare must be immediately cleaned and disinfected according to procedures approved by the State Veterinarian.

11.6. Actions for Newly Diagnosed Sero-positive Stallions

11.6.1. A stallion infected with EAV during the breeding season shall immediately cease breeding or immediately cease having semen collected for artificial insemination or semen collected and stored for future use. Since EVA is a reportable disease in the State of Colorado, the State Veterinarian must be immediately notified in the event of clinical EVA disease demonstrated by a positive laboratory test on serum or semen. An owner or agent with a mare booked or bred to a stallion that became infected with EAV during the breeding season shall be immediately notified in writing by the stallion's owner or agent. A copy of the written notification shall be sent to the State Veterinarian. A stallion infected with EAV during the breeding season shall be classified as

an EAV carrier and shall be handled according to the requirements of this rule. Following the stallion's classification as a carrier, the State Veterinarian may reclassify the stallion as a non-carrier in accordance with this rule.

11.7. Equine Vaccinated Against EVA

11.7.1. Following are the recommendations that will provide for a more effective program for mares or stallions to be vaccinated for EVA in Colorado:

11.7.1.1. The equine owner's facility should have a premises identification number (PIN).

11.7.1.2. The mare or stallion receiving EVA vaccine should have an ISO compliant microchip implanted according to USDA's animal disease traceability requirements.

11.7.1.3. That mares be tested for antibodies to EAV prior to an initial EVA vaccination.

11.7.1.4. Testing for antibodies in blood of mares be submitted to an approved veterinary laboratory.

11.7.1.5. A certificate documenting the mare has been vaccinated be sent to the State Veterinarian within seven (7) days of the vaccination date.

11.7.1.6. The EVA vaccination certificate for mares be on a form prescribed by the State Veterinarian.

11.7.1.7. The prior negative EVA test and vaccination of intact colts between 6-12 months of age and of adult teaser stallions.

11.7.2. Following are the requirements for mares or stallions to be vaccinated with EVA vaccine in Colorado:

11.7.2.1. Testing of stallions for antibodies in blood or evidence of EAV in semen shall be submitted to an approved veterinary laboratory.

11.7.2.2. Stallions vaccinated for the first time against EVA shall be test negative to a blood sample collected by an accredited veterinarian prior to vaccination.

11.7.2.3. Stallions vaccinated for the first time against EVA shall have the EVA vaccine administered by an accredited veterinarian within ten (10) days after the sample collection date.

11.7.2.4. A certificate documenting that the stallion has been vaccinated shall be sent to the State Veterinarian within seven (7) days of the vaccination date.

11.7.2.5. The EVA vaccination certificate for stallions shall be on a form prescribed by State Veterinarian.

11.7.2.6. All equids vaccinated for the first time against EVA shall not have direct exposure to an EVA affected animal or a pregnant mare for twenty-one (21) days after vaccination.

11.7.2.7. A vaccinated stallion shall not be used for breeding or artificial insemination within twenty-eight (28) days after vaccination. A vaccinated mare shall not be bred within twenty-one (21) days of vaccination.

11.8. EVA Test Mares

11.8.1. An EVA test mare shall be isolated from the other equine and under the supervision of the State Veterinarian if the mare becomes:

11.8.1.1. Clinically affected with EVA after breeding or artificial insemination; or

11.8.1.2. Sero-positive after breeding or artificial insemination.

11.8.2. An isolated mare shall be released from isolation by the State Veterinarian after:

11.8.2.1. Twenty-eight (28) days in isolation and providing test results are negative; or

11.8.2.2. The spread of EAV is no longer a risk, whichever is longer.

Part 12. Reportable Diseases

12.1. Reportable Disease List

12.1.1. The State Veterinarian shall develop and maintain a list of current reportable diseases and make the list readily available to accredited veterinarians and laboratories.

12.2. Notification of Reportable Diseases

12.2.1. The State Veterinarian shall be notified upon suspicion or recognition of clinical signs consistent with reportable disease.

12.3. Submission of Samples and Test Request Forms

12.3.1. Testing for Reportable Diseases shall only be performed at laboratories approved by the State Veterinarian

12.3.2. All laboratory samples submitted for official tests for reportable diseases shall be accompanied by a properly completed form or electronic form approved by the State Veterinarian. The Reportable Disease forms shall include the following:

12.3.2.1. Owner's name, physical address, telephone number and, if available, email address

12.3.2.2. Veterinarian’s name, physical address, telephone number, license or accreditation number, and, if available, email address.

12.3.2.3. Physical address of the livestock premises and, if available, the location identification number or premises identification number.

12.3.2.4. Description of the animal(s) tested, including but not limited to the species, age, breed, color, sex, and the animal(s) official identification, tattoos, or other distinguishing marks.

12.3.2.5. Tests requested

12.3.2.6. Purpose of the test (diagnostic, movement, change of ownership, grazing permit, etc.)

12.3.3. Samples submitted for testing without proper and complete test request forms, may have test performed but the results may not be considered official for the purpose of the test until appropriate information on the test forms has been completed.

Part 13. Rule Exception

13.1. The Commissioner of Agriculture or his designee, the Colorado State Veterinarian, may grant exceptions to any portion of this rule when disease management standards permit or require.

13.2. Any such exception will be limited to individual cases.

Parts 14 – 15: Reserved

Part 16: Statements of Basis, Specific Statutory Authority and Purpose

16.1. Adopted: September 14, 2005 – Effective: December 1, 2005

The statutory authority for this rule is C.R.S. 35-50-101-133, The Livestock Health Act.

The basis of this rule is to implement Senate Bill 05-024 titled The Livestock Health Act. This law repealed and reenacted authorities of the State Veterinarian to control and prevent livestock diseases. The law granted the State Veterinarian new authorities, most notably the authority to order a "hold" on all livestock on a premises while tests for the presence of a disease are conducted. The law also removed from statute language dealing with specific livestock diseases and granted the Colorado Commissioner of Agriculture the authority to adopt rules to control diseases.

Part 1 of this rule establishes procedures and requirements for the issuance of Certificates of Veterinary Inspection. These certificates offer proof that an animal is free from clinical signs of specific diseases and documents vaccinations and tests that may have been administered.

Part 2 establishes a commuter agreement process whereby existing breeding herds from border states are shipped into Colorado and later return to the herd of origin. This Part facilitates cross-border shipments that recur for grazing on a regular basis.

Part 3 establishes measures to prevent bovine tuberculosis, a disease that can be transmitted from cattle to other warm blooded mammals. The measures are designed to achieve continual eradication of bovine tuberculosis through herd testing and surveillance at slaughter plants.

Part 4 creates a process to control *brucella ovis*, a bacterium that causes a highly infectious disease affecting breeding rams known as ram epididymitis which causes infertility. Without an effective vaccine, management of the disease relies on surveillance of rams within herds. This part sets out surveillance requirements for movement of rams from one flock to another.

Part 5 creates a process to maintain Colorado's Certified Brucellosis Free Status and further reduce the possibility of infection to cattle and bison in Colorado. This Part establishes surveillance and vaccination requirements on cattle and bison herds.

Part 6 deals with an infectious disease that threatens Colorado's horse industry. Equine infectious anemia (EIA) is an infectious and potentially fatal disease without an effective vaccine or treatment regimen. This Part establishes an EIA surveillance process and disease control mechanism.

Part 7 creates a surveillance and testing program for swine herds to control pseudorabies and swine brucellosis. Pseudorabies is a viral disease most prevalent in swine that can also affect cattle, horses, sheep and other mammals that causes reproductive problems and can be fatal to newborn swine. Swine brucellosis is caused by the bacterium *Brucella suis* that causes reproductive and other problems.

Part 8 of this rule deals with trichomoniasis and was previously adopted. The provisions are moved to this rule.

Pursuant to Section 24-4-103(12.5) of the Administrative Procedures Act, Section 24-4-101 *et seq*. C.R.S. (2004), the Colorado Department of Agriculture will comply with the following rules, codes or standards, which are incorporated herein by reference: Swine Brucellosis Control/Eradication, State-Federal-Industry, Uniform Methods and Rules, USDA APHIS Bulletin No. 91-55-042, issued April 1998; Brucellosis Eradication, Uniform Methods and Rules, USDA APHIS Bulletin No. 91-45-013, effective October 1, 2003; Pseudorabies Eradication State-Federal-Industry Program Standards, USDA APHIS Bulletin No. 91-55-071, effective November 1, 2003; Bovine Tuberculosis Eradication, Uniform Methods and Rules, USDA APHIS Bulletin No. 91-45-011, effective January 1, 2005; 9CFR § 161 (2002), Requirements and Standards for Accredited Veterinarians and Suspension or Revocation of Such Accreditation; and 9 CFR 93-427 (c) (2005), Cattle From Mexico.

This rule does not include later amendments or additions of the incorporated material. Information on obtaining copies of these incorporated materials may be found by contacting the Director of the Division of Animal Industry, Colorado Department of Agriculture, 710 Kipling Street, Suite 202, Lakewood, Colorado 80215. The incorporated materials may be examined at any state publications depository library.

16.2. Adopted: November 13, 2006 – Effective: November 13, 2006

The Colorado Department of Agriculture adopts the following emergency rules according to its authority as found in Colo. Rev. Stat. § 35-50-105, et seq., and 24-4-103(6).

STATEMENT OF PURPOSE AND COMPLIANCE WITH COLO. REV. STAT. § 24-4-103(6).

The Colorado Department of Agriculture finds that immediate adoption of these rules is imperatively necessary for preservation of public health, safety or welfare and that compliance with the rulemaking requirements of § 24-4-103, C.R.S., would be contrary to the public interest.

Equine Viral Arteritis (EVA) is a contagious disease of horses that is caused by the equine arterits virus (EAV). At this point, most of the Colorado equine population has yet to be exposed. The commencement of immediate testing to identify pre-antibody receiving mares and stallions and to locate those already infected/affected with/by EAV is of the utmost importance to ensure the continued safety and health of Colorado's equine population. Therefore, adoption of these emergency rules is imperative.

Without the adoption of these emergency rules, the public's interest is not served. Wherefore, the Colorado Department of Agriculture, pursuant to § 24-4-103(6), C.R.S., has an obvious and stated need to enact these rules.

Statements of Basis, Specific Statutory Authority and Purpose

The statutory authority of this rule lies in § 35-50-105, et seq., C.R.S., 2005, specifically 35-50-105 (3)(f), (g) and (h), C.R.S., 2005, which grants authority to the Commissioner of Agriculture, with the approval of the Colorado Agricultural Commission, to set standards and requirements for testing livestock for infectious or contagious diseases and to set similar requirements for the vaccination of livestock to control infectious diseases. The Commissioner is further authorized to set standards and requirements for surveillance, testing, or implementation of other disease control measures.

The basis of this rule lies in the importance of controlling contagious disease among horses and other equine species and to facilitate commerce among citizens of Colorado and other states and countries. Equine viral arteritis (EVA) is a highly communicable disease spread among horses in two different manners. Infected equines with clinical signs of EVA can infect other equines by aerosol discharges from the mouth or nose. Male equines that have contracted EVA can then spread the disease to females by breeding or by artificial insemination. Therefore EVA is spread through both direct and venereal routes among equines. There is no direct treatment for the veneral disease, and therefore, male equines with the disease may have restricted ability to breed during the remaining period of their lives.

The purpose of this rule is to establish a widely accepted protocol for EVA disease control methods, testing, vaccination and record keeping requirements. This rule will enable owners of equines to contract for breeding their equines with increased confidence that EVA vaccination, testing, and disease control standards remain in effect in Colorado.

16.3. Adopted: January 4, 2007 – Effective: January 4, 2007

The Colorado Department of Agriculture adopts the following emergency rules according to its authority as found in Colo. Rev. Stat. § 35-50-105, et seq., and 24-4-103(6). These rules be effective on January 4, 2007.

STATEMENT OF PURPOSE AND COMPLIANCE WITH COLO. REV. STAT. § 24-4-103(6).

The Colorado Department of Agriculture finds that immediate adoption of these rules is imperatively necessary for preservation of public health, safety or welfare and that compliance with the rulemaking requirements of § 24-4-103, C.R.S., would be contrary to the public interest.

Equine Viral Arteritis (EVA) is a contagious disease of horses that is caused by the equine arterits virus (EAV). At this point, most of the Colorado equine population has yet to be exposed. The commencement of immediate testing to identify pre-antibody receiving mares and stallions and to locate those already infected/affected with/by EAV is of the utmost importance to ensure the continued safety and health of Colorado's equine population. New Mexico, has reported confirmed cases of EVA. Because of New Mexico's proximate closeness to Colorado and because the breeding season is currently active, adoption of these emergency rules is imperatively necessary for preservation of public health, safety and welfare.

Without the adoption of these emergency rules, the public's interest is not served. Wherefore, the Colorado Department of Agriculture, pursuant to § 24-4-103(6), C.R.S., has an obvious and stated need to enact these rules.

Statements of Basis, Specific Statutory Authority and Purpose

The statutory authority of this rule lies in § 35-50-105, et seq., C.R.S., 2005, specifically 35-50-105 (3)(f), (g) and (h), C.R.S., 2005, which grants authority to the Commissioner of Agriculture, with the approval of the Colorado Agricultural Commission, to set standards and requirements for testing livestock for infectious or contagious diseases and to set similar requirements for the vaccination of livestock to control infectious diseases. The Commissioner is further authorized to set standards and requirements for surveillance, testing, or implementation of other disease control measures.

The basis of this rule lies in the importance of controlling contagious disease among horses and other equine species and to facilitate commerce among citizens of Colorado and other states and countries. Equine viral arteritis (EVA) is a highly communicable disease spread among horses in two different manners. Infected equines with clinical signs of EVA can infect other equines by aerosol discharges from the mouth or nose. Male equines that have contracted EVA can then spread the disease to females by breeding or by artificial insemination. Therefore EVA is spread through both direct and venereal routes among equines. There is no direct treatment for the veneral disease, and therefore, male equines with the disease may have restricted ability to breed during the remaining period of their lives.

The purpose of this rule is to establish a widely accepted protocol for EVA disease control methods, testing, vaccination and record keeping requirements. This rule will enable owners of equines to contract for breeding their equines with increased confidence that EVA vaccination, testing, and disease control standards remain in effect in Colorado.

16.4. Adopted: January 4, 2007 – Effective: March 4, 2007

The Colorado Department of Agriculture adopts the following rules according to its authority as found in Colo. Rev. Stat. § 35-50-105, et seq.

Statements of Basis, Specific Statutory Authority and Purpose

The statutory authority of this rule lies in § 35-50-105, et seq., C.R.S., 2005, specifically 35-50-105 (3)(f), (g) and (h), C.R.S., 2005, which grants authority to the Commissioner of Agriculture, with the approval of the Colorado Agricultural Commission, to set standards and requirements for testing livestock for infectious or contagious diseases and to set similar requirements for the vaccination of livestock to control infectious diseases. The Commissioner is further authorized to set standards and requirements for surveillance, testing, or implementation of other disease control measures.

The basis of this rule lies in the importance of controlling contagious disease among horses and other equine species and to facilitate commerce among citizens of Colorado and other states and countries. Equine viral arteritis (EVA) is a highly communicable disease spread among horses in two different manners. Infected equines with clinical signs of EVA can infect other equines by aerosol discharges from the mouth or nose. Male equines that have contracted EVA can then spread the disease to females by breeding or by artificial insemination. Therefore EVA is spread through both direct and venereal routes among equines. There is no direct treatment for the veneral disease, and therefore, male equines with the disease may have restricted ability to breed during the remaining period of their lives.

The purpose of this rule is to establish a widely accepted protocol for EVA disease control methods, testing, vaccination and record keeping requirements. This rule will enable owners of equines to contract for breeding their equines with increased confidence that EVA vaccination, testing, and disease control standards remain in effect in Colorado.

16.5. Adopted: July 31, 2008 – Effective: August 1, 2008

SPECIFIC STATUTORY AUTHORITY:

The specific statutory authority of this rule is § 35-50-105(3)(c), C.R.S., which grants authority to the Commissioner of Agriculture, upon approval of the Colorado Agricultural Commission, to adopt rules related to the health standards for importation of livestock into the State of Colorado. With approval from the Colorado Agricultural Commission, the Commissioner of Agriculture adopts this rule as an emergency rule pursuant to § 24-4-103(6), C.R.S.

Statement of Emergency Purpose

The Colorado Commissioner of Agriculture, with approval of the Colorado Agricultural Commission, finds that immediate adoption of this rule is imperatively necessary for preservation of public health, safety or welfare and that compliance with the rulemaking requirements of § 24-4-103, C.R.S., would be contrary to the public's interest.

This rule creates a standardized method by which the Commissioner of Agriculture, through the Colorado State Veterinarian, may identify feedlots in the State of Colorado that are approved to import livestock that come from states whose regulated disease statuses may be different from those in Colorado. Specifically, the rule identifies the requirements for a feedlot to attain and maintain a registration and the methods to apply for a registration. In addition, the rule obviates the need for import testing or vaccination in livestock that come from states with different regulated disease statutes prior to importation.

The overall purpose of this rule is to protect both the economic vitality of Colorado's feedlots while continuing to protect the state's livestock producers from diseases that are currently eradicated or controlled within the state.

Immediate implementation of this rule is necessary to protect the economic viability of Colorado's livestock producers.

Factual and Policy Issues

The factual and policy issues encountered when developing these rules include:

Recent changes in neighboring states' regulated disease status have made it difficult and expensive for feedlots within the state to import certain livestock for the purpose of finishing at a feedlot prior to sending to slaughter. An import ban on livestock from states that have lost certain disease regulation status or that have lower disease control requirements than Colorado makes it difficult for feedlots to import the numbers of livestock needed to maintain economic vitality. At the same time, importing cattle from states that have different statuses could be harmful to Colorado's breeding herd and Colorado's livestock producers.

The Commissioner of Agriculture, in tandem with representatives from industry groups and the State Veterinarian's Office, recognized that the dual goal of protecting Colorado's livestock producers while providing feedlots a method to remain competitive could be achieved. This rule establishes a uniform method to identify those feedlots that are eligible to import livestock from states with different regulated disease statuses.

The rule permits immediate importation of livestock from neighboring states whose regulated disease status have changed with minimal output cost to the Colorado feedlot. In addition, this rule maintains the important protections provided to Colorado's livestock producers and breeding stock from diseases that are controlled or eradicated from within the State of Colorado.

16.6. Adopted: September 9, 2008 – Effective: October 30, 2008

SPECIFIC STATUTORY AUTHORITY:

The specific statutory authority of this rule is § 35-50-105(3)(c), C.R.S., which grants authority to the Commissioner of Agriculture, upon approval of the Colorado Agricultural Commission, to adopt rules related to the health standards for importation of livestock into the State of Colorado. With approval from the Colorado Agricultural Commission, the Commissioner of Agriculture adopts this rule pursuant to § 24-4-103(4), C.R.S.

Statement of Purpose

The adoption of this rule makes permanent emergency rules and renumbers parts of the rule as appropriate.

This rule creates a standardized method by which the Commissioner of Agriculture, through the Colorado State Veterinarian, may identify feedlots in the State of Colorado that are approved to import livestock that come from states whose regulated disease statuses may be different from those in Colorado. Specifically, the rule identifies the requirements for a feedlot to attain and maintain a registration and the methods to apply for a registration. In addition, the rule obviates the need for import testing or vaccination in livestock that come from states with different regulated disease statutes prior to importation.

The overall purpose of this rule is to protect both the economic vitality of Colorado's feedlots while continuing to protect the state's livestock producers from diseases that are currently eradicated or controlled within the state.

Implementation of this rule is necessary to protect the economic viability of Colorado's livestock producers.

Factual and Policy Issues

The factual and policy issues encountered when developing these rules include:

Recent changes in neighboring states' regulated disease status have made it difficult and expensive for feedlots within the state to import certain livestock for the purpose of finishing at a feedlot prior to sending to slaughter. An import ban on livestock from states that have lost certain disease regulation status or that have lower disease control requirements than Colorado makes it difficult for feedlots to import the numbers of livestock needed to maintain economic vitality. At the same time, importing cattle from states

that have different statuses could be harmful to Colorado's breeding herd and Colorado's livestock producers.

The Commissioner of Agriculture, in tandem with representatives from industry groups and the State Veterinarian's Office, recognized that the dual goal of protecting Colorado's livestock producers while providing feedlots a method to remain competitive could be achieved. This rule establishes a uniform method to identify those feedlots that are eligible to import livestock from states with different regulated disease statuses.

The rule permits importation of livestock from neighboring states whose regulated disease status have changed with minimal output cost to the Colorado feedlot. In addition, this rule maintains the important protections provided to Colorado's livestock producers and breeding stock from diseases that are controlled or eradicated from within the State of Colorado.

16.7. Adopted: March 18, 2010 – Effective: April 30, 2010

SPECIFIC STATUTORY AUTHORITY:

The specific statutory authority of this rule is located in §§ 35-50-105(3)(a), (b), (c), (f), (h), (j), (n), (p), and (q), C.R.S., which cumulatively grant authority to the Commissioner of Agriculture, upon approval of the Colorado Agricultural Commission, to adopt rules related to designations of livestock disease for control and reporting purposes; health standards for importation of livestock; livestock testing for contagious or infectious disease; standards for disease surveillance among and in livestock; the form and manner of disease reporting; standards and requirements for disease prevention; and livestock disease prevention.

Purpose

The purpose of this rule change is to update the rule to clarify definitions, strengthen testing procedures and guidelines, and implement an improved risk-based approach in preventing and controlling Bovine Trichomoniasis, also known as Trich.

The changes reflected in this rule-making represent new developments in the science of veterinary medical diagnostics and in the application of that science to better prevent and control the identified disease. In addition, these changes addressed the concerns of the livestock industry to mitigate the prevalence and economic implications of Trichomoniasis to the Colorado cattle industry.

Changes to the definitions of the rule add terms that have been identified and adopted in other parts of the Livestock Disease Control rules. In addition, changes in the definitions section amend previously adopted definitions to create consistency within the entire Livestock Disease Control rules. Further changes identify alternate official tests that may be used to identify Trich and reduce producers' costs in the testing and release of quarantined herds, and formatting changes within the definitions provide consistency and clarity to terms used throughout this part of the livestock disease control rules.

The "Import Rules" section of this part underwent changes to place more stringent requirements on the import of cattle and to ensure that sample collection and testing procedures apply the most recent scientific understanding to better prevent and control the disease prior to import. The rules within this section are re-organized for ease of reading and clarity of thoughts. Minor changes to testing requirements amend previous requirements so as to assure more accurate test results. Finally, changes throughout the section clarify disease control requirements for breeding females, bulls, commuter-permitted bovines, and bovines at public livestock auctions.

Changes throughout the rule also allow for virgin bull affidavits as an alternative to testing bulls that are 12 to 18 months of age that have no history of sexual contact, thereby implementing a risk-based approach that reduces the testing requirements, the testing costs, and the risk of injury to cattle, owners/operators, and veterinarians. Changes to the "Approved Laboratory Responsibilities" and "Approved Veterinarian" conform to law, removing requirements that the State Veterinarian could not legally enforce.

Factual and Policy Issues

The factual and policy issues encountered when developing these rules include:

The reviewers found that since the inception of this rule several years back, updates in the science related to testing for Trich and updates in general knowledge related to the prevention of the disease rendered portions of the previous rule unnecessary to accomplish the same goals. The veterinary scientific community identified ways to improve the accuracy of testing by making improvements to the sampling procedure and testing protocol, which improvements are reflected in the rule changes. The reviewers identified risks to field veterinarians who were performing sample collections on bulls and the dangers associated with repeated collections from bulls that had previously been sampled. At least one veterinarian had been seriously injured while collecting samples from a previously sampled bull. Additionally, the reviewers found that due to the newer diagnostic tests and capabilities, fewer tests were required to release a Trich quarantined herd as repeated testing of the same animals would not yield any more conclusive results. Therefore, the new testing protocol allowed in the rule will produce a more accurate test with less risk to producers and veterinarians.

Other issues that the reviewers considered include the fact that other definitions throughout the “Livestock Disease Control” rules had been amended or changed entirely. Part of the effort with this rule-making was to bring this rule into closer conformity to other parts within the “Livestock Disease Control” rules as a whole.

Finally, the reviewers found it necessary to amend requirements for bulls known to be virgin bulls such that an owner’s affidavit would sufficiently and satisfactorily confirm the virgin status of their bulls without additional testing. Doing so will not increase the risk of spread of the disease because a risk-based testing approach to this age group of breeding bulls is already in place. Further, allowing affidavits will remove an undue financial burden on the livestock producers in testing all of their young bulls. Lastly, requiring the testing of virgin bulls over 18 months of age will increase disease surveillance and better control and prevent the disease.

The changes in these rules reflect the most up-to-date scientific studies, research, and knowledge available and apply that science in a manner that protects Colorado’s livestock industry while encouraging and maintaining a healthy and robust livestock sector within Colorado’s economy.

16.8. Adopted: November 12, 2014 – Effective: December 30, 2014

SPECIFIC STATUTORY AUTHORITY

The specific statutory authority of this rule is located in §§ 35-50-105(3)(a) through (d), (f), (h), (j), (n), (p), and (q), C.R.S., which cumulatively grant authority to the Commissioner of Agriculture, upon approval by the Colorado Agricultural Commission, to adopt rules related to designations of livestock disease for control and reporting purposes; health standards for importation of livestock; standards for livestock health certificates; livestock testing for contagious or infectious disease; standards for disease surveillance among and in livestock; the forma and manner of disease reporting; standards and requirements for disease prevention; and livestock disease prevention.

Purpose

The purpose of this rule-making is to provide revisions to portions of the current Livestock Disease Control rules that will make the rules easier to read and understand while updating the rules to reflect changes in disease detection, surveillance, testing, and monitoring. These changes in this rule-making reflect the efforts of the reviewers to achieve the dual goal of protecting Colorado’s livestock industry from disease while providing an environment where that industry may thrive.

In this rule-making, the reviewers focused on Parts 1, 2, 3, 5, 9, and 10. Generally, duplicative definitions from the rule were moved to an opening section, “Definitions.” This section will apply to the entire rule except where a more specific definition remains or is set forth within a specific Part. Throughout the

changed rules, the reviewers sought to clarify sentences, update language, removed duplicative terms, and increase readability.

Factual Policy and Issues

Since the time that these rules were last reviewed, the USDA has finalized its disease traceability requirements. The changes to USDA's rules effected changes in these rules. These changes come into these rules in new definitions and in changes to requirements for CVIs, movement between states, and movement between Approved Feedlots.

Additionally, these rule changes represent the most current veterinary science related to disease transmissibility, prevention, and monitoring.

These revisions incorporate changes as a result of the Department's Regulatory Efficiency Review Process conducted in accordance with the Governor's Executive Order D 2012-002.

16.9. Adopted June 8, 2016 – Effective July 30, 2016

Specific Statutory Authority

The specific statutory authority of this Rule is located in §§ 35-50-105(3)(a), (d), (f), and (h), C.R.S., which cumulatively grant authority to the Commissioner of Agriculture, upon approval by the Colorado Agricultural Commission, to adopt Rules related to designations of livestock disease for control and reporting purposes; standards and requirements for testing livestock for infectious or contagious diseases; standards for livestock health certificates; standards for disease surveillance among and in livestock; standards and requirements for disease prevention; and livestock disease prevention.

Purpose

The purpose of this rule-making is to move relevant Rule provisions that are currently in 8 CCR 1201-1 "Health Requirements Governing Livestock and Poultry" into 8 CCR 1201-19 to permit that 8 CCR 1201-1 be repealed in their entirety.

Specifically, the changes to this Rule add a definition for "zoological park"; incorporate 8 CCR 1201-1's exceptions to livestock that require a certificate of veterinary inspection into 8 CCR 1201-19; set forth the certificate of veterinary requirements for non-livestock animals, animals going to zoological parks, and wildlife; incorporate 8 CCR 1201-1's bovine dairy herd tuberculosis testing and accreditation into 8 CCR 1201-19. These revisions incorporate changes as a result of the Department's Regulatory Efficiency Review Process.

Factual Policy and Issues

8 CCR 1201-1 was originally adopted in the 1950s. Most of that Rule were repealed with the enactment of § 35-50-101, et seq. This rule-making was important to streamline all Rules regarding livestock health into one Rule.

16.10. Adopted November 8, 2017 – Effective December 30, 2017

Statutory Authority

These Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture pursuant to his authority under §§ 35-50-105(3)(a), (d), (f), and (h), C.R.S.

Purpose

The purpose of this proposed rulemaking is to update definitions; delete the “Introduction” sections in each part; update the tuberculosis and brucellosis parts to align with updated federal guidelines; and clean up unnecessary language.

Specific Purpose

The introduction sections were deleted in every Part in order to bring this rule into conformity with CDA’s uniform rules format; and the rule has been renumbered to bring it into uniformity with other Department rules. Grammatical and syntactic changes were made to Part 1, including bringing the definitions into conformity with national disease prevention, and statutory definitions.

Within Part 5 CCT responses being plotted on a CCT scattergram has been removed as it is informational in nature and not needed in rule. Sections of the rule pertaining to branding of reactor and exposed cattle have been removed because this is no longer practiced in the U.S. Language has been updated pertaining to imported cattle from Mexico to reflect the most recent Colorado import requirements.

Within Part 6 information pertaining to participation in a flock certified program has been removed. CDA has not had any participants in this program so it is being removed due to lack of use. In the event a livestock producer should be interested, CDA could create a voluntary program without rule guidance.

In Part 7 the portion of the rule on beef and bison brucellosis import test requirements has been removed as all of these vaccination and test requirements have changed so these rule requirements are no longer accurate.

In Part 8 portions concerning owner assist in handling and restraining animals has been removed as it has been removed in statute; the notification window for the approved laboratories to inform the State Veterinarian’s office of all positive test results has been changed to 24 hours to reflect the speed of modern communication technology; portions of 8.7 and 8.8 are being removed as EIA positive horses are no longer allowed to be slaughtered in the U.S. Changes brought the rule into alignment with USDA Code of Federal Regulations.

In Part 9 information about swine pseudorabies and brucellosis was deleted as these diseases have been eradicated from commercial swine in the U.S. If either disease re-emerges it will likely be addressed as a new and emerging or a foreign animal disease and not described in this portion of the rule.

Part 12 was added to address reportable disease requirements of accredited veterinarians and diagnostic laboratories in Colorado.

Factual Policy and Issues

These rule changes represent the most current veterinary science related to disease transmissibility, prevention, and monitoring. The language has been updated to bring it into conformity with national disease prevention terms, definitions, and standards.

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Office of the Attorney General

Tracking number: 2017-00434

Opinion of the Attorney General rendered in connection with the rules adopted by the

Commissioner of Agriculture

on 11/08/2017

8 CCR 1201-19

LIVESTOCK DISEASE CONTROL

The above-referenced rules were submitted to this office on 11/13/2017 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.

November 21, 2017 14:32:30

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Agriculture

Agency

Inspection and Consumer Services Division

CCR number

8 CCR 1202-4

Rule title

8 CCR 1202-4 FERTILIZERS AND SOIL CONDITIONERS 1 - eff 12/30/2017

Effective date

12/30/2017

COLORADO DEPARTMENT OF AGRICULTURE

Inspection and Consumer Services Division

Fertilizers and Soil Conditioners

8 CCR 1202-4

Part 1. LEGAL AUTHORITY

1.1 Title 35, Article 12, Colorado Revised Statutes.

Part 2. DEFINITIONS

2.1 The Official Publication of the Association of American plant food Control Officials, Inc. shall mean the 2017 Official Publication of the Association of American plant food Control Officials, Inc. ("AAPFCO"), effective January 1, 2017. This Rule incorporates by reference the AAPFCO standards and guidelines. The Rule does not adopt any later amendments to, or editions of, the AAPFCO standards and guidelines. Additionally, anyone seeking to review a copy of the referenced material may contact the Inspection and Consumer Services Division of the Department of Agriculture, located at 2331 West 31st Avenue, Denver, Colorado 80211 to learn how this information by reference, may be examined at any state publications depository library.

2.2 These Rules incorporate the official terms and official fertilizer definitions as published in the 2017 Official Publication of the Association of American Plant Food Control Officials, Inc. (AAPFCO), , except as the Commissioner of Agriculture ("Commissioner") designates otherwise in specific cases.

2.3 "Index value" means the comparison of the sum of the actual values found for total nitrogen, available phosphate and soluble potash over the sum of the guaranteed values for the same, expressed as a percentage.

2.4 "Soil conditioner" means a substance intended to improve the chemical or physical characteristics of the soil for the purpose of growing plants. "Soil conditioner" is synonymous with "soil amendment." It does not include commercial fertilizers, plant amendments, untreated manures, compost and treated manures that are distributed without soil conditioner labeling claims.

2.5 "Potting Soil" and "Planting Mix" means a material suitable for holding and growing plants. It may include small amounts of fertilizer or pesticide.

2.6 "Beneficial Substances or Compounds" means any substance or compound, other than primary, secondary and mirco plant nutrients, that can be demonstrated by peer reviewed scientific research to be beneficial to one or more species or plants, when applied exogenously.

2.7 "Ingredient Statement" means a collective and contiguous listing of the ingredients of which a soil conditioner or plant amendment is composed listed in descending order by their predominance by volume or weight as appropriate in non-quantitative terms.

Part 3. REGISTRATION

3.1 Each commercial fertilizer, soil conditioner, or plant amendment product must be registered by the person whose name appears on the label before being distributed in this state. All

registrations will expire annually on January 31. Applications for renewal of registrations must be submitted each year on or before that date.

3.2 Each manufacturing facility that produces commercial fertilizer custom mixes in this state must be registered as required in Section 35-12-104 (7), C.R.S. All registrations will expire annually on January 31. Applications for renewal of registrations must be submitted each year on or before such date.

3.3 Each manufacturing facility that produces compost in this state must be registered as required in Section 35-12-104(8) (a), C.R.S. All registrations will expire annually on January 31. Applications for renewal of registrations must be submitted each year on or before such date.

3.4 Each manufacturing facility in this state that produces compost must register with the Commissioner except that:

3.4.1 Producers of less than ten (10) tons of compost per calendar year will not be required to register;

3.4.2 Any facilities regulated under Section 14 of Part 1 of the Colorado Department of Public Health and Environment Regulations Pertaining to Solid Waste Sites and Facilities, 6 CCR 1007-2, will not be required to register.

3.5 Products whose primary purpose is as potting soil or a planting mix, that may also guarantee fertilizer, are exempt from registration when the sum of all fertilizer guarantees is below 3%.

Part 4. DISTRIBUTION FEES - REPORTS

4.1 Each registrant must file an affidavit annually with the Commissioner within forty-five (45) days after January 1 each year that discloses the pounds or tonnage of commercial fertilizer, soil conditioner, or plant amendment sold or distributed in the state during the preceding twelve (12) month period.

4.1.1 In addition, each registrant must report the composition of fertilizer and the county in which fertilizer was distributed by the registrant.

4.2 Such affidavit will be accurately reported and submitted on the form (electronic or otherwise) that is furnished by the Commissioner.

Part 5. LABEL REQUIREMENTS

5.1 Fertilizer labels

The following information must be displayed on the product label in a readable and conspicuous form:

5.1.1 Product name

5.1.2 Grade

5.1.3 Guaranteed Analysis in the following format and order:

Guaranteed Analysis

Total Nitrogen (N) _____%

_____% Ammoniacal Nitrogen**

_____% Nitrate Nitrogen**

_____% Water Insoluble Nitrogen*

_____% Urea Nitrogen**

_____% (other recognized and determinable forms of Nitrogen)**

5.1.4 Available Phosphate (P_2O_5) _____%

5.1.5 Soluble Potash (K_2O) _____%

5.1.6 (Other nutrients, elemental basis)_____%***

5.1.7 Directions for use sufficient to ensure the safe and effective use of the product that, at a minimum, specify:

5.1.7.1 The recommended application method(s) and rate(s)

5.1.7.2 Any warning or caution statements necessary to avoid harm to the target plant(s), or other plants or animals

5.1.8 Net weight or mass, net volume of liquid or dry material, or count.

5.1.9 The date of manufacture, processing, packaging or repackaging or a code that permits the determination of the date; or if bulk, the shipment or delivery date.

5.1.10 The name and address of the registrant.

*If claimed or the statement "organic" or "slow acting nitrogen" or similar terms are used on the label

**If claimed.

***As prescribed by Rule 5.2

5.2 Plant Nutrients in addition to Nitrogen, Phosphorous, and Potassium

5.2.1 Other plant nutrients, when mentioned in any form or manner, must be guaranteed only on an available elemental basis. Sources of the elements guaranteed and proof of availability must be provided to the Commissioner upon request. Except guarantees for those water soluble nutrients labeled for ready to use foliar fertilizers, ready to use specialty liquid fertilizers, hydroponic or continuous liquid feed programs and guarantees for potting soils, the minimum percentages that will be accepted for registration are as follows:

Element	Minimum %
Calcium (Ca)	1.00
Magnesium (Mg)	0.50
Sulfur (S)	1.00
Boron (B)	0.02
Chlorine (Cl)	0.10
Cobalt (co)	0.0005
Copper (Cu)	0.05
Iron (Fe)	0.10
Manganese (Mn)	0.05

Molybdenum (Mo)	0.0005
Nickel (Ni)	0.0010
Sodium (Na)	0.10
Zinc (Zn)	0.05

Any of the above-listed elements which are guaranteed must appear in the order listed, immediately following guarantees for the primary nutrients, nitrogen, phosphorous and potassium.

5.2.2 Guarantees or claims for the above-listed plant nutrients are the only ones which will be accepted except that fertilizer guarantees may include other nutrients, recognized by AAPFCO. Proposed labels and directions for use of the fertilizer must be furnished with the application for registration upon request.

5.3 Slowly Released Plant Nutrients

5.3.1 No fertilizer label shall bear a statement that connotes or implies that certain plant nutrients contained in a fertilizer are released slowly over a period of time, unless the slow release components are identified and guaranteed at a level of at least 15% of the total guarantee for that nutrient(s).

5.3.2 Types of products recognized by the Commissioner to have slow release properties include, but are not limited to, (1) water insoluble products, such as natural organics, urea form materials, urea-formaldehyde products, isobutylidene diurea, and oxamide; (2) coated slow release products, such as sulfur coated urea and other encapsulated soluble fertilizers; (3) occluded slow release products in which fertilizers or fertilizer materials are mixed with waxes, resins, or other inert materials and formed into particles; and (4) products containing water soluble nitrogen such as ureaform materials, urea-formaldehyde products, methylenediurea (MDU), dimethylenetriurea (DMTU), and dicyanodiamide (DCD).

5.3.3 The term, “water insoluble”, “coated slow release”, “slow release”, “controlled release”, “slowly available water soluble” and “occluded slow release” are accepted as descriptive of these products, provided the manufacturer can demonstrate a testing program to substantiate the claim that is acceptable to the Commissioner.

5.3.4 A laboratory procedure, acceptable to the Commissioner for evaluating the release characteristics of the product(s) must be provided by the manufacturer if requested by the Commissioner.

5.4 Soil Conditioner and Plant Amendment Labels

The following information must be displayed on the product label in a readable and conspicuous form:

5.4.1 Net Weight or mass, net volume of liquid or dry material, or count.

5.4.2 Product Name.

5.4.3 Ingredient Statement including the name of each ingredient identified by the name published in the 2017 Official Publication of the Association of American Plant Food Control Officials, Inc., incorporated herein by reference as above in Rule 2.1 (later amendments not included). If no AAPFCO name exists, the common or usual name shall be used.

5.4.4 Purpose of product.

5.4.5 Directions for use sufficient to ensure the safe and effective use of the product that, at a minimum, specify:

5.4.5.1 The recommended application method(s) and rate(s).

5.4.5.2 Any warning or caution statements necessary to avoid harm to the target plants (if applicable), or other plants or animals.

5.4.6 Name and address of the registrant.

5.4.7 The date of manufacture, processing, packaging or repackaging or a code that permits the determination of the date; or if bulk, the shipment or delivery date.

5.5 Compost Labels

5.5.1 The following information shall be displayed on the product label in a readable and conspicuous form:

5.5.1.1 Product name.

5.5.1.2 Directions for use sufficient to ensure the safe and effective use of the product that at minimum specify:

5.5.1.2.1 The recommended application method(s) and rate(s); and

5.5.1.2.2 Any warning or caution statements necessary to avoid harm to the target plants (if applicable), or other plants or animals.

5.5.1.3 Name and address of the manufacturer or distributor.

5.5.1.4 Net weight or volume.

5.5.2 Compost distributed in bulk must be accompanied by a printed or written statement showing the ph level & soluble salt level in addition to the information required above.

5.5.3 Any product labeled as compost must meet the following minimum standards:

5.5.3.1 The product must contain carbon and nitrogen in a ratio of less than or equal to 18, as determined by the method specified in Rule 6.2.5.5.3.2 The product must have a SOLVITA Ammonia Test result of greater than or equal to 4, as determined by the method specified in Rule 6.2.

5.5.3.3 The product must have a SOLVITA Carbon Dioxide test result of greater than or equal to 5, as determined by the method specified in Rule 6.2.

5.6 Beneficial Substances or compounds

5.6.1 When claimed or advertised, beneficial substances or compounds must be guaranteed on the product label under the heading ‘Contains Beneficial Substances’ or ‘Contains Beneficial Compounds’, or ‘Contains non-plant food ingredients’.

5.6.2 The amount of the beneficial substance or compound shall be guaranteed by the weight of the substance or compound as a percentage of the net weight of the product.

5.7 Microbes

5.7.1. When claimed or advertised, a product which contains the presence of microbes must guarantee the microbes as a minimum number of each claimed viable organism at the genus and species level in colony forming units (CFU), spores, or propagules per gram or milliliter, and must have an expiration date and must have storage and handling instructions.

5.8 Any products coming under the fertilizer law must not carry labels to emphasize that dilutions will make so many gallons of fertilizer. Specific claims, such as “contents of this package will make ___ gallons of fertilizer” are prohibited.

Part 6 Analytical and Sampling Methods

6.1 The methods of sampling for fertilizers, soil conditioners and plant amendments shall be those set forth in the 20th Edition of the Official Methods of Analysis of the Association of Analytical Communities (AOAC) International, or such other methods adopted by the Commissioner from authoritative sources that the Commissioner deems reliable including but not limited to Colorado State University. This Rule incorporates by reference the AOAC methods of analysis. This Rule does not adopt any later amendments to, or editions of, the AOAC methods of analysis. Additionally, anyone seeking to review a copy of the referenced material may contact the Inspection and Consumer Services Division of the Department of Agriculture, located at 2331 West 31st Avenue, Denver, Colorado 80211 to learn how this information may be obtained or reviewed. This, and any other material that is incorporated by reference, may be examined at any state publications depository library.

6.2 The methods for sampling and analysis of compost shall be those specified in Test Methods for the Examination of Composting and Compost, U. S. Composting Council Research and Education Foundation (CCREF), and United States Department of Agriculture (USDA) (TMECC, 2002) incorporated herein by reference (later amendments not included); or such other methods adopted by the Commissioner from authoritative sources that the Commissioner deems reliable, including but not limited to Colorado State University. The Commissioner shall maintain a current public list of official methods used by the Department and make such list available on the Department Internet site and from the Department office. The above-mentioned TMECC publication is available for public inspection at the Department office at 2331 West 31st Avenue, Denver, Colorado 80211. Copies of this publication are available for a reasonable charge from the Department or from CCREF at 5400 Grosvenor Lane, Bethesda, MD 20814.

6.3 Investigational Allowances

6.3.1 A commercial fertilizer shall be deemed deficient if the analysis of any nutrient is below the guarantee percent by an amount exceeding the applicable value specified in the following schedule, or if the index value of the fertilizer is below 98%:

Guarantee percent	Nitrogen percent	Available Phosphate percent	Soluble Potash percent
4 or less	0.49	0.67	0.41
5	0.51	0.67	0.43
6	0.52	0.67	0.47
7	0.54	0.68	0.53
8	0.55	0.68	0.60
9	0.57	0.68	0.65

10	0.58	0.69	0.70
12	0.61	0.69	0.79
14	0.63	0.70	0.87
16	0.67	0.70	0.94
18	0.70	0.71	1.01
20	0.73	0.72	1.08
22	0.75	0.72	1.15
24	0.78	0.73	1.21
26	0.81	0.73	1.27
28	0.83	0.74	1.33
30	0.86	0.75	1.39
32 or more	0.88	0.76	1.44

For guarantees not listed, calculate the appropriate value by Interpolation.

6.3.2 Other elements shall be deemed deficient if any element is below the guarantee by an amount exceeding the applicable value specified in the following schedule:

ELEMENT	GUARANTEE	ALLOWABLE DEFICIENCY
Calcium and Sulfur	1% and up	0.2 units + 5% of guarantee
Magnesium	0.5% and up	0.2 units + 5% of guarantee
Boron	.02% to 5%	.003 units + 15% of guarantee
	5.0% and up	Potash Schedule 6.3 (a)
Cobalt and Molybdenum	.0005% to 1.0%	.0001 units + 30% of guarantee
	1.0% to 4.0%	.2 units + 10% of guarantee
	4.1% and up	Potash Schedule 6.3 (a)
Chlorine, Iron & Sodium	0.1% to 4.0%	.005 units + 10% of guarantee
	4.1% and up	Potash Schedule 6.3 (a)
Copper, Manganese, & Zinc	.05% to 4.0%	.005 units + 10% of gaurantee
	4.1% and up	Potash Schedule 6.3 (a)

6.3.3 The above tolerances listed in 6.3.1. and 6.3.2 are for single samples run in duplicate.

Part 7.0 ADULTERATION

7.1 Fertilizer

7.1.1 Any product distributed as a fertilizer that contains guaranteed amounts of phosphates and/or micronutrients shall be deemed adulterated if it contains one or more metals in amounts greater than the levels of metals established by the following table:

Metals	ppm per 1% P_2O_5	ppm per 1% Micronutrients[1]
1. Arsenic	13	112
2. Cadmium	10	83
3. Cobalt	136[2]	2228[2]
4. Lead	61	463
5. Mercury	1	6
6. Molybdenum	42	300[2]
7. Nickel	250	1,900
8. Selenium	26	180
9. Zinc	420	2,900[2]

[1] Micro-nutrients include secondary and micro plant nutrients. Secondary plant nutrients are calcium, magnesium, and sulfur. Micro plant nutrients are boron, chlorine, cobalt, copper, iron, manganese, molybdenum, nickel, sodium, and zinc.

[2] Only applies when not guaranteed.

7.1.2 To use the above table:

7.1.2.1 First:

7.1.2.1.1 For fertilizers with a phosphate guarantee but no micro-nutrient guarantee, multiply the percent guaranteed P_2O_5 in the product by the values in the table to obtain the maximum allowable concentration of each metal. The minimum value for P_2O_5 utilized as a multiplier shall be 6.0.

7.1.2.1.2 For fertilizers with one or more micro-nutrient guarantees but no phosphate guarantee, multiply the sum of the guaranteed percentages of all micro-nutrients in the product by the value in the appropriate column in the Table to obtain the maximum allowable concentration (ppm) of each metal. The minimum value for micro-nutrients utilized as a multiplier shall be 1.

7.1.2.1.3 For fertilizers with both a phosphate and a micro-nutrient guarantee, multiply the guaranteed percent P_2O_5 by the value in the appropriate column. The minimum value for P_2O_5 utilized as a multiplier shall be 6.0.

7.1.2.2 Then multiply the sum of the guaranteed percentages of the micro-nutrients by the value in the appropriate column. The minimum value for micro-nutrients utilized as a multiplier shall be 1.

7.1.2.3 Utilize the higher of the two resulting values as the maximum allowable concentration (ppm) of each metal.

7.2 Compost

7.2.1 Any product labeled and distributed as compost will be deemed adulterated if it contains one or more metals in amounts greater than the levels of metals established by the following table:

Metals	Maximum level mg/kg dry weight basis
Arsenic	41
Cadmium	39
Copper	1500

Lead	300
Mercury	17
Nickel	420
Selenium	100
Zinc	2800

7.2.2 Any product labeled and distributed as compost will be deemed adulterated if it contains a pathogen concentration greater than either of the following levels:

7.2.2.1 Fecal coliform in an amount greater than 1000 most probable number per gram of total solids (dry weight basis); or

7.2.2.2 Salmonella sp. bacteria in an amount greater than three (3) most probable number per four (4) grams of total solids (dry weight basis).

Part 8. Reserved

Part 9. STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE

The Statements of Basis, Specific Statutory Authority and Purpose for rulemaking activity from 1971 to 1984 are no longer in the Department's files.

9.1 October 9, 2008 – Effective November 30, 2008

STATUTORY AUTHORITY:

The Commissioner of Agriculture, Colorado Department of Agriculture, adopts these permanent rules pursuant to the provisions and requirements of the Colorado Commercial Fertilizer, Soil Conditioner and Plant Amendment Act, Section 35-12-114, C. R. S.

PURPOSE:

The purpose of these Rules is to comply with the requirements of the Colorado Commercial Fertilizer, Soil Conditioner and Plant Amendment Act to provide specific guidelines for the manufacture, labeling, and distribution of commercial fertilizers, soil conditioners, plant amendments, and compost.

These rules:

- Adopt the most current version of the official terms as published in the 2008 Official Publication of the Association of American Plant Food Control Officials (AAPFCO).
- Establish registration dates for commercial fertilizer, soil conditioner, and plant amendment products.
- Establish registration dates for fertilizer and compost manufacturers.
- Establish the due date for distribution (tonnage) reports.
- Establish minimum standards and labeling requirements for compost.
- Establish directions for use requirements for fertilizer products.

- Remove all references to agricultural liming materials. These references were originally incorporated into these Rules because they are included in the AAPFCO Model Rules and Regulations. Due to the alkaline nature of Colorado soils, lime is not used; therefore, regulations that pertain to these materials are not needed.

- Establish the level of concentration of certain metals that would deem fertilizer to be adulterated.

- Establish the level of concentration of certain metals and pathogens that would deem compost to be adulterated.

- Update sampling and laboratory analysis methods for fertilizers and soil conditioners.

- Establish the laboratory analysis method for iron sucrate.

- Establish sampling and laboratory analysis methods for compost.

- Update rules and remove outdated language.

FACTUAL AND POLICY ISSUES:

The factual and policy issues encountered in the proposal of these permanent Rules are as follows:

1. On August 6, 2008, The Colorado Commercial Fertilizer, Soil Conditioner, and Plant Amendment Act was amended by House Bill 08-1231.

   a. HB 08-1231 requires the Department to set minimum standards for compost produced by those facilities that are not regulated by Colorado Department of Public Health and Environment (CDPHE).

   b. The Department worked with compost industry stakeholders, CDPHE, and Colorado State University to develop compost minimum standards.

2. These new, revised rules are based upon national standard (model) regulations developed by AAPFCO, an organization comprised of state fertilizer regulatory officials. These rules promote standardization of fertilizer industry regulation amongst the states.

3. The Department met with fertilizer industry groups throughout the rule drafting process. The industry groups have indicated support for these Rules.

9.2 January 13, 2009 – Effective March 2, 2009

STATUTORY AUTHORITY:

The Commissioner of Agriculture, Colorado Department of Agriculture, adopts these permanent rules pursuant to the provisions and requirements of the Colorado Commercial Fertilizer, Soil Conditioner and Plant Amendment Act, 35-12-114, C.R.S.

PURPOSE:

The purpose of these rules is to add additional labeling requirements to fertilizer and soil conditioning labeling guidelines.

FACTUAL AND POLICY ISSUES:

The factual and policy issues encountered in the proposal of these permanent rules are as follows:

1. Upon review of the recent amendments to these rules, filed with the Secretary of State on October 16, 2008, the Office of Legislative Legal Services (OLLS) requested additions to Rule 5.1 to conform labeling requirements for fertilizer products with those in section 35-12-105(1), C.R.S.

2. In addition to the changes requested by OLLS, the Department will add similar language to Rule 5.4 to conform labeling requirements for soil conditioners and plant amendments to those in section 35-12-105(3), C.R.S.

9.3 November 13, 2012 – Effective December 30, 2012

STATUTORY AUTHORITY:

The Commissioner of Agriculture is authorized to adopt these permanent rules pursuant to section 35-12-114, C.R.S., of the Colorado Commercial Fertilizer, Soil Conditioner and Plant Amendment Act.

PURPOSE:

The specific purposes of these rule changes are as follows:

1. Amend rule 2.1 to adopt the most current version of the official terms as published in the Official Publication of the Association of American Plant Food Control Officials (AAPFCO) and update the rule language to reflect the most current version of the statutory requirements for incorporating such information by reference.

2. Add a new rule 2.2 to define “index value.”

3. Add a new rule 2.3 to define “soil conditioner.”

4. Amend rule 3.5 to remove restrictions on the use of iron sucrate as a source.

5. Amend rule 5.2 (a) to change the requirements for minimum nutrient guarantees for specialty fertilizers.

6. Amend rule 5.2 (b) to remove restrictions on testing requirements for minor nutrients and allow the use of iron oxide and similar sources.

7. Amend rule 6.1 to separate sampling and analytical methods for clarity and update the rule language to reflect the most current version of the statutory requirements for incorporating such information by reference.

8. Add a new rule 6.2 to:

    a. Provide more flexibility on fertilizer test methods and nutrient sources, and

    b. Require internet posting of all official test methods.

9. Amend existing rule 6.2 to:

    A. Provide more flexibility on compost test methods, and

    B. Require internet posting of all official test methods.

10. Delete existing rule 6.3(c) to remove the reference to section 35-14-110 C.R.S., which no longer exists.

11. Amend rules 5.4(c), 6.3(a) and 6.3(b) for accuracy.

FACTUAL AND POLICY ISSUES:

The Department has been in contact with industry groups and interested parties throughout the rule drafting process. All have indicated support for the proposed changes.

The factual and policy issues encountered in the proposal of these permanent rules are as follows:

1. Rule 2.1 of the prior revision incorporated terms listed in the 2008 Official Publication of AAPFCO, which is updated annually. This revision updates the terms to the current 2012 publication. AAPFCO is an organization comprised of state fertilizer regulatory officials that develops national models to promote standardization of fertilizer industry regulation amongst the states.

2. "Index value" is used in existing rule 6.3(a) to determine whether a fertilizer is deficient. It was not previously defined, except indirectly in 6.3 (c), which is being deleted.

3. A definition of "soil conditioner" is required by section 35-12-103(29), C.R.S., of the Commercial Fertilizer, Soil Conditioner, and Plant Amendment Act. "Soil amendment" is a generally used, but less descriptive term synonymous with "soil conditioner."

4. A simplified regulatory approach towards fertilizer nutrient sources and analytical testing is adopted with these revisions. The use of iron sucrate is no longer restricted to specialty fertilizers.

5. Removing the requirements for minimum nutrient guarantees for specialty fertilizers changes the rule to reflect the national models developed by AAPFCO.

6. This revision simplifies the regulatory approach for minor nutrients. Regulation will now reflect AAPFCO national models.

7. Amended rule 6.1 clarifies the regulatory approach for sampling.

8. New rule 6.2 simplifies the regulatory approach towards fertilizer analytical testing and nutrient sources.

    a. Rule 6.1 of the prior revision required specific test methods for minor nutrients and nutrient sources such as iron oxide and resulted in restrictions on the use of such sources. This revision removes the restrictions and updates test and nutrient source requirements.

    b. Transparency in government is promoted with the requirement to post all current test methods on the internet.

9. Amended rule 6.3 simplifies the regulatory approach towards compost sampling and analytical testing.

    a. This change allows the Department to respond more quickly to technological changes in analytical test methods.

b. Transparency in government is promoted with the new requirement to post all test methods on the internet.

10. Deleting previous revision rule 6.3(c):

a. Removes a reference to section 35-12-110, C.R.S., which no longer exists.

b. Allows for a clear definition of “Index value” which is used in rule 6.3(a) to determine whether a fertilizer is deficient. Index value was not previously defined, except indirectly in 6.3 (c), which is being deleted.

11. Minor textual errors were identified which are addressed in this rule revision.

9.4 April 9, 2013 – Effective January 1, 2014

STATUTORY AUTHORITY:

The Commissioner's authority for the adoption of these permanent rule amendments is set forth in § 35-12-104(1), § 35-12-104(7) and § 35-1-107(5)(a), C.R.S.

PURPOSE:

The purpose of these permanent rule amendments is to amend Part 3.1 to change the expiration date for a fertilizer registration and amend Part 3.2 to change the expiration date for a fertilizer manufacturing facility registration from June 30 to December 31.

FACTUAL AND POLICY BASIS:

The factual and policy issues pertaining to the adoption of these permanent rule amendments 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.

9.5 Adopted November 9, 2016- Effective December 30, 2016

STATUTORY AUTHORITY:

The Commissioner's authority for the adoption of these permanent rule amendments is set forth in § 35-12-104(1), § 35-12-104(7) and § 35-12-106(4), C.R.S.

PURPOSE:

The purpose of these permanent rule amendments is to:

1. Amend Part 4 to clarify the reporting requirements.

2. Change the date in Parts 3.1, 3.2, and 3.3 to align the registration renewals with the tonnage reporting deadline.

3. Update formatting to be consistent with other Rules within the Department.

FACTUAL AND POLICY BASIS:

The factual and policy issues pertaining to the adoption of these permanent rule amendments are as follows:

1. The previous version of Part 4 was not specific to the types of data required to be reported on fertilizer distribution.

2. Currently, fertilizer registrants have to log into the Department's licensing system at separate times of the year to complete the registration and reporting process. This can be burdensome to registrants and be prone to mistakes.

3. After consulting with industry stakeholders, the Department has proposed to synchronize all deadlines associated with the larger registration process to make the process more efficient for registrants.

9.6 February 8, 2017 – Effective March 30, 2017

Statutory Authority:

The Commissioner's authority for the adoption of these permanent rule amendments is set forth in § 35-12-104(1), § 35-12-104(7) and § 35-12-106(4), C.R.S.

Purpose:

The purpose of this rule-making is to incorporate the changes that were effective December 30, 2012 which were inadvertently omitted when the rule was further amended through rules adopted November 9, 2016 to be effective December 30, 2016. See Part 9.3 for the specific changes.

9.7 Adopted November 8, 2017 – Effective December 30, 2017

Statutory Authority

The Commissioner's authority for the adoption of these permanent Rule amendments is set forth in section 35-12-114, C.R.S. of the Colorado Commercial Fertilizer, Soil Conditioner, and Plant Amendment Act.

Purpose

The purpose of this rulemaking is to update terms, definitions and references to match the current version of the AAPFCO; update registration requirements; expand and update label language; and update references to the AOAC.

Factual and Policy Issues

The Department has been in contact with industry groups and interested parties throughout the rule drafting process. The factual and policy issues related to the adoption of these permanent Rule amendments are as follows:

1. Rule 2.1 and 2.2 of the prior revision incorporated by reference the 2012 version of the Official Publication of the Association of the American Plant Food Control Officials (APPFCO) and did not include the rule language required by the most current version of the statutory requirements for incorporating such information by reference.

2. “Potting Soil”; “Planting Mix”; “Beneficial Substances or Compounds”; and “Ingredient Statement” are official terms in the 2017 Official Publication of AAPFCO.

3. Rule 3.5 exempts certain products from registration and allows products to be used in a timely manner. This Rule accounts for the constantly evolving advances in the fertilizer industry and APPFCO’s inability to publish recognition of ingredients fast enough to keep up with the advances. This Rule change is in agreement with stakeholder comments.

4. Rule 5.1.7.1 removes the requirement that a label specify the type of plant for which a product is intended; this information is not a requirement in the AAPFCO model bill or regulations. The amended Rule 5.1.7.1 allows for either a recommended application method and rate or a statement referring the user to a qualified individual or a nutrient management plan.

5. Rule 5.3.3 adds the terms “Coated Slow Release,” “Slow Release,” “Controlled Release,” and “Slowly Available Water Soluble,” which are terms consistent with the 2017 Official Publication of AAPFCO.

6. Rule 5.4.3 removes the requirement that percentages be included on a label. This information is proprietary and disclosure is not required on labels. This change is in agreement with stakeholder comments.

7. Rules 5.4.6.1 and 5.5.1.2.1 are being deleted because they are no longer necessary. Including the intended types of plants or soils on a label is not a requirement in the AAPFCO model bill or regulations.

8. Rule 5.5.1.5 is not necessary. Typical analysis of compost has been an optional label item and has not been considered a guarantee. The removal of this Rule is in agreement with stakeholder comments.

9. The Rule 5.6 label requirements for “Beneficial Substances or Compounds” are consistent with the 2017 Official Publication of AAPFCO.

10. The Rule 5.7 label requirements for “Microbes” are consistent with the 2017 Official Publication of AAPFCO.

11. Rule 5.8 limits label claims related to dilutions. Products that have directions for dilutions prior to use should not have a claim that the dilution will make a certain amount of finished product to avoid misleading advertising and claims. This is consistent with the 2017 Official Publication of AAPFCO.

12. Rule 6.1 adopts the most current version of the Official Methods of Analysis of The Association of Analytical Communities (AOAC), and updates the Rule language to reflect the most current version of the statutory requirements for incorporating such information by reference.

13. Rule 6.4.4 is no longer necessary because the soil conditioner and plant amendment label requirement of disclosing the percentage of all active ingredients has been changed with amendment of Rule 5.4.3 and the deletion of Rule 5.4.4.

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Office of the Attorney General

Tracking number: 2017-00435

Opinion of the Attorney General rendered in connection with the rules adopted by the

Commissioner of Agriculture

on 11/08/2017

8 CCR 1202-4

FERTILIZERS AND SOIL CONDITIONERS

The above-referenced rules were submitted to this office on 11/09/2017 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.

November 17, 2017 10:59:27

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Agriculture

Agency

Plant Industry Division

CCR number

8 CCR 1203-13

Rule title

8 CCR 1203-13 QUARANTINE FOR LATE BLIGHT 1 - eff 12/30/2017

Effective date

12/30/2017

Colorado Department of Agriculture

Plant Industry Division

Quarantine for Late Blight

8 CCR 1203-13

Part 1. DEFINITIONS

1.1. “Certificate” means any federal/state, state or other inspection certificate accepted by the government of origin.

1.2. “Certified” means certified seed as defined in § 35-27-103(3) certified by a certifying agency as defined in § 35-27-103(4), C.R.S., or certified seed certified by a government of origin.

1.3. “Commissioner” means the Commissioner of the Colorado Department of Agriculture, or the Commissioner's designee.

1.4. “CPAC” means the Colorado Potato Administrative Committee, Area II.

1.5. “Culls” means any forms of waste and off-grade potatoes, including volunteer plants.

1.6. “Department” means the Colorado Department of Agriculture.

1.7. “Import” means to ship into the San Luis Valley from any state or country.

1.8 . “Inspection” means an inspection performed at the place of origin by an inspector.

1.9. “Inspector” means a qualified fruit and vegetable inspector who is licensed by the United States Department of Agriculture, Agricultural Marketing Service or an inspector who meets all qualifications, licensure or other requirements of the country of origin.

1.10. “Late blight” means the fungus Phytophthora infestans.

1.11. “Nuclear seed stock” means disease-tested, certified seed potatoes produced in a greenhouse.

1.12. “Person” means any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, limited liability company, partnership, association, or other legal entity.

1.12. “Quarantine” means the quarantine for late blight imposed by the Commissioner of Agriculture effective September 30, 1996.

1.13. “Reinspection” means an inspection conducted by the Commissioner after the potatoes have been shipped from the area of origin to Colorado.

1.14. “Repack” means potatoes imported into the San Luis Valley for packaging.

1.15. “San Luis Valley” means the Colorado counties of Rio Grande, Saguache, Alamosa, Conejos, Costilla and Chaffee.

1.16. “Seed potatoes” means potato tubers or portions thereof utilized as seed.

1.17. “Tested or Testing” means performed or performing a scientifically accepted protocol to detect the presence of a specific plant pathogen.

Part 2. QUARANTINE FOR LATE BLIGHT

2.1. Imported Seed Potatoes

2.1.1. A quarantine is imposed against seed potatoes imported into the San Luis Valley. Pursuant to said quarantine, seed potatoes may be imported into the San Luis Valley under the terms and conditions set forth in Parts 2.1.2 through 2.1.6.

2.1.2. Imported seed potatoes shall be certified and accompanied by 1) a certificate which shows proof of field inspection, 2) a North American Plant Health Certificate issued by the certifying authority for seed potatoes where the seed potatoes were grown, and 3) laboratory results of a 21-day bioassay test documenting that a representative sample of tubers (at least 400) from the lot(s) was tested for late blight.

2.1.2.1. Small lots of seed potatoes intended for research must be laboratory tested for late blight as required above prior to entering the San Luis Valley, however the number of tubers can be less than 400 as long as the sample is representative of the lot and is a minimum of 5 tubers.

2.1.3. If the inspection certificate, North American Plant Health Certificate or the laboratory test results indicates that late blight was present during growing or loading, or no statement is made on the certificate concerning the presence or absence of late blight, the load(s) to which said certificate pertains shall not be unloaded, and, pursuant to § 35-4-109, shall be removed from the state within forty-eight (48) hours or shall be destroyed by the Commissioner.

2.1.4. Any load(s) which are not accompanied by an inspection certificate, a North American Plant Health Certificate and laboratory test results shall not be unloaded, and, if a certificate cannot be produced within forty-eight (48) hours, pursuant to § 35-4-109, shall be removed from the state within forty-eight (48) hours or shall be destroyed by the Commissioner.

2.1.5. If the inspection certificate, North American Plant Health Certificate and the laboratory test results indicates that no late blight was present during the growing, loading, or testing, the load(s) to which said certificate pertains shall be reinspected during the unloading process. Random sampling of the load shall be taken and any tubers showing symptoms of late blight shall be tested. Any load(s) showing symptoms of late blight shall be placed in a bin and held at the place where reinspection occurred, or, they shall be placed in a truck owned by the receiver of said load(s) and held at the place where reinspection occurred, pending results of testing. If late blight is confirmed by testing, the load(s) must be removed from the state or destroyed within seventy-two (72) hours.

2.1.6. Nuclear seed stock is exempt from the reinspection and sampling set forth in Part 2.1.5. Nuclear seed stock no older than mini-tubers that originates within Colorado and is part of the seed potato certification program may have a sample size of at least 5 tubers sent to the Colorado Potato Certification Service Disease Laboratory for late blight testing. Nuclear seed stock of any size lot that originates outside of Colorado must have laboratory test results as required in 2.1.2 above prior to entering the San Luis Valley however the numbers of tubers tested may be less than 400 tubers provided the sample is representative of the lot; but it must be a minimum of 5 tubers.

2.2. Transportation

2.2.1. From June 1 to September 10 of each year:

2.2.1.1. All cull potatoes must be transported in a vehicle that is constructed and tarped or covered to prevent any potatoes from escaping and minimize the potential for spores to escape.

2.2.1.2. Any potato shipments imported from outside the San Luis Valley must be transported in a vehicle that is constructed and tarped or covered until the shipment is unloaded to prevent any potatoes from escaping and minimize the potential for spores to escape.

2.3. Cull Management

2.3.1. If culls are made permanently nonviable by chemical or mechanical means prior to leaving the storage, processing or packing facility, no further management is required.

2.3.2. If culls are not processed as set forth in Part 2.3.1, one of the following management measures shall be used:

2.3.2.1. From June 1 through September 10 of each year,

All cull potatoes shall be destroyed within seventy-two (72) hours utilizing one of the methods set forth below:

2.3.2.1.1. Composting, under the following conditions:

2.3.2.1.1.1. Any person who intends to use composting as a means of cull management shall notify the Department of such intent, prior to beginning composting;

2.3.2.1.1.2. Composting, as used herein, is the hot aerobic (oxygen-requiring) decomposition of organic materials including culls by microorganisms under controlled conditions. Each compost windrow or pile shall be marked with an identification number. Temperature readings of each windrow or pile shall be taken and recorded daily at a maximum of 50-foot intervals along each windrow. Compost windrows or piles shall reach temperatures of 130 degrees Fahrenheit or higher for a minimum of fifteen (15) separate daily readings to ensure destruction of late blight or other plant pathogens. Written records of the temperature readings shall be maintained for a period of one year and made available to the Department upon request to the compost operator; and

2.3.2.1.1.3. Inspections of the composting operation and records will be performed by the Department at regular intervals.

2.3.2.1.2. Ensiling;

2.3.2.1.3. Processing, such as for starch;

2.3.2.1.4. Burying, if lawful under applicable statutes, rules, or ordinances; or

2.3.2.1.5. Utilizing for livestock feed, under the following conditions:

2.3.2.1.5.1 Within seventy-two (72) hours of receiving the culls, the feeder shall feed the culls or cut, chop, or grind them to make them nonviable;

2.3.2.1.5.2. Culls not fed or processed as described in Part 2.3.2.1.5.1 or culls being stored prior to feeding or processing shall be completely covered with a tarp;

2.3.2.1.5.3. The unprocessed culls shall be consumed within forty-eight (48) hours of feeding;

2.3.2.1.5.4. Any person who intends to utilize culls for animal feed during this time period shall notify the Department of such intent, prior to beginning to feed culls; and

2.3.2.1.5.5. Regular inspections of the feeding operation will be performed by the Department.

2.3.2.2. From September 11 to March 31 of each year,

All culls shall be destroyed utilizing one of the methods set forth below:

2.3.2.1. Composting, under the following conditions:

2.3.2.1.1. Any person who intends to use composting as a means of cull management shall notify the Department of such intent, prior to beginning composting;

2.3.2.1.2. Composting, as used herein, is the hot aerobic (oxygen-requiring) decomposition of organic materials including culls by microorganisms under controlled conditions. Each compost windrow or pile shall be marked with an identification number. Temperature readings of each windrow or pile shall be taken and recorded daily at a maximum of 50-foot intervals along each windrow. Compost windrows or piles shall reach temperatures of 130 degrees Fahrenheit or higher for a minimum of fifteen (15) separate daily readings to ensure destruction of late blight or other plant pathogens. Written records of the temperature readings shall be maintained for a period of one year and made available to the Department upon request to the compost operator; and

2.3.2.1.3. Inspections of the composting operation and records will be performed by the Department at regular intervals.

2.3.2.2. Ensiling;

2.3.2.3. Processing, such as for starch;

2.3.2.4. Burying, if lawful under applicable statutes, rules, or ordinances;

2.3.2.5. Utilizing for livestock feed;

2.3.2.6. Spreading uniformly on the soil surface to a depth no greater than three (3) inches so that the culls are made nonviable by freezing or desiccation; or

2.3.2.7. Treating pursuant to label directions with a pesticide effective for the destruction of volunteer potato plants.

2.3.2.3. From April 1 to May 31 of each year,

All culls shall be destroyed utilizing one of the methods set forth below:

2.3.2.3.1. Composting, under the following conditions:

2.3.2.3.1.1. Any person who intends to use composting as a means of cull management shall notify the Department of such intent, prior to beginning composting;

2.3.2.3.1.2. Composting, as used herein, is the hot aerobic (oxygen-requiring) decomposition of organic materials including culls by microorganisms under controlled conditions. Each compost windrow or pile shall be marked with an identification number. Temperature readings of each windrow or pile shall be taken and recorded daily at a maximum of 50-foot intervals along each windrow. Compost windrows or piles shall reach temperatures of 130 degrees Fahrenheit or higher for a minimum of fifteen (15) separate daily readings to ensure destruction of late blight or other plant pathogens. Written records of the temperature readings shall be maintained for a period of one year and made available to the Department upon request to the compost operator; and

2.3.2.3.1.3. Inspections of the composting operation and records will be performed by the Department at regular intervals.

2.3.2.3.2. Ensiling;

2.3.2.3.3. Processing, such as for starch;

2.3.2.3.4. Burying, if lawful under applicable statutes, rules, or ordinances;

2.3.2.3.5. Utilizing for livestock feed; or

2.3.2.3.6. Treating pursuant to label directions with a pesticide effective for the destruction of volunteer potato plants.

2.4. Producer Reports

Any person who plants imported seed potatoes in the San Luis Valley shall report to the Commissioner annually, not later than June 1, the location (section, township and range) where such seed potatoes were planted and not later than October 1, as to whether late blight did or did not appear after planting.

Part 3. RULES PERTAINING TO THE QUARANTINE FOR LATE BLIGHT

3.1. Reinspection

3.1.1. Any person who receives imported seed potatoes shall notify the Department whenever a load of imported seed potatoes arrives. This notification may be accomplished by phoning the Monte Vista or Lakewood, Colorado office of the Department.

3.1.2. Imported seed potatoes shall not be unloaded until authorized by the Commissioner.

3.1.3. The Commissioner shall inspect the certificates for compliance with the provisions of the quarantine.

3.1.4. Loads which do not comply with the provisions of the quarantine shall be sealed by the Commissioner.

3.1.5. The Commissioner shall take random samples and route the samples for testing as required by the quarantine.

3.1.6. The Commissioner shall insure that loads pending test results are held in a bin or a truck at the site of reinspection, as required by the quarantine.

3.1.7. After reinspection, the Commissioner shall document the presence or absence of visible late blight and the results of testing, if any.

3.2. Investigations

The Division of Plant Industry of the Department shall conduct investigations of all alleged violations of the quarantine and these rules.

3.3. Costs

3.3.1. The fees for reinspection shall be on file at the offices of the Colorado Department of Agriculture at Monte Vista and Lakewood, Colorado. These fees shall be applicable when such reinspection occurs during normal business hours, 0800-1700 hours, Monday through Friday, excluding state recognized holidays.

3.3.2. In the event a person requests reinspection outside of normal business hours, that person shall pay all overtime and mileage for the Commissioner's inspector.

3.3.3. Except for the special cost set forth in Part 3.3.2, the cost for all reinspection shall be billed quarterly to CPAC.

3.3.4. The full cost (direct and indirect cost) incurred by the Department for activities associated with investigations conducted pursuant to Part 3.2 shall be billed to CPAC on a quarterly basis.

3.3.5. The Department shall recover all legal costs from CPAC incurred as a result of promulgating, implementing, and enforcing the quarantine and these rules at the rate charged by the Department of Law to the Department for legal services. CPAC shall be billed quarterly for any such legal costs.

Part 4. STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE

4.1. July 31, 1996 – Effective September 30, 1996

This quarantine is imposed pursuant to the Pest Control Act, § 35-4-110, C.R.S. (1995) and HB 96-1018.

The Commissioner of Agriculture finds as follows:[1]

1. Throughout most of the year, Colorado ranks second in the nation in number of shipments of fresh-pack potatoes. The San Luis Valley of the state has approximately 77,000 acres devoted to the production of potatoes, producing 23,808,000 cwt (1,190,400 tons) of potatoes with a market value of $132,134,000.

2. The potato industry is the number one agricultural industry in the San Luis Valley.

3. Late blight, *Phytophthora infestans,* is a fungus that is among the most devastating of all plant diseases. All portions of the plant are susceptible. Late blight is commonly recognized as the Irish potato famine fungus.

4. The San Luis Valley is free of late blight.

5. Late blight is epidemic in North America and no other potato production area outside of Colorado is free of late blight.

6. Late blight spores are dramatically explosive and the subsequent disease can destroy whole fields of plants in a remarkably short time. Under favorable conditions, a potato field that had mild and scattered lesions in one week can be nearly destroyed the next week.

7. An exact measure of the actual economic damage from late blight in areas of similar conditions of climate and natural habitat is not yet available, but the cost of protecting a potato field or treating an infected potato field with fungicide throughout a growing season is $200 to $250 per acre.

8. Late blight kills the foliage of the potato plant and the spores find their way into the soil and cause rot in the plant tuber. The spores may be present in fresh potatoes or, after harvesting, in potatoes in storage.

9. Importation of seed potatoes infected with late blight would likely result in the introduction of late blight to the potato crops in the San Luis Valley.

10. Introduction of late blight to the potato crops in the San Luis Valley would cause irreparable economic injury to the potato producers in the San Luis Valley.

A quarantine is thus declared against the importation of seed potatoes into the San Luis Valley, unless such seed potatoes are certified and inspected as late blight free.

[1]Sources for this information are: “Colorado Potato Situation and Outlook Report” and “Potato Late Blight Management Plan for Colorado,” Dr. Richard T. Zink, Extension Potato Specialist, Colorado State University; “Re-emergence of the Irish Potato Famine Fungus,” W. E. Fry and S. B. Goodwin, Plant Pathology Department, Cornell University; “Colorado Agricultural Statistics 1995 Annual Report,” Colorado Agricultural Statistics Service.

Rules Pertaining to the Quarantine for Late Blight Statement of Basis and Purpose

The rules are adopted pursuant to the Pest Control Act, § 35-4-110 and 116, C.R.S. (1995) and HB 96-1018.

The purposes of these rules are to enforce the provisions of the quarantine for late blight, to recover the actual costs to offset the cash funds expended for services performed by the Commissioner in imposing the quarantine and to specify how such actual costs shall be recovered.

4.2. May 29, 1997 – Effective July 30, 1997

This amendment to the quarantine is made pursuant to the Pest Control Act, § 35-4-110, C.R.S. (1995 and 1996 Supp.).

Section 4.00 concerning producer reports is amended to make the reports received by the Commissioner more complete and useful. Requiring reporting of the location where imported seed potatoes are planted will facilitate detection of late blight should it occur in fields planted with imported seed potatoes.

4.3. April 8, 1999 – Effective May 30, 1999

The amendments to the quarantine are adopted pursuant to the Pest Control Act,

§ 35-4-110, C.R.S. (1998).

The purpose of these amendments is to enforce the provisions of the quarantine for late blight by further defining cull management to decrease any opportunity for late blight spore transmission.

4.4. April 16, 2009 – Effective May 30, 2009

Statutory Authority

The amendments to the quarantine and rules are adopted pursuant to the Pest Control Act, § 35-4-110, C.R.S. (2008).

The purpose of these amendments is to enforce the provisions of the quarantine for late blight by:

1) restricting the timeframe to June 1 through September 10 when cull potatoes must be tarped or covered when being transported;

2) clarifying that cull potatoes must be tarped or covered as opposed to using other methods to prevent potatoes or spores from potatoes from escaping when being transported; and

3) requiring all potatoes being imported into the San Luis Valley be tarped or covered between June 1 and September 10 to prevent spores or potatoes from escaping when being transported.

4) Non-substantive typographical or numbering errors are corrected to clarify the rule and remove duplicate language and definitions.

The factual and policy issues encountered in the proposal of this amendment to the quarantine are as follows:

1) The critical time period when late blight can be transferred from potatoes being transported to the current potato crop is during the growing season. The growing season for potatoes in the San Luis Valley is June 1 through September 10. Potatoes being transported outside of this time frame would have minimal or no opportunity to infect the current crop with late blight, so restrictions are not needed outside of this time.

2) The current quarantine provides several methods to prevent potatoes from falling off trucks or spores from being blown off the truck during transport. Some of these methods such as "loading the truck to prevent this" are ambiguous and difficult to enforce. This change will make the quarantine specific so that the potatoes must be tarped or covered to meet the requirements.

3) Potatoes being imported into the San Luis Valley pose a threat of infecting the potato crop with late blight. This could be done by infected potatoes falling off the truck or spores escaping from the truck. To prevent this, trucks carrying imported potatoes must be covered or tarped. The only period when late blight could be transferred from potatoes being transported is during the growing

season when potato plants are in the field. Therefore the restriction only needs to be in place between June 1 and September 10.

The purpose of these amendments is to enforce the rules pertaining to the quarantine for late blight:

1) correcting the contact information of the Department for notifications and when requesting reinspection.

The factual and policy issues encountered in the proposal of this amendment to the rules pertaining to the quarantine for late blight are as follows:

1) The phone numbers for the Department have changed. In addition, the Fruit and Vegetable Inspection Service within the Department is performing reinspections. This will allow the person to call either office.

4.50. November 12, 2013 – Effective December 30, 2013

Statutory Authority

The amendments to the quarantine are adopted pursuant to the Pest Control Act, § 35-3-110, C.R.S. (2013).

The purpose of these amendments is to enforce the provisions of the quarantine for late blight by:

1) Adding a requirement in 2.00 B that both a North American Plant Health Certificate accompany any seed potatoes imported into the San Luis Valley to document that field inspections were performed and that the lot is free from late blight.

2) Adding to 2.00 C the authority to deny unloading of any load of seed potatoes into the San Luis Valley if either the North American Plant Health Certificate or the laboratory test results indicate that late blight was present during growing, storage or loading of the load.

3) Adding to 2.00 D the authority to deny unloading of any load of seed potatoes into the San Luis Valley if either the North American Plant Health Certificate or the laboratory test results does not accompany the load.

4) Adding to 2.00 E the requirement to reinspect any load if the North American Plan Health Certificates or the laboratory test results indicate that no late blight was present during the growing, loading, or testing of the load.

5) Changing the interval at which CDA will bill CPAC to reflect what is currently being done.

The factual and policy issues encountered in the proposal of this amendment to the quarantine are as follows:

1) In some instances a field inspection report does not represent the complete field inspection information on the lot. This is the case when more than one field is aggregated into one lot. The North American Plant Health Certificate should provide the disease findings of all field inspections for each lot.

2) The North American Plant Health Certificate had not been developed at the time the Late Blight Quarantine was initially adopted in 1995, therefore it could not be required at that time. In addition, the recently implemented Seed Potato Act and associated rules requires imported seed into Colorado to have a North American Plant Health Certificate. Therefore requiring this

document places no further burden on the producer, as they must have this document for Seed Potato Act compliance.

3) The Department has been billing CPAC on a quarterly basis for past several years. Quarterly billing rather than monthly billing is more efficient for both CDA and CPAC.

4.6. Adopted November 8, 2017 – Effective December 30, 2017

Statutory Authority

The amendments to the quarantine are adopted pursuant to the Pest Control Act, § 35-4-110,(1), (2) and (3), C.R.S.

The purpose of these amendments is to enforce the provisions of the quarantine for late blight by:

1. Clarifying the laboratory test required in 2.1.2 for incoming seed potatoes is a 21-day bioassay using at least 400 tubers. And clarifying that small lots of seed potatoes still need the late blight testing as required in Part 2.1.2 but can be less than 400 tubers as long as it is representative of the lot and a minimum of 5 tubers.

2. Clarifying the laboratory test required in 2.1.2 for incoming nuclear seed potatoes is a 21-day bioassay but the sample size may be smaller than 400 tubers for small lots but must be at least 5 tubers.

3. Update numbering system to make this Rule consistent with other Department Rules.

The factual and policy issues encountered in the proposal of this amendment to the quarantine are as follows:

1. The quarantine is currently nonspecific with regard to the required laboratory test for late blight and also the number of tubers that must be tested. New laboratory testing techniques have been developed since the late blight Quarantine became effective in 1996, but after talking with authorities in the field such as Amy Chartkowski at CSU it was determined that the 21-day bioassay is still the best testing procedure for late blight. So we felt like this needed to be specified to meet the requirements of the quarantine. Also it must be clear how many tubers, at a minimum, must be tested.

2. In small lots of seed potatoes, which are typically nuclear stock, 400 tubers may be all or a substantial portion of the lot. The quarantine needs to allow for fewer tubers to be tested but still allow for the test to be representative of the lot to protect against late blight. 5 tubers is the minimum that would be representative. Also, it has been decided that nuclear stock no older than mini-tubers that originate within Colorado from the labs that are already part of the potato certification program pose no threat of late blight and should be allowed to send a sample size of no fewer than 5 tubers to the Colorado Potato Certification Service Disease Laboratory for late blight testing. Nuclear seed stock of any size that originates outside of Colorado must have the late blight testing as required in 2.1.2 prior to entering the San Luis Valley, however the number of tubers tested may be less than the 400 tubers as long as it is representative of the lot and no less than 5 tubers.

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Tracking number: 2017-00431

Opinion of the Attorney General rendered in connection with the rules adopted by the

Commissioner of Agriculture

on 11/08/2017

8 CCR 1203-13

QUARANTINE FOR LATE BLIGHT

The above-referenced rules were submitted to this office on 11/17/2017 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.

November 21, 2017 14:31:10

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Agriculture

Agency

State Board of Stock Inspection Commissioners

CCR number

8 CCR 1205-4

Rule title

8 CCR 1205-4 RULES PERTAINING TO THE FEEDLOT CERTIFICATION ACT 1 - eff 12/30/2017

Effective date

12/30/2017

DEPARTMENT OF AGRICULTURE

State Board of Stock Inspection Commissioners

RULES PERTAINING TO THE FEEDLOT CERTIFICATION ACT

8 CCR 1205-4

Part 3. Fees

3.1. The fee for application and annual renewal of certification shall be $1000.00 per year, or such lesser sum as the Board may direct.

Part 10. Statement of Basis, Specific Statutory Authority and Purpose

10.1. Adopted July 8, 1998 – Effective August 30, 1998

These rules are adopted pursuant to § 35-53.5-103(1), HB 98-1101.

The purposes of these rules are to: establish definitions for relevant terminology; define requirements for certification; set fees to fund all direct and indirect costs of the administration and enforcement; define methods for separation of cattle; set standards for inspections; establish recordkeeping requirements; define standards for movement of cattle from a certified feedlot; and establish standards and procedures for renewal of certifications and disciplinary actions.

10.2. Adopted December 13, 2016- Effective January 30, 2017

Statutory Authority

The statutory authority for the changes to this rule is found at § 35-53.5-103(1)(a) through (f), C.R.S.

Purpose of These Rules

The purposes of the changes to this rule are to clarify terminology; remove redundant or unnecessary language and terminology; make the rule more readable and user-friendly where any confusion previously existed; move the statement of basis, specific statutory authority and purpose to Part 10; and to update the rule to reflect changes to Board policies and practices related to the Feedlot Certification Act in conformity with the Departments Regulatory Review Process.

Factual Basis and Policy Issues

During its review the Board encountered the following factual issues. First, between the date of the last rule-making and the date of this rule-making, the Board has moved its physical office to Broomfield to be part of the Colorado Department of Agriculture's main campus. As such, the Board changed references where the previous rule had used "Denver Office" to "Broomfield Office." In making those changes, the Board recognized that the term "Denver Office" had formerly been used in a way that made it appear as though the office itself was the regulatory authority. In those places, the Board changed "Denver Office" to "the Board," rather than "Broomfield Office."

Second, throughout the rule, the Board cleaned up statutory citations, removed or changed mis-leading uses of "must" and "shall," and brought clarity to the variety of terms used throughout the rule when referencing movement certifications, condensing them all into one phrase, "Direct to Slaughter Movement Permits," which term the Board then defined. The Board also added language to Part 5 to specify that

audits and inspections will occur quarterly rather than “on a routine basis,” providing further clarity for those holding feedlot certifications.

Finally, where sentences or ideas lacked clarity, the Board re-worked the sentences to make them more clear and precise.

10.3. Adopted November 16, 2017 – Effective December 30, 2017

Statutory Authority

These rules are adopted pursuant to § 35-53.5-103(1)(a)

Purpose of these Rules

The purpose of this rule change is to remove language from the rule regarding per-head, direct-to-slaughter fees. The current language conflicts with statutory provisions that are codified within the Act itself.

Factual and Policy Issues

The Office of Legislative Legal Services alerted the State Board of Stock Inspection Commissioners of a potential conflict between language within the rule regarding the direct-to-slaughter fees and language that is codified within the Feedlot Certification Act. Upon review of the rule, the Board determined that language adopted during the initial formation of this rule set had mis-quoted the statute and was confusing to the regulated community. The Board further determined that setting these fees in rule was redundant to the statute and, therefore, unnecessary. The Board decided to remove the language that was dissimilar to the statute and to rely instead upon the statute itself while maintaining Rule 3.1 regarding the application and annual renewal fees for certification.

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Office of the Attorney General

Tracking number: 2017-00492

Opinion of the Attorney General rendered in connection with the rules adopted by the

State Board of Stock Inspection Commissioners

on 11/16/2017

8 CCR 1205-4

RULES PERTAINING TO THE FEEDLOT CERTIFICATION ACT

The above-referenced rules were submitted to this office on 11/16/2017 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.

November 21, 2017 14:34:01

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Public Safety

Agency

Colorado State Patrol

CCR number

8 CCR 1507-55

Rule title

8 CCR 1507-55 Commercial Vehicle VIN Inspection Pilot Program 1 - eff 12/30/2017

Effective date

12/30/2017

DEPARTMENT OF PUBLIC SAFETY
DIVISION OF STATE PATROL

RULES AND REGULATIONS CONCERNING THE COLORADO STATE PATROL PILOT COMMERCIAL VEHICLE VIN INSPECTION PROGRAM

STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE

§42-1-232(2), CRS, directs the Chief of the Colorado State Patrol (CSP) to design and enact a pilot program providing opportunities for qualified Transportation Associations or Organizations to apply for and receive authority to employ inspectors to verify commercial vehicle information, up to and including verification of vehicle identification numbers (VINs). §42-1-232(7), CRS, gives the Chief of the CSP authority to promulgate rules reasonably necessary to implement this pilot program, including rules necessary to review, approve, deny, suspend, or cancel any application or permit issued by the CSP as a result of the pilot program.

These rules provide information, definitions relevant to the pilot program, clarify minimum eligibility requirements of applicants and Transportation Associations or Organizations, and outline the authority of the CSP to not only accept and review applications and ongoing permit program compliance.

The General Assembly has declared that the legal, accurate, and efficient verification of commercial vehicle VINs and other related identifying information is a matter of statewide concern. The General Assembly has further found that the establishment of this pilot program benefits the preservation of the public peace, health and safety. For these reasons, it is necessary that the proposed rules be adopted.

_____ _____

Colonel Scott Hernandez — Date of Adoption
Chief, Colorado State Patrol

DEPARTMENT OF PUBLIC SAFETY
DIVISION OF STATE PATROL

RULES AND REGULATIONS CONCERNING THE COLORADO STATE PATROL PILOT COMMERCIAL VEHICLE VIN INSPECTION PROGRAM

I. AUTHORITY TO ADOPT RULES

A. The Chief of the Colorado State Patrol (CSP) is authorized by the provisions of §42-1-232(7), CRS, to promulgate rules necessary to implement the pilot commercial vehicle VIN inspection program described within §42-1-232(2), CRS.

II. APPLICABILITY

A. These rules and regulations shall apply to all individuals, corporations, Colorado government or governmental subdivisions or agencies or other legal entities engaged in the verification of commercial vehicle information that operate as Transportation Associations, Transportation Organizations, or Employee Verifiers, as defined by these rules.

III. GENERAL DEFINITIONS

A. The following definitions are applicable unless otherwise specified:

1. Civilian VIN Training: A class provided by the CSP to train individuals on how to perform and document VIN inspections. A certificate is provided to individuals upon successful completion of this course.

2. Commercial Vehicle: The definition of commercial vehicle will be as it is set forth within §42-4-235 (1) (a), CRS.

3. Commercial Vehicle VIN Inspection Permit (CVVP): A permit issued by the Chief of the CSP or his or her delegate to a Transportation Association/Transportation Organization to employ and manage Employee Verifiers approved to verify commercial vehicle information, including VINs, for a statutorily set inspection fee.

4. Criminal History Search: A service provided by the Colorado Bureau of Investigation (CBI) that provides an individual's Colorado criminal history upon request.

5. CVSA Certified Enforcement Official: CSP enforcement official who is certified by the Federal Motor Carrier Safety Administration (FMCSA) pursuant to 49 CFR 385, Subpart C, to perform compliance reviews and safety audits.

6. Employee Verifier: An employee or contract employee of a permitted Transportation Association/Transportation Organization (TA/TO) approved by the Chief of the CSP or his or her delegate to complete commercial vehicle verifications, including VINs.

7. Employee Verifier Permit (EVP): A permit issued by the Chief of the CSP or his or her delegate to a TA/TO holding a CVVP for purposes of employing a specific individual to complete commercial vehicle verifications, including VIN inspections. Multiple EVPs may be issued to different TA/TO's for the same Employee Verifier where the Employee Verifier is employed by multiple TA/TO's for the purposes of performing commercial vehicle verifications.

8. Enforcement Official: The definition of enforcement official will be as it set forth in §§ 16-2.5-101, 16-2.5-115, and 16-2.5-143 and also as set forth in 42-20-103 (2), CRS.

9. Pilot Program Compliance Review: An examination of the records and/or the interviewing of VIN Pilot Permit Program participants by a CSP CVSA Certified Enforcement Official. Examination of any documents or interviews will be limited to those activities reasonably related to participation in the VIN Pilot Permit Program.

10. Transportation Association/Transportation Organization (TA/TO): A Colorado domiciled legal business entity and membership organization registered and in good standing with the Colorado Secretary of State that operates only within the state of Colorado focusing on transportation issues, regulations and highway safety and/or whose membership consists of legal entities primarily engaged in the operation of commercial vehicles within this state.

11. Vehicle Identification Number (VIN): Means any identifying number, serial number, engine number, or other identifying number or mark as is set forth in §42-5-101 (11), CRS.

IV. AUTHORITY TO REGULATE AND INSPECT

A. §42-1-232 (7), CRS, gives the Chief of the CSP the authority to promulgate rules necessary to implement the pilot VIN program created by §42-1-232 (2), CRS. This authority extends to and includes:

1. Establishing application procedures and the development of required forms;

2. Establishing procedures related to the review and cancellation of permits; and

3. Establishing procedures for summary suspension of permits.

B. Delegation of any authority held by the Chief of the CSP relevant to the VIN Pilot Permit Program will occur in conformity with CSP policies.

C. Authority to inspect records

1. Authorized enforcement officials shall, at all times, have the authority to inspect all records relevant to activities regulated by these rules and arising out of the participation of either a TA/TO or Employee Verifier in the Pilot VIN Inspection Permit Program. Relevant records subject to inspection shall include:

   i. Copies of all commercial vehicle VIN verifications completed by Employee Verifiers of a TA/TO; and

   ii. Copies of all documentation relevant to vehicle verification activities and background information for each Employee Verifier employed or formerly employed by the TA/TO during the period the TA/TO held a valid CVVP.

   iii. Relevant records will not include any records related to the salary or benefits of Employee Verifiers employed by a TA/TO.

2. The CSP shall have the exclusive enforcement authority to conduct Pilot Program Compliance Reviews. CSP Enforcement Officials who are certified by the FMCSA pursuant to 49 CFR 385, Subpart C, to perform compliance reviews and safety audits upon motor carriers operating commercial vehicles within the state of Colorado, shall also be authorized to perform Pilot Program Compliance Reviews upon TA/TOs and Employee Verifiers for which CVVPs or EVPs have been issued.

   i. All CVVPs and EVPs issued to TA/TOs will be reviewed annually to assess program compliance.

   ii. Where appropriate, the CSP will complete additional reviews assessing the compliance of a TA/TO or an Employee Verifier with the Pilot VIN Verification Program. Additional reviews may be necessary when:

      a. The CSP receives complaints about a TA/TO or the Employee Verifiers of a TA/TO that raise concerns about compliance with statute or these rules; or

      b. A TA/TO or an Employee Verifier appeals a decision to deny an application for an EVP or a decision cancelling a CVVP or an EVP and a review of the records relevant to the decision to deny or cancel is

necessary to determine if the decision of the Chief of the CSP or his or her designee should be reevaluated.

V. ELIGIBILITY AND PERMIT APPLICATION STANDARDS

A. Minimum Eligibility Requirements for TA/TOs applying for a CVVP

1. To be eligible to receive a CVVP, a TA/TO must:

   i. Satisfy the definition of a TA/TO as set forth by these rules;

   ii. Furnish evidence of a savings account or deposit in a certificate of deposit meeting the requirements of §11-35-101, CRS, or a surety bond that holds harmless any person who suffers loss or damage arising from the issuance of a certificate of title that included verification done by the potential CVVP holder and is in the amount of at least $10,000;

   iii. Employ verifiers who demonstrate knowledge of the process and standards related to vehicle information verification, including the VIN verification process;

   iv. Employ verifiers who have not been convicted of violating Article 4 of Title 18, CRS, within ten years prior to the submission of any application;

   v. Agree to submit the name, background, experience, location of operation, contact information and any other information required by the Chief of the CSP or his or her designee for each Employee Verifier;

   vi. Agree to use only those Employee Verifiers for which they have received an EVP for from the Chief of the CSP or his or her designee to verify commercial vehicle information, including VINs; and

   vii. Submit a complete CVVP application as required by the Chief of the CSP or his or her designee. Incomplete applications will be returned to the submitting applicant.

2. To be eligible to receive an EVP for an Employee Verifier to perform commercial vehicle information verifications:

   i. The TA/TO submitting the EVP application must have a valid CVVP;

   ii. The TA/TO must include in the EVP application the name, background, experience, location of operation, contact information and any other information required by the Chief of the CSP or his or her designee for the Employee Verifier identified in the EVP application; and

iii. The TA/TO must obtain a Criminal History Search from CBI for the Employee Verifier identified in the EVP. This Criminal History Search must confirm Employee Verifier identified in the EVP application has not been convicted of violating Article 4 of Title 18, CRS, within the ten years preceding submission of the EVP application. A printed copy of these search results, dated within 30 days of the EVP application submission, must be included with the EVP application.

iv. The Employee Verifier identified in the EVP application must complete a signed declaration stating that he or she has not been convicted of violations of Article 4 of Title 18, CRS, within the past ten years prior to the EVP application submission. An original copy of this signed declaration must be included with the EVP Application.

v. The proposed Employee Verifier must have successfully completed the CSP Civilian VIN Verification training prior to issuing the EVP to the TA/TO.

a. In the event a TA/TO submits an EVP application for an Employee Verifier prior to that Employee Verifier successfully completing the CSP Civilian VIN Verification training, an otherwise approved EVP application will remain in a "pending" status.

1. Upon confirmation from the CSP that an Employee Verifier identified in a pending EVP application has successfully completed the CSP Civilian VIN Training, the EVP will be issued to the TA/TO.
2. A TA/TO shall not allow an Employee Verifier to verify commercial vehicle information on their behalf until the EVP is formally issued.

3. Upon confirmation from the CSP that an Employee Verifier identified in a pending EVP application has failed to successfully complete the CSP Civilian VIN Training, the EVP will be denied and written notice of the denial will be sent to the TA/TO.

VI. CVVP APPROVAL, CONDITIONS, DENIAL, SUMMARY SUSPENSION, CANCELLATION AND APPEAL

A. Approval of all CVVP applications will be in writing from the CSP Chief or his or her designee. Approval of all CVVP applications will include a copy of the CVVP issued to the TA/TO, signed by the Chief of the CSP or his or her designee.

B. Conditions applicable to all approved CVVPs:

1. A CVVP shall be valid for a period of no more than 24 months, or the duration of the VIN Pilot Program authorized by §42-1-232 (2), CRS, whichever expires sooner, contingent upon:

    i. Compliance with §42-1-232 (4)-(6), CRS;

    ii. Compliance with these rules;

    iii. Satisfactory completion of the mandatory annual review performed by the CSP; and

    iv. Satisfactory completion of any compliance review conducted by a CSP CVSA Certified Enforcement Official, as may be applicable.

2. A CVVP must:

    i. Be available upon demand for inspection by the CSP at the office of the TA/TO during regular business hours.

3. A CVVP:

    i. Is not transferrable;

    ii. Does not affect the right of any lawful authority to check for valid state-issued ID and employer-issued operating credentials of an Employee Verifier of a TA/TO; and

    iii. Does not affect the right of any lawful authority to confirm with the Chief of the CSP or his or her designee that a TA/TO has a valid CVVP and/or EVP.

4. The CSP Chief or his or her designee reserve the right to attach special conditions to any CVVP where it is determined that it is necessary or advisable to do so.

C. Denial of CVVP

The Chief of the CSP or his or her designee may deny a CVVP application in writing when:

1. The application and/or the required supporting documentation is incomplete or incorrect;

2. The TA/TO fails to meet the definition of a TA/TO as established within these rules;

3. The CSP cannot verify that a TA/TO has a savings account or certificate of deposit meeting the requirements of §11-35-101, CRS, or a surety bond, each satisfying the monetary amounts established by §42-1-232 (3) (c), CRS.

4. The CVVP application submitted is determined to contain or assert misrepresentations;

5. The TA/TO does not agree to maintain and provide upon request the records required by these rules;

6. It is determined that the TA/TO previously employed or presently employs an Employee Verifier absent either a CVVP or EVP issued by the Chief of the CSP or his or her designee;

7. It is determined that the TA/TO previously employed or presently employs an Employee Verifier convicted of offenses under Article 4 of Title 18, CRS, and that conviction of these offenses is within 10 years prior to submission of the CVVP application;

8. It is determined that the TA/TO is or has been previously determined incompetent as a consequence of failing to adequately verify commercial vehicle information, including VINs, as a vehicle-related entity; or

9. It is determined that the TA/TO previously misused a CVVP, or the authority provided thereby, or has otherwise operated in a manner inconsistent with applicable statutes or these rules.

D. Summary Suspension of a CVVP

A CVVP may be summarily suspended for up to 60 days pending a cancellation hearing.

1. Summary suspension of a CVVP may occur where the Chief of the CSP or his or her designee determines that irreparable harm may occur if the TA/TO holding the CVVP continues to verify commercial vehicle information, including VINs, as a vehicle-related entity.

2. Notice of a summary suspension of a CVVP will be provided in writing and in accordance with §24-4-104, CRS.

3. The TA/TO may appeal the summary suspension in writing and in a manner consistent with the appeal of the cancellation of a CVVP, set forth within these rules.

E. Cancellation of a CVVP

A CVVP may be cancelled by the CSP when:

1. A TA/TO no longer satisfies the definition of a TA/TO established within these rules.

2. A TA/TO fails to comply with §42-1-232, CRS, or these rules.

3. A TA/TO is discovered to have asserted misrepresentations in their CVVP application.

4. A TA/TO is discovered and determined to have failed to maintain copies of all documentation related to participation in the Pilot Vin Verification Program, including:

    i. Copies of all commercial vehicle VIN inspections completed;

    ii. All receipts or invoices issued as a result of commercial vehicle VIN inspections completed; and

    iii. All related documents for Employee Verifiers currently or previously employed by the TA/TO for an active CVVP period plus six (6) months.

5. A TA/TO fails to provide sufficient, written notice to the Chief of the CSP or his or her designee of the separation of employment of an approved Employee Verifier for which an EVP has been issued within seven (7) says of the date of separation.

    i. When the separation of employment involves employee misconduct directly related to the performance of commercial vehicle VIN inspections, the TA/TO must include in their written notice to the CSP a statement identifying this misconduct. Failure to include this information will result in the written notice being determined insufficient by the CSP.

6. When after 60 days and an opportunity to appeal the decision of the CSP Chief and his or her designee, the decision to summarily suspend a CVVP is upheld.

7. The cancellation of a CVVP held by a TA/TO will result in the subsequent cancellation of all EVPs also held by the same TA/TO.

F. Appeal of CVVP Application Denial, Summary Suspension or Cancellation

1. Within 30 days of receiving written notice from the Chief of the CSP or his or her designee denying, summarily suspending, or cancelling a CVVP, a TA/TO may request a hearing. A request for a CVVP hearing from a TA/TO must:

    i. Be in writing;

    ii. Be addressed to the Chief of the CSP or his or her designee; and

    iii. Must explain the error that the TA/TO believes the CSP committed in denying the CVVP application or in summarily suspending or cancelling the CVVP.

2. The CSP Chief or his or her designee will hold the hearing.

    i. The scope of the hearing will be limited to whether the TA/TO is eligible to participate as a CVVP holder.

        a. Where the appeal involves the cancellation of an existing CVVP, the scope of the hearing will include discussion of the TA/TO's compliance with these rules.

    ii. The CSP Chief or his or her designee will issue a written decision within 20 business days of the completed hearing

        a. If the CSP Chief or his or her designee finds that evidence of noncompliance or ineligibility is sufficient to sustain the CVVP denial, summary suspension, or cancellation, the prior decision to deny, summarily suspend or cancel the CVVP will be sustained.

        b. If the CSP Chief or his or her designee finds that evidence of ineligibility or noncompliance is not sufficient for denial, summary suspension, or cancellation of a CVVP, the denial, summary suspension, or cancellation will be immediately overturned and the CVVP application will either be approved, the summary suspension rescinded, or the CVVP reinstated.

        c. The decision of the CSP Chief or his or her designee in either case shall constitute a final agency action and is subject to judicial review as described by §24-4-106, CRS.

VII. EVP APPROVAL, CONDITIONS, DENIAL, SUMAMARY SUSPENSION, CANCELLATION AND APPEAL

A. Approval of all EVP applications will be in writing from the CSP Chief or his or her designee. Approval of all EVP applications will include a copy of the EVP issued to the TA/TO, identify the CVVP to which they are attached, and will be signed by the Chief of the CSP or his or her designee.
B. Conditions applicable to all approved EVPs:

1. An EVP shall be valid for a period of no more than 24 months, the duration of the VIN Pilot Program authorized by §42-1-232 (2), CRS, or the term of the employment of the Employee Verifier with the TA/TO, whichever expires first, contingent upon:

    i. Compliance of a TA/TO with the Employee Verifier requirements established within §42-1-232 (2)-(4), CRS;

    ii. Compliance of a TA/TO and an Employee Verifier with these rules;

    iii. Completion of the CSP Civilian VIN Training by the identified Employee Verifier; and

    iv. The absence of any conviction against the Employee Verified identified on an EVP for violations of Article 4, Title 18, CRS, within the ten years prior to the submission of the EVP application.

2. An EVP must:

    i. Be available upon demand for inspection by the CSP at the office of the TA/TO during regular business hours.

3. An EVP:

    i. Is not transferrable;

    ii. Does not affect the right of any lawful authority to check for valid state-issued ID and employer-issued operating credentials of any Employee Verifier operating as an Employee Verifier of a TA/TO;

    iii. Does not affect the right of any lawful authority to confirm with the Chief of the CSP or his or her designee that an Employee Verifier is operating pursuant to a valid EVP;

    iv. Is valid only when being used by an Employee Verifier operating on behalf of the TA/TO to which the EVP is issued.

        a. An Employee Verifier may be approved by the Chief of the CSP or his or her designee to complete commercial VIN verifications for more than one (1) TA/TO.
        b. Where an Employee Verifier is employed by more than one (1) TA/TO to complete commercial VIN verifications, each TA/TO must complete a separate EVP application.

c. Prior approval of an EVP application for an Employee Verifier employed by a TA/TO do not guarantee approval of subsequent EVP applications from other TATOs identifying the same Employee Verifier.

C. Denial of an EVP

The Chief of the CSP or his or her designee may deny an EVP application in writing when:

1. The TA/TO applying for an EVP does not have a valid CVVP;

2. The TA/TO submitting the application fails to meet the definition of a TA/TO as established by these rules;

3. The application and/or the required supporting documentation is incomplete or incorrect;

4. The Employee Verifier identified in the EVP application is not employed by the TA/TO submitting the application;

5. The Employee Verifier identified in the EVP application fails to complete the CSP Civilian VIN training.

6. The Employee Verifier identified in the EVP application is determined to have been convicted of violations of Article 4 of Title 18, CRS, within ten year prior to the date of the EVP application submission;

7. The Employee Verifier identified in the EVP application fails to complete a written declaration confirming that he or she has not been convicted of violations of Article 4 of Title 18, CRS, within ten years prior to the date of the EVP application submission or an original of this signed declaration is not included by the TA/TO in the application submission

8. The EVP application is determined to contain or assert misrepresentations;

9. The TA/TO submitting the EVP is or has previously been determined incompetent as a consequence of failing to adequately verify commercial vehicle information, including VINs, as a vehicle-related entity;

10. It is determined that the TA/TO submitting the EVP previously misused their CVVP, or the authority provided thereby, or has otherwise operated in a manner inconsistent with applicable statutes or rules;

11. It is determined that the Employer Verifier identified in the EVP application previously misused their position as an Employee Verifier of a TA/TO, or the

authority provided thereby, or has otherwise operated in a manner inconsistent with applicable statutes or these rules.

D. Summary Suspension of an EVP

An EVP may be summarily suspended for up to 60 days pending a cancellation hearing.

1. Summary suspension of an EVP may occur where the Chief of the CSP or his or her designee determines that irreparable harm may occur if either the TA/TO holding the EVP or the Employee Verifier identified by the EVP continues to verify commercial vehicle information, including VINs, as a vehicle-related entity.

2. Notice of a summary suspension of an EVP will be provided in writing to both the TA/TO and the Employee Verifier, and in accordance with §24-4-104, CRS.

3. Either the TA/TO or the Employee Verifier may appeal the summary suspension in writing and in a manner consistent with the appeal of a cancellation of an EVP by either a TA/TO or an Employee Verifier, set forth within these rules.

E. Cancellation of an EVP

An EVP may be cancelled when:

1. A TA/TO is determined to no longer hold a valid CVVP;

2. An Employee Verifier is no longer employed by the TA/TO indicated on an EVP;

3. An Employee Verifier is convicted of an offense under Article 4 of Title 18, CRS, while employed by a TA/TO;

4. It is determined that the Employee Verifier knowingly previously completed verification of commercial vehicle information, including VINs, prior to an EVP being issued to a TA/TO for the Employee Verifier;

5. It is determined that the Employee Verifier was convicted of an offense under Article 4 of Title 18, CRS, within 10 years prior to the date the EVP application was submitted by the TA/TO;

6. The Employee Verifier is determined to be incompetent for failure to adequately verify commercial vehicle information, including VINs, when employed by a vehicle-related entity, including a TA/TO, as defined by these rules.

7. The cancellation of an EVP issued to a TA/TO will not necessarily result in the subsequent cancellation of any other EVP or the CVVP issued to the TA/TO.

8. The cancellation of an EVP may result in the subsequent review of EVPs issued to other TA/TOs identifying the same Employee Verifier.

F. Appeal of Denial of EVP Application Denial, Summary Suspension or Cancellation

1. Within 30 days of receiving written notice from the Chief of the CSP or his or her designee denying, summarily suspending, or cancelling an EVP, a TA/TO or the Employee Verifier identified may request a hearing. A request for a hearing by either must:

   i. Be in writing;

   ii. Be addressed to the Chief of the CSP or his or her designee; and

   iii. Must explain the error that the TA/TO or Employee Verifier believes the CSP committed in denying the EVP application or in summarily spending or cancelling the EVP.

2. The CSP Chief or his or her designee will hold the hearing.

   i. The scope of the hearing will be limited to the EVP appealed, regardless of any other EVPs held by or applied for by a TA/TO or that identify the Employee Verifier.

      a. Where the appeal involves the cancellation of an existing EVP, the scope of the hearing will include discussion of the Employee Verifier's or the TA/TO's compliance with these rules, as each may be relevant.

   ii. The CSP Chief or his or her designee will issue a written decision within 20 business days of the completed hearing.

      a. If the CSP Chief or his or her designee finds that evidence of noncompliance or ineligibility is sufficient to sustain the EVP denial, summary suspension, or cancellation, the prior decision to deny, summarily suspend or cancel the EVP will be sustained.

      b. If the CSP Chief or his or her designee finds that evidence of ineligibility or noncompliance is not sufficient for denial, summary suspension, or cancellation of an EVP, the denial, summary suspension, or cancellation will be immediately overturned, resulting in the approval of the EVP application, cancellation of the summary suspension, or the reinstatement of the cancelled EVP.

c. The decision of the CSP Chief or his or her designee in either case shall constitute a final agency action and is subject to judicial review as described by §24-4-106, CRS.

VIII. MISCELLANEOUS

A. All contact with the CSP regarding these rules or their applicability should be addressed to the Chief of the CSP or his or her delegate at

Colorado State Patrol
Criminal Investigations Branch
Investigative Services Section
15055 S. Golden Road
Golden, CO 80401
303-273-1771
303-273-1822

B. All publications and rules adopted and incorporated by reference in these regulations are on file and available for public inspection by contacting the officer in charge of the CSP [Section] at [Address}, Golden, CO 80401 or online at the CDPS website at:

HTTPS://WW.COLORADO.GOV/PACIFIC/PUBLICSAFETY/RULES-AND-REGULATIONS-6.

Materials incorporated by reference may be examined at any sate publication depository library. This rule does not include later amendments to or additions of any materials incorporated by reference.

CYNTHIA H. COFFMAN
Attorney General

MELANIE J. SNYDER
Chief Deputy Attorney General

LEORA JOSEPH
Chief of Staff

FREDERICK R. YARGER
Solicitor General

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Office of the Attorney General

Tracking number: 2017-00467

Opinion of the Attorney General rendered in connection with the rules adopted by the

Colorado State Patrol

on 11/02/2017

8 CCR 1507-55

Commercial Vehicle VIN Inspection Pilot Program

The above-referenced rules were submitted to this office on 11/03/2017 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.

November 17, 2017 10:57:20

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Human Services

Agency

Income Maintenance (Volume 3)

CCR number

9 CCR 2503-6

Rule title

9 CCR 2503-6 COLORADO WORKS PROGRAM 1 - eff 01/01/2018

Effective date

01/01/2018

(**9 CCR 2503-6**)

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3.605.3 Unearned Income
For the purpose of determining eligibility for Colorado Works, the following shall be exempt from consideration as income:

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D. General Income Exemptions – Exemptions from Consideration as Income

For the purpose of determining eligibility for Colorado Works, the following shall be exempt from consideration as income herein incorporated by reference; no later amendments or editions are incorporated. Copies of these federal laws are available from the Colorado Department of Human Services, Director of the Colorado Works Division, 1575 Sherman Street, Denver, Colorado 80203, or at any State Publications Library:

1. A bona fide loan. Bona fide loans are loans, either private or commercial, which have a repayment agreement.

2. Benefits received under the Older Americans Act, Nutrition Program for the Elderly.

3. The value of supplemental food assistance received under the special food services program for children provided for in the National School Lunch Act and under the Child Nutrition Act, including benefits received from the special supplemental food program for Women, Infants and Children (WIC).

4. Home produce utilized for personal consumption.

5. Payments received under Title II of the Uniform Reconciliation Act and Real Property Acquisition Policies Act; relocation payments to a displaced homeowner toward the purchase of a replacement dwelling are considered exempt for up to six (6) months.

6. Experimental Housing Allowance Program (EHAP) payments made by HUD under Section 23 of the U.S. Housing Act.

7. Payments from Indian judgment funds and tribal funds held in trust by the Secretary of the Interior and/or distributed per capita; and the initial purchase made with such funds.

8. Distributions from a native corporation formed pursuant to the Alaska Native Claims Settlement Act (ANCSA) which are in the form of: cash payments up to an amount not to exceed $2,000 per individual per calendar year; stock; a partnership interest; or an interest in a settlement trust. Cash payments, up to $2,000, received by a recipient in one calendar year which is retained into subsequent years is excluded as income and resources; however, cash payments up to $2,000 received in the subsequent year would be excluded from income in the month(s) received, but counted as a resource if retained beyond that month(s).

9. Assistance from other agencies or organizations that are provided for items not included in the need standard or do not duplicate a component of the need standard in total.

10. Major disaster and emergency assistance provided to individuals and families, and comparable disaster assistance provided to states, local governments and disaster assistance organizations.

11. Payments received for providing foster care.

12. Payments to volunteers serving as foster grandparents, senior health aids, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and any other program under Title I (AmeriCorps VISTA) when the value of all such payments adjusted to reflect the number of hours such volunteers are serving is not equivalent to or greater than the minimum wage, and Title II and Title III of the Domestic Volunteer Services Act.

13. Training allowances or training scholarships granted by Workforce Investment Act (WIA) of 1998 or other programs to enable any individual to participate in a training program is exempt.

14. Payments received from the Youth Incentive Entitlement Pilot Projects (YIEPP), the Youth Community Conservation and Improvement Projects (YCCIP), and the Youth Employment and Training Programs (YETP) under the Youth Employment and Demonstration Project Act (YEDPA).

15. Social Security benefit payments and the accrued amount thereof paid to a person when an individual plan for self-care and/or self-support has been developed under the following conditions:
    (a) SSI permits such disregard under such developed plan for selfcare-support goal, and

    (b) assurance exists that the funds involved will not be for purposes other than those intended.

16. Payments made from the Agent Orange Settlement Fund or any fund established pursuant to the settlement in the Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.).

17. Money received from the Radiation Exposure Compensation Trust Fund, P.L. No. 101- 426 as amended by P.L. No. 101-510.

18. Reimbursement of out-of-pocket expenses.

19. Payments received by individuals because of their status as victims of Nazi persecution pursuant to P.L. No. 103-286.

20. Individual Development Accounts (IDAs).

21. Retirement savings accounts.

22. Health care savings accounts.

23. Income paid to children of Vietnam veterans who were born with spina bifida pursuant to P. L. No. 104-204.

24. Income of an applicant or participant who is attending school (student in a secondary education or undergraduate degree program) shall be considered as follows: a. Income received from a college work-study program grant shall be exempt. b. All earned income, including earned income from WIA, that is received by a dependent child who is a full-time student or a part-time student who is not a fulltime employee shall be disregarded.

25. Educational savings accounts.

26. Educational grants, loans, stipends, and/or scholarships.

27. The income and resources (including any share in resources or income jointly owned or received) of an individual receiving SSI.

28. Income tax refunds.

29. Earned Income Tax Credit (EITC).

30. Refugee resettlement funds and reception and placement money.

31. Interim Cash Payment received through the Colorado Refugee Services Program.

32. Life or disability insurance policies that may have a cash value taken.

33. The benefits provided from the Low-Income Energy Assistance Program (LEAP).

34. A child receiving subsidized adoption funds shall be excluded from the assistance unit and his or her income shall be exempt from consideration for Colorado Works eligibility and payment, unless such exclusion results in lower benefits to the family.

35. Income that is exempt shall also be exempt if received as a lump sum or excluded if designated or legally obligated for legal fees related to obtaining the lump sum payment, medical bills, funeral and burial expenses or income taxes.

36. Income tax credits when identified as exempt by the state or federal government.

37. Wages earned through subsidized employment programs including employment, apprenticeships, on-the-job training, and transitional jobs.

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CYNTHIA H. COFFMAN
Attorney General

MELANIE J. SNYDER
Chief Deputy Attorney General

LEORA JOSEPH
Chief of Staff

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Office of the Attorney General

Tracking number: 2017-00401

Opinion of the Attorney General rendered in connection with the rules adopted by the

Income Maintenance (Volume 3)

on 11/03/2017

9 CCR 2503-6

COLORADO WORKS PROGRAM

The above-referenced rules were submitted to this office on 11/07/2017 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.

November 21, 2017 14:23:47

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Human Services

Agency

Income Maintenance (Volume 3)

CCR number

9 CCR 2503-9

Rule title

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DEPARTMENT OF HUMAN SERVICES

Income Maintenance (Volume 3)

COLORADO CHILD CARE ASSISTANCE PROGRAM

9 CCR 2503-9

3.900 COLORADO CHILD CARE ASSISTANCE PROGRAM (CCCAP)

3.901 CCCAP MISSION AND APPROPRIATIONS

A. Mission

The purpose of CCCAP is to provide eligible households with access to high quality, affordable child care that supports healthy child development and school readiness while promoting household self-sufficiency and informed child care choices.

B. Appropriations

Nothing in these rules shall create a legal entitlement to child care assistance. Counties shall not be required to expend funds exceeding allocated state and federal dollars or exceeding any matching funds expended by the counties as a condition of drawing down federal and state funds.

When a county can demonstrate, through a written justification in its county CCCAP plan, that it has insufficient CCCAP allocations, a county is not required to implement a provision or provisions of rule(s) enacted under statutory provisions that are explicitly “subject to available appropriations.” The county is not required to implement that or those rules or statutory provision(s) for which it has demonstrated through its annual CCCAP plan that it has insufficient CCCAP allocations to implement, except for the entry income eligibility floor referenced in Section 3.905.1, J.

As part of its demonstration, the county shall include a list of priorities reflecting community circumstance in its county CCCAP plan that prioritizes the implementation of the rules and/or provisions of statute that are “subject to available appropriations.”

If the State Department determines the county CCCAP plan is not in compliance with these rules and/or provisions of statute, the State Department will first work with the county to address the concerns. If a resolution cannot be agreed upon, the State Department reserves the right to deny the county CCCAP plan. If the State Department denies the county CCCAP plan, the county and the state shall work together to complete a final approved county CCCAP plan that is in compliance with these rules and statute. A county may pursue an appeal of the State Department denial of the plan pursuant to Section 26-2-715(3), C.R.S.

3.902 PROGRAM FUNDING

A. The Colorado Child Care Assistance Program will be funded through annual allocations made to the counties. Nothing in these rules shall create a legal entitlement to child care assistance. Counties may use annual allocation for child care services which includes direct services and administration.

B. Each county shall be required to meet a level of county spending for the Colorado Child Care Assistance Program that is equal to the county's proportionate share of the total county funds set forth in the annual general Appropriation Act for the Colorado Child Care Assistance Program for that State fiscal year. The level of county spending shall be known as the county's maintenance of effort for the program for that State fiscal year.

3.903 DEFINITIONS

"Additional care needs" means a child who has a physical and/or mental disability and needs a higher level of care on an individualized basis than that of his/her peers at the same age; or, who is under court supervision, including a voluntary out-of-home placement prior to or subsequent to a petition review of the need for placement (PRNP), and who has additional care needs identified by an individual health care plan (IHCP), individual education plan (IEP), physician's/professional's statement, child welfare, or individualized family service plan (IFSP).

"Adult caretaker" means a person in the home who is financially contributing to the welfare of the child and is the parent, adoptive parent, step-parent, legal guardian, or person who is acting in "loco parentis" and has physical custody of the child during the period of time child care is being requested.

"Adverse action" means any action by the counties or their designee which adversely affects the Adult caretaker or Teen parent's eligibility for, or the Child Care Provider's right to services provided or authorized under the Colorado Child Care Assistance Program.

"Affidavit" means a voluntary written declaration reflecting the personal knowledge of the declarant.

"Applicant" means the adult caretaker(s) or teen parent(s) who sign(s) the application form and/or the re-determination form.

"Application" is a State-approved form that may include, but is not limited to:

A. An original application (valid for sixty (60) days), which is the first application for the Colorado Child Care Assistance Program filed by prospective program participant; or,

B. A re-determination application filed by an enrolled program participant; or,

C. Any application for some additional program benefit by an enrolled program participant.

"Application date" means the date that the county receives the signed application. Required supporting documents may be submitted up to sixty (60) days after receipt of the signed completed application.

"Application date for pre-eligibility determinations" means the date that the application is received from the Child Care Provider or Applicant by the county. Required supporting documents may be submitted up to thirty (30) days after receipt of the signed application.

"Application process" all of the following:

A. The State-approved, signed low-income child care application form completed by the Adult caretaker or Teen parent or his/her authorized representative, which includes appeal rights. Counties with Head Start programs may accept the Head Start application in lieu of the low-income child care application for those children enrolled in the Head Start program; and,

B. The required verification supporting the information declared on the application form; and,

C. As a county option, an orientation for new applicants may be required.

“Assets” include but are not limited to the following:

A. Liquid resources such as cash on hand, money in checking or savings accounts, saving certificates, stocks or bonds, lump sum payments as specified in the section titled “nonrecurring lump sum payments”.

B. Non-liquid resources such as any tangible property including, but not limited to, licensed and unlicensed automobiles and motorcycles, utility trailer, seasonal or recreational vehicles (such as any camper, motor home, boat, snowmobile, water skidoo, or airplane) and real property (such as buildings, land, and vacation homes). Primary home and automobile of the primary caretakers are excluded.

“Attestation of mental competence” means a signed statement from a Qualified Exempt Child Care Provider declaring that no one in the home where the care is provided has been determined to be insane or mentally incompetent by a court of competent jurisdiction; or specifically that the mental incompetence or insanity is not of such a degree that the individual cannot safely operate as a Qualified Exempt Child Care Provider.

"Attendance tracking system (ATS)" means the system used by adult caretakers, teen parents, or designees to access benefits and to record child attendance for the purposes of paying for authorized and provided child care.

“Authorized care” means the amount and length of time care is provided by licensed or qualified exempt child care providers to whom social/human services will authorize payment.

“Authorization start date” means the date from which payments for child care services will be paid by the county.

“Base reimbursement rate” means the regular daily reimbursement rate paid by the county to the child care provider. This does not include the increase of rates of reimbursement for high-quality early childhood programs. Base reimbursement rates do not include absences, holidays, registration fees, activity fees, and/or transportation fees in addition to their regular daily reimbursement rate.

“Basic education" means participation in high school education programs working towards a high school diploma or high school equivalency; Adult Basic Education (ABE); and/or, English as a Second Language (ESL).

“Cash assistance” means payments, vouchers, and other forms of benefits designed to meet a household’s ongoing basic needs such as food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses. Cash assistance may include supportive services to households based on the assessment completed. All state diversion payments of less than four (4) consecutive months are not cash assistance. For the purpose of child care, county diversion payments are not cash assistance.

“Child care authorization notice” means a state prescribed form given to the adult caretaker(s) Or teen parent(s) and the child care provider(s) of the adult caretaker or teen parent’s choosing which authorizes the purchase of child care and includes the listed on the child care authorization notice and will serve as notice to the adult caretaker(s) or teen parent(s), and child care provider(s) of approval or change of child care services. Colorado’s child care authorization notice(s) are vouchers for the purposes of the Colorado Child Care Assistance Program.

“CHATS” means the Child Care Automated Tracking System.

“Child Care Fiscal Agreement” means a State-approved agreement between counties or their designees and child care provider(s), which defines the maximum rate possible based on county ceiling rates and

quality rating tiers, provider rights and responsibilities, and responsibilities of the counties or their designees to the child care provider(s).

“Child care provider” means licensed individuals or businesses that provide less than twenty-four (24) hour care and are licensed or qualified exempt child care providers including child care centers, preschools, and child care homes. Qualified exempt child care providers include care provided in the child's own home, in the home of a relative, or in the home of a non-relative.

“Child Care Resource and Referral Agencies” (CCR&R) means agencies or organizations available to assist individuals in the process of choosing child care providers.

“Child care staff” means individuals who are designated by counties or their designees to administer all, or a portion of, the Colorado Child Care Assistance Program (CCCAP) and includes, but is not limited to, workers whose responsibilities are to refer children for child care assistance, determine eligibility, authorize care, process billing forms, and issue payment for child care subsidies.

“Child Welfare Child Care” means less than twenty four (24) hour child care assistance to maintain children in their own homes or in the least restrictive out-of-home care when there are no other child care options available. See rule manual Volume 7, Section 7.302, Child Welfare Child Care (12 CCR 2509-4).

“Citizen/legal resident” means a citizen of the United States, current legal resident of the United States, or a person lawfully present in the United States pursuant to Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, Public Law 104-193; Federal Register notices 62 FR 61344 and 63 FR 41657-41686. (No later amendments or editions are incorporated. Copies of this material may be inspected by contacting the Colorado Department of Human Services (CDHS), 1575 Sherman Street, Denver, Colorado; or any state publications depository library.) . Since the child is the beneficiary of child care assistance, the citizen/legal resident requirement only applies to the child who is being considered for assistance.

“Clear and convincing” means proof which results in a reasonable certainty of the truth of the ultimate fact in controversy. It is stronger than a preponderance of the evidence and is unmistakable or free from serious or substantial doubt.

“Colorado Child Care Assistance Program (CCCAP)” means a program of CDHS which provides child care subsidies to households in the following programs: Low-Income, Colorado Works, Protective Services, and Child Welfare. CDHS is responsible for the oversight and coordination of all child care funds and services.

“Colorado Works” is Colorado’s Temporary Assistance for Needy Families (TANF) program that provides public assistance to households in need. The Colorado Works program is designed to assist adult caretaker(s) or teen parent(s) in becoming self-sufficient by strengthening the economic and social stability of households.

“Colorado Works households” means members of the same Colorado Works Assistance unit/household who meet requirements of the Colorado Works program, through receipt of basic cash assistance or state diversion payments while working toward achieving self-sufficiency through eligible work activities and eventual employment where the adult caretaker(s) or teen parent(s) is included in the assistance unit, as defined in The Colorado Works Program Rules (9 CCR 2503-6).

“Collateral Contact” means a verbal or written confirmation of a household's circumstances by a person outside the household who has first-hand knowledge of the information, made either in person, electronically submitted, or by telephone.

“Confirmed abuse or neglect” means any report of an act or omission that threatens the health or welfare of a child that is found by a count, law enforcement agency, or entity authorized to investigate abuse or neglect to be supported by a preponderance of the evidence.

“Consumer Education” means information relayed to adult caretaker(s) or teen parent(s) about their child care options and other available services.

“Cooperation with Child Support Services (county option)” means applying for Child Support Services for all children who are in need of care and have an absent parent, within thirty (30) calendar-days of the completion and approval of the CCCAP application and maintaining compliance with Child Support Services case unless a good cause exemption exists. The county IV-D administrator or designee determines cooperation with Child Support Services.

“County or Counties” means the county departments of social/human services or other agency designated by the Board of County Commissioners as the agency responsible for the administration of CCCAP.

“Current immunizations” means immunization records, or a statement from a qualified medical professional showing that immunizations are current and up-to-date according to the recommended shot schedule issued by the Colorado Department of Public Health and Environment, for the child(ren) based on their current age unless there is a signed statement from the adult caretaker(s) or teen parent(s) indicating an exemption for religious or medical reasons.

“Discovery” means that a pertinent fact related to CCCAP eligibility was found to exist.

"Drop in day" means a county-determined number of days that will generate an approval and payment for care utilized outside of the standard authorization.

“Early care and education provider” means a school district or child care provider that is licensed pursuant to Part 1 of Article 6 of this Title or that participates in the Colorado preschool program pursuant to Article 28 of Title 22, C.R.S.

“Eligible activity”, for the purpose of Low Income Child Care, means the activity in which the Teen parent(s) or adult caretaker(s) are involved. This may include job search; employment; and/or education/training. For Teen parents, education/training, and teen parent education is an approved activity for all counties.

“Eligible child” means a child under the age of thirteen (13) years who needs child care services during a portion of the day, but less than twenty four (24) hours, and is physically residing with the eligible adult caretaker(s) or teen parent(s); or a child with additional care needs under the age of nineteen (19) who is physically or mentally incapable of caring for himself or herself or is under court supervision and is physically residing with the eligible adult caretaker(s) or teen parent(s). Any child served through the Colorado Works program or the low-income child care program shall be a citizen of the United States or a qualified alien.

“Employment” means holding a part-time or full-time job for which wages, salary, in-kind income or commissions are received.

“Entry income eligibility level” means the level above which an adult caretaker(s) or teen parent(s) is not eligible at original application. The level is set by each county between the base, which is at or above one hundred sixty-five percent (165%) of the federal poverty level, and the maximum ceiling, which is eighty-five percent (85%) of the Colorado state median income.

“Equivalent full-time units” mean all part-time units times a factor of .55 to be converted to full-time units. The full-time equivalent units added to the other full-time units shall be less than thirteen (13) in order to be considered part-time for parent fees.

“Exit income eligibility level” is the income level at the twelve (12) month re-determination of eligibility above which the county may deny continuing eligibility, and is based on the federal poverty levels. Each county sets their exit eligibility level, though it shall be higher than the entry income eligibility level and cannot exceed the maximum ceiling, which is eighty-five percent (85%) of the Colorado state median income. If the county-set entry income level is above one hundred eighty-five percent (185%) of the federal poverty level, the exit eligibility income level may be equal to the entry income eligibility level.

“Families experiencing homelessness” means families who lack a fixed, regular, and adequate nighttime residence and at least one of the following:

A. Children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, or camping grounds due to the lack of alternative accommodations; are living in emergency or transitional shelters;

B. Children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

C. Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and,

D. Migratory children who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in this definition A through C.

“Fingerprint-based criminal background check” means a complete set of fingerprints for anyone eighteen (18) years of age and older residing in the qualified exempt provider’s home, taken by a qualified law enforcement agency, and submitted to the Colorado Department of Human Services, Division of Early Care and Learning, for subsequent submission to the Colorado Bureau of Investigations (CBI). The individual(s) will also be required to submit a background check with the Federal Bureau of Investigation (FBI). Costs for all investigations are the responsibility of the person whose fingerprints are being submitted.

“Fraud/Fraudulent criminal act” means an adult caretaker(s), teen parent(s), or child care provider who has secured, attempted to secure, or aided or abetted another person in securing public assistance to which the adult caretaker(s) or teen parent(s) was not eligible by means of willful misrepresentation/withholding of information or intentional concealment of any essential facts. Fraud is determined as a result of any of the following:

A. Obtaining a “waiver of intentional program violation”; or,

B. An administrative disqualification hearing; or,

C. Civil or criminal action in an appropriate state or federal court.

“Funding concerns” means a determination by a county that actual or projected expenditures indicate a risk of overspending of that county’s available CCCAP allocation in a current fiscal year.

“Good cause exemption for child support” may include potential physical or emotional harm to the adult caretaker(s), teen parent(s) or child(ren); a pregnancy related to rape or incest; legal adoption or receiving pre-adoption services; or, when the county director or his/her designee has/have determined any other exemptions.

“Head Start” is a federally funded early learning program that provides comprehensive services to low-income pregnant women and households with children ages birth to five years of age through provision of education, health, nutrition, social and other services.

“High-quality early childhood program” means a program operated by a child care provider with a fiscal agreement through CCCAP; and, that is in the top three levels of the State Department's quality rating and improvement system, is accredited by a State Department-approved accrediting body, or is an Early Head Start or Head Start program that meets federal standards.

"Hold slots" means a county determined number of days when payment is allowed for unused care that is in addition to absences, holidays, and school breaks. Holding spaces are intended to hold a child's slot with a provider.

“Household” includes: all children in the home who are under eighteen (18) years of age; all children under nineteen (19) years of age who are still in high school and the responsibility of the adult caretaker(s); and the adult caretaker(s) or teen parent(s).

“In loco parentis” means a person who is assuming the parent obligations for a minor, including protecting his/her rights and/or a person who is standing in the role of the parent of a minor without having gone through the formal adoption process. Parent obligations include, but are not limited to, attending parent teacher conferences, regularly picking up and dropping children at child care, and regularly taking the child to doctor appointments.

“Incapacitated” means a physical or mental impairment which substantially reduces or precludes the adult caretaker or teen parent from providing care for his/her child(ren). Such a condition shall be documented by a physician's statement or other medical verification which establishes a causal relationship between the impairment and the ability to provide child care.

“Income eligibility” means that eligibility for child care subsidies is based on and determined by measuring the countable household income and size against eligibility guidelines

“Intentional Program Violation (IPV)” means an act committed by an adult caretaker(s) or teen parent(s) who has intentionally made a false or misleading statement or misrepresented, concealed or withheld facts for the purpose of establishing or maintaining a Colorado Child Care Assistance Program household’s eligibility to receive benefits for which they were not eligible; or has committed or intended to commit any act that constitutes a violation of the child care assistance program regulations or any state statute related to the use or receipt of CCCAP benefits for the purpose of establishing or maintaining the household’s eligibility to receive benefits.

“Involuntarily out of the home” means when an adult caretaker or teen parent is out of the home due to circumstances beyond his/her immediate control to include, but not be limited to, incarceration, resolution of immigration issues, and/or restraining orders.

“Job search” means the low-income child care eligible activity for a minimum of thirteen (13) weeks of child care in a twelve (12) month period. The twelve (12) month period begins with the first actual week of job search.

“Low-Income Program” means a child care component within CCCAP that targets households with an adult caretaker(s) or teen parent(s) who is/are in an eligible activity and who are not receiving child care assistance through Colorado Works/TANF, Child Welfare or Protective Services.

“Manual Claim” means reimbursement to the child care provider for services not automatically paid through CHATS.

“Maternity and/or paternity leave” is a temporary period of absence from the adult caretaker or teen parent’s employment, education, and/or training activity granted to expectant or new mothers and/or fathers for up to twelve (12) consecutive weeks for the birth and care of a newborn child.

“Negative licensing action” means a Final Agency Action resulting in the denial, suspension, or revocation of a license issued pursuant to the Child Care Licensing Act; or the demotion of such a license to a probationary license.

“New employment verification” means verification of employment that has begun within the last sixty (60) days. It is verified by a county form, employer letter or through collateral contact which includes a start date, hourly wage or gross salary amount, hours worked per week, pay frequency, work schedule (if non-traditional care hours are requested), and verifiable employer contact information.

“Non-traditional care hours” means weekend, evening, or overnight care.

“Overpayment” means child care assistance received by the adult caretaker(s) or teen parent(s), or monies paid to a child care provider, which they were not eligible to receive.

“Parent” means a biological, adoptive or stepparent of a child.

“Parent fee or co-payment” means the household’s contribution to the total cost of child care paid directly to the child care provider(s) prior to any state/county child care funds being expended.

“Pay stubs” means a form or statement from the employer indicating the name of the employee, the gross amount of income, mandatory and voluntary deductions from pay (i.e. FICA, insurance, etc.), net pay and pay date, along with year-to-date gross income.

“Physical custody” means that a child is living with, or in the legal custody of, the adult caretaker(s) or teen parent(s) on the days/nights they receive child care assistance.

“Post eligibility period” means ninety (90) days from the first day of the month following the re-determination month at which time the household income exceeds the exit income eligibility level set by the county. Counties have the option of extending the post eligibility period to six (6) months.

“Primary adult caretaker” means the person listed first on the application and who accepts primary responsibility for completing forms and providing required verification.

“Protective services” means children that have been placed by the county in foster home care, kinship foster home care or non-certified kinship care and have an open child welfare case.

“Prudent person principle” means allowing the child care worker the ability to exercise reasonable judgment in executing his/her responsibilities in determining CCCAP eligibility.

“Qualified exempt child care facilities” means a facility that is approved, certified, or licensed by any other state department or agency or federal government department or agency, which has standards for operation of the facility and inspects or monitors the facility; and, has been declared exempt from the child care licensing act as defined in rule manual 7, section 7.701.11 (12 CCR 2509-8).

“Qualified exempt child care provider” means a family child care home provider who is not licensed but provides care for a child(ren) from the same family; or an individual who is not licensed but provides care for a child(ren) who is related to the individual if the child’s care is funded in whole or in part with money received on the child’s behalf from the publicly funded CCCAP under rule manual Volume 7, Section 7.701.11, A, 1, b. (12 CCR 2509-8).

“Recipient” means the person receiving the benefit. For the purposes of the Colorado Child Care Assistance Program, the recipient is the child.

“Recovery” means the act of collecting monies when an adult caretaker(s), teen parent(s) or child care provider has received childcare assistance benefits for which they were not eligible, commonly known as an “over payment”.

“Re-determination (Redet)” is the process to update eligibility for CCCAP. This process is completed no earlier than every twelve (12) months which includes completion of the State-approved form, and providing the verification needed to determine continued eligibility.

“Regionally accredited institution of higher education” means a community college, college, or university which is a candidate for accreditation or is accredited by one of the following regional accrediting bodies: Middle States, Association of Colleges and Schools, New England Association of Schools and Colleges, North Central Association of Colleges and Schools, Northwest Commission on Colleges and Universities, Southern Association of Colleges and Schools, Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges.

“Relative” means a blood or adoptive relative to include, but not limited to: a brother, sister, uncle, aunt, first cousin, nephew, niece, or persons of preceding generations denoted by grand, great, great-great, or great-great-great; a stepbrother, stepsister; or, a spouse of any person included in the preceding groups even after the marriage is terminated by death or divorce.

“Risk-based audit” means audit selection based on a combination of the likelihood of an event occurring and the impact of its consequences. This may include, but not be limited to, the number, dollar amounts and complexity of transactions; the adequacy of management oversight and monitoring; previous regulatory and audit results; review of the technician's accuracy; and/or reviews for separation of duty.

“Self-employment” means earned income for a person who is responsible for all taxes and/or other required deductions from income. A self-employed person shall show that his/her taxable income, divided by the number of hours worked, equals at least the federal minimum wage.

“Slot contracts (county option)” means the purchasing of slots at a licensed child care provider for children enrolled in CCCAP in communities where quality care may not otherwise be available to county-identified target populations and areas or to incentivize or maintain quality.

“State established age bands” means the breakdown of child age ranges used when determining child care provider base reimbursement rates.

“State or local public benefit” means any grant, contract, loan, professional license, or commercial license provided by an agency of a state or local government, or by appropriated funds of a state or local government.

“Substantiated” means that the investigating party has found a preponderance of evidence to support the complaint.

“Target population” means a population whose eligibility is determined by criteria different than other child care populations, and has a priority to be served regardless of wait lists based upon appropriations. Current target populations include:

A. Households whose income is at or below 130% of the current federal poverty guidelines;

B. Teen parents;

C. Children with additional care needs;

D. Families experiencing homelessness; and,

E. Segments of population defined by county, based on local needs.

“Teen parent” means a parent under twenty-one (21) years of age who has physical custody of his/her child(ren) for the period that care is requested and is in an eligible activity such as attending junior high/middle school, high school, GED program, vocational/technical training activity, employment or job search.

“Tiered reimbursement” means a pay structure that reflects increasing rates for high-quality early childhood programs that receive CCCAP reimbursement. These increases are made in addition to the base reimbursement rate.

“Timely written notice” means that any adverse action shall be preceded by a prior notice period of fifteen (15) calendar-days. “Timely” means that written notice is provided to the household and child care provider at least by the business day following the date the action was entered into the eligibility system. The fifteen (15) calendar-day prior notice period constitutes the period during which assistance is continued and no adverse action is to be taken during this time.

"Training and post-secondary education" means educational programs including regionally accredited post-secondary training for a Bachelor's degree or less or a workforce training program such as vocational, technical, or job skills training Workforce training programs include educational activities after completing basic education.

“Transition families” means households ending their participation in the Colorado Works Program due to employment or job training, as defined in Colorado Works program rules 9 CCR 2503-6, who have verified eligibility for Low-Income Child Care Assistance.

“Units” or “unit of care” means the period of time care is billed by a child care provider and paid for a household. (These units would be full-time, part-time, full-time/part-time, or full-time/full-time.)

“Voluntarily out of the home” means circumstances where an adult caretaker or teen parent is out of the home due to his/her choice to include, but not be limited to, job search, employment, military service, vacations, and/or family emergencies.

“Wait list” means a list maintained by a county reflecting individuals who have submitted an application for the CCCAP program for whom the county is not able to enroll due to funding concerns.

“Willful misrepresentation/withholding of information” means an understatement, overstatement, or omission, whether oral or written, made by a household voluntarily or in response to oral or written questions from the department, and/or a willful failure by a household to report changes in income, if the household’s income exceeds eighty-five percent (85%) of the State median income within ten (10) days, or changes to the qualifying eligible activity within four weeks of the change.

3.904 APPLICANT RIGHTS

3.904.1 ANTI-DISCRIMINATION

Child care programs shall be administered in compliance with Title VI of the Civil Rights Act of 1964 (42 USC 2000(d)) located at http://www.fhwa.dot.gov/environment/title_vi.htm; Title II of the Americans with Disabilities Act (42 USC 12132(b)).

A. Counties or their designee shall not deny a person aid, services, or other benefits or opportunity to participate therein, solely because of age, race, color, religion, gender, national origin, political beliefs, or persons with a physical or mental disability.

B. No otherwise qualified individual with a physical or mental disability shall solely, by reason of his/her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity provided by the counties or their designee(s).

C. The county shall make services available to all eligible adult caretaker(s) and teen parents, subject to appropriations, including those with mental and physical disabilities and non-English speaking individuals, through hiring qualified staff or through purchase of necessary services.

3.904.2 CONFIDENTIALITY

The use or disclosure of information by the counties or their designee(s) concerning current or prior applicants and recipients shall be prohibited except for purposes directly connected with the activities listed below:

A. The administration of public assistance programs, Child Welfare, Head Start and Early Head Start programs, and related State Department activities.

B. Any investigation, recovery, prosecution, or criminal or civil proceeding in connection with the administration of the program.

C. The adult caretaker(s) or teen parent(s) applying for CCCAP may authorize a licensed child care provider or head start provider to assist them with the completion of a CCCAP application, including collection and organization of supporting documentation and submission of the application and supporting documents to a county. Authorization for application assistance and release of information shall be obtained on a department-approved form and included with the CCCAP application.

3.904.3 TIMELY WRITTEN NOTICE OF ADVERSE ACTION

A decision to take adverse action concerning an applicant or a child care provider for assistance payments will result in a written notice mailed to the applicant or child care provider within one (1) business day of the decision. The written notice is considered mailed when it is faxed, emailed, sent via other electronic systems, hand-delivered, or deposited with the postal service. Fifteen (15) calendar-days will follow the date of mailing the notice before adverse action is actually taken with the following exceptions, which require no prior notice:

A. When facts indicate an overpayment because of probable fraud or an intentional program violation and such facts have been verified to the extent possible.

B. When the proposed adverse action is based on a written or verbal statement from the adult caretaker(s) or teen parent(s) who states that he/she no longer wishes to receive assistance or services.

C. When the proposed adverse action is requested by another county or state department.

D. When the counties or their designee(s) have confirmed the death of a recipient or of Adult Care Taker or Teen parent.

E. The counties have the authority to terminate a fiscal agreement with any child care provider without advance notice if a child’s health or safety is endangered or if the child care provider is under a negative licensing action.

3.904.4 ADULT CARETAKER OR TEEN PARENT AND CHILD CARE PROVIDER APPEAL RIGHTS

Counties' or designee(s)' staff shall advise adult caretakers or teen parents in writing of their right to a county dispute resolution conference or state level fair hearing pursuant to Sections 3.840 and 3.850 of Income Maintenance Volume 3 (9 CCR 2503-1).

Child care providers shall be informed of their right to a county dispute resolution conference included with their copy of the child care authorization notice pursuant to Section 3.840 of Income Maintenance Volume 3 (9 CCR 2503-1).

3.905 LOW INCOME CHILD CARE

Eligible Colorado Child Care Assistance Program participants shall be an adult caretaker(s) or teen parent(s) of a child, meet program guidelines, and are low income adult caretakers or teen parents who are in an eligible activity, and need child care assistance.

3.905.1 LOW INCOME CHILD CARE ELIGIBILITY

In order to be eligible for child care assistance the following criteria shall be met:

A. All adult caretakers and teen parents shall be verified residents of the county from which assistance is sought and received.

B. The adult caretaker(s) or teen parent(s) shall meet the following criteria:

1. Is actively participating in an eligible activity; and,

2. Meets the income eligibility guidelines set by the county and state departments; and,

3. Shall have physical custody of the child for the period they are requesting care.

C. The application process shall be completed and the primary adult caretaker or teen parent shall sign the required application forms. This includes:

1. The State Low Income Child Care Assistance Program application signed and completed by the applicant or their authorized representative, which includes appeal rights.

a. Counties with Head Start programs may accept the Head Start application in lieu of the Low-Income Child Care application for those children enrolled in the head start program and are encouraged to work with local Head Start programs to coordinate this effort.

b. Families enrolled in a Head Start or Early Head Start program at the time they apply for CCCAP, shall have a re-determination date that aligns with the Head Start or Early Head Start program year.

2. The required verification supporting the information declared on the application form; including:

a. Proof of current residence;

b. Citizenship and identity of the child(ren);

c. Age of the child(ren) for which they are requesting care;

d. Immunizations if applicable;

e. Eligible activity;

f. Schedule (if non-traditional care hours are requested);

g. Income;

h. Incapacitation if applicable;

i. Custody arrangement and/or parenting schedule if applicable;

j. Child care provider; and,

k. Other verifications as determined by approved county plan.

3. An orientation for new applicants as a county option.

D. Eligible Households

1. The following household compositions qualify as eligible households:

a. Households with one adult caretaker or teen parent, where the adult caretaker or teen parent is engaged in an eligible activity, meets low-income eligibility guidelines, has physical custody of the child and needs child care.

b. Households with two adult caretakers or teen parents, when one-adult caretaker or teen parent is involuntarily out of the home. Such a household shall be considered a household with one adult caretaker or teen parent.

c. Households with two adult caretakers or teen parents that need child care, where:

1) Both adult caretakers or teen parents are engaged in an eligible activity; or,

2) One adult caretaker or teen parent is voluntarily absent from the home, but both adult caretakers or teen parents are in an eligible activity; or,

3) One adult caretaker or teen parent is engaged in an eligible activity and the other adult caretaker or teen parent is incapacitated such that, according to a physician or licensed psychologist, they are unable to care for the child(ren).

d. Protective services households refer to households where the child(ren) have been placed, by the county, in foster home care, kinship foster home care, or non-certified kinship care and that have an open child welfare case (county option).

2. Households are considered households with two adult caretakers or teen parents when two adults or teen parents contribute financially to the welfare of the child and/or assume parent rights, duties and obligations similar to those of a biological parent, even without legal adoption.

3. Two separate adult caretakers or teen parents who share custody but live in separate households may apply for the same child through separate applications, during periods that they have physical custody.

4. All adult caretakers or teen parents who are engaged in an eligible activity, have physical custody of the child and meet low-income eligibility guidelines.

5. Any unrelated individual who is acting as a primary adult caretaker for an eligible child, is required to obtain verification from the child's biological or adoptive parent, legal guardian, or a court order which identifies the unrelated individual as the child's adult caretaker.

6. An adult caretaker or teen parent, caring for children who are receiving basic cash assistance through the Colorado Works Program may be eligible for Low-Income Child Care if the adult caretaker or teen parent is not a member of the Colorado Works assistance unit; and, she/he meets all other Low-Income program criteria.

7. Adoptive parents (including those receiving adoption assistance) are eligible if they meet the low-income program requirements.

8. Adult caretaker(s) or teen parent(s) with an open and active CCCAP case who are participating in an eligible activity, and go on verified maternity/paternity leave. Not to exceed twelve (12) weeks in an eligibility/re-determination period.

9. Adult caretaker(s) or teen parent(s) with an open and active CCCAP case who are participating in an eligible activity, and go on verified medical leave and are unable to care for his/her children. Not to exceed twelve (12) weeks in an eligibility/re-determination period.

10. A separated primary adult caretaker or teen parent with a validly issued temporary order for parent responsibilities or child custody shall not be determined ineligible based on the other spouse's or parent's financial resources.

E. Ineligible Household Compositions

Incapacitated single adult caretakers or teen parents who are not in an eligible activity are not eligible for the low-income program.

F. Eligible Child

An "eligible child" is a child under the age of thirteen (13) years who needs child care services during a portion of the day, but less than twenty four (24) hours, and is physically residing with the eligible adult caretaker(s) or teen parent(s); or a child with additional care needs under the age of nineteen (19) who is physically or mentally incapable of caring for himself or herself or is under court supervision and is physically residing with the eligible adult caretaker(s) or teen parent(s).

1. All children who have had an application made on their behalf for or are receiving child care assistance shall verify that they are a U.S. citizen or qualified alien and provide proof of identity.

2. Children receiving child care from a qualified exempt child care provider who is unrelated to the child and care is provided outside of the child's home and who are not attending school as defined by the Colorado Department of Education shall provide a copy of their immunization record to the county indicating that the children are age-appropriately immunized, unless exempt due to religious or medical reasons (see Sections 25-4-902 and 25-4-908, C.R.S.).

G. Eligible Activities

Adult caretakers or teen parents shall meet the criteria of at least one of the following activities:

1. Employment Criteria

    a. Adult caretakers or teen parents may be employed full or part time.

    b. Adult caretaker(s) or teen parent(s) shall verify that his/her gross income divided by the number of hours worked equals at least the current federal minimum wage.

    c. Owners of LLC's and S-Corporations, are considered employees of the corporation.

2. Self-Employed Criteria

    a. The adult caretaker(s) shall submit documentation listing his/her income and work-related expenses. All expenses shall be verified or they will not be allowed.

    b. The adult caretaker(s) shall submit an expected weekly employment schedule that includes approximate employment hours. This is required upon beginning self-employment, at application, and at re-determination.

    c. The adult caretaker(s) shall show that he/she has maintained an average income that exceeds their business expenses from self-employment.

    d. The adult caretaker(s) shall show that his/her taxable gross income divided by the number of hours worked equals at least the current federal minimum wage.

    e. Adult caretakers whose self-employment endeavor is less than twelve (12) months old, may be granted child care for six (6) months or until their next re-determination, whichever is longer, to establish their business. At the end of the launch period, adult caretakers shall provide documentation of income, verification of expenses and proof that they are making at least federal minimum wage for the number of hours worked. Projected income for the launch period shall be determined based upon the federal minimum wage times the number of declared number of hours worked.

3. Job Search Criteria

    a. Job search child care is available to eligible adult caretakers or teen parents for no fewer than thirteen (13) weeks of child care in a twelve (12) month period beginning with the first authorized week of job search activity. Any day utilized in a week is considered one (1) week used toward the time limited activity.

    b. Regular consistent care must be provided during the job search period.

    c. The amount of care authorized each day shall, at a minimum, be commensurate with the amount needed to complete the job search tasks.

    d. Job search child care shall be approved when adult caretakers or teen parents lose their jobs while enrolled in the Low-Income program.

    e. Subject to available appropriations, an adult caretaker or teen parent who is not employed at the time of application is eligible for CCCAP for thirteen (13) weeks of job search within a twelve (12) month period.

4. Training Criteria and Post-Secondary Education

Subject to available appropriations, an adult caretaker(s) who is enrolled in a training or post-secondary education program is eligible for CCCAP for at least one hundred four (104) weeks and up to two-hundred-eight (208) weeks per lifetime, provided all other eligibility requirements are met during the adult caretaker's enrollment. These weeks do not have to be used consecutively. A county may give priority for services to a working adult caretaker(s) over an adult caretaker(s) enrolled in post-secondary education or workforce training. When a teen parent becomes enrolled in post-secondary education, they are considered an adult caretaker and the time limited activity timelines apply.

Counties' child care staff may refer adult caretakers and teen parents to community employment and training resources for assistance in making a training and postsecondary education decision.

a. Adult caretaker educational programs include post-secondary education for a first bachelor's degree or less, or workforce/vocational/technical job skills training when offered as secondary education, which result in a diploma or certificate, for at least one-hundred-four (104) weeks and up to two-hundred-eight (208) weeks per lifetime. This is limited to coursework for the degree or certificate.

b. In addition to the weeks of assistance available for post-secondary and vocational or technical training, up to fifty-two (52) weeks of assistance is allowable for basic education.

c. Any week in which at least one (1) day is utilized for child care is considered one (1) week used toward the time limit.

H. Low-Income Eligibility Guidelines

1. Adult caretaker(s) or teen parent(s) gross income may not exceed the maximum defined by the county of residence of the applicant. Subject to available appropriations, each county shall determine its maximum gross monthly income guidelines not to exceed eighty-five percent (85%) of the state median income.

a. Entry income eligibility cannot be set below one hundred sixty-five percent (165%) of federal poverty level.

b. Exit income eligibility for a county whose entry income level is at or below one hundred eighty five percent (185%) of the federal poverty level shall be greater than their entry income level not to exceed eighty-five percent (85%) of the state median income.

2. Generally, the expected monthly income amount is based on the income received in the prior thirty (30) day period; except that, when the prior thirty (30) day period does not provide an accurate indication of anticipated income as referenced in the definition of "Income Eligibility" in Section 3.903 or under circumstances as specified below, a different period of time may be applicable:

a. For new or changed income, a period shorter than a month may be used to arrive at a projected monthly amount.

b. For contract employment in cases, such as in some school systems, where the employees derive their annual income in a period shorter than a year, the income

shall be prorated over the term of the contract, provided that the income from the contract is not earned on an hourly or piecework basis.

c. For regularly received self-employment income, net earnings will usually be prorated and counted as received in a prior thirty (30) day period, except for farm income. For further information, see Section 3.905.1, K, 1-2, on self-employment under countable earned income.

d. For all other cases where receipt of income is reasonably certain but the monthly amount is expected to fluctuate, a period of up to twelve months may be used to arrive at an average monthly amount.

e. For income from rental property to be considered as self-employment income, the adult caretaker(s) or teen parent(s) shall actively manage the property at least an average of twenty (20) hours per week. Income from rental property will be considered as unearned income if the adult caretaker(s) or teen parent(s) are not actively managing the property an average of at least twenty (20) hours per week. Rental income, as self-employment or as unearned income, may be averaged over a twelve (12) month period to determine monthly income. Income from jointly owned property shall be considered as a percentage at least equal to the percentage of ownership or, if receiving more than percentage of ownership, the actual amount received.

f. For cases where a change in the monthly income amount can be anticipated with reasonable certainty, such as with Social Security cost-of-living increases or other similar benefit increases, the expected amount shall be considered in arriving at countable monthly income for the month received.

g. Income inclusions and exclusions (Section 3.905) shall be used in income calculations.

h. Irregular child support income, not including lump sum payments, may be averaged over a period of time up to twelve (12) months in order to calculate household income.

i. Non-recurring lump sum payments, including lump sum child support payments, may be included as income in the month received or averaged over a twelve (12) month period, whichever is most beneficial for the client.

3. Income Verification at Application and Re-determination

a. Earned Income

1) For ongoing employment, income received during the prior thirty (30) day period shall be used in determining eligibility unless, on a case-by-case basis, the prior thirty (30) day period does not provide an accurate indication of anticipated income, in which case, a county can require verification of up to twelve (12) of the most recent months of income to determine a monthly average. The adult caretaker(s) or teen parent(s) may also provide verification of up to twelve (12) of the most recent months of income if he/she chooses to do so if such verification more accurately reflects a household’s current income level.

2) For employment that has begun or changed within the last sixty (60) days, a new employment verification letter may be used.

3) For self-employment income the person shall submit documentation listing his/her income and work-related expenses for the prior thirty (30) day period. On a case-by-case basis, if the prior thirty (30) day period does not provide an accurate indication of anticipated income, a county can require verification of up to twelve (12) of the most recent months of income and expenses to determine a monthly average. The adult caretaker(s) may also provide verification of up to twelve (12) of the most recent months of income and expenses if he/she chooses to do so if such verification more accurately reflects a household's current income level. All expenses shall be verified or they will not be allowed.

b. Unearned Income

Unearned income received during the prior thirty (30) day period shall be used in determining eligibility unless, on a case-by-case basis, the prior thirty (30) day period does not provide an accurate indication of anticipated income, in which case, a county can require verification of up to twelve (12) of the most recent months of income to determine a monthly average. The adult caretaker(s) or teen parent(s) may choose to also provide verification of up to twelve (12) of the most recent months of income if such verification more accurately reflects a household's current income level.

c. Adult caretakers or teen parents shall self-declare that their liquid and non-liquid assets do not exceed one million dollars. If assets exceed one million dollars the household is ineligible for CCCAP.

d. If written documentation is not available at time of eligibility determination, verbal verification from the employer or other person issuing the payment may be obtained. Counties shall document the verbal verification in the case file to include the date that the information was received, who provided the information, and a contact phone number.

e. If income is not verified

1) At application

a) If verifications are not returned within the fifteen (15) day noticing period the application will be denied.

b) If all verification has not been submitted within sixty (60) calendar-days of the application date then the county shall require a new application.

2) At re-determination, if all verifications are not received within the fifteen (15) day noticing period, the CCCAP case will be closed.

I. Income Inclusions

1. Gross earnings, salary, armed forces pay (including but not limited to basic pay, basic assistance for housing (BAH) and basic assistance for subsistence (BAS), hazard duty pay, and separation pay), commissions, tips, and cash bonuses are counted before deductions are made for taxes, bonds, pensions, union dues and similar deductions. If child care is provided for an employment activity, then gross wages divided by the number of hours worked shall equal at least the current federal minimum wage.

2. Taxable gross income (declared gross income minus verified business expenses from one's own business, professional enterprise, or partnership) from non-farm self-employment.

    a. These verified business expenses include, but are not limited to:

        1) The rent of business premises; and,

        2) Wholesale cost of merchandise; and,

        3) Utilities; and,

        4) Taxes; and,

        5) Mileage expense for business purposes only; and,

        6) Labor; and,

        7) Upkeep of necessary equipment.

    b. The following are not allowed as business expenses from self-employment:

        1) Depreciation of equipment; and,

        2) The cost of and payment on the principal of loans for capital asset or durable goods; and,

        3) Personal expenses such as personal income tax payments, lunches, and transportation to and from work.

    c. If child care is provided for a self-employment activity, then taxable gross wages divided by the number of hours worked shall equal at least the current federal minimum wage. To determine a valid monthly income taxable gross income may be averaged for a period of up to twelve (12) months.

3. Taxable gross income (gross receipts minus operating expenses from the operation of a farm by a person on his own account, as an owner, renter or sharecropper) from farm self-employment.

    a. Gross receipts include, but are not limited to:

        1) The value of all products sold; and,

        2) Government crop loans; and,

        3) Money received from the rental of farm equipment and/or farm land to others; and,

        4) Incidental receipts from the sale of wood, sand, gravel, and similar items.

    b. Operating expenses include, but are not limited to:

        1) Cost of feed, fertilizer, seed, and other farming supplies; and,

        2) Cash wages paid to farmhands; and

3) Cash rent; and,

4) Interest on farm mortgages; and,

5) Farm building repairs; and,

6) Farm taxes (not state and federal income taxes); and,

7) Similar expenses.

c. The value of fuel, food, or other farm products used for family living is not included as part of net income. If child care is provided for an employment activity, then taxable gross wages divided by the number of hours worked shall equal at least the current federal minimum wage. To determine a valid monthly income, taxable gross income may be averaged for a period of up to twelve months. For all other cases where receipt of income is reasonably certain but the monthly amount is expected to fluctuate, a period of up to twelve months shall be used to arrive at an average monthly amount.

4. An in-kind benefit is any gain or benefit received by the adult caretaker(s) or teen parent(s) as compensation for employment, which is not in the form of money such as meals, clothing, public housing or produce from a garden. A dollar amount shall be established for this benefit and it shall be counted as other income. The dollar amount is based on the cost or fair market value.

5. Vendor payments are money payments that are not payable directly to an adult caretaker or teen parent, but are paid to a third party for a household expense and are countable when the person or organization making the payment on behalf of a household is using funds that otherwise would need to be paid to the adult caretaker(s) or teen parent(s) and are part of the compensation for employment.

6. Railroad retirement insurance

7. Veterans Payments

a. Retirement or pension payments paid by defense finance and accounting services (DFAS) to retired members of the Armed Forces;

b. Pension payments paid by the veterans administration to disabled members of the Armed Forces or to survivors of deceased veterans;

c. Subsistence allowances paid to veterans through the GI bill. For education and on-the-job training; and,

d. “Refunds” paid to veterans as GI insurance premiums.

8. Pensions and annuities (minus the amount deducted for penalties, if early payouts are received from these accounts)

a. Retirement benefit payments;

b. 401(k) payments;

c. IRA payments;

d. Pension payments; or,

e. Any other payment from an account meant to provide for a retired person or their survivors.

9. Dividends

10. Interest on savings or bonds

11. Income from estates or trusts

12. Net rental income

13. Royalties

14. Dividends from stockholders

15. Memberships in association

16. Periodic receipts from estates or trust funds

17. Net income from rental of a house, store, or other property to others

18. Receipts from boarders or lodgers

19. Net royalties

20. Inheritance, gifts, and prizes

21. Proceeds of a life insurance policy, minus the amount expended by the beneficiary for the purpose of the insured individual's last illness and burial, which are not covered by other benefits

22. Proceeds of a health insurance policy or personal injury lawsuit to the extent that they exceed the amount to be expended or shall be expended for medical care

23. Strike benefits

24. Lease bonuses and royalties (e.g., oil and mineral)

25. Social Security pensions, survivor's benefits and permanent disability insurance payments made prior to deductions for medical insurance

26. Unemployment insurance benefits

27. Worker's compensation received for injuries incurred at work

28. Maintenance payments made by an ex-spouse as a result of dissolution of a marriage

29. Child support payments

30. Military allotments

31. Workforce innovation opportunity act (WIOA) wages earned in work experience or on-the-job training

32. Earned AmeriCorps income includes government payments from agricultural stabilization and conservation service and wages of AmeriCorps volunteers in service to America (vista) workers. Vista payments are excluded if the client was receiving CCCAP when he or she joined vista. If the client was not receiving CCCAP when he or she joined vista, the vista payments shall count as earned income.

33. CARES payments – refugee payments from Refugee Services

J. Income Exclusions

1. Earnings of a child in the household when not a teen parent

2. Supplemental Security Income (SSI) under Title XVI

3. Any payment made from the Agent Orange Settlement Fund, pursuant to P.L. No. 101-201

4. Nutrition related public assistance

   a. The value of Food Assistance benefits (SNAP)

   b. Benefits received under title VII, Nutrition Program for the Elderly, of The Older Americans Act (42 U.S.C. 3030A)

   c. The value of supplemental food assistance received under the Special Food Services Program for Children provided for in the National School Lunch Act and under the Child Nutrition Act

   d. Benefits received from the Special Supplemental Food Program for Women, Infants and Children (WIC)

5. Payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act

6. Experimental Housing Allowance Program (EHAP) payments made by HUD under Section 23 of the U.S. Housing Act

7. Payments made from Indian judgment funds and tribal funds held in trust by the Secretary of the Interior and/or distributed per capita

8. Distributions from a native corporation formed pursuant to the Alaska Native Claims Settlement Act (ANCSA)

9. Major disaster and emergency assistance provided to individuals and families, and comparable disaster assistance provided by states, local governments and disaster assistance organizations

10. Payments received from the county or state for providing foster care, kinship care, or for an adoption subsidy

11. Payments to volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and any other program under Title I (VISTA) when the value of all such payments adjusted to reflect the number of hours such volunteers

are serving is not equivalent to or greater than the minimum wage, and Title II and III of the Domestic Volunteer Services Act

12. Low-Income Energy Assistance Program (LEAP) benefits

13. Social security benefit payments and the accrued amount thereof to a recipient when an individual plan for self-care and/or self-support has been developed

14. Earned Income Tax Credit (EIC) payments

15. Monies received pursuant to the "Civil Liberties Act of 1988," P.L. No. 100-383 (by eligible persons of Japanese ancestry or certain specified survivors, and certain eligible Aleuts)

16. Any grant or loan to any undergraduate student for educational purposes made or insured under any programs administered by the Commissioner of Education (Basic Educational Opportunity Grants, Supplementary Educational Opportunity Grants, National Direct Student Loans, and Guaranteed Student Loans); Pell Grant Program, the PLUS Program, the Byrd Honor Scholarship programs, and the College Work Study Program

17. Training allowances granted by WIA to enable any individual, whether dependent child or caretaker relative, to participate in a training program are exempt

18. Payments received from the youth incentive entitlement pilot projects, the youth community conservation and improvement projects, and the youth employment and training programs under the Youth Employment and Demonstration Project Act

19. Any portion of educational loans, scholarships, and grants obtained and used under conditions that preclude their use for current living costs and that are earmarked for education

20. Financial assistance received under the Carl D. Perkins Vocational and Applied Technology Education Act that is made available for attendance costs. Attendance costs include: tuition, fees, rental or purchase of equipment, materials, supplies, transportation, dependent care and miscellaneous personal expenses

21. Any money received from the Radiation Exposure Compensation Trust Fund, pursuant to Public Law No. 101-426 as amended by Public Law No. 101-510

22. Resettlement and Placement (R & P) vendor payments for refugees

23. Supportive service payments under the Colorado Works Program

24. Home Care Allowance under adult categories of assistance

25. Loans from private individuals as well as commercial institutions

26. Public cash assistance grants including Old Age Pension (OAP), Aid to the Needy Disabled (AND), and Temporary Assistance to Needy Families (TANF)/Colorado Works

27. Reimbursements for expenses paid related to a settlement or lawsuit

28. Irregular income in the certification period that totals less than ninety dollars ($90) in any calendar quarter, such as slight fluctuations in regular monthly income and/or that which is received too infrequently or irregularly to be reasonably anticipated

29. Income received for participation in grant funded research studies on early childhood development

K. Income Adjustments

1. Verified court-ordered child support payments for children not living in the household shall be deducted prior to applying the monthly gross income to the maximum gross monthly income guidelines and when calculating parent fees. To qualify for the adjustment, the child support shall be:

   a. Court ordered and paid; and,

   b. For a current monthly support order (not including arrears).

2. In order to be considered verified:

   a. There shall be verification that payments are court ordered and actually paid;

   b. Court ordered payments deducted shall be for current child support payments; and,

   c. Such verification shall be made at the time of initial approval of eligibility for services and at the time of each re-determination of eligibility.

L. Child Support Services (County Option)

1. At the option of the county, the county may require adult caretakers in households receiving Low-Income Child Care Assistance to apply for and cooperate with Child Support Services pursuant to Section 26-2-805, C.R.S.

2. At the option of the county, teen parents may be required to cooperate with the child support services unit upon high school graduation or completion of the high school equivalency exam.

3. Participating counties shall refer all dependent children with a non-custodial parent that are in need of care to the Child Support Services Unit or their delegates unless an active child support case exists or if a good cause exemption has been granted.

   a. Counties shall inform all adult caretakers or teen parents (per section 3.905.1, L, 2) of their right to apply for a good cause exemption in writing at the time of application as well as any time while receiving child care. Counties shall extend benefits until a good cause determination is complete.

   b. “Good cause” shall include, but not be limited to, the following:

      1) Potential physical or emotional harm to a child or children; or,

      2) Potential physical or emotional harm to an adult caretaker relative or teen parents; or,

3) Pregnancy or birth of a child related to incest or forcible rape; or,

4) Legal adoption in a court of law or a parent receiving pre-adoption services; or,

5) Other exemption reasons as determined by the county director or designee.

c. The county director or designee shall make determination of good cause exemption and shall determine if good cause needs to be reviewed at some future date.

d. If an adult caretaker has been approved for good cause in another public assistance program that requires child support Services, a good cause exemption shall be extended to CCCAP.

4. The adult caretaker(s) or teen parent(s) (per section 3.905.1, L, 2) shall apply for and cooperate with the Child Support Services Unit or delegate agency within thirty (30) calendar-days of initial date of approval for child care. For ongoing child care cases, the county shall require the adult caretaker(s) to cooperate with Child Support Services within thirty (30) calendar-days of the date the county provides written notification of the requirement.

5. For Low-Income Child Care Assistance “Child Support Services cooperation” is defined as:

a. Applying for Child Support Services within thirty (30) calendar-days of being notified of the requirement; and,

b. Maintaining an active Child Support Services case while receiving ongoing Low-Income Child Care Assistance benefits; and,

c. Cooperating with Child Support Services is required for all children that are requesting care in the ongoing child care household with an absent parent.

6. If CCCAP receives written notice within required timeframes from the Child Support Services Unit that the child care household has not cooperated, the following steps shall be taken:

a. The county or its designee child care staff shall notify the household within fifteen (15) calendar-days, in writing, that he/she has fifteen (15) calendar-days from the date the notice is mailed to cooperate, or request a good cause exemption, before the child care case and all authorizations shall be closed.

b. If the adult caretaker or teen parent (per section 3.905.1, L, 2) fails to cooperate within the required time frames and/or with the Child Support Services Unit, the CCCAP case shall be closed. Upon notification of a request for good cause, the county shall extend benefits until a good cause determination is complete, as long as the household meets all other eligibility criteria. The county shall make a good cause determination within fifteen (15) calendar-days of the request.

7. If a household's benefits are terminated due to failure to cooperate, that household may remain ineligible in all counties that have this option until cooperation is verified by the Child Support Services Unit or delegate agency.

8. At the time of referral from the Colorado Works Program to the Low-Income Child Care Assistance Program, the Low-Income Child Care Assistance Program shall notify households in writing within at least fifteen (15) calendar-days of the referral of his/her continued requirement to cooperate with the Child Support Services Unit.

9. The Child Care Assistance Program shall notify Child Support Services within at least fifteen (15) calendar-days when a household is transitioned from Colorado Works child care to Low-Income Child Care Assistance and the household's continued requirement to cooperate.

10. Households shall not be required to cooperate with Child Support Services if:

    a. Good cause has been established; or,

    b. The child support case is closed pursuant to Section 6.260.51 (9 CCR 2504-1); or,

    c. The Low-Income Child Care case is a two-parent household if there are no absent parents for any children in the home.

3.905.2 ADULT CARETAKER OR TEEN PARENT RESPONSIBILITIES

A. Primary adult caretaker(s) or teen parent(s) shall sign the application/re-determination form along with providing verification of income to determine eligibility.

B. Adult caretaker(s) or teen parent(s) agrees to pay the parent fee listed on the child care authorization notice and understands that it is due to the child care provider in the month that care is received.

C. Adult caretaker(s) or teen parent(s) have the responsibility to report and verify changes to income, only if the household's income exceeds eighty-five percent (85%) of the State median income, in writing, within ten (10) calendar-days of the change. Also, if the adult caretaker(s) or teen parent(s) is no longer in his/her qualifying eligible activity, this shall be reported in writing within four (4) calendar weeks pursuant to Section 26-2-805(1)(e)(III), C.R.S. this does not include a temporary break in eligible activity such as a temporary job loss from the qualifying eligible activity or temporary change in participation in a training or education activity. A temporary break includes but is not limited to:

    1. Absence from seasonal employment not to exceed twelve (12) weeks when returning to same employer;

    2. Absence from employment due to extended verified medical leave, not to exceed twelve (12) weeks when returning to same employer;

    3. Absence from employment due to verified maternity/paternity leave, not to exceed twelve (12) consecutive weeks as defined in section 3.903 when returning to same employer; or,

    4. Temporarily not attending class between semesters not to exceed twelve (12) weeks.

D. Adult caretaker(s) or teen parent(s) shall provide the County Department with current immunization records for child(ren) who receive child care from qualified exempt child care providers not related to the child(ren), where care is provided outside of the child's home and the child(ren) are not school age.

E. Adult caretaker(s) or teen parent(s) shall cooperate with the child support services unit or the delegate agency for all children who are in need of care and have an absent parent, within thirty (30) days of requesting child care, as required by the county and per section 3.905.1 L.

F. Adult caretaker(s) or teen parent(s) shall report changes in child care providers prior to the change.

G. All adult caretaker(s) or teen parent(s) shall provide verification of their schedule related to their eligible activity at application, and re-determination only if non-traditional care hours are requested.

H. When the primary adult caretaker(s) or teen parent(s) is declaring the identity of his/her child due to the child not having identification as part of the application, an un-expired picture id that has been taken in the past ten (10) years issued by a school or U.S. federal or state governmental agency of the primary adult caretaker or teen parent is needed to verify the adult caretaker's identity.

I. When a child care case has closed and not more than thirty (30) days have passed from date of closure; the adult caretaker(s) or teen parent(s) may provide the verification needed to correct the reason for closure. If the household is determined to be eligible, services may resume as of the date the verification was received by the county, despite a gap in services. The adult caretaker(s) or teen parent(s) would be responsible for payment during the gap in service.

J. Adult caretaker(s) or teen parent(s) shall not share his/her individual attendance credentials with the child care provider at any time or he/she may be subject to disqualification per section 3.915.4, b.

K. Adult caretaker(s) or teen parent(s) are required to use the Attendance Tracking System (ATS) to check children in and out for the days of care authorized and attended unless the child care provider has been granted an exemption by the state. Non-cooperation with the use of the Attendance Tracking System (ATS) may result in case closure and/or non-payment of the child care subsidy as defined by county policy.

3.905.3 LOW INCOME CHILD CARE RE-DETERMINATION

A. A re-determination of eligibility shall be conducted no earlier than every twelve (12) months. The State-approved eligibility re-determination form shall be mailed to households at least forty-five (45) calendar-days prior to the re-determination due date. Adult caretaker(s) or teen parent(s) shall complete and return to Child Care staff by the re-determination due date. Adult caretaker(s) or teen parent(s) who do not return eligibility re-determination forms and all required verification may not be eligible for child care subsidies.

1. Employed and self-employed adult caretaker(s) or teen parent(s) shall submit documentation of the following:

a. Earned income

1) For ongoing employment, income received during the prior thirty (30) day period shall be used in determining eligibility unless, on a case-by-case basis, the prior thirty (30) day period does not provide an accurate indication of anticipated income, in which case, a county can require verification of up to twelve (12) of the most recent months of income to determine a monthly average. The adult caretaker(s) or teen parent(s) may also provide verification of up to twelve (12) of the most recent

months of income if he/she chooses to do so if such verification more accurately reflects a household's current income level.

2) For employment that has begun or changed within the last sixty (60) days, a new employment verification letter may be used.

3) For self-employment income the person shall submit documentation listing his/her income and verification of work-related expenses for the prior thirty (30) day period. On a case-by-case basis, if the prior thirty (30) day period does not provide an accurate indication of anticipated income, a county can require verification of up to twelve (12) of the most recent months of income and expenses to determine a monthly average. An adult caretaker may also provide verification of up to twelve (12) of the most recent months of income and expenses if he/she chooses to do so if such verification more accurately reflects a household's current income level. All expenses shall be verified or they will not be allowed.

b. Unearned income received during the prior thirty (30) day period shall be used in determining eligibility unless, on a case-by-case basis, the prior thirty (30) day period does not provide an accurate indication of anticipated income, in which case, a county can require verification of up to twelve (12) of the most recent months of income to determine a monthly average. The adult caretaker(s) or teen parent(s) may also provide verification of up to twelve (12) of the most recent months of income if he/she chooses to do so if such verification more accurately reflects a household's current income level.

c. All adult caretaker(s) or teen parent(s) shall provide verification of their schedule related to their eligible activity at re-determination only if non-traditional care hours are requested.

d. Adult caretakers or teen parents shall self-declare that their liquid and non-liquid assets do not exceed one million dollars. If assets exceed one million dollars the household is ineligible for CCCAP.

2. Adult caretaker(s) or teen parent(s) in training shall submit documentation from the training institution which verifies school schedule (only if non-traditional care hours are requested), and verifies current student status.

3. Adult caretaker(s) or teen parent(s) shall provide the county department with current immunization records for child(ren) who receive child care from qualified exempt child care providers not related to the child(ren), where care is provided outside of the child's home and the child(ren) are not school age.

4. If written documentation is not available at time of eligibility determination, verbal verification from the employer or other person issuing the payment may be obtained. Counties shall document the collateral contact verification in the case file to include the date that the information was received, who provided the information, and a contact phone number. Acceptable collateral contacts include but are not limited to:

a. Employers;

b. Landlords;

c. Social/migrant service agencies; and,

d. Medical providers who can be expected to provide accurate third party verification.

B. Parent fees shall be reviewed at re-determination. An adjusted parent fee will be based on an average of at least the past thirty (30) days gross income or a best estimate of anticipated income in the event of new employment. Unless, on a case-by-case basis, the prior thirty (30) day period does not provide an accurate indication of anticipated income, in which case a county can require evidence of up to twelve (12) of the most recent months of income. The adult caretaker(s) or teen parent(s) may also provide evidence of up to twelve (12) of the most recent months of income if they choose to do so if such evidence more accurately reflects the adult caretaker or teen parent's current income level. The fee change shall be effective the first full calendar month after the change is reported and verified, and timely written notice is provided.

C. For adult caretaker(s) or teen parent(s) whose children are enrolled in Head Start or Early Head Start, counties shall extend re-determination of eligibility to annually coincide with the Head Start or Early Head Start program schedule. These households are still responsible for notifying the county of any changes that may impact eligibility.

3.905.4 TRANSITION OFF LOW-INCOME ASSISTANCE

A. At the time of re-determination only, an adult caretaker(s) or teen parent(s) enrolled in CCCAP, whose household income exceeds the exit income eligibility levels set by the county but are still engaged in eligible activities, shall continue to receive the CCCAP subsidy for no less than ninety (90) calendar-days; except that in no event shall child care assistance be provided if the household income exceeds eighty- five percent (85%) of the Colorado state median income.

B. At the option of the county, households receiving Low-Income Child Care Assistance, who become ineligible at re-determination because their income exceeds the gross monthly income guidelines set by the county, may continue to receive assistance for up to six months following the date they became ineligible when the following criteria are met:

1. The household's gross monthly income does not exceed 85% of the state's median income, published annually by the U.S. Department of Health and Human Services, Administration for Children and Families, based on household size.

2. The household and the county work together to prepare the HOUSEHOLD for the transition off assistance.

3. Counties selecting this option shall notify the state department in advance of their selection of this option, including an outline of the county's transition plan strategies for households.

3.905.5 TERMINATION OF LOW INCOME CHILD CARE SERVICES

A. Child care authorizations and/or cases shall be terminated for the following eligibility related reasons:

1. Eligible child exceeds age limits

2. Household's income exceeds county eligibility guidelines at re-determination and the ninety (90) day post eligibility period has expired

3. Adult caretaker(s) or teen parent(s) did not pay parent fees, an acceptable payment schedule has not been worked out between the child care provider(s) and adult

caretaker(s) or teen parent(s), or the adult caretaker(s) or teen parent(s) has/have not followed through with the payment schedule.

4. Adult caretaker(s) or teen parent(s) exceeds activity time limits

5. Adult caretaker(s) or teen parent(s) fails to comply with re-determination requirements

6. Adult caretaker(s) or teen parent(s) is not involved in an eligible activity

7. Adult caretaker(s) or teen parent(s) has become a participant in Colorado Works

8. Adult caretaker(s) or teen parent(s) did not submit required immunization records

9. Household's optional six (6) month post-eligibility period has expired

10. Adult caretaker(s) or teen parent(s) is/are no longer a resident of the county

11. Adult caretaker(s) or teen parent(s) (per section 3.905.1, L, 2) is/are not cooperating with child support establishment, modification or enforcement services, at county option, and, if the adult caretaker(s) or teen parent(s) has/have applied for a good cause exemption, the county director or designee has determined that the adult caretaker(s) or teen parent(s) is/are not eligible for a good cause exemption

12. Adult caretaker(s) or teen parent(s) do not meet minimum wage requirement for employment or self-employment are not considered to be in an eligible activity

13. Household income exceeds eighty-five percent (85%) of State median income during eligibility period

14. Adult caretaker(s) or teen parent(s) did not select a child care provider willing to contract with the county to provide CCCAP services

B. Reason for termination shall be documented on the state prescribed closure form and mailed via postal service, emailed or other electronic systems, faxed or hand-delivered to the primary adult caretaker or teen parent and child care provider.

C. Upon termination from the child care program, the adult caretaker(s) or teen parent(s) will have thirty (30) days from the effective date of closure to correct or provide the information without having to reapply for benefits. Upon correcting or providing the information, eligibility will continue as of the date the missing information was provided to the county. Parent fees will be based on the previous amount specified until prior notice is provided of changes to future parent fees.

D. Nothing in this section shall preclude an adult caretaker(s) or teen parent(s) from voluntarily withdrawing from the Low-Income program.

3.906 COLORADO WORKS CHILD CARE

A. Adult caretakers or teen parents who have been approved for Colorado Works are eligible to receive Colorado Works child care during the Colorado Works assessment process.

B. To continue receiving Colorado Works child care after the assessment process has been completed, a referral form or individualized plan shall be completed and/or received indicating that the participant remains eligible for basic cash assistance. A referral form shall be received by the child care technician unless the Colorado Works technician processes the child care and clearly documents the need for child care in CHATS.

C. An adult caretaker, caring for children who are receiving basic cash assistance through the Colorado Works program may be eligible for low-income child care if the adult caretaker is not a part of the Colorado Works assistance unit; and, she/he meets all other low-income program criteria.

D. Counties may provide Colorado Works child care for households approved for state diversions not to exceed the state diversion period.

3.906.1 ELIGIBILITY FOR COLORADO WORKS CHILD CARE

A. Households are eligible for Colorado Works child care based on their Colorado Works certification period (not to exceed six (6) months). All Colorado Works child care cases shall be authorized until the end of the Colorado Works certification period unless the eligibility status for Colorado Works changes during the certification period.

B. It is the responsibility of the local Colorado Works program to notify the child care technician if the household becomes ineligible during the certification period at which time the Colorado Works child care case and authorization shall be set to close at the end of the month in which the household became ineligible, allowing for timely noticing.

C. Income is verified and shared by the local Colorado Works program.

1. Supportive service payments under the Colorado Works program are not countable income.

2. Temporary assistance to needy families (TANF)/Colorado Works payments are not countable income.

D. Eligible activity is determined and shared by the local Colorado Works program.

E. Child care schedule is determined and shared by the local Colorado Works program.

F. Residency is verified by the local Colorado Works program.

G. Citizenship and identity is verified by the local Colorado Works program.

H. Colorado Works participants shall provide the county with current immunization records for child(ren) who receive child care from qualified exempt child care providers not related to the child(ren), where care is provided outside of the child's home and the child(ren) are not school age.

I. Counties that provide Colorado Works child care for households approved for state diversions require the same eligibility as outlined above. The eligibility period will match the state diversion period.

3.906.2 TRANSITION OFF COLORADO WORKS CHILD CARE

Counties shall provide low income child care assistance for a household transitioning off the Colorado Works program due to employment or job training without requiring the household to apply for low income child care but shall initially re-determine the household's eligibility within six (6) months after the transition.

A. A household that transitions off the Colorado Works program shall not be automatically transitioned to low income CCCAP if any of the following conditions apply:

1. The household leaves the Colorado Works Program due to an Intentional Program Violation (IPV) as determined in Section 3.500 or as outlined in county policy; or,

2. The household needs child care for activities other than employment or job training; or,

3. The household is leaving the Colorado Works program due to employment and will be at an income level that exceeds the county adopted income eligibility limit for the county's low income CCCAP; or,

4. The household has withdrawn from the Colorado Works program; or,

5. If a household is not transitioned for the reasons outlined above, the county shall provide notice.

B. At the county's discretion, a household transitioning off the Colorado Works program that is eligible for low income CCCAP and resides in a county that has households on its wait list may be added to the wait list or be provided child care assistance without first being added to the wait list.

C. If a household is not transitioned from Colorado Works to low-income child care, the county shall provide a fifteen (15) day notice.

3.907 PROTECTIVE SERVICES CHILD CARE

A. Protective services households refers to households when child(ren) have been placed by the county in foster home care, kinship foster home care, or non-certified kinship care and that have an open child welfare case. At the option of the county, the county may provide protective services child care utilizing child care development funds (CCDF).

B. Protective services child care is not twenty-four (24) hour care. Child care services for school-age children during regular school hours shall be different from, and cannot be substituted for, educational services that school districts are required to provide under the Colorado exceptional children's act.

3.907.1 ELIGIBILITY FOR PROTECTIVE SERVICES HOUSEHOLDS (COUNTY OPTION)

A. Protective services households are considered to be a household of one for purposes of determining income eligibility. The only countable income for a protective services household is the income that is received by the child(ren) that have been placed in kinship or foster care. Child support income shall not be included as income. Child support income is intercepted by the county child welfare department.

B. Protective services households shall be allowed up to sixty (60) days to provide verification of the child(ren)'s income.

C. As determined by the Child Welfare worker, the income requirement for protective services households may be waived on a case by case basis. If the income requirement is waived, it shall be documented in the case file.

D. Protective services households are not subject to eligible activity requirements.

E. Protective services households are not subject to residency verification requirements. The county with the open child welfare case shall be considered the county of residency.

F. Citizenship and identity

1. Protective services households shall be allowed up to six (6) months to provide verification of the child(ren)'s U.S. citizenship.
2. Protective services households shall be allowed up to sixty (60) days to provide the adult caretaker or teen parent's identification.

G. Protective services households shall be allowed up to sixty (60) days to provide verification of immunization if child care is provided by a qualified exempt child care provider not related to the child where care is provided outside of the home.

3.908 CHILD WELFARE CHILD CARE

A. Child Welfare child care is used as a temporary service to maintain children in their own homes or in the least restrictive out of-home care setting when there are no other child care options available. This may include parents, non-certified kinship care, kinship foster care homes, and foster care homes.

B. Child Welfare child care is not twenty-four (24) hour care. Child care services for school-age children during regular school hours shall be different from, and cannot be substituted for, educational services that school districts are required to provide under the Colorado exceptional children's act.

C. Eligibility for Child Welfare child care is determined on a case-by-case basis by the Child Welfare division using the criteria outlined in 7.302 (12 CCR 2509-4).

D. Child Welfare households are not subject to residency verification requirements. The county with the open child welfare case shall be considered the county of residency.

E. The county shall not provide Child Welfare child care utilizing CCDF.

3.909 ELIGIBILITY FOR FAMILIES EXPERIENCING HOMELESSNESS

A. Households shall meet the definition of families experiencing homelessness.

B. Households that meet the definition of "families experiencing homelessness" shall be provided a child care authorization during a stabilization period of at least sixty (60) consecutive calendar-days, within a twelve (12) month period, to allow the household the opportunity to submit verification for ongoing child care subsidies.

1. If verifications necessary to determine ongoing eligibility are received within the stabilization period, the household will continue to receive subsidized child care.

2. If verifications necessary to determine ongoing eligibility are not received within the stabilization period, the household will be determined ineligible and given proper adverse action notice.

3. Subsidized care provided during the stabilization period is considered non-recoverable by the county unless fraud has been established.

4. Eligible activity

a. The adult caretaker(s) or teen parent(s) is not required to participate in an eligible activity during the stabilization period.

b. If the adult caretaker(s) or teen parent(s) is participating in an eligible activity, they will have at least sixty (60) days to provide necessary verification.

5. Residency

a. The adult caretaker(s) or teen parent(s) shall self-declare residency during the stabilization period by providing the location they are temporarily residing. Counties shall identify the zip code of this location in CHATS.

b. The adult caretaker(s) or teen parent(s) may provide a mailing address or the county shall use general delivery or the county office address for client correspondence.

6. The adult caretaker(s) or teen parent(s) may self-declare citizenship and identity of the child(ren) during the stabilization period.

7. If child care is provided by a qualified exempt child care provider not related to the child where care is provided outside of the home, the requirement to provide the county with verification of immunization status shall not be required during the stabilization period.

3.910 PARENT FEES

A. Parent fee revisions for child care during the twelve (12) month eligibility period may occur upon reported changes only if the change would result in a decrease of the parent fee

B. Parent fees shall be reviewed at re-determination. An adjusted parent fee will be based on an average of at least the past thirty (30) days gross income or a best estimate of anticipated income in the event of new employment or a change in the adult caretaker(s)' or teen parent(s)' regular monthly income. Unless, on a case-by-case basis, the prior thirty (30) day period does not provide an accurate indication of anticipated income, in which case a county can require evidence of up to twelve (12) of the most recent months of income. The adult caretaker(s) or teen parent(s) may also provide evidence of up to twelve (12) of the most recent months of income if they choose to do so if such evidence more accurately reflects the adult caretaker's current income level. Income may be divided by a weekly amount then multiplied by 4.33 to arrive at a monthly average for parent fee calculations.

C. Parent fees are based on gross countable income for the child care household compared to the household size and in consideration of the number of children in care. Parent fees are to be rounded to the nearest whole dollar.

D. Colorado Works households in a paid employment activity shall pay parent fees based on gross countable income as verified and shared by the local Colorado Works program.

E. For a household utilizing a child care provider in the top three levels of the state department's quality rating system, the parent fee shall be reduced by twenty percent (20%) of the regularly calculated parent fee. For households utilizing multiple child care providers, only one child care provider is required to be in the top three quality levels for the reduced parent fee to apply.

F. All adult caretaker(s) and teen parents are required to pay the fee as determined by the formula listed below, except in the following cases:

1. One or two teen parent households who are in middle/junior high, high school, GED, or vocational/technical training activity and for whom payment of a fee produces a hardship, the parent fee may be waived entirely and documented in the case file. The parent fee waiver shall be reviewed during each re-determination.

2. The household is eligible for a reduced parent fee based on the quality level of the child care provider

3. Colorado Works participants enrolled in activities other than paid employment

4. Child Welfare Child Care households as defined in the Social Services rule manual, Section 7.000.5 (12 CCR 2509-1)

5. Families Experiencing Homelessness as defined in section 3.909

6. Protective Service Households as defined in section 3.907

7. Families that have no income shall have no parent fee.

G. The initial or revised fee shall be effective the first full calendar month after the end of the timely written notice period. A parent fee shall not be assessed or changed retroactively.

H. The fee shall be paid in the month that care is received and shall be paid by the parent directly to the child care provider(s). Parent fees are used as the first dollars paid for care. The counties or their designee shall not be liable for the fee payment.

I. When more than one child care provider is being used by the same household, child care staff shall designate to whom the adult caretaker(s) or teen parent(s) pays a fee or in what proportion the fee shall be split between child care providers. The full parent fee shall be paid each month, but parent fees shall not exceed the reimbursement rate by CCCAP. The adult caretaker(s) or teen parent(s) shall determine if it is most beneficial to close their CCCAP case if the parent fee exceeds the cost of care.

J. Adult caretakers or teen parents will be informed of their responsibilities related to fee payment on their signed application form.

K. Loss of eligibility for child care subsidies may occur if the adult caretaker(s) or teen parents do not pay their parent fees; do not make acceptable payment arrangements with the child care providers; or, do not follow through with the arrangements. Notice of termination for such loss of eligibility shall be given in accordance with Section 3.905.5. Child care providers shall report non-payment of parent fees no later than sixty (60) calendar-days after the end of the month following the month the parent fees are due unless county policy requires it earlier. If a household's benefits are terminated for non-payment of parent fees, that household will remain ineligible until:

1. Delinquent parent fees are paid in full; or,

2. Adequate payment arrangements are made with the child care provider to whom the fees are owed and an agreement is signed by both parties; or,

3. County determination of verified good faith efforts to make payment to the child care provider(s), when the client was unable to locate the child care provider(s).

L. The adult caretaker(s) or teen parent(s) and child care provider(s) shall be given timely written notice of the parent fee amount, on the child care notice of authorization, at least fifteen (15) calendar-days prior to the first of the month the parent fee is effective.

M. Parent fees shall be assessed based on the following formula:

PERCENT FPG	FOR FIRST CHILD-PERCENT OF HOUSEHOLD INCOME	EACH ADDITIONAL CHILD
At or below 100%	1%	NONE
Above 100% and at or below 103%	2%	$15
Above 103% and at or below 106%	3%	$15
Above 106% and at or below 109%	4%	$15
Above 109% and at or below 112%	5%	$15
Above 112% and at or below 115%	6%	$15
Above 115% and at or below 118%	7%	$15
Above 118% and at or below 121%	8%	$15
Above 121% and at or below 124%	9%	$15
Above 124% and at or below 130%	10%	$15
Above 130% and at or below 160%	11%	$25
Above 160% and at or below 185%	12%	$35
Above 185% and at or below 205%	13%	$40
Above 205% and at or below 225%	14%	$40
When income is above county set level but less than 85% state median	12%-25%	$40

N. When income is above county set level but less than eighty five percent (85%) state median, the parent fees shall be increased incrementally as outlined by the individual household transition plan up to the six month limit.

O. Parent fees, as assessed by the parent fee formula, may be reduced to five dollars ($5) for hardship reasons for up to six (6) months per hardship award. The county director or his/her designee shall approve fee reductions and a written justification placed in the case file and noted in the case record in the Child Care Automated Tracking System (CHATS). Any hardship award may be extended so long as justification for extending the hardship award exists.

P. The state department shall notify counties annually of the current federal poverty guidelines and state median income limit. Counties shall update parent fees at the next scheduled re-determination.

Q. When all children in a household are in part-time care, the parent fee shall be assessed at fifty-five percent (55%) of the above-calculated fee. Part-time care is defined as an average of less than thirteen (13) full-time equivalent units of care per month.

R. When parent fees fluctuate between part-time and full-time, due to the authorized care schedule, the parent fee should be assessed at the lower rate if the majority of the months in the twelve (12) month eligibility period calculate to part-time care.

S. One or two teen parent households for whom payment of a parent fee produces a hardship may have their fee waived entirely. The parent fee waiver shall be documented in the case file and reviewed during each subsequent re-determination.

3.911 COUNTY RESPONSIBILITIES

A. Counties shall administer the Colorado Child Care Assistance Program in compliance with State Department fiscal and program regulations and in accordance with the terms associated with their allocation. Counties will be allocated child care funds annually.

B. Counties or their designee shall establish administrative controls to ensure appropriate internal controls and separation of duties (this means that the same employee shall not authorize and

process payment for child care services). If these administrative controls create a hardship for the county, the county shall submit a waiver request and an internal county policy to the state department for approval. In no event will the state department approve a waiver of controls specified in federal or state statute or regulation/rule.

C. Counties shall use forms as specified when required by the State Department. Counties may add additional language to state forms but shall not remove language. This does not include the CCCAP application or re-determination. All changes to forms shall be submitted to and approved by the state department prior to use.

D. The counties shall respond to requests from the State Department, in a timely and attentive manner.

E. Counties shall make reasonable efforts to advise county residents of services available to target groups through press releases, presentations, pamphlets, and other mass media.

F. Counties shall use CHATS as designated by the state to administer CCCAP. Counties who do not use CHATS as prescribed by the state may not be reimbursed.

G. Counties shall establish controls over which county staff have the authority to override eligibility in CHATS. All overrides of eligibility shall be accompanied by documentation in CHATS.

H. The county shall document in CHATS case actions and contacts made under the appropriate comment screen, within two (2) business days of case action or contact.

I. Counties shall code child care expenditures to the appropriate program, as prescribed by the state. Failure to do so may result in non-reimbursement or other actions as deemed appropriate by the state.

J. Counties shall monitor expenditures of Child Care funds and may suspend enrollments, as necessary, to prevent over-expenditures in child care. “Reimbursable expenditures” are supported in whole or in part by State General Fund, Federal (pass through) or a combination of State and Federal money.

K. The county shall be responsible for the provision of a safe place for storage of case records and other confidential material to prevent disclosure by accident or as a result of unauthorized persons other than those involved in the administration of the CCCAP program. Data of any form shall be retained for the current year, plus three previous years, unless:

1. A statute, rule or regulation, or generally applicable policy issued by a county, state or federal agency that requires a longer retention period; or,

2. There has been a recovery, audit, negotiation, litigation or other action started before the expiration of the three-year period.

3. If a county shares building space with other county offices, it shall use locked files to store case material and instruct facility and other maintenance personnel concerning the confidential nature of information.

L. If the county opts to require Child Support Services the county shall coordinate with the county Child Care Assistance Program or delegate agency and the delegate county Child Support Services Unit. This includes, but is not limited to:

1. Developing a referral process to notify the delegate Child Support Services unit within its county within fifteen (15) calendar-days of determining that a household is eligible for CCCAP.

2. Determining good cause procedures. Counties shall notify the delegate Child Support Services unit within its county within fifteen (15) calendar-days of making the good cause determination.

3. Developing cooperation and non-cooperation procedures which shall include timelines and processes for inter-department communication.

4. Notifying Child Support Services no later than the end of the thirty (30) day reinstatement period of a low income case closure.

M. Counties shall post eligibility, authorization, and administration policies and procedures so they are easily accessible and readable to the layperson. The policies shall be sent to the State Department for compilation.

N. Counties shall provide adult caretakers, teen parents, child care providers and the general public with information as required by the state department including but not limited to:

1. Information on all available types of child care providers in the community: centers, family child care homes, qualified exempt child care providers and in-home child care. This information can be provided through child care resource and referral agencies.

2. Information regarding voter registration

3. Information on family support services including but not limited to:

   a. Colorado Works;

   b. Head Start and Early Head Start;

   c. Low-Income Energy Assistance Program (LEAP);

   d. Food Assistance program;

   e. Women, Infants And Children (WIC) program;

   f. Child And Adult Care Food program (CACFP);

   g. Medicaid And State Children's Health Insurance Program;

   h. Housing Information; and,

   i. Individuals with Disabilities Education Act (IDEA) programs and services.

4. Counties shall also provide information and referrals to services under early and periodic screening, diagnosis, and treatment (EPSDT) under Medicaid and Part C of IDEA (34 CFR 300)

5. Counties shall collect information on adult caretaker(s) or teen parent(s) receiving programs services listed in 3.911, N, 3-4 via the CCCAP application and shall enter the information into CHATS for reporting purposes.

O. If a county reduces its exit income eligibility levels, a household receiving child care assistance services when the change is implemented, if the household's income exceeds the new exit income eligibility level, shall continue to receive said services until the household's next eligibility re-determination or for six months, whichever is longer, so long as the household income does not exceed eighty-five percent (85%) of the state median income.

P. Once determined eligible, households should remain eligible for a minimum of twelve (12) months. The county shall not discontinue child care services prior to a household's next eligibility re-determination unless:

1. The household's income exceeds eighty-five percent (85%) of the state median income;

2. The adult caretaker(s) or teen parent(s) is no longer in a qualifying eligible activity for the reasons that do not constitute a temporary break as defined in section 3.905.2,C; or,

3. The adult caretaker(s) or teen parent(s) no longer resides in the county of which they are currently receiving CCCAP.

Q. Counties shall maintain a current and accurate wait list in the state identified human services case management system of adult caretakers and teen parents who have applied for the CCCAP program and are likely to be found eligible based on self-reported income and job, education, job search, or workforce training activity if potential program participants are not able to be served at the time of application due to county funding concerns. Counties may enroll adult caretakers and teen parents from wait lists according to local priorities and may require an applicant to restate his or her intention to be kept on the wait list every six months in order to maintain his or her place on the wait list. Counties shall have a written policy that is provided to the state for review and approval at the time of county plan submission.

R. Counties shall review current applications for completeness, approve or deny the application, and provide timely written notice to the adult caretaker(s) or teen parent(s) of approval, or of missing verifications, no more than fifteen (15) calendar-days from the date the application was received by the county. Applications are valid for a period of sixty (60) calendar-days from the application date.

1. If verifications are not received within the fifteen (15) day noticing period the application will be denied.

2. If verification is received within sixty (60) calendar-days of the application date, counties will determine eligibility from the date the current verification was received if the eligibility criteria is met.

3. If verification has not been completely submitted within sixty (60) calendar-days of the application date then the county shall require a new application.

S. Upon review of an application that was directed to the wrong county of residence, the receiving county shall forward the application and any verification within one (1) business day to the correct county. The county shall provide notification to the adult caretaker(s) or teen parent(s) that his/her application has been forwarded to the correct county.

T. Counties may access information already available on file or through system interfaces from other assistance programs within their county to use in child care eligibility determination at application and/or re-determination. Counties shall place a copy of this verification in the case file and/or make a notation in CHATS regarding the verification as appropriate.

U. Counties shall obtain immunization records for children who receive child care from qualified exempt child care providers not related to the child(ren), where care is provided outside of the child's home and the child(ren) are not school age at application and re-determination.

V. Counties are encouraged to use collateral contact whenever possible to verify information needed to determine eligibility, not including citizenship and identity.

W. Counties shall allow adult caretaker(s) or teen parent(s) who declare their children are citizens of the U.S. no more than six (6) months to obtain the documents needed to meet the citizenship documentation requirement for the children.

X. The county shall not require Social Security Numbers or cards for household members who apply for child care assistance.

Y. Counties shall verify the date of birth for all children receiving child care services.

Z. Counties shall use the prudent person principle when determining eligibility or authorizing care and shall document reasoning in the appropriate notes section of CHATS.

AA. The counties or their designee shall verify the residence of any adult caretaker(s) or teen parent(s) receiving or applying for child care assistance to ensure that they live in the county where they are applying for assistance at the time of application or when a change in address is reported. For families experiencing homelessness, refer to section 3.909.

1. Verification of address may include but is not limited to:

    a. Rent receipt/lease; or,

    b. Mortgage statement; or,

    c. Utility or other bill mailed no more than two months previously; or,

    d. Voter registration; or,

    e. Automobile registration; or,

    f. A statement from the person who leases/owns the property; or,

    g. Documentation from schools such as verification of enrollment, report card, or official transcript mailed no more than two months previously; or,

    h. Official correspondence from any other government agency (e.g. IRS) mailed within the past two months; or

    i. A statement from another department in your agency if they have verified the residence (e.g. Child Welfare, collateral contact); or

    j. Paycheck stub received within the past two months

2. If the county of residence is questionable, a secondary means of verification may be requested such as but not limited to:

    a. Records from the local county clerk and recorder's office; or,

    b. Records from the local county assessor's office.

BB. County child care staff shall advise low-income adult caretaker(s) or teen parent(s) of their responsibilities in writing at application and re-determination. Information that shall be reported during the twelve (12) month eligibility period is as follows:

1. Changes to income, if the household's income exceeds eighty-five percent (85%) of the State median income shall be reported within ten (10) calendar-days of the change.

2. Changes to an adult caretaker(s) or teen parent's qualifying eligible activity, which does not qualify as a temporary break as defined in section 3.905.2, C, must be reported within four (4) calendar weeks.

CC. Counties shall process any reported change and/or required verification within ten (10) calendar-days of receiving the information using the following guidelines:

1. Changes reported during the twelve (12) month eligibility period requiring immediate action:

   a. Changes to income, if the household's income exceeds eighty-five percent (85%) of the state median income;

   b. Changes to an adult caretaker or teen parent's qualifying eligibility activity, which does not qualify as a temporary break as defined in section 3.905.2, C;

   c. Changes in county residency; and,

   d. Changes that are beneficial to the household such as, but not limited to:

      1) An increase in authorized care;

      2) Changes that would result in a decrease of the parent fee;

      3) A change of child care provider;

      4) Change in household composition due to an additional child requesting care; and,

      5) Change in mailing address.

2. Changes outside of the above guidelines should be documented in CHATS but shall not be acted upon until the adult caretaker or teen parent's re-determination.

DD. If the adult caretaker(s) or teen parent(s) moves out of county, the exiting county shall:

1. Keep the CCCAP case open for up to 30 days from the date of the move or from the date the move was reported, which ever occurred first, to allow the adult caretaker(s) or teen parent(s) to apply for CCCAP in the receiving county; and,

2. The exiting county and the receiving county shall communicate during this thirty (30) day period to mitigate service interruptions if the adult caretaker(s) or teen parent(s) is eligible in the receiving county.

EE. Counties shall respond to requests for information or assistance from other agencies within five (5) business days.

FF. Whenever possible in processing re-determinations of eligibility for adult caretaker(s) or teen parent(s) currently receiving CCCAP, counties shall use information that is already available in other sources to document any verification including citizenship and identity.

GG. Counties shall reduce parent fees by twenty percent (20%) of the regularly calculated parent fee when a household utilizes a quality child care provider rated in the top three levels of the state department's quality rating system. For households utilizing multiple child care providers, only one child care provider is required to be in the top three quality levels for the reduced parent fee to apply.

HH. The county shall not take action on report of unpaid parent fees if it is outside of the required reporting time frame.

II. Counties shall authorize care based on verified need, by establishing an authorization to cover the maximum amount of units needed to ensure care is available based on the adult caretaker or teen parent's participation in an eligible activity, and shall not be linked directly to the adult caretaker or teen parent's activity schedule and should be based on the child's need for care.

JJ. Counties are encouraged to blend Head Start, Early Head Start and CCDF funding streams by authorizing care based on the child's need for care, regardless of the child's head start or early head start enrollment status, in order to provide seamless services to children dually enrolled in these programs.

KK. Counties shall align the CCCAP re-determination date with the Head Start or Early Head Start program year upon notification that a child is enrolled in a Head Start or Early Head Start program. The re-determination date shall not occur any earlier than twelve (12) months from the CCCAP application date.

LL. With regard to services to students enrolled in grades one (1) through twelve (12), no funds may be used for services provided during the regular school day, for any services for which the students received academic credit toward graduation, or for any instructional services, which supplant or duplicate the academic program of any public or private school, this applies to grades 1 through 12. Exceptions to this may include but are not limited to:

1. When a child is temporarily prohibited from attending his/her regular classes due to a suspension or expulsion; or,

2. When a child is temporarily out of school due to scheduled breaks; or,

3. When a child is temporarily out of school due to unexpected school closures.

MM. The authorization start date shall be the date a low income CCCAP case is determined eligible, except in the case of a pre-eligibility application.

NN. For pre-eligibility care reimbursable after eligibility has been determined and the county can provide subsidy for the potential program participant, authorization shall be dated to the date the pre-eligibility application was received by the county.

OO. The county shall generate a state-approved notice regarding changes to child care subsidies within one (1) business day and provide to the primary adult caretaker, teen parent and child care provider via postal service, e-mail or other electronic systems, fax, or hand-delivery.

PP. If verification that is needed to correct the reason for closure of a child care case is received within thirty (30) calendar-days after the effective date of closure, eligibility shall be determined as of the date the verification was received regardless of any break in service period.

QQ. The county shall generate Attendance Tracking System registration for the household upon case approval or initial authorization.

RR. The county shall generate Attendance Tracking System registration for child care providers upon entering into a fiscal agreement with a provider.

SS. The county shall make available the following child care provider information, including protective services information, to all staff whose responsibilities include child care subsidy services:

1. Information known to licensing staff.

2. Information from previous agency contacts.

3. Information obtained from the Child Care Fiscal Agreement renewals.

4. Information obtained from adult caretaker(s) or teen parent(s), caseworker visits, and other sources.

5. Information about corrective action intervention by the counties, their designee(s), or State Department.

TT. Counties are responsible for verifying proof of lawful physical residence in the United States for any qualified exempt child care provider(s).

UU. The counties or their designee will complete a review of the state administered system for child abuse and neglect on the qualified exempt child care provider(s) and any one in the qualified exempt child care provider's household who is eighteen (18) years and over not including the adult caretaker(s) or teen parent(s).

VV. The counties or their designee shall screen the qualified exempt child care provider(s) and any other adult eighteen (18) years of age and older, not including the adult caretaker(s) or teen parent(s), for current or previous adverse county contact, including but not limited to, allegations of fraud or IPV.

WW The county shall reimburse licensed child care providers based on the state established base payment and tiered reimbursement rates unless they have followed the county opt out process outlined in section 3.914.1 and it has been approved by the state department.

XX. The county-established licensed child care provider reimbursement rates shall include a system of tiered reimbursement based on quality levels for licensed child care providers that enroll children participating in CCCAP.

YY. For renewals, the county shall send fiscal agreements at least sixty (60) calendar-days prior to the end date of the previous fiscal agreement via postal service, fax, hand-delivery, e-mail or other electronic systems.

ZZ. Prior to approving a fiscal agreement with any child care provider, the county shall compare the child care provider's private pay rates to the county's base ceiling reimbursement rates and set the provider's base reimbursement rate at the amount that is the lesser of the two.

AAA. Counties may opt to pay higher than a provider's private pay rates for high quality rating 3-5. Maximum payment for each high quality tier shall not be higher than the county ceiling rate.

BBB. Counties shall have fiscal agreements signed by the child care provider and county staff prior to opening or amending them in CHATS. Counties shall provide a copy of the fully executed fiscal agreement to the child care provider within seven (7) days of CHATS entry.

CCC. Counties shall verify that child care providers are not excluded from receiving payments prior to signing a fiscal agreement. The county shall make this verification check through the Excluded Parties List System (EPLS) established by the General Services Division on the website at: www.sam.gov.

DDD. Counties shall pay child care providers for services provided that could not be paid through the automated system, based on county payroll policies. If payment is delayed for any reason, the county shall notify the child care provider(s) in a timely manner and document the circumstances in CHATS.

EEE. In any cases where payments to licensed centers or homes are delayed more than three (3) calendar months past the end of the month care was provided, county-only money shall be used to pay for this care.

FFF. Counties shall ensure that child care providers are not charging the county more than their established private pay rates.

GGG. County offices shall complete a random monthly review of attendance data for at least one percent (1%) or one provider, whichever is greater. The county or its designee shall take necessary action as defined in the county fraud referral process if the review indicates:

1. That the child care provider(s) may have submitted an inaccurate report of attendance for a manual claim, the county or its designee shall contact the child care provider(s) and adult caretaker(s) or teen parent(s) to resolve the inaccuracy.

2. That either the adult caretaker(s) or teen parent(s) or the child care provider has attempted to defraud the program or receive benefits to which they were not eligible. The county or its designee shall report that information to the appropriate legal authority.

HHH. The county shall refer, within fifteen (15) calendar-days of establishing recovery, to the appropriate investigatory agency and/or the district attorney, any alleged discrepancy which may be a suspected fraudulent act by a household or child care provider of services.

III. Counties shall establish recoveries within twelve (12) months of discovery of the facts resulting in recovery.

JJJ. Counties shall take whatever action is necessary to recover payments when households and/or child care providers owe money to the State Department because of overpayments, ineligibility and/or failure to comply with applicable state laws, rules or procedures.

KKK. Counties shall report established recoveries that are the result of fraud to the state department.

3.911.1 ADDITIONAL COUNTY RESPONSIBILITIES FOR COLORADO WORKS CHILD CARE

A. The county will act within five (5) business days of receipt of a referral from Colorado Works for new or ongoing child care.

B. The county shall not terminate care on any Colorado Works (basic cash assistance) child care cases until the end of the month the Colorado Works case is closed. Since clients are eligible for Colorado Works for the entire month, they are also eligible for Colorado Works child care. This does not include Colorado Works diversion cases.

3.912 PRE-ELIGIBILITY DETERMINATIONS

An Early Care and Education provider may provide services to the household prior to the final determination of eligibility and shall be reimbursed for such services only if the county determines the household is eligible for services and there is no need to place the household on the wait list. The start date of eligibility is defined in Section 3.911, R. If the household is found ineligible for services, the Early Care and Education provider shall not be reimbursed for any services provided during the period between his/her pre-eligibility determination and the county's final determination of eligibility.

The Early Care and Education provider or county may conduct a pre-eligibility determination for child care assistance for a potential program participant to facilitate the determination process.

A. The Early Care and Education provider may submit the prospective program participant's State-approved application, release of information, and documentation to the county for final determination of eligibility for child care assistance. The Early Care and Education provider shall signify on the first page of the application in the space provided that a pre-eligibility determination has been made.

B. The Early Care and Education provider or county may provide services to the household prior to final determination of eligibility, and the county shall reimburse an Early Care and Education Provider:

   1. As of the date the county receives the application from the Early Care And Education provider for such services only if the county determines the prospective program participant is eligible for services; and,

   2. There is no need to place the prospective program participant on a wait list.

C. All supporting documentation for a pre-eligibility application submitted by an Early Care and Education Provider shall be received in thirty (30) calendar-days of the date the application was received or the application may be determined ineligible by the county. If all verifications are received between the thirty-first (31st) and sixtieth (60th) day, counties shall determine eligibility from the date the verification was received.

D. If the prospective program participant is found ineligible for services, the county shall not reimburse the Early Care and Education provider for any services provided during the period between its pre-eligibility determination and the county's final determination of eligibility.

E. If an Early Care and Education provider or county has conducted a pre-eligibility determination, they shall include documentation of the information on which the pre-eligibility determination has been made in or with the application. The documentation shall include household income, household composition, and eligible activity.

F. When a county conducts a pre-eligibility determination, the county shall notify the prospective child care provider with the referral for pre-eligibility authorization that payment for care provided prior to full eligibility may not occur if the adult caretaker(s) or teen parent(s) is ultimately deemed ineligible for the CCCAP program.

G. A child care provider may refuse to serve a county pre-eligibility authorized program participant.

3.913 CHILD CARE PROVIDERS

3.913.1 ELIGIBLE FACILITIES

A. Licensed Facilities

The following facilities are required to be licensed and comply with licensing rules as defined in the Social Services rule manual, sections 7.701 through 7.712 (12 CCR 2509-8):

1. Family child care homes

2. Child care centers which are less than 24-hour programs of care, as defined in section 26-6-102(1.5), C.R.S.

B. Qualified Exempt Child Care Providers

1. Qualified exempt child care provider: A non-licensed family child care home in which less than twenty-four (24) hour care is given at any one time for only one child, two or more children who are siblings from the same household, or children who are a relative of the child care provider. This includes the following relationships for types of care:

   a. “Relative in-home care” means care provided by a relative in the child’s own home by a person who does not meet the definition of “adult caretaker” or “teen parent”.

   b. “Relative out-of-home care” means care provided by a relative in another location by a person who does not meet the definition of “adult caretaker” or “teen parent”.

   c. “Non-relative in-home care” means care provided by a person, who is not related to the child, in the child’s own home by a person who does not meet the definition of “adult caretaker” or “teen parent”.

   d. “Non-relative out-of-home care” means care provided by a person, who is not related to the child, in another location by a person who does not meet the definition of “adult caretaker” or “teen parent”.

2. The counties or their designee shall register qualified exempt child care providers and include the following information: name, address (not a P.O. Box #), phone number and social security number. Pursuant to Section 24-76.5-103, C.R.S., counties or their designee shall verify the lawful presence in the United States of all applicants for state or local public benefits, or federal benefits provided by CDHS, or by the county or their designee under the supervision of the State Department pursuant to Section 3.140.12, except as otherwise provided in subsection (3) of 24-76.5-103, C.R.S. Any contract provided by an agency of a state or local government is considered a public benefit.

3. Qualified Exempt Child Care Provider Requirements

   a. Qualified exempt child care provider(s) shall be at least eighteen (18) years of age.

   b. A qualified exempt child care provider shall not be the parent or adult caretaker of the child that is receiving care.

c. As a prerequisite to signing a fiscal agreement with a county or its designee, a qualified exempt child care provider shall sign an attestation of mental competence. The attestation affirms that he or she, and any adult residing in the qualified exempt child care provider home where care is provided, has not been adjudged by a court of competent jurisdiction to be insane or mentally incompetent to such a degree that the individual cannot safely care for children.

4. Background Checks

a. A qualified exempt child care provider and any adult eighteen years of age or older who resides in the exempt child care provider's home, not including the adult caretaker(s) or teen parent(s), shall be subject to a criminal background review once every five years including the following checks:

1) The Federal Bureau of Investigations (FBI) and the Colorado Bureau of Investigations (CBI) fingerprint-based criminal history records;

2) The state administered database for child abuse and neglect;

3) The CBI sex offender registry; and,

4) The national sex offender registry public website (effective September 30, 2017).

b. Information submitted to the CBI sex offender registry and the national sex offender registry public website shall include:

1) Known names and addresses of each adult residing in the home, not including the adult caretaker(s) or teen parents; and,

2) Addresses.

c. Upon submission of the completed background check packet, as determined by state procedures, a qualified exempt child care provider shall submit certified funds (i.e., money order or cashier's check) to cover all fees indicated below.

1) A fee for the administrative costs referred to in Section 7.701.4, F (12 CCR 2509-8).

2) A fee for each set of submitted fingerprints for any adult who resides in the home where the care is provided, eighteen (18) years of age or older, not including the adult caretaker(s) or teen parent(s), will be required. Payment of the fee for the criminal record check is the responsibility of the individual being checked.

3) Counties have the option to begin authorization and payment for child care services as of the date the state department receives the completed background check.

d. The qualified exempt child care provider(s) may continue to receive payment as long as the qualified exempt child care provider(s) or other adult is not ineligible due to the following circumstances:

1) Conviction of child abuse, as described in Section 18-6-401, C.R.S.;

2) Conviction of a crime of violence, as defined in Section 18-1.3-406, C.R.S.;

3) Conviction of any felony offense involving unlawful sexual behavior, as defined in Section 16-22-102 (9), C.R.S.;

4) Conviction of any felony that on the record includes an act of domestic violence, as defined in Section 18-6-800.3, C.R.S.;

5) Conviction of any felony involving physical assault, battery or a drug-related/alcohol offense within the five years preceding the date of the fingerprint-based criminal background check;

6) Conviction of any offense in another state substantially similar to the elements described in Items 1 through 5, above;

7) Has shown a pattern of misdemeanor convictions within the ten (10) years immediately preceding submission of the application. “Pattern of misdemeanor” shall include consideration of Section 26-6-108(2), C.R.S., regarding suspension, revocation and denial of a license, and shall be defined as:

8) Three (3) or more convictions of 3rd degree assault as described in Section 18-3-204, C.R.S., and/or any misdemeanor, the underlying factual basis of which has been found by any court on the record to include an act of domestic violence as defined in Section 18-6-800.3, C.R.S.; or,

9) Five (5) misdemeanor convictions of any type, with at least two (2) convictions of 3rd degree assault as described in Section 18-3-204, C.R.S., and/or any misdemeanor, the underlying factual basis of which has been found by any court on the record to include an act of domestic violence as defined in Section 18-6-800.3, C.R.S.; or,

10) Seven (7) misdemeanor convictions of any type.

11) Has been determined to be responsible in a confirmed report of child abuse or neglect.

e. A qualified exempt child care provider shall notify the county with whom he or she has contracted pursuant to a publicly funded state Child Care Assistance Program, within ten (10) calendar-days of any circumstances that result in the presence of any new adult in the residence.

5. Additional requirements for non-relative qualified exempt child care providers and other qualified child care facilities:

a. Completion of all pre-service health and safety trainings approved by the state department of human services, within three months of providing services as a qualified exempt child care provider under the Colorado Child Care Assistance Program.

b. An annual on-site health and safety inspection conducted by the state department of human services or its designee. The health and safety check list is incorporated by reference to provide further guidance; no further editions or

amendments are included. Non-relative qualified exempt providers shall correct any health and safety inspection standards immediately after the inspection.

c. A qualified exempt child care provider who is a non-relative and provides services in the child's home or in the qualified exempt child care provider's home shall sign an attestation of mental competence.

d. Qualified exempt non-relative child care providers shall meet the mandatory child abuse and neglect reporting requirements.

e. If the non-relative qualified exempt child care provider fails to comply with any of the requirements in (a)-(d) above, the county shall deny or terminate a fiscal agreement.

6. Qualified exempt child care providers who are denied a Fiscal Agreement or whose Fiscal Agreement is terminated may request an informal conference with staff responsible for the action, the supervisor for that staff and the county director or director's designee to discuss the basis for this decision and to afford the qualified exempt child care provider(s) with the opportunity to present information as to why the qualified exempt child care provider(s) feels the county should approve or continue the Fiscal Agreement. Any request for a conference shall be submitted in writing within fifteen (15) calendar-days of the date the qualified exempt child care provider is notified of the action. The county shall hold that conference within two (2) weeks of the date of the request. The county shall provide written notice of its final decision to the qualified exempt child care provider(s) within fifteen (15) business days after the conference.

7. Non-relative qualified exempt child care providers who are denied a fiscal agreement or whose fiscal agreement is terminated due to the department's decision regarding adherence to health and safety standards may appeal the decision to the executive director of the state department of human services or his/her designee in writing within fifteen (15) days of the county's decision. The executive director's decision is a final agency decision subject to judicial review by the state district court under § 24-4-106, C.R.S.

C. For renewals, the county shall send fiscal agreements at least sixty (60) calendar-days prior to the end date of the previous fiscal agreement via postal service, fax, hand-delivery, e-mail or other electronic systems.

D. PAYMENT METHODS

a. Payment for purchased child care shall be made to the child care provider(s) through an automated system if it is a qualified exempt child care provider(s) or licensed facility.

b. When a manual claim is needed, the child care form for attendance record and billing shall be prepared and signed by the child care provider monthly and used by the county to verify that the billing does not exceed the authorized number of units.

E. Child care providers shall be provided with a written notice of the process of termination of the fiscal agreement on the fiscal agreement form.

3.913.2 CHILD CARE PROVIDER RESPONSIBILITIES

A. Child care Providers shall maintain a valid child care license as required by Colorado statute unless exempt from the Child Care Licensing Act.

B. Child care Providers shall report to the county if their license has been revoked, suspended, or denied within three (3) calendar-days of receiving notification or a recovery will be established of all payments made as of the effective date of closure.

C. Child care providers shall report to the county and state licensing any changes in address no less than thirty (30) calendar-days prior to the change.

D. Child care providers shall report to the county and state licensing any changes in phone number within ten (10) calendar-days of the change.

E. Child care providers shall allow parents, adult caretakers, or teen parents immediate access to the child(ren) in care at all times.

F. Child care providers shall accept referrals for child care without discrimination with regard to race, color, national origin, age, sex, religion, marital status, sexual orientation, or physical or mental handicap.

G. Child care providers shall provide children with adequate food, shelter, and rest as defined in licensing rule (12 CCR 2509-8).

H. Child care providers shall maintain as strictly confidential all information concerning children and their families.

I. Child care providers shall protect children from abuse/neglect and report any suspected child abuse and neglect to the county or the Colorado Child Abuse and Neglect Hotline immediately.

J. Child care providers shall provide child care at the facility address listed on the fiscal agreement and ensure care is provided by the person or business listed on the fiscal agreement. Exceptions are defined in licensing rules (12 CCR 2509-8).

K. Child care providers will not be reimbursed for any care provided before the fiscal agreement start date and after the fiscal agreement end date.

L. Child care providers shall sign the child care fiscal agreement and all other county or state required forms. Payment shall not begin prior to the first of the month the fiscal agreement has been signed and received by the county.

M. Child care providers shall comply with Attendance Tracking System (ATS) requirements as defined in section 3.914.4.

N. Child care providers shall develop an individualized care plan (ICP) for children with additional care needs based upon the Individual Education Plan (IEP), or Individual Health Care Plan (IHCP), and provide a copy to the county eligibility worker on an annual basis or other alternate period of time determined in the plan.

O. Licensed child care providers shall maintain proof of current immunizations for the children in their care in accordance with Section 7.702 et seq. (12 CCR 2509-8). This rule does not apply to the following:

    1. Qualified exempt child care Providers caring for children in the child's own home; or,

2. Qualified exempt child care Providers caring only for children related to the child care provider such as grandchildren, great-grandchildren, siblings, nieces, or nephews, etc.;

P. Child care Providers shall maintain paper or electronic sign in/out sheets that the person authorized to drop off/pick up the children has signed with the time the children arrive and leave each day they attend. These records shall be available for county review upon request and maintained for the current year plus three years.

Q. Child care providers shall report non-payment of parent fees no later than sixty (60) calendar-days after the end of the month the parent fees are due unless county policy requires it earlier. The unpaid parent fees can be reported by fax, e-mail or other electronic systems, in writing or on the billing form.

R. Child care providers shall notify the county of unexplained, frequent and/or consistent absences within ten (10) calendar-days of establishing a pattern.

S. Child care providers shall not charge counties more than their established private pay rates.

T. Child care providers shall not charge adult caretakers or teen parents rates in excess of those agreed upon in the fiscal agreement (this includes the agreed upon registration, mandatory activity and transportation fees if the county pays these fees).

U. Child care Providers shall offer free, age appropriate alternatives to voluntary activities.

V. Child care Providers shall only bill for care authorized and provided.

W. Child care Providers shall bill counties monthly for services authorized and attended but not paid through the Attendance Tracking System (ATS). Payment for services shall be forfeited if the original billing form is not submitted within sixty (60) calendar-days following the month of service.

X. Child care providers shall not hold, transfer, or use an adult caretaker or teen parent's individual attendance credentials. If intentional misuse is founded by any county or state agency, the child care provider will be subject to disqualification(s) as outlined in section 3.915.

3.913.3 COMPLAINTS ABOUT CHILD CARE PROVIDERS

Counties and the public may access substantiated complaint files regarding complaints about procedures other than child abuse at the Colorado Department of Human Services, Division of Early Care and Learning, or on the CDHS website at https://gateway.cdhs.state.co.us/cccls/PublicFileReview.aspx.

A. Complaints about qualified exempt child care providers

Complaints shall be referred to the Colorado Department of Human Services, Division of Early Care and Learning Licensing staff or appropriate contracted agencies the same day as it is received by the county when:

1. The complaint is about a qualified exempt child care provider, who is alleged to be providing illegal care.

2. The complaint is related to issues with a qualified exempt child care provider such as violation of non- discrimination laws or denial of parent access (does not include investigation of illegal care).

B. Complaints about licensed child care providers

The following guidelines shall apply to complaints received by counties about licensed child care providers:

1. If the complaint concerns child abuse or neglect, the county shall immediately refer the complaint to the appropriate county protective services unit.

2. If the complaint concerns a difference of opinion between a child care provider and an adult caretaker(s) or teen parent(s), the counties shall encourage the child care provider and adult caretaker or teen parent to resolve their differences.

3. Complaints shall be referred to the Colorado Department of Human Services, Division of Early Care and Learning licensing staff the same day the county receives it when the complaint is about a family child care home or child care center and is related to non-compliance licensing issues.

3.914 PURCHASE OF SERVICES

3.914.1 CHILD CARE PROVIDER REIMBURSEMENT RATES

The state department shall establish licensed child care provider base payment rates for each county every other year. In addition to establishing licensed child care provider base payment rates the state department will establish tiered reimbursement rates based on quality levels for licensed child care providers that enroll children participating in CCCAP.

A. Counties may choose to opt out of the state established child care provider rates and shall complete the following to ensure payment rates are sufficient to ensure equal access:

1. Identify and explain what facts the county used to determine equal access using one or more of the following methods:

a. Payment rates are set at the seventy-fifth (75^{th}) percentile or higher of the most recent market rate survey

b. Using tiered rates/differential rates to increase access for targeted needs

c. Rates based on data on the cost to the child care provider of providing care meeting certain standards

d. Data on the size of the difference (in terms of dollars) between the payment rates and the 75th percentile in the most recent market rate survey, if rates are below the 75th percentile

e. Data on the proportion of children receiving subsidy being served by high quality child care providers

f. Data on where children are being served showing access to the full range of child care providers

g. Feedback from parents, including parent survey or parent complaints

h. Other method of ensuring equal access (subject to state approval)

2. Consult with the following entities:

a. Local early childhood council

b. Local resource and referral agency

c. Child care child care providers in the county who serve or want to serve children receiving CCCAP

3. Notify the state department of the decision to opt out of state established licensed child care provider base rate and/or tiered reimbursement rate through the use of the county plan approval process

4. The county may set payment rates for qualified exempt child care providers based on local need.

B. Payment rates shall be defined utilizing the state established, system supported age bands.

C. Rate types are selected by child care provider type (licensed home, licensed center, and qualified exempt child care providers). The state department has established rate type definitions to be used by all counties and deviation from the rate definitions shall not be permitted.

D. Payments shall be made in part time/full time daily rates.

1. Part-time is defined as zero (0) hours, zero (0) minutes, and one (1) second through five (5) hours, zero (0) minutes, and zero (0) seconds per day. Part time is paid at fifty-five percent (55%) of the full time rate, unless the county designates otherwise.

2. Full time is defined as five (5) hours, zero (0) minutes, and one (1) second through twelve (12) hours, zero (0) minutes, and zero (0) seconds.

3. Full-time/part time is defined as twelve (12) hours, zero (0) minutes, one (1) second through seventeen (17) hours, zero (0) minutes, zero (0) seconds of care.

4. Full time/full time is defined as seventeen (17) hours, zero (0) minutes, one (1) second through twenty-four (24) hours, zero (0) minutes, zero (0) seconds of care.

5. Counties may set rates for basic and alternative care as defined by the county and reported in the county plan.

E. Absences and Holidays

1. Counties shall pay for absences in accordance with the policy set by the county. Any absence policy set by the county shall address when the child is not in care to include, but not limited to, payments for scheduled school breaks, absences, and holidays.

2. Counties have the discretion to roll payments for absences and holidays into their regular daily child care provider reimbursement rates, or may pay for absences and holidays with a daily rate as they occur and pursuant to the county policies.

3. Tiered Absences and Holidays

a. Whether a county rolls their absences and holidays in addition to their child care provider base reimbursement rate, or they pay them separately, and if a child utilizes care at multiple child care providers, counties shall reimburse child care providers proportionate to the quantity of care provided overall or in accordance with the child’s actual use of care.

b. Counties shall reimburse child care providers for absences and holidays per twelve (12) months of continuous eligibility based on the following schedule:

1) For child care providers in the first level of the department's quality rating and improvement system, no fewer than six (6) absences or holidays;

2) For child care providers in the second level of the department's quality rating and improvement system, no fewer than ten (10) absences or holidays;

3) For child care providers in the top three levels of the department's quality rating and improvement system, no fewer than fifteen (15) absences or holidays.

4. Counties may adopt a policy allowing the use of holding spaces in order to address payments to hold a child's space with a provider when the child is not in care to include, but not limited to:

A. Payments for scheduled school breaks;

B. Absences, and;

C. Holidays.

F. Counties may adopt a policy to pay for drop in days in addition to regularly authorized care.

G. Bonus Payments

Counties shall not at any time use federal Child Care Development Block Grant Funds (CCDBG), or state General Funds, for the payment of bonuses to child care providers serving children in the CCCAP program. A county shall not use CCDBG or state General Funds to retroactively increase the daily rate paid to child care providers and issue a payment to child care providers based on that retroactive calculation.

H. Child care providers who contend that the county has not made payment for care provided under CCCAP in compliance with these rules may request an informal conference with staff, the appropriate supervisor, the county director or the director's designee, and, if requested by the child care provider(s), state program staff. Any request for a conference shall be submitted in writing within fifteen (15) calendar-days of the date of the action. The county shall hold that conference within two (2) weeks of the date of the request. The county shall provide written notice of its final decision within fifteen (15) business days of the conference. The purpose of the conference shall be limited to discussion of the payments in dispute and the relevant rules regarding payment.

3.914.2 SLOT CONTRACTS (COUNTY OPTION)

Slot contracts are used as a method to increase the supply and improve the quality of child care for county identified target populations and areas through collaborative partnerships that meet family and community needs. Slot contracts should also support continuity of care for households, funding stability for child care providers, and expenditure predictability for counties.

A. Counties may choose to enter into a slot contract not to exceed twelve (12) months per contract with a licensed child care provider to purchase a specified number of slots for children enrolled in CCCAP.

1. When a county chooses the option to use slot contracts with a licensed child care provider, the following steps shall be completed a minimum of sixty (60) days prior to the commencement of the slot contract:

    a. County plan shall be updated in CHATS to include selection of the slot contract option.

    b. At the time the county plan is updated a slot contract policy shall be submitted to the state department for approval. The policy shall include but is not limited to:

        1) The county identified target populations and areas

        2) How the county will determine the length of the slot contract

        3) How the county will identify the need for the slot contract at a specific licensed child care provider

        4) How the county will ensure a fair and equitable review and selection process when selecting a licensed child care provider in the case of multiple child care programs expressing interest in entering into slot contracts.

        5) How the county will determine the number of slots they contract for with a licensed child care provider

        6) Evidence that less-than-arm's length transactions are prohibited including, but not limited to, those in which; one party is able to control or substantially influence the actions of the other.

        7) How the county will continuously monitor the success of a slot contract during the contract period to include but not limited to:

            a) What the measure of success is for the slot contract and how it is determined.

            b) Frequency of monitoring the success of the slot contract to be no less than quarterly.

            c) Contract renegotiation for not reaching the set measure of success for the slot contract including under-utilization of paid slots during the designated monitoring period.

        8) How the county will determine the need for a slot contract renewal

            a) A proposed slot contract (state template or county developed), including the state-approved slot contract fiscal agreement, between the county and the child care provider shall be submitted to the state department for approval a minimum of thirty (30) days prior to the contract start date. The slot contract shall include the obligations that need to be met by each party and the steps that will be taken if either party fails to meet the identified obligations.

b) If the county determines a need for slot contract renewal or renegotiation, they shall provide documentation to the state department of the success of the initial slot contract and the need for an additional slot contract a minimum of sixty (60) days prior to the end of the initial slot contract.

B. Counties shall submit the state developed monitoring tool based on the county determined review schedule.

C. Target population and areas may include but are not limited to:

1. Infants and toddlers;

2. Children with additional care needs;

3. Children needing care during nontraditional hours (i.e., evening, overnight and weekend care);

4. Children in underserved areas;

5. Areas where quality programs are in short supply for children enrolled in CCCAP; or,

6. Any other county identified target population or areas.

D. Criteria for assessing the need for slot contracts may include but is not limited to:

1. Counties shall demonstrate the rationale for identifying specific CCCAP populations or underserved areas in their county;

2. The demographic data source(s) shall be identified which supports the need to expand quality programs for specific CCCAP target populations and/or justifies needs based on underserved areas for all CCCAP households (demographic data may be based on zip codes or other geographic areas as determined by the county);

3. Counties are strongly encouraged to work with early childhood councils, resource and referral agencies, and other community based organizations to identify the need for contracts with specific populations or in specific areas of the county.

E. Licensed child care programs who enter into slot contract agreements with counties shall agree to be engaged in quality building at a minimum of a level two (2) quality rating through the Colorado Shines QRIS program.

F. The state department will develop a contract template that meets the requirements of this rule and all state and federal contracting requirements.

1. Counties may adapt the contract template to include any county-specific requirements or may draft their own contract which shall be pre-approved by the state department prior to use.

2. The state department will assess and approve within thirty (30) days of receipt:

a. The updated county plan;

b. The county submitted slot contract policy; and,

c. The county submitted slot contract.

3. The state department will assess requests for slot contract renewals within thirty (30) days of receipt based on the supporting documentation provided by the county.

4. The state department will review the monitoring conducted by the county based on the county determined review schedule.

3.914.3 ARRANGEMENT FOR CHILD CARE SERVICES

A. Counties shall use the state prescribed child care authorization notice form to purchase care on a child-by-child basis and identify the amount of care and length of authorized care. Payment for care will be authorized for child care providers who have a license or who are qualified exempt child care providers and have a current, signed fiscal agreement with the county.

B. Care is typically authorized for twelve (12) consecutive months except:

1. When an eligible child is or will be enrolled in a program that does not intend to operate for the entire eligibility period;

2. When an eligible child's adult caretaker(s) or teen parent(s) does not intend to keep the child enrolled with their initial child care provider(s) during the entire eligibility period; or,

3. When the adult caretaker(s) or teen parent(s) are participating in time limited activities such as job search or education/training.

C. When payment will be made to the child care provider(s), the county shall forward the child care authorization notice form to the child care provider(s) within seven (7) working days of determined eligibility. This time limit applies to original, changed and terminated actions. The state may not reimburse counties if the seven working day requirement is not met.

D. Child care will be paid for children under the age of thirteen (13) for a portion of a day, but less than twenty-four (24) hours. Child care for eligible activities will include reasonable transportation time from the child care location to eligible activity and from eligible activity to child care location.

E. Children over the age of thirteen (13) but up to age nineteen (19), who are physically or mentally incapable of caring for himself or herself or under court supervision, may be eligible for child care due to having additional care needs for a portion of a day but less than twenty-four (24) hours. Counties may pay more for children who have additional care needs based upon verified individual needs and documented in county policy, but rates cannot exceed the child care provider's published private pay rates.

F. Counties may pay for activity fees if the child care provider charges such fees, and if the child care fiscal agreement contains the child care provider's policy on activity fee costs. Counties shall set their own limit on activity fees with prior notice to the state department.

G. Counties may pay for transportation costs if the child care provider charges such costs, and if the child care fiscal agreement contains the child care provider's policy on transportation costs. Allowable costs include the child care provider's charges for transportation from the child care provider's facility to another child care or school facility. Transportation costs do not include travel between an adult caretaker's or teen parent's home and the child care provider's facility. Counties shall set their own limit on transportation fees with prior notice to the state department.

H. Counties may pay for registration fees if the child care provider is licensed, and if the child care fiscal agreement contains the child care provider's policy on registration costs. Counties shall set their own limit on registration fees with prior notice to the state department.

I. Any money paid or payable to child care providers shall be subject to execution, levy, attachment, garnishment or other legal process.

J. Expenditures shall be necessary and reasonable for proper and efficient performance and administration. A cost is reasonable if, in its nature and amount, it meets all the following criteria:

1. Expenditures shall be compared to market prices for reasonableness.

2. Expenditures shall be compared to the market prices for comparable goods or services as a test for reasonableness.

3. Expenditures shall be ordinary and necessary.

4. Expenditures shall be of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the federal award.

5. Expenditures shall meet standards such as sound business practices and arms-length bargaining.

6. Expenditures shall have restraints or requirements imposed by such factors as: sound business practices; arms-length bargaining; Federal, State and other laws and regulations; and, terms and conditions of the State and/or Federal award. “Arms-length bargaining” means both parties to a contract have relatively equal powers of negotiation upon entering the contract. Neither party has a disproportionate amount of power to strong-arm the other party. Less-than-arms-length transactions are prohibited and these include, but are not limited to, those where; one party is able to control or substantially influence the actions of the other.

7. Expenditures shall be the same as would be incurred by a prudent person.

8. Expenditures shall not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. A prudent person is one who considers their responsibilities to the governmental unit, its employees, the public at large, and the federal government.

3.914.4 ATTENDANCE TRACKING SYSTEM (ATS)

A. The adult caretaker(s) or teen parent(s) shall utilize the Attendance Tracking System as follows:

1. To record child's authorized and utilized daily attendance at the designated child care provider’s location.

2. In the event that the child care provider has recorded a missed check-in or check-out the adult caretaker or teen parent shall confirm the record in the Attendance Tracking System for the prior nine (9) day period.

3. Adult caretakers or teen parents shall not leave his/her individual attendance credentials in the child care provider's possession at any time or he/she may be subject to disqualification.

4. Non-cooperation with the use of the Attendance Tracking System may result in case closure and/or non-payment of the child care subsidy as defined by a state approved county policy.

B. The child care provider will receive registration information for the Attendance Tracking System upon entering into a fiscal agreement with the county and shall utilize the Attendance Tracking System as follows:

1. To ensure that CCCAP adult caretakers or teen parents record child's authorized and utilized daily attendance at the designated child care provider's location.

2. To ensure that in the event that the adult caretaker(s) or teen parent(s) misses one or more check-ins/outs to record daily attendance, the child care provider may record the missed check-in/out in the Attendance Tracking System and the adult caretaker or teen parent shall confirm the record in the attendance tracking system for the prior nine (9) day period for automatic payment.

3. The child care provider shall not hold, transfer, or use any adult caretaker or teen parents' Individual attendance credentials at any time or the child care provider may be subject to disqualification.

4. Non-cooperation with the use of the Attendance Tracking System may result in non-payment of the child care subsidy as defined by a state approved county policy, unless non-use of the Attendance Tracking System is approved by the state department.

3.914.5 COUNTY FISCAL AGREEMENT AUTHORITY

A. Counties have the authority to enter into a fiscal agreement with Qualified Exempt Child Care Providers and licensed child care providers including those in a probationary status.

B. Counties have the authority to refuse to enter into a fiscal agreement with a child care provider.

C. Counties have the authority to terminate a fiscal agreement after providing at least fifteen (15) calendar-days' notice by postal service mail, fax, hand-delivery, email or other electronic systems.

D. The counties have the authority to terminate a fiscal agreement without advance notice if a child's health or safety is endangered or if the child care provider is under a negative licensing action as defined in section 7.701.2, j, 11 and section 7.701.22, k (12 CCR 2509-8). Counties may not enter into or continue a fiscal agreement with any child care provider who has a denied, suspended or revoked child care license.

E. The county may notify the child care provider of an immediate termination verbally, but written notice of that action shall be forwarded to the child care provider within at least fifteen (15) calendar-days. Any notice regarding denial or termination of a Fiscal Agreement shall include information regarding the child care provider's right to an informal conference.

3.915 PROGRAM INTEGRITY

3.915.1 INTENTIONAL PROGRAM VIOLATION (IPV)

All adult caretakers or teen parents that apply for the Colorado Child Care Assistance Program (CCCAP) shall be provided with a written notice of the penalties for an Intentional Program Violation (IPV) on the child care application and statement of responsibility.

A. An IPV is an intentional act committed by an adult caretaker(s) or teen parent(s), for the purpose of establishing or maintaining the Colorado Child Care Assistance Program (CCCAP) household's eligibility to receive benefits for which they were not eligible. An adult caretaker or teen parent commits an IPV when he or she makes a false or misleading statement or omission in any application or communication, with knowledge of its false or misleading nature, for the purpose of establishing or maintaining the household's eligibility to receive benefits.

B. A county shall be required to conduct an investigation of any adult caretaker(s) or teen parent(s) who has applied for or received CCCAP whenever there is an allegation or reason to believe that an individual has committed an IPV as described below.

1. Following investigation, action shall be taken on cases where documented evidence exists to show an individual has committed one or more acts of IPV. Action shall be taken through:

a. Obtaining a "Waiver of Intentional Program Violation Hearing"; or,

b. Conducting an administrative disqualification hearing; or,

c. Referring case for civil or criminal action in an appropriate court of jurisdiction.

2. Overpayment collection activities shall be initiated immediately in all cases even if administrative disqualification procedures or referral for prosecution is not initiated.

3.915.2 CRITERIA FOR DETERMINING INTENTIONAL PROGRAM VIOLATION

A. The determination of IPV shall be based on clear and convincing evidence that demonstrates intent to commit IPV. "Intent" is defined as a false representation of a material fact with knowledge of that falsity or omission of a material fact with knowledge of that omission.

B. "Clear and convincing" evidence is stronger than "a preponderance of evidence" and is unmistakable and free from serious or substantial doubt.

3.915.3 INTENTIONAL PROGRAM VIOLATION/ADMINISTRATIVE DISQUALIFICATION HEARINGS (IPV/ADH)

An IPV/ADH shall be requested whenever facts of the case do not warrant civil or criminal prosecution, where documentary evidence exists to show an individual has committed one or more acts of IPV, and the individual has failed to sign and return the Waiver of IPV form.

A. A county may conduct an IPV/ADH or may use the Colorado Department of Personnel and Administration to conduct the IPV/ADH. A state prescribed form to request the administrative disqualification hearing for intentional program violation shall be used for this purpose.

The adult caretaker(s) or teen parent(s) may request that the Department of Personnel and Administration conduct the ADH/IPV in lieu of a county level hearing. Such a hearing shall be requested ten (10) calendar-days before the scheduled date of the county hearing.

B. Notice of the date of the administrative disqualification hearing on a form prescribed by the Colorado Department of Human Services shall be mailed to the last known address on record to the individual alleged to have committed an IPV at least thirty (30) calendar-days prior to the

hearing date. The notice form shall include a statement that the individual may waive the right to appear at the administrative disqualification hearing, along with the hearing procedure form and client rights.

C. The Administrative Law Judge or hearing officer shall not enter a default against the participant or applicant for failure to file a written answer to the notice of IPV hearing form, but shall base the initial decision upon the evidence introduced at the hearing.

D. Upon good cause shown, the administrative hearing shall be rescheduled not more than once at the accused individual's request. The request for continuance shall be received by the appropriate hearing officer prior to the administrative disqualification hearing. The hearing shall not be continued for more than a total of thirty (30) calendar-days from the original hearing date. One additional continuance is permitted at the hearing officer or ALJ's discretion.

E. An IPV/ADH shall not be requested against an accused adult caretaker(s) or teen parent(s) whose case is currently being referred for prosecution on a civil or criminal action in an appropriate state or federal court.

3.915.4 WAIVER OF ADMINISTRATIVE DISQUALIFICATION HEARING

A. Supporting evidence warranting the scheduling of an administrative disqualification hearing for an alleged IPV shall be documented with a county supervisory review. If the county determines there is evidence to substantiate that person has committed an IPV, the county shall allow that person the opportunity to waive the right to an administrative disqualification hearing.

B. A State-approved Notice of Alleged Intentional Program Violation form including the client's rights, the state-approved Waiver of Intentional Program Violation Hearing form, and the state-approved request for a state level Administrative Disqualification Hearing for Intentional Program Violation form shall be mailed to the individual suspected of an IPV. An investigator in the process of completing an investigation shall offer the waiver to the individual if the investigator is not intending to pursue criminal or civil action. The individual shall have fifteen (15) calendar-days from the date these forms are mailed by the county to return the completed Waiver of IPV hearing form.

C. When an adult caretaker(s) or teen parent(s) waives his/her right to an administrative disqualification hearing, a written notice of the disqualification penalty shall be mailed to the individual. This notice shall be on the State prescribed notice form.

D. The completion of the waiver is voluntary and the county may not require its completion nor by its action appear to require the completion of the request of waiver.

3.915.5 DISQUALIFICATION FOR INTENTIONAL PROGRAM VIOLATION (IPV)

A. If the adult caretaker(s) or teen parent(s) signs and returns the request for waiver of IPV hearing form within the fifteen (15) day deadline or an individual is found to have committed an intentional program violation through the hearing process, the primary adult caretaker or teen parent shall be provided with a notice of the period of disqualification. The disqualification shall begin the first day of the month following the disqualification determination, allowing for authorization noticing, unless the household in which a disqualified person is living is ineligible for other reasons.

B. Once the disqualification has been imposed, the period shall run without interruption even if the participant becomes ineligible for the Colorado Child Care Assistance Program.

C. The penalty shall be in effect for:

1. Twelve (12) months upon the first occasion of any such offense;

2. Twenty-four (24) months upon the second occasion of any such offense and,

3. Permanently upon the third such offense.

D. The disqualification penalties affect any household to which the adult caretaker(s) or teen parent(s) is a member.

E. The penalty period shall remain in effect unless and until the finding is reversed by the State Department or a court of appropriate jurisdiction.

F. A penalty imposed by one county shall be used when determining the appropriate level of disqualification and penalty for that individual in another county.

G. The disqualification penalties may be in addition to any other penalties which may be imposed by a court of law for the same offenses.

3.915.6 NOTIFICATION OF HEARING DECISION

A. If the local level hearing officer finds the adult caretaker(s) or teen parent(s) has committed an IPV as a result of a county hearing, a written notice shall be provided to notify the primary adult caretaker or teen parent of the decision. The local level hearing decision notice shall be a state prescribed form, which includes a statement that a state level hearing may be requested with the request form attached.

B. In a hearing before an Administrative Law Judge (ALJ), the determination of IPV shall be an initial decision, which shall not be implemented while pending State Department review and Final Agency Action. The initial decision shall advise the adult caretaker(s) or teen parent(s) that failure to file exceptions to provisions of the initial decision will waive the right to seek judicial review of a final agency decision affirming those provisions.

C. When a final decision is made, a written notice of the disqualification penalty shall be mailed to the adult caretaker(s) or teen parent(s). This notice shall be on a state prescribed notice form.

3.915.7 REFERRAL TO DISTRICT ATTORNEY

When the counties or their designee(s) determine that they have paid or are about to pay for child care as a result of a suspected criminal act, the facts used in the determination shall be reviewed with the counties' legal advisor, investigatory unit and/or a representative from the District Attorney's office. If the available evidence supports suspected criminal acts, the case shall be referred to the District Attorney. All referrals to the District Attorney shall be made in writing and shall include the amount of assistance fraudulently received by the adult caretaker, teen parent, or child care provider.

The following actions may be taken:

A. If the District Attorney prosecutes, the amount of overpayment due will be taken into consideration and may be included in the court decision and order.

B. Interest may be charged from the month in which the amount of overpayment due was received by the collection entity until the date it is recovered. Interest shall be calculated at the legal rate.

C. If the District Attorney decides not to prosecute, the amount of overpayment due will continue to be recovered by all legal means. The county retains the option to pursue IPV/ADH or other administrative measures.

D. A referral is not a violation of the safeguards and restrictions provided by confidentiality rules and regulations.

3.915.8 CRIMINAL VERDICT DISQUALIFICATION

Upon determination of fraudulent acts, adult caretaker(s) or teen parent(s) who have signed the application or re-determination will be disqualified from participation in the Colorado Child Care Assistance Program for the following periods, pursuant to Section 26-1-127, C.R.S. Such disqualification is mandatory and in addition to any other penalty imposed by law. Disqualification levels are:

A. Twelve months (12) for the first offense; or,

B. Twenty-four months (24) for a second offense; or,

C. Permanently for a third offense.

3.915.9 DISQUALIFICATION PERIOD

A. Upon determination of fraudulent criminal acts, the adult caretaker(s) or teen parent(s) shall be notified of the period of disqualification. The disqualification shall begin the first day of the month that follows the disqualification determination, allowing for authorization noticing and shall run uninterrupted from that date.

B. In collecting evidence of fraudulent activities the counties or their designee shall not violate the legal rights of the individual. When the county questions whether an action it contemplates might violate the legal rights of the individual, it shall seek the advice of its legal advisor.

3.915.91 DISQUALIFICATION PENALTIES

In addition to any criminal penalty imposed, the disqualification penalties affect the adult caretaker(s) or teen parent(s) the penalty period shall remain in effect unless the finding is reversed by the state department or a court of appropriate jurisdiction. The disqualification period shall follow the adult caretaker(s) and teen parent(s) regardless of the county of residence in Colorado. Penalties imposed are progressive regardless of the county of residence for each subsequent penalty level.

3.915.92 HEARING AND DISPUTE RESOLUTION RIGHTS

Adult caretaker(s) or teen parent(s) have the right to a county dispute resolution conference or state level fair hearing pursuant to Sections 3.840 and 3.850.

Child care providers shall be informed of their right to a county dispute resolution conference on the reverse side of their copy of the child care authorization notice pursuant to section 3.840, “county dispute resolution process”.

3.915.93 CHILD CARE RECOVERY

When the counties or their designee have determined that an adult caretaker(s) or teen parent(s) has received public assistance for which he or she was not eligible due to an increase in household income, that causes the household’s income exceeds eighty-five percent (85%) of the State median income, or a change in the qualifying eligible activity that was not reported within four weeks of its occurrence; or a child care provider has received child care payments they were not eligible for:

A. The county, or its designee(s), determines if the overpayment is to be recovered. Exception from recovery includes:

1. The household who is without fault in the creation of the overpayment; and,

2. The household who has reported any increase in income or change in resources or other circumstances affecting the household's eligibility within the timely reporting requirements for the program.

B. The county or its designee determines whether there was willful misrepresentation and/or withholding of information and considers or rules out possible fraud;

C. The county or its designee determines the amount of overpayment;

D. The county or its designee notifies the household or child care provider(s) of the amount due and the reason for the recovery using the prior notice rules;

E. The county or its designee enters the amount of the overpayment and other specific factors of the situation in the case record, including the calculation used to determine the recovery amount.

3.915.94 TIMELINESS AND AMOUNT

A. A recovery for overpayment of public assistance is established when the overpayment occurred during the twelve (12) months preceding discovery and the facts to establish recovery have been received. However, when a single overpayment or several overpayments have been made within the prior twelve (12) months and the overpayments total less than fifty dollars ($50), a recovery for repayment is not made.

B. If an overpayment occurs due to willful misrepresentation or withholding of information and the county is unable to determine income and activity eligibility criteria for child care previously provided, either through verification from the client or child care provider(s) or access to other verification sources, the county shall recover the entire benefit for the affected months.

For willful misrepresentation and/or withholding of information, all overpayments will be pursued regardless of how long ago they occurred.

3.915.95 RECOVERY PROCESS

A. When it is determined that an overpayment has occurred, the counties or their designee shall:

1. Document the facts and situation that produced the overpayment and retain this documentation until the overpayment is paid in full or for three years plus the current year, whichever is longer.

2. Determine what benefits the household was eligible for and recover benefits for which the household was found to be ineligible, except in the case of willful misrepresentation or withholding of information.

3. Determine the payments for which the child care provider was not eligible and recover those payments.

4. Initiate timely written notice allowing for the fifteen (15) calendar day noticing period. Such notice shall include a complete explanation, including applicable rules, concerning the overpayment, recovery sought and appeal rights.

5. Take action to recover following the right of appeal and fair hearing process.

6. Pursue all legal remedies available to the county in order to recover the overpayment. Legal remedies include, but are not limited to:

    a. Judgments;

    b. Garnishments;

    c. Claims on estates; and,

    d. The state income tax refund intercept process.

7. In accordance with Sections 26-2-133 and 39-21-108, C.R.S., the state and counties or their designees may recover overpayments of public assistance benefits through the offset (intercept) of a taxpayer's State Income Tax Refund.

    a. This method may be used to recover overpayments that have been:

        1) Determined by final agency action; or,

        2) Ordered by a court as restitution; or,

        3) Reduced to judgment.

    b. This offset (intercept) may include the current legal rate of interest on the total when fraud or intentional program violation has been determined. Offsets (intercepts) are applied to recoveries through use of a hierarchy. The hierarchy is:

        1) Fraud recoveries, oldest to newest;

        2) Court ordered recoveries, oldest to newest; and,

        3) Client error recoveries, oldest to newest.

B. Prior to certifying the taxpayer's name and other information to the Department of Revenue, the Colorado Department of Human Services shall notify the taxpayer, in writing at his/her last-known address, that the state intends to use the tax refund offset (intercept) to recover the overpayment. In addition to the requirements of Section 26-2-133(2), C.R.S., the pre-offset (intercept) notice shall include the name of the counties claiming the overpayment, a reference to child care as the source of the overpayment, and the current balance owed. The taxpayer is entitled to object to the offset (intercept) by filing a request for a county dispute resolution conference or state hearing within thirty (30) calendar-days from the date that the pre-offset notice is mailed, faxed, emailed, sent via other electronic systems, or hand-delivered to the taxpayer. In all other respects, the procedures applicable to such hearings shall be those stated elsewhere in Section 3.840 and Section 3.850. At the hearing on the offset (intercept), the counties or their designee, or an Administrative Law Judge (ALJ), shall not consider whether an overpayment has occurred, but may consider the following issues if raised by the taxpayer in his/her request for a hearing whether:

    1. The taxpayer was properly notified of the overpayment,

    2. The taxpayer is the person who owes the overpayment,

    3. The amount of the overpayment has been paid or is incorrect, or

    4. The debt created by the overpayment has been discharged through bankruptcy.

CYNTHIA H. COFFMAN
Attorney General

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Chief Deputy Attorney General

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STATE OF COLORADO
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Office of the Attorney General

Tracking number: 2017-00404

Opinion of the Attorney General rendered in connection with the rules adopted by the

Income Maintenance (Volume 3)

on 11/03/2017

9 CCR 2503-9

COLORADO CHILD CARE ASSISTANCE PROGRAM

The above-referenced rules were submitted to this office on 11/07/2017 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.

November 21, 2017 14:24:50

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Health Care Policy and Financing

Agency

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

CCR number

10 CCR 2505-10

Rule title

10 CCR 2505-10 MEDICAL ASSISTANCE - STATEMENT OF BASIS AND PURPOSE, AND RULE HISTORY 1 - eff 12/30/2017

Effective date

12/30/2017

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Rule Concerning the Mistreatment, Abuse, Neglect, and Exploitation (MANE) of at-risk adults with intellectual and developmental disabilities, Section 8.600.4
Rule Number: MSB 17-03-08-A
Division / Contact / Phone: Division for Intellectual and Developmental Disabilities / James Ruden / 303-866-2016

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name:	Health Care Policy and Financing / Medical Services Board
2. Title of Rule:	MSB 17-03-08-A, Revision to the Medical Assistance Rule Concerning the Mistreatment, Abuse, Neglect, and Exploitation (MANE) of at-risk adults with intellectual and developmental disabilities, Section 8.600.4
3. This action is an adoption of:	an amendment

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 8.600.4, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)? No
   If yes, state effective date:
   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Replace the current text at 8.600.4 with the proposed text starting at 8.600.4 through the end of 8.600.4. Replace the current text at 8.608.8 with the proposed text starting at 8.608.8.D through the end of 8.608.8.D. the effective date of this rule is December 30, 2017.

*to be completed by MSB Board Coordinator

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Rule Concerning the Mistreatment, Abuse, Neglect, and Exploitation (MANE) of at-risk adults with intellectual and developmental disabilities, Section 8.600.4
Rule Number: MSB 17-03-08-A
Division / Contact / Phone: Division for Intellectual and Developmental Disabilities / James Ruden / 303-866-2016

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   HB16-1394 updated the definitions of Mistreatment, Abuse, Neglect, Exploitation, and Undue Influence. This bill aligned the definitions across the criminal statutes, DHS - Adult Protective Services statutes, and HCPF statutes. The Department is proposing this regulation to update the rules and remain consistent with statute.

2. An emergency rule-making is imperatively necessary

   ☐ to comply with state or federal law or federal regulation and/or
   ☐ for the preservation of public health, safety and welfare.

   Explain:

   N/A

3. Federal authority for the Rule, if any:

   N/A

4. State Authority for the Rule:

   25.5-1-301 through 25.5-1-303, C.R.S. (2015);
   25.5-10-204(2), C.R.S. (2017).

Initial Review **10/13/17** Final Adoption **11/09/17**
Proposed Effective Date **12/30/17** Emergency Adoption

DOCUMENT #01

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Rule Concerning the Mistreatment, Abuse, Neglect, and Exploitation (MANE) of at-risk adults with intellectual and developmental disabilities, Section 8.600.4
Rule Number: MSB 17-03-08-A
Division / Contact / Phone: Division for Intellectual and Developmental Disabilities / James Ruden / 303-866-2016

REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   The proposed regulation will affect all individuals in services by clearly defining Mistreatment, Abuse, Neglect, and Exploitation. Aligning the definitions with the criminal statutes and Adult Protective Services statutes will make it easier for law enforcement and IDD professionals to identify situations requiring investigation and reporting.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   This proposed regulation should have minimal economic impact. This impact is also lessened because the Department is simply updating the rules to remain consistent with statute. The regulation should have a positive qualitative impact on reporting of MANE incidents. By clearly defining the prohibited conduct and aligning it with DHS and the criminal statutes, IDD professionals will know better what to investigate and report.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

   This regulation simply updates definitions consistent with the HCPF statute found at C.R.S. 25.5-10-202. There should be no cost for implementation or enforcement of these definitions.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   To avoid conflicts with statute the definitions need to be updated. Inaction only results in confusion and hampers the ability of the Department to enforce regulations surrounding MANE incidents and investigations.

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5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   This regulation is simply updating definitions to remain consistent with the statue. There should be no cost associated with this regulation.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

   No alternatives were considered. The definitions in regulation need to follow the definitions in statute.

8.600.4 Definitions

As used in these rules, unless the context requires otherwise:

“Abuse,” for the purpose of mistreatment, abuse, neglect and exploitation, means any of the following acts or omissions committed against a person with an intellectual or developmental disability:

A. The non-accidental infliction of physical pain or injury, as demonstrated by, but not limited to, substantial or multiple skin bruising, bleeding, malnutrition, dehydration, burns, bone fractures, poisoning, subdural hematoma, soft tissue swelling, or suffocation;

B. Confinement or restraint that is unreasonable under generally accepted caretaking standards; or

C. The subjection to sexual conduct or contact classified as a crime under the “Colorado Criminal Code,” Title 18, C.R.S.

"Algorithm" means a formula that establishes a set of rules that precisely defines a sequence of operations. An algorithm is used to assign clients into one of six support levels in the Home and Community Based Services for Persons with Developmental Disabilities (HCBS-DD) and Home and Community Based Services-Supported Living Services (HCBS-SLS) waivers.

"Assistive Technology Devices" means any item, piece of equipment, or product system that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

"Assistive Technology Services" includes, but is not limited to, the evaluation of a person's need for assistive technology; helping to select and obtain appropriate devices; designing, fitting and customizing those devices; purchasing, repairing or replacing the devices; and, training the individual, or if appropriate a family member, to use the devices effectively.

"Authorized Representative" means an individual designated by the person receiving services, or by the parent or guardian of the person receiving services, if appropriate, to assist the person receiving services in acquiring or utilizing services and supports pursuant to section 25.5-10, C.R.S.

"Authorized Services" means those services and supports authorized pursuant to section 25.5-10-206, C.R.S., which the Department shall provide directly or purchase subject to available appropriations for persons who have been determined to be eligible for such services and supports and as specified in the eligible person's individualized plan.

“Caretaker” means a person who:

A. Is responsible for the care of a person with an intellectual or developmental disability as a result of a family or legal relationship;

B. Has assumed responsibility for the care of a person with an intellectual or developmental disability; or

C. Is paid to provide care, services, or oversight of services to a person with an intellectual or developmental disability.

“Caretaker Neglect” means neglect that occurs when adequate food, clothing, shelter, psychological care, physical care, medical care, habilitation, supervision, or other treatment necessary for the health and safety of a person with an intellectual and developmental disability is not secured for a person with an intellectual and developmental disability or is not provided by a caretaker in a timely manner and with the

degree of care that a reasonable person in the same situation would exercise, or a caretaker knowingly uses harassment, undue influence, or intimidation to create a hostile or fearful environment for an at-risk adult with an intellectual and developmental disability.

A. Notwithstanding the provisions of this subsection, the withholding, withdrawing, or refusing of any medication, any medical procedure or device, or any treatment, including but not limited to resuscitation, cardiac pacing, mechanical ventilation, dialysis, artificial nutrition and hydration, in accordance with any valid medical directive or order, or as described in a palliative plan of care, shall not be deemed caretaker neglect.

B. As used in this subsection, “medical directive or order” includes a medical durable power of attorney, a declaration as to medical treatment executed pursuant to section 15-18-108, C.R.S., a medical order for scope of treatment form executed pursuant to Article 18.7 of Title 15, C.R.S., and a CPR Directive executed pursuant to Article 18.6 of Title 15, C.R.S.

"Case Management Agency" (CMA) means a Community Centered Board within a designated service area where an applicant or client can obtain case management services.

"Challenging Behavior" means behavior that puts the person at risk of exclusion from typical community settings, community services and supports, or presents a risk to the health and safety of the person or others or a significant risk to property.

"Client" means an individual who has met Long Term Care (LTC) eligibility requirements and has been offered and agreed to receive Home and Community Based Services (HCBS) in the Children's Extensive Supports (HCBS-CES) waiver, the HCBS waiver for Persons with Developmental Disabilities (HCBS-DD) or the Supported Living Services (HCBS-SLS) waiver.

"Community Centered Board (CCB)" means a private corporation, for profit or not for profit, which, when designated pursuant to section 25.5-10-209, C.R.S., provides case management services to persons with developmental disabilities, is authorized to determine eligibility of such persons within a specified geographical area, serves as the single point of entry for persons to receive services and supports under section 25.5-10, C.R.S., and provides authorized services and supports to such persons either directly or by purchasing such services and supports from service agencies.

"Comprehensive Review of the Person's Life Situation" means a thorough review of all aspects of the person's current life situation by the program approved service agency in conjunction with other members of the interdisciplinary team.

"Comprehensive Services" means habilitation services and supports that provide a full day (24 hours) of services and supports to ensure the health, safety and welfare of the individual, and to provide training and habilitation services or a combination of training and supports in the areas of personal, physical, mental and social development and to promote interdependence, self-sufficiency and community inclusion. Services include residential habilitation services and supports, day habilitation services and supports and transportation.

"Consent" means an informed assent, which is expressed in writing and is freely given. Consent shall always be preceded by the following:

A. A fair explanation of the procedures to be followed, including an identification of those which are experimental;

B. A description of the attendant discomforts and risks;

C. A description of the benefits to be expected;

D. A disclosure of appropriate alternative procedures together with an explanation of the respective benefits, discomforts and risks;

E. An offer to answer any inquiries regarding the procedure;

F. An instruction that the person giving consent is free to withdraw such consent and discontinue participation in the project or activity at any time; and,

G. A statement that withholding or withdrawal of consent shall not prejudice future provision of appropriate services and supports to individuals.

"Developmental Delay" means that a child meets one or more of the following:

A. A child who is less than five (5) years of age at risk of having a developmental disability because of the presence of one or more of the following:

1. Chromosomal conditions associated with delays in development,

2. Congenital syndromes and conditions associated with delays in development,

3. Sensory impairments associated with delays in development,

4. Metabolic disorders associated with delays in development,

5. Prenatal and perinatal infections and significant medical problems associated with delays in development,

6. Low birth weight infants weighing less than 1200 grams, or

7. Postnatal acquired problems resulting in delays in development.

B. A child less than five (5) years of age who is significantly delayed in development in one or more of the following areas:

1. Communication,

2. Adaptive behavior,

3. Social-emotional,

4. Motor,

5. Sensory, or

6. Cognition.

C. A child less than three (3) years of age who lives with one or both parents who have a developmental disability.

"Developmental Disabilities Professional" means a person who has at least a Bachelor’s Degree and a minimum of two (2) years’ experience in the field of developmental disabilities or a person with at least five (5) years of experience in the field of developmental disabilities with competency in the following areas:

A. Understanding of civil, legal and human rights;

B. Understanding of the theory and practice of positive and non-aversive behavioral intervention strategies;

C. Understanding of the theory and practice of non-violent crisis and behavioral intervention strategies.

"Developmental Disability" means a disability that:

A. Is manifested before the person reaches twenty-two (22) years of age;

B. Constitutes a substantial disability to the affected individual, as demonstrated by the criteria below at C, 1 and/or C, 2; and,

C. Is attributable to mental retardation or related conditions which include cerebral palsy, epilepsy, autism or other neurological conditions when such conditions result in either impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation.

1. "Impairment of general intellectual functioning" means that the person has been determined to have a full scale intellectual quotient equivalent which is two or more standard deviations below the mean (70 or less assuming a scale with a mean of 100 and a standard deviation of 15).

    a. A secondary score comparable to the General Abilities Index for a Wechsler Intelligence Scale that is two or more standard deviations below the mean may be used only if a full scale score cannot be appropriately derived.

    b. Score shall be determined using a norm-referenced, standardized test of general intellectual functioning comparable to a comprehensively administered Wechsler Intelligence Scale or Stanford-Binet Intelligence Scales, as revised or current to the date of administration. The test shall be administered by a licensed psychologist or a school psychologist.

    c. When determining the intellectual quotient equivalent score, a maximum confidence level of ninety percent (90%) shall be applied to the full scale score to determine if the interval includes a score of 70 or less and shall be interpreted to the benefit of the applicant being determined to have a developmental disability.

2. "Adaptive behavior similar to that of a person with mental retardation" means that the person has an overall adaptive behavior composite or equivalent score that is two or more standard deviations below the mean.

    a. Measurements shall be determined using a norm-referenced, standardized assessment of adaptive behaviors that is appropriate to the person's living environment and comparable to a comprehensively administered Vineland Scale of Adaptive Behavior, as revised or current to the date of administration. The assessment shall be administered and determined by a professional qualified to administer the assessment used.

    b. When determining the overall adaptive behavior score, a maximum confidence level of ninety percent (90%) shall be applied to the overall adaptive behavior score to determine if the interval includes a score of 70 or less and shall be interpreted to the benefit of the applicant being determined to have a developmental disability.

D. A person shall not be determined to have a developmental disability if it can be demonstrated such conditions are attributable to only a physical or sensory impairment or a mental illness.

"Division for Intellectual and Developmental Disabilities" means the unit within the Colorado Department of Health Care Policy and Financing, responsible for the administration of state sponsored services and funding for developmental disabilities for the state of Colorado.

"Emergency", as used in section 8.608.3 regarding restraint, means a serious, probable, imminent threat of bodily harm to self or others where there is the present ability to effect such bodily harm.

"Emergency Control Procedure" means an unanticipated use of a restrictive procedure or restraint in order to keep the person receiving services and others safe.

"Executive Director" means the Executive Director of the Colorado Department of Health Care Policy and Financing unless otherwise indicated.

“Exploitation” means an act or omission committed by a person who:

A. Uses deception, harassment, intimidation, or undue influence to permanently or temporarily deprive a person with an intellectual or developmental disability of the use, benefit, or possession of anything of value;

B. Employs the services of a third party for the profit or advantage of the person or another person to the detriment of the person with an intellectual or developmental disability; or

C. Forces, compels, coerces, or entices a person with an intellectual or developmental disability to perform services for the profit or advantage of the person or another person against the will of the person with an intellectual or developmental disability; or

D. Misuses the property of a person with an intellectual or developmental disability in a manger that adversely affects the person with an intellectual or developmental disability’s ability to receive health care or health care benefits or to pay bills for basic needs or obligations.

"Extreme Safety Risk to Self" means a factor in addition to specific Supports Intensity Scale (SIS) scores that is considered in the calculation of a client's support level. This factor shall be identified when a client:

A. Displays self-destructiveness related to self-injury, suicide attempts or other similar behaviors that seriously threaten the client's safety; and,

B. Has a rights suspension in accordance with section 8.604.3 or has a court order that imposes line of sight supervision unless the client is in a controlled environment that limits the ability of the client to harm himself or herself.

"Family", as used in rules pertaining to support services, the Family Support Services Program and the Colorado Family Support Loan Fund herein, means a group of interdependent persons residing in the same household that consists of a family member with a developmental disability or a child under the age of five (5) years with a developmental delay, and one or more of the following:

A. A mother, father, brother(s), sister(s) or any combination; or,

B. Extended blood relatives such as grandparent(s), aunt(s) or uncle(s); or,

C. An adoptive parent(s); or,

D. One or more persons to whom legal custody of a person with a developmental disability has been given by a court; or,

E. A spouse and/or his/her children.

"Family Support Council" means the local group of persons within the community centered board's designated service area who have the responsibility for providing guidance and direction to the community centered board for the implementation of the Family Support Services Program.

"Family Support Plan (FSP)" means a plan which is written for the delivery of family support services as specified in section 8.613, herein.

"Functional Analysis" means a comprehensive analysis of the medical, social, environmental, and personal factors that may influence current behavior. This analysis shall also investigate the person's ability to communicate, analyze whether the current behavior is a means to communicate, and identify historical factors which may contribute to the understanding of the current behavior.

“Guardian” means a person appointed by the court, or named in a will to be the guardian or a minor child, and charged with limited, temporary, or full guardian’s power and duties.

"Home and Community-Based Services Waivers (HCBS)" means HCBS waiver programs, including the Home and Community Based Waiver for the Developmentally Disabled (HCBS-DD), Supported Living Services (SLS) and Children's Extensive Support (CES). These waivers are authorized by section 25.5-6-404, C.R.S., et seq., for alternatives to long term care for the developmentally disabled by waivers to section 1915(c), 1902(a)(10)(B), and 1902(a)(1) of the Social Security Act approved by the United States Department of Health and Human Services, in accordance with section 2176 of Public Law No. 97-35 and approved for implementation by the Colorado General Assembly, and regulated by those sections of the Medical Assistance Staff Manual Volume 8 (10 C.C.R. 2505-10) of the Colorado Department of Health Care Policy and Financing, pertaining to Long Term Care and Home and Community-Based Services for the Developmentally Disabled.

"Host Home Provider" is an individual (or individuals) who provides residential supports in his/her home to persons receiving comprehensive services who are not family members as defined in section 25.5-10-202(16), C.R.S. A host home provider is not a developmental disabilities service agency pursuant to section 8.602 of these rules.

“Human Rights Committee” means a third-party mechanism to adequately safeguard the legal rights of persons receiving services by participating in the granting of informed consent, monitoring the suspension of rights of persons receiving services, monitoring behavioral development programs in which persons with intellectual and developmental disabilities are involved, monitoring the use of psychotropic medication by persons with intellectual and developmental disabilities, and reviewing investigations of allegations of mistreatment of persons with intellectual and developmental disabilities who are receiving services or supports.

"Individual Service and Support Plan (ISSP)" means a plan of intervention or instruction which directly addresses the needs identified in the person's Individualized Plan and which provides specific direction and methodology to employees and contractors providing direct service to a person.

"Individualized Plan (IP)" means a written plan designed by an interdisciplinary team for the purpose of identifying:

A. The needs of the person receiving services or family;

B. The specific services and supports appropriate to meet those needs;

C. The projected date for initiation of service and supports; and,

D. The anticipated results to be achieved by receiving the services and supports.

"Interdisciplinary Team (IDT)" means a group of people convened by a community centered board which shall include the person receiving services, the parent or guardian of a minor, a guardian or an authorized representative, as appropriate, the person who coordinates the provision of services and supports, and others as determined by such person's needs and preferences, who are assembled in a cooperative manner to develop or review the individualized plan.

"Loan Fund" means the Colorado Family Support Loan Fund.

"Mechanical Restraint" means the use of devices intended to restrict the movement or normal functioning of a portion of an individual's body. Mechanical restraint does not include the use of protective devices used for the purpose of providing physical support or prevention of accidental injury.

"Mental Retardation" means substantial limitations in present functioning. It is characterized by significantly sub-average intellectual functioning, existing concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work. Mental retardation manifests before age 18.

"Minimum Effective Dose" means the smallest medication dosage necessary to produce the intended effect.

“Mistreated” or “Mistreatment” means:

A. Abuse,

B. Caretaker Neglect,

C. Exploitation,

D. An act or omission that threatens the health, safety, or welfare of a person with intellectual or developmental disability, or

E. An act or omission that exposes the person with an intellectual or developmental disability to a situation or condition that poses an imminent risk of bodily injury.

"Notice" means written notification hand delivered to or sent by first class mail that contains at least all of the following:

A. The proposed action;

B. The reason or reasons for that action;

C. The effective date of that action;

D. The specific law, regulation, or policy supporting the action;

E. The responsible agency with whom a protest of the action may be filed including the name and address of the director.

F. The dispute resolution procedure, including deadlines, in conformity with section 8.605 and procedures on accessing agency records:

1. For disputes involving individuals as defined in section 8.605.2, information on availability of advocacy assistance, including referral to publicly funded legal services, corporation, and other publicly or privately funded advocacy organizations, including the protection and advocacy system required under 42 U.S.C. 6012, the Developmental Disabilities Assistance and Bill of Rights Act; and,

2. For disputes involving individuals as defined in section 8.605.2 an explanation of how the agency will provide services to a currently enrolled person during the dispute resolution period, including a statement that services will not be terminated during the appeal. Such explanation will include a description of services currently received.

"Parent" means the biological or adoptive parent.

"Physical Restraint" means the use of manual methods to restrict the movement or normal functioning of a portion of an individual's body through direct physical contact by others except for the purpose of providing assistance/prompts. Assistance/prompts is the use of manual methods to guide or assist with the initiation or completion of and/or support the voluntary movement or functioning of an individual's body through the use of physical contact by others except for the purpose of providing physical restraint.

"PRN" (Pro Re Nata) means giving drugs on an "as needed" basis through a standing prescription or standing order.

"Program Approved Service Agency" means a developmental disabilities service agency or typical community service agency as defined in section 8.602, which has received program approval by the Department pursuant to section 8.603 of these rules.

"Program Services" means an organized program of therapeutic, habilitative, specialized support or remedial services provided on a scheduled basis to individuals with developmental disabilities.

"Prospective New Service Agency" means an individual or any publicly or privately operated program, organization or business that has completed and submitted an application with a community centered board for selection and approval as a service agency to provide comprehensive services.

"Public Safety Risk-Convicted" means a factor in addition to specific SIS scores that is considered in the calculation of a client's support level. This factor shall be identified when a client has:

A. Been found guilty through the criminal justice system for a criminal action involving harm to another person or arson and who continues to pose a current risk of repeating a similar serious action; and,

B. A rights suspension in accordance with section 8.604.3 or through parole or probation, or a court order that imposes line of sight supervision unless the client is in a controlled environment that limits his or her ability to engage in the behaviors that pose a risk or to leave the controlled environment unsupervised.

"Public Safety Risk-Not Convicted" means a factor in addition to specific SIS scores that is considered in the calculation of a client's support level. This factor shall be identified when a client has:

A. Not been found guilty through the criminal justice system, but who does pose a current and serious risk of committing actions involving harm to another person or arson; and,

B. A rights suspension in accordance with section 8.604.3or through parole or probation, or a court order that imposes line of sight supervision unless the client is in a controlled environment that limits his or her ability to engage in the behaviors that pose a risk or to leave the controlled environment unsupervised.

"Rate" means the amount of money, determined by a standardized rate setting methodology, reimbursed for each unit of a defined waiver service provided to a client by a qualified provider.

"Referral" means any notice or information (written, verbal, or otherwise) presented to a community centered board which indicates that a person may be appropriate for services or supports provided through the developmental disabilities system and for which the community centered board determines that some type of follow-up activity for eligibility is warranted.

"Referral and Placement Committee (RPC)" means an interdisciplinary or interagency committee authorized by a community centered board or the department to make referral and placement recommendations for persons receiving services.

"Regional Center" means a facility or program operated directly by the Department, which provides services and supports to persons with developmental disabilities.

"Respondent" means a person participating in the SIS assessment who has known the client for at least three months and has knowledge of the client's skills and abilities. The respondent must have recently observed the person directly in one or more places such as home, work, or in the community.

"Restrictive Procedure" means any of the following when the intent or plan is to bring the person's behavior into compliance:

A. Limitations of an individual's movement or activity against his or her wishes; or,

B. Interference with an individual's ability to acquire and/or retain rewarding items or engage in valued experiences.

"Request for Developmental Disability Determination" means written formal documentation, either handwritten or a signed standardized form, which is submitted to a Community Centered Board requesting that a determination of developmental disability be completed.

"Safety Control Procedure" means a restrictive procedure or restraint that is used to control a previously exhibited behavior which is anticipated to occur again and for which the planned method of intervention is developed in order to keep the person and others safe.

"Screening" for Early Intervention Services means a quick look at how a child is developing and learning to determine what areas of development, if any, are behind what would be expected for a child.

"Seclusion" means the placement of a person receiving services alone in a closed room for the purpose of punishment. Seclusion for any purpose is prohibited.

"Service Agency" means an individual or any publicly or privately operated program, organization or business providing services or supports for persons with developmental disabilities.

"Service Plan Authorization Limit" (SPAL) means an annual upper payment limit of total funds available to purchase services to meet the client's ongoing needs. Purchase of services not subject to the SPAL are in accordance with the Department of Health Care Policy and Financing rules in section 8.500.102.B (10

C.C.R. 2505-10). A specific limit is assigned to each of the six support levels in the HCBS-SLS waiver. The SPAL is determined by the Department based on the annual appropriation for the HCBS-SLS waiver, the number of clients in each level, and projected utilization.

“Sexual contact” means the knowing touching of the victim's intimate parts by the actor, or of the actor's intimate parts by the victim, or the knowing touching of the clothing covering the immediate area of the victim's or actor's intimate parts if that sexual contact is for the purposes of sexual arousal, gratification, or abuse.

"Sexual intrusion" means any intrusion, however slight, by any object or any part of a person's body, except the mouth, tongue, or penis, into the genital or anal opening of another person's body if that sexual intrusion can reasonably be construed as being for the purposes of sexual arousal, gratification, or abuse.

"Sexual penetration" means sexual intercourse, cunnilingus, fellatio, analingus, or anal intercourse. Emission need not be proved as an element of any sexual penetration. Any penetration, however slight, is sufficient to complete the crime.

"SIS Interviewer" means an individual formally trained in the administration and implementation of the Supports Intensity Scale by a Department approved trainer using the Department approved curriculum. SIS Interviewers must maintain a standard for conducting SIS assessments as measured through periodic interviewer reliability reviews.

"Statewide Database" means the state web-based system that contains consumer-related demographic and program data.

"Support Coordinating Agency" means a community centered board which has been designated as the agency responsible for the coordination of support services (supported living services for adults and the children's extensive support program) within its service area.

"Supports Intensity Scale" (SIS) means the standardized assessment tool published in 2004 by the American Association on Intellectual and Developmental Disabilities. The assessment gathers information from a semi-structured interview of respondents who know the client well. It is designed to identify and measure the practical support requirements of adults with developmental disabilities. No later editions or amendments are included. Copies may be obtained or examined by contacting the Case Management Specialist, Colorado Department of Health Care Policy and Financing, Division for Intellectual and Developmental Disabilities, 1570 Grant Street, Denver, Colorado 80203; or any State Publications Depository Library.

"Support Level" means a numeric value determined using an algorithm that places clients into groups with other clients who have similar overall support needs.

“Undue Influence” means use of influence to take advantage of a person with an intellectual or developmental disability’s vulnerable state of mind, neediness, pain, or emotional distress.

"Waiver Services" means those optional Medicaid services defined in the current federally approved HCBS waiver document and do not include Medicaid State Plan services.

8.608.8 ABUSE, MISTREATMENT, NEGLECT, AND EXPLOITATION

A. Pursuant to section 25.5-10-221, C.R.S., all community centered boards, service agencies and regional centers shall prohibit abuse, mistreatment, neglect, or exploitation of any person receiving services.

B. Community centered boards, program approved service agencies and regional centers shall have written policies and procedures for handling cases of alleged or suspected abuse, mistreatment, neglect, or exploitation of any person receiving services. These policies and procedures must be consistent with state law and:

1. Definitions of abuse, mistreatment, neglect, or exploitation must be consistent with state law and these rules;

2. Provide a mechanism for monitoring to detect instances of abuse, mistreatment, neglect, or exploitation. Monitoring is to include, at a minimum, the review of:

   a. Incident reports;

   b. Verbal and written reports of unusual or dramatic changes in behavior(s) of persons receiving services; and,

   c. Verbal and written reports from persons receiving services, advocates, families, guardians, and friends of persons receiving services.

3. Provide procedures for reporting, reviewing, and investigating all allegations of abuse, mistreatment, neglect, or exploitation;

4. Ensure that appropriate disciplinary actions up to and including termination, and appropriate legal recourse are taken against employees and contractors who have engaged in abuse, mistreatment, neglect, or exploitation;

5. Ensure that employees and contractors are made aware of applicable state law and agency policies and procedures related to abuse, mistreatment, neglect or exploitation;

6. Require immediate reporting when observed by employees and contractors according to agency policy and procedures and to the agency administrator or his/her designee;

7. Require reporting of allegations within 24 hours to the parent of a minor, guardian, authorized representative, and community centered board or regional center;

8. Ensure prompt action to protect the safety of the person receiving services. Such action may include any action that would protect the person(s) receiving services if determined necessary and appropriate by the service agency or community centered board pending the outcome of the investigation. Actions may include,

but are not limited to, removing the person from his/her residential and/or day services setting and removing or replacing staff;

9. Provide necessary victim supports;

10. Require prompt reporting of the allegation to appropriate authorities in accordance with statutory requirements pursuant to section 8.608.8.C of these rules;

11. Ensure Human Rights Committee review of all allegations; and,

12. Ensure that no individual is coerced, intimidated, threatened or retaliated against because the individual, in good faith, makes a report of suspected abuse, mistreatment, neglect or exploitation or assists or participates in any manner in an investigation of such allegations in accordance with section 8.608.8.D.

C. Any and all actual or suspected incidents of abuse, mistreatment, neglect, or exploitation shall be reported immediately to the agency administrator or designee. The agency shall ensure that employees and contractors obligated by statute, including but not limited to, section 19-10-103, C.R.S., (Colorado Children's Code), section 18-8-115, C.R.S., (Colorado Criminal Code - Duty To Report A Crime), and section 26-3.1-102, C.R.S., (Social Services Code - Protective Services), to report suspected abuse, mistreatment, neglect, or exploitation, are aware of the obligation and reporting procedures.

D. All alleged incidents of abuse, mistreatment, neglect, or exploitation shall be thoroughly investigated in a timely manner using the specified investigation procedures. However, such procedures must not be used in lieu of investigations required by law or which may result from action initiated pursuant to section C, herein.

1. Within twenty-four hours of becoming aware of the incident, a written incident report shall be made available to the agency administrator or designee and the community centered board or regional center.

2. The agency shall maintain a written administrative record of all such investigations including:

   a. The incident report and preliminary results of the investigation;

   b. A summary of the investigative procedures utilized;

   c. The full investigative finding(s);

   d. The actions taken; and,

   e. Human Rights Committee review of the investigative report and the action taken on recommendations made by the committee.

3. The agency shall ensure that appropriate actions are taken when an allegation against an employee or contractor is substantiated, and that the results of the

investigation are recorded, with the employee's or contractor's knowledge, in the employee's personnel or contractor's file.

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Rule Concerning Qualified Medication Administration Person (QMAP), Section 8.603.93
Rule Number: MSB 17-07-17-A
Division / Contact / Phone: Division for Intellectual and Developmental Disabilities / James Ruden / 303-866-2016

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name:	Health Care Policy and Financing / Medical Services Board
2. Title of Rule:	MSB 17-07-17-A, Revision to the Medical Assistance Rule Concerning Qualified Medication Administration Person (QMAP), Section 8.603.93
3. This action is an adoption of:	an amendment

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 8.603.9, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)?	No
If yes, state effective date:	
Is rule to be made permanent? (If yes, please attach notice of hearing).	<Select One>

PUBLICATION INSTRUCTIONS*

Replace the current text at 8.603.9 with the proposed text starting at 8.603.9.F through the end of 8.603.9.F. This rule is effective December 30, 2017.

*to be completed by MSB Board Coordinator

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Rule Concerning Qualified Medication Administration Person (QMAP), Section 8.603.93
Rule Number: MSB 17-07-17-A
Division / Contact / Phone: Division for Intellectual and Developmental Disabilities / James Ruden / 303-866-2016

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   The Department is proposing a rule change to 8.603.9, regulating the training of Qualified Medication Administration Persons. In the past, CDPHE individually approved the curriculum for each training site. After the passage of HB16-1424, CDPHE will no longer individually approve the training curriculum. Instead, CDPHE will designate sites as Approved Training Entities (ATEs). Each ATE will then be responsible for developing a curriculum consistent with the CDPHE rules found at 6 CCR 1011-1, Section 6.

2. An emergency rule-making is imperatively necessary

   ☐ to comply with state or federal law or federal regulation and/or
   ☐ for the preservation of public health, safety and welfare.

   Explain:

3. Federal authority for the Rule, if any:

4. State Authority for the Rule:

   25.5-1-301 through 25.5-1-303, C.R.S. (2016);
   25-1.5-302(1), C.R.S.

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Rule Concerning Qualified Medication Administration Person (QMAP), Section 8.603.93
Rule Number: MSB 17-07-17-A
Division / Contact / Phone: Division for Intellectual and Developmental Disabilities / James Ruden / 303-866-2016

REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   This rule will directly impact all organizations and individuals who pass medications to clients. Currently, there are 52 Approved Training Entities (ATEs) that are organizations and 21 ATEs approved as individuals. The new process allows ATEs a more streamlined approach to getting their curriculum developed because they don't each have to wait on individual approval from CDPHE.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   The proposed rule simplifies the process for ATEs in developing their curriculum. By not having CDPHE individually review and approve the curriculum for each program, ATEs can more quickly develop their programs and train new QMAPs.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

   This change should not affect state revenues. CDPHE will likely benefit from this change because they won't need dedicated employees to review each individual QMAP program.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   This rule is necessary because of statutory changes made by HB16-1424. The Department needs to update their rules to stay consistent with the changes at CDPHE. There will not be any cost to the Department.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

No. This is a minor rule change and simply aligns the Department rules with statute.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

   The Department briefly considered administering the program itself, essentially having the Department become the Approved Training Entity and requiring all QMAPs to attend Department sponsored training. This approach however was abandoned because of the cost of hiring trainers, the liability, and difficulty traveling to provide training to all service agencies across both LTSS and DIDD.

8.603.9 PERSONNEL AND CONTRACTOR ADMINISTRATION

A. Community centered boards and program approved service agencies shall establish qualifications for employees and contractors (Host Home and other providers) and maintain records documenting the qualifications and training of employees and contractors who provide services pursuant to these rules and regulations.

B. The community centered board or service agency may, in accordance with section 27-90-110, C.R.S., conduct background checks and reference checks prior to employing staff providing supports and services and contracting with Host Home and other providers.

C. The community centered board in its role as support coordinating agency, as defined in section 8.609.1, shall have screening procedures for individual providers who are not agency employees and for other entities providing services and supports.

D. The community centered board and program approved service agency shall have an organized program of orientation and training of sufficient scope for employees and contractors to carry out their duties and responsibilities efficiently, effectively and competently. The program shall, at a minimum, provide for:

1. Extent and type of training to be provided prior to employees or contractors providing supports and services having unsupervised contact with persons receiving services;

2. Training related to health, safety and services and supports to be provided within the first ninety (90) days for employees and contractors; and,

3. Training specific to the individual(s) for whom the employees or contractors will be providing services and supports.

E. Community centered boards shall ensure that individuals who are hired to fulfill the duties of case management services have at least a bachelor's level degree of education, five (5) years of experience in the field of developmental disabilities, or some combination of education and experience appropriate to the requirements of the position.

F. All employees and contractors, not otherwise authorized by law to administer medication, who assist and/or monitor persons receiving services in the administration of medications or the filling of medication reminder systems shall have passed a competency evaluation offered by an approved training entity, as defined in 6 CCR 1011-1, Chapter 24, *et seq*.

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Rule Concerning Outpatient Hospital Reimbursement, Section 8.300.6
Rule Number: MSB 17-07-28-A
Division / Contact / Phone: Payment Reform / Andrew Abalos / 2130

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name:	Health Care Policy and Financing / Medical Services Board
2. Title of Rule:	MSB 17-07-28-A, Revision to the Medical Assistance Rule Concerning Outpatient Hospital Reimbursement, Section 8.300.6
3. This action is an adoption of:	new rules

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 8.300.6.A, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)?	Yes
If yes, state effective date:	7/1/2017
Is rule to be made permanent? (If yes, please attach notice of hearing).	Yes

PUBLICATION INSTRUCTIONS*

Replace the current text at 8.300.6.A with the proposed text beginning at 8.300.6 through the end of 8.300.6.A.2. This rule is effective December 30, 2017.

*to be completed by MSB Board Coordinator

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Rule Concerning Outpatient Hospital Reimbursement, Section 8.300.6
Rule Number: MSB 17-07-28-A
Division / Contact / Phone: Payment Reform / Andrew Abalos / 2130

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   On May 26, 2017, Governor Hickenlooper signed Senate Bill 17-254, which set the Colorado state budget for FY 2017-18. After much debate by the General Assembly, the signed budget includes reimbursement increases for Medicaid providers, including hospitals. As a result, Medicaid hospitals are receiving a 1.4% increase in their reimbursement rate for outpatient services. This outpatient reimbursement rate change requires a new rule since it adds an additional step in the reimbursement rate calculation to accommodate the 1.4% increase, representing the payment increase of 1.4% as required by Senate Bill 17-254.

2. An emergency rule-making is imperatively necessary

   ☒ to comply with state or federal law or federal regulation and/or
   ☐ for the preservation of public health, safety and welfare.

   Explain:

   The purpose of this rule is to comply wih state law, specifically the mandates of Senate Bill 17-254.

3. Federal authority for the Rule, if any:

   42 U.S.C. 1396a(a)(30)(A);

   42 C.F.R. 447.321

4. State Authority for the Rule:

   25.5-1-301 through 25.5-1-303, C.R.S. (2016);
   24-4-103(6), C.R.S., (2016); 10 CCR 2505-10 8.300.6; SB 17-254

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Rule Concerning Outpatient Hospital Reimbursement, Section 8.300.6
Rule Number: MSB 17-07-28-A
Division / Contact / Phone: Payment Reform / Andrew Abalos / 2130

REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   Hospitals will receive increased reimbursement for outpatient services provided to Medicaid clients. These costs have already been accounted for in the state budget for FY 2017-18 through Senate Bill 17-254.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   Reimbursement to hospitals for outpatient services is estimated to increase by $7,507,001 for FY 2017-18 as a result of the 1.4% rate increase. The increase contained in this rule will allow hospitals to continue providing services to Medicaid clients and potentially provide improved services to more recipients.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

   This would cost the Department approximately $7,507,001 in FY 2017-18 for the increased reimbursement to hospitals. These costs have already been accounted for in the state budget for FY 2017-18 through Senate Bill 17-254. There are no additional costs to the Department or any other agency due to the implementation and enforcement of the proposed rule.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   The proposed rule will allow the Department to increase reimbursement to hospitals for outpatient services provided to Medicaid clients as required in Senate Bill 17-254. Hospitals will receive a 1.4% rate increase, which will be funded by both state and federal dollars. Inaction would leave the Department out of compliance with state legislation, and Hospitals would continue to receive reimbursement at current levels.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

Senate Bill 17-254 mandates across-the-board rate increases for most Medicaid providers effective 7/1/2017. There are no methods for achieving the purpose of the proposed rule that are less costly or less intrusive.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

Senate Bill 17-254 mandates across-the-board rate increases for most Medicaid providers effective 7/1/2017. There are no methods for achieving the purpose of the proposed rule that are less costly or less intrusive.

8.300.6 Payments For Outpatient Hospital Services

8.300.6.A Payments to DRG Hospitals for Outpatient Services

1. Payments to In-Network Colorado DRG Hospitals

Excluding items that are reimbursed according to the Department's fee schedule, Outpatient Hospital Services are reimbursed on an interim basis at actual billed charges multiplied by the Medicare cost-to-charge ratio less 28%. When the Department determines that the Medicare cost-to-charge ratio is not representative of a Hospital's Outpatient costs, the cost-to-charge ratio may be calculated using historical data. A periodic cost audit is done and any necessary retrospective adjustment is made to bring reimbursement to the lower of actual audited Medicaid cost less 28% or billed charges less 28%.

Effective September 1, 2009, Outpatient Hospital Services are reimbursed on an interim basis at actual billed charges times the Medicare cost-to-charge ratio less 29.1 percent (29.1%). When the Department determines that the Medicare cost-to-charge ratio is not representative of a hospital's outpatient costs, the cost-to-charge ratio may be calculated using historical data. A periodic cost audit is done and any necessary retrospective adjustment is made to bring reimbursement to the lower of actual audited cost less 29.1 percent (29.1%) or billed charges less 29.1 percent (29.1%).

Effective January 1, 2010, Outpatient Hospital Services are reimbursed on an interim basis at actual billed charges times the Medicare cost-to-charge ratio less 30 percent (30%). When the Department determines that the Medicare cost-to-charge ratio is not representative of a hospital's outpatient costs, the cost-to-charge ratio may be calculated using historical data. A periodic cost audit is done and any necessary retrospective adjustment is made to bring reimbursement to the lower of actual audited cost less 30 percent (30%) or billed charges less 30 percent (30%).

Effective July 1, 2010, Outpatient Hospital Services are reimbursed on an interim basis at actual billed charges times the Medicare cost-to-charge ratio less 30.7 percent (30.7%). When the Department determines that the Medicare cost-to-charge ratio is not representative of a hospital's outpatient costs, the cost-to-charge ratio may be calculated using historical data. A periodic cost audit is done and any necessary retrospective adjustment is made to bring reimbursement to the lower of actual audited cost less 30.7 percent (30.7%) or billed charges less 30.7 percent (30.7%).

Effective July 1, 2011, Outpatient Hospital Services are reimbursed on an interim basis at actual billed charges times the Medicare cost-to-charge ratio less 31.2 percent (31.2%). When the Department determines that the Medicare cost-to-charge ratio is not representative of a hospital's outpatient costs, the cost-to-charge ratio may be calculated using historical data. A periodic cost audit is done and any necessary retrospective adjustment is made to bring reimbursement to the lower of actual audited cost less 31.2 percent (31.2%) or billed charges less 31.2 percent (31.2%).

Effective July 1, 2013, Outpatient Hospital Services are reimbursed on an interim basis at actual billed charges times the Medicare cost-to-charge ratio less 29.8 percent (29.8%). When the Department determines that the Medicare cost-to-charge ratio is not representative of a hospital's outpatient costs, the cost-to-charge ratio may be calculated using historical data. A periodic cost audit is done and any necessary retrospective

adjustment is made to bring reimbursement to the lower of actual audited cost less 29.8 percent (29.8%) or billed charges less 29.8 percent (29.8%).

Effective July 1, 2014, Outpatient Hospital Services are reimbursed on an interim basis at actual billed charges times the Medicare cost-to-charge ratio less 28.4 percent (28.4%). When the Department determines that the Medicare cost-to-charge ratio is not representative of a hospital's outpatient costs, the cost-to-charge ratio may be calculated using historical data. A periodic cost audit is done and any necessary retrospective adjustment is made to bring reimbursement to the lower of actual audited cost less 28.4 percent (28.4%) or billed charges less 28.4 percent (28.4%).

Effective July 1, 2015, Outpatient Hospital Services are reimbursed on an interim basis at actual billed charges times the Medicare cost-to-charge ratio less 28 percent (28%). When the Department determines that the Medicare cost-to-charge ratio is not representative of a hospital's outpatient costs, the cost-to-charge ratio may be calculated using historical data. A periodic cost audit is done and any necessary retrospective adjustment is made to bring reimbursement to the lower of actual audited cost less 28 percent (28%) or billed charges less 28 percent (28%).

Effective October 31, 2016, DRG Hospitals will be reimbursed for Outpatient Hospital Services based on a system of Enhanced Ambulatory Patient Grouping and a Hospital-specific Medicaid Outpatient base rate. The reimbursement for Outpatient Hospital Services shall be referred to as the EAPG Payment.

a. The EAPG Payment will be equal to the EAPG Weight multiplied by the Hospital-specific Medicaid Outpatient base rate for that hospital as calculated in 10 CCR 2505-10, Section 8.300.6.A.1.k. If the EAPG Weight is modified due to any action impacting payment as described in sections 8.300.6.A.1.d-j, the modified EAPG Weight will be referred to as the EAPG Adjusted Weight. EAPG Payment will then be equal to the EAPG Adjusted Weight multiplied by the Hospital-specific Medicaid Outpatient base rate. If the billed amount is less than the EAPG Payment, reimbursement will be the billed amount.

b. The EAPG Payment is calculated for each detail on the claim. Claim details with the same dates of service are grouped into a visit. Claims containing details describing charges for emergency room, treatment room services or patients placed under observation will have all its details grouped into a single visit.

c. Each detail on a claim is assigned an EAPG. EAPGs can have the following types:

    (1) Per Diem

    (2) Significant Procedure. Subtypes of Significant Procedures Are:

        (a) General Significant Procedures

        (b) Physical Therapy and Rehabilitation

        (c) Mental Health and Counseling

        (d) Dental Procedure

        (e) Radiologic Procedure

(f) Diagnostic Significant Procedure

(3) Medical Visit

(4) Ancillary

(5) Incidental

(6) Drug

(7) Durable Medical Equipment

(8) Unassigned

d. A detail will be subject to EAPG Consolidation when it is assigned the same Significant Procedure EAPG as a detail not already subjected to EAPG Consolidation for that visit. EAPG Consolidation will also occur for details assigned EAPGs considered to be clinically similar to another EAPG during the visit. Details subject to EAPG Consolidation will have an EAPG Payment calculated using an EAPG Weight of 0.

e. A detail will be subject to EAPG Packaging when its assigned EAPG is considered an ancillary service to a Significant Procedure EAPG or Medical Visit EAPG present on the claim for that visit. Details describing additional undifferentiated medical visits and services will be exempt from EAPG Packaging. A detail is also subject to EAPG Packaging when it is assigned a Medical Visit EAPG while a Significant Procedure EAPG is present on the claim for that visit. Details assigned Significant Procedure EAPGs that are of subtypes Physical Therapy and Rehabilitation and Radiologic Significant Procedure do not cause details with Medical Visit EAPGs to be subject to EAPG Packaging. Details subject to EAPG Packaging will be calculated using an EAPG Weight of 0.

f. A detail will qualify for Multiple Significant Procedure Discounting when a Significant Procedure of the same subtype is present on the claim for that visit. Details qualifying for Multiple Significant Procedure Discounting are ordered by their EAPG Weight, by visit. Per visit, the qualifying detail with the greatest EAPG Weight will have its EAPG Payment calculated at 100 percent (100%) of its EAPG Weight. The qualifying detail for that visit with the next greatest EAPG Weight will have its EAPG Payment calculated at 50 percent (50%) of its EAPG Weight. All other qualifying details for that visit will have its EAPG Payment calculated at 25 percent (25%) of its EAPG Weight.

g. Details assigned the same Ancillary EAPG on the same visit will qualify for Repeat Ancillary Discounting. EAPG Payment for the first occurrence of a detail qualifying for Repeat Ancillary Discounting for that visit and EAPG is calculated using 100 percent (100%) of its EAPG Weight. EAPG Payment for the second occurrence of a detail qualifying for Repeat Ancillary Discounting for that visit and EAPG is calculated using 50 percent (50%) of its EAPG Weight. EAPG Payment for all other details qualifying for Repeat Ancillary Discounting for that visit and EAPG will be calculated using 25 percent (25%) of their EAPG Weights.

h. Details describing terminated procedures will be subject to Terminated Procedure Discounting. EAPG Payment for a detail subject to Terminated Procedure Discounting is calculated using 50 percent (50%) of the EAPG Weight. Terminated procedures are not subject to other types of discounting.

i. Details describing bilateral services will have EAPG Payment calculated using 150 percent (150%) of the EAPG Weight or the EAPG Payment not resulting from Terminated Procedure Discounting.

j. Details describing 340B Drugs will have an EAPG Payment calculated using 50 percent (50%) of the EAPG Weight or the EAPG Payment not resulting from Terminated Procedure Discounting.

k. The Hospital-specific Medicaid Outpatient base rate for the year of the methodology implementation for each hospital is calculated using the following method.

(1) Assign each hospital to one of the following peer groups based on hospital type and location:

(a) Pediatric Hospitals

(b) Urban Hospitals

(c) Rural Hospitals

(2) Process Medicaid outpatient hospital claims from state fiscal year 2015, known as the Base Year, through the methodology described in 8.300.6.A.1.a-j using Colorado's EAPG Relative Weights. For lines with incomplete data, estimations of EAPG Adjusted Weights will be used.

(3) Calculate costs from hospital charge data using the computation of the ratio of costs to charges from the CMS-2552-10 Cost Report. After the application of inflation factors to account for the difference in cost and caseload from state fiscal year 2015 to the implementation period, costs and EAPG Adjusted Weights are aggregated by peer group and are used to form peer group base rates. Each hospital is assigned the peer group base rate depending on their respective peer group assigned in 8.300.6.A.1.k.(1).

(4) For each hospital, calculate the projected EAPG payment by multiplying its peer group base rate by its hospital-specific EAPG Adjusted Weights as calculated in 8.300.6.A.1.k.(2). If the projected payment exceeds a +/- 10% difference in payment from the prior outpatient hospital reimbursement methodology, the hospital will receive an adjustment to their base rate to cap its resulting gains or losses in projected EAPG payments to 10%.

(5) Effective July 1, 2017, hospitals will receive a 1.4% increase to the rate calculated in sections 8.300.6.A.1.k.(1)-(4).

2. Payments to Out-of-Network DRG Hospitals

Excluding items that are reimbursed according to the Department's fee schedule, border-state Hospitals and out-of-network Hospitals, including out-of-state Hospitals, shall be

paid 30% of billed charges for Outpatient Hospital Services. Consideration of additional reimbursement shall be made on a case-by-case basis in accordance with supporting documentation submitted by the Hospital.

Effective October 31, 2016, Out-of-Network DRG Hospitals will be reimbursed for Outpatient Hospital Services based the system of Enhanced Ambulatory Patient Grouping described in 10 CCR 2505-10 Section 8.300.6.A.1. Such hospitals will be assigned to a Rural or Urban peer group depending on hospital location and will receive a base rate of 90% of the respective peer group base rate as calculated in 8.300.6.A.1.k.(3).

Effective July 1, 2017, Out-of-Network DRG Hospitals will have their rates increased by 1.4% from their rates effective October 31, 2016.

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Rule Concerning Adding the Asset Verification Program as a Valid Verification Source for Certain Liquid Assets. Section 8.100.5.B.1.e
Rule Number: MSB 17-08-21-B
Division / Contact / Phone: Eligibility Policy / Eric Stricca / 303-866-4475

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board
2. Title of Rule: MSB 17-08-21-B, Revision to the Medical Assistance Rule Concerning Adding the Asset Verification Program as a Valid Verification Source for Certain Liquid Assets. Section 8.100.5.B.1.e
3. This action is an adoption of: an amendment
4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 8.100.5.B.1.e, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).
5. Does this action involve any temporary or emergency rule(s)? No
   If yes, state effective date:
   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Replace the current text at 8.100.5.B.1 with the proposed text beginning at 8.100.5.B.1 through the end of 8.100.5.B.1. This rule is effective December 30, 2017.

*to be completed by MSB Board Coordinator

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Rule Concerning Adding the Asset Verification Program as a Valid Verification Source for Certain Liquid Assets. Section 8.100.5.B.1.e
Rule Number: MSB 17-08-21-B
Division / Contact / Phone: Eligibility Policy / Eric Stricca / 303-866-4475

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   Section 1940 of the Social Security Act set forth the requirement that states implement a federally mandated electronic interface that will verify assets held in depository institutions, such as checking and savings accounts. This rule adds the Asset Verification Program as the electronic data source and as a valid way to verify liquid assets.

2. An emergency rule-making is imperatively necessary

   ☐ to comply with state or federal law or federal regulation and/or
   ☐ for the preservation of public health, safety and welfare.

   Explain:

3. Federal authority for the Rule, if any:

   42 U.S.C. 1396w

4. State Authority for the Rule:

   25.5-1-301 through 25.5-1-303, C.R.S. (2016);
   25.5.1.101(4) C.R.S. (2017)

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Rule Concerning Adding the Asset Verification Program as a Valid Verification Source for Certain Liquid Assets. Section 8.100.5.B.1.e
Rule Number: MSB 17-08-21-B
Division / Contact / Phone: Eligibility Policy / Eric Stricca / 303-866-4475

REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   The classes of persons who will be affected are those whose eligibility for Medical Assistance includes an asset test. These are groups that are referred to as Non-MAGI. When certain assets are able to be verified by an electronic data source, such as the Asset Verification Program, the burden to provide physical verifications of those assets will be reduced which will decrease the time in which eligibility determinations can be completed.

2. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

   The Department received administrative resources through FY 2017-18 R-7 "Oversight of State Resources" to implement the Asset Verification Program in compliance with federal law. The Department does not anticipate that verifying resources through this program would result in a change to the number of clients determined eligible for medical assistance; rather, it would allow the verification to happen through an electronic mechanism rather than through supplemental paper verifications.

3. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   Using the Asset Verification Program to verify resources with an electronic data source is federally mandated, inaction would jeopardize Federal Matching.

4. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   There are no less costly or intrusive methods.

5. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

   The Asset Verification Program is the only electronic data source that verifies resources. There are no other alternatives methods.

8.100.5.B. Verification Requirements

1. The particular circumstances of an applicant will dictate the appropriate documentation needed for a complete application. The following items shall be verified for individuals applying for Medical Assistance:

    a. A Social Security Number shall be provided for each individual on the application for whom Medical Assistance is being requested, or proof shall be submitted that an application for a Social Security Number has been made. Members of religious groups whose faith will not permit them to obtain Social Security Numbers shall be exempt from providing a Social Security Number.

    b. Verification of citizenship and identity as outlined in the section 8.100.3.H under Citizenship and Identity Documentation Requirements.

    e. Verification of all resources shall be provided if the resources were available to the applicant in the month for which eligibility is being determined.

        Resource information that is verified through an electronic data source, such as the Asset Verification Program, shall be a valid verification. Supplemental physical verifications for the same resource is not required unless further information is needed for clarification.

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Eligibility Rules Concerning Persons Requesting Long Term Care through Home and Community Based Services (HCBS) or the Program of All Inclusive Care for the Elderly (PACE) for individuals that are in the Working Adults with Disabilities category to be able to access Supported Living Services Waiver Services at 8.100.7. B.1
Rule Number: MSB 17-08-23-A
Division / Contact / Phone: Eligibility / Beverly Hirsekorn / 6320

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board

2. Title of Rule: MSB 17-08-23-A, Revision to the Medical Assistance Eligibility Rules Concerning Persons Requesting Long Term Care through Home and Community Based Services (HCBS) or the Program of All Inclusive Care for the Elderly (PACE) for individuals that are in the Working Adults with Disabilities category to be able to access Supported Living Services Waiver Services at 8.100.7. B.1

3. This action is an adoption of: an amendment

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 8.100.7.B.1, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)? No
   If yes, state effective date:
   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Replace the current text at 8.100.7.B.1 with the proposed text starting at 8.100.7.B.1.c through the end of 8.100.7.B.1.c. This rule is effective December 30, 2017.

*to be completed by MSB Board Coordinator

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Eligibility Rules Concerning Persons Requesting Long Term Care through Home and Community Based Services (HCBS) or the Program of All Inclusive Care for the Elderly (PACE) for individuals that are in the Working Adults with Disabilities category to be able to access Supported Living Services Waiver Services at 8.100.7. B.1
Rule Number: MSB 17-08-23-A
Division / Contact / Phone: Eligibility / Beverly Hirsekorn / 6320

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   The proposed rule will amend 10 CCR 2505-10 8.100.7.B.1 to incorporate changes that implement HB 16-1321 which directs the Department to allow individuals who are financially eligible under the Working Adults with Disabilities Buy-In category to receive Home and Community Based Services (HCBS) under the Supported Living Services waiver (SLS).

2. An emergency rule-making is imperatively necessary

   ☐ to comply with state or federal law or federal regulation and/or
   ☐ for the preservation of public health, safety and welfare.

   Explain:

3. Federal authority for the Rule, if any:

   42 USC § 1396n

4. State Authority for the Rule:

   25.5-1-301 through 25.5-1-303, C.R.S. (2016);
   25.5-6-1405, C.R.S. (2016)

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Eligibility Rules Concerning Persons Requesting Long Term Care through Home and Community Based Services (HCBS) or the Program of All Inclusive Care for the Elderly (PACE) for individuals that are in the Working Adults with Disabilities category to be able to access Supported Living Services Waiver Services at 8.100.7. B.1
Rule Number: MSB 17-08-23-A
Division / Contact / Phone: Eligibility / Beverly Hirsekorn / 6320

REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   Colorado Medicaid currently has a buy-in program for working adults with disabilities. The existing buy-in program allows adults with a qualifying disability who earn incomes of less than 450 percent of the Federal Poverty Level to obtain Medicaid coverage by paying a premium (i.e., to buying into Medicaid) based on a sliding payment scale. This bill extends the Medicaid buy-in program to adults that are eligible to receive home- and community-based services under the Supported Living Services waiver. The Supported Living Services Waiver provides services to persons with Intellectual and Developmental Disabilities, with the goal of allowing clients to remain in their homes. To participate, adults must meet certain financial and program criteria.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   The addition of SLS Waiver services to the Working Adults with Disabilities Medicaid Buy-In program allows working people with disabilities, who have incomes between the Medicaid limit and up to 450 percent of the Federal Poverty Level, and who also meet the functional level for the Supported Living Waiver, to get their necessary services while earning more income or having more resources than allowed under regular Medicaid. This would benefit individuals on the waiver who would like to work but fear losing services if additional work would raise their income above the limit for regular Medicaid. This also affects individuals who cannot currently access the SLS waiver because they do not meet the income or resource requirement by allowing them to buy in to Medicaid with HCBS-SLS services.

   Approximately 20 clients are expected participate in the new HCBS-SLS buy-in program in FY 2017-18 and 38 clients will participate in FY 2018-19. Out of these participating clients, 3 clients in FY 2017-18 and 5 clients in FY 2018-19 will be new

clients, the remainder (31 in FY 2017-18 and 32 in FY 2018-19) will be existing waiver clients that transition from the regular waiver program to the buy-in program

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

   Addition of the HCBS-SLS buy-in option increases net costs to HCPF by $306,821 in FY 2017-18, and $606,865 in FY 2018-19. In addition, for clients shifted from regular waiver programs to the Medicaid buy-in, costs will be shifted from the General Fund to the Hospital Provider Fee Cash Fund. This shift, and the collection of client premiums will increase the cash fund revenue to HCPF by $159,275 and by $312,232 in FY 2018-19.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   Without implementing this rule, the Department will be out of compliance with state law; therefore, inaction is not possible

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   There are no less costly or intrusive methods.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

   There are no alternative methods.

8.100.7.B. Persons Requesting Long-term Care through Home and Community Based Services (HCBS) or the Program of All Inclusive Care for the Elderly (PACE)

1. HCBS or PACE shall be provided to persons who have been assessed by the Single Entry Point/Case Management Agency to have met the functional level of care and will remain in the community by receiving HCBS or PACE; and

    a. are SSI (including 1619b) or OAP Medicaid eligible; or

    b. are eligible under the Institutionalized 300% Special Income category described at 8.100.7.A; or

    c. are eligible under the Medicaid Buy-In Program for Working Adults with Disabilities described at 8.100.6.P. For this group, access to HCBS:

        i) Is limited to the Elderly, Blind and Disabled (EBD), Community Mental Health Supports (CMHS), Brain Injury (BI), Spinal Cord Injury (SCI) and Supported Living Services (SLS) waivers; and

        ii) Is contingent on the Department receiving all necessary federal approval for the waiver amendments that extend access to HCBS to the Working Adults with Disabilities population described at 8.100.6.P.

2. A client who is already Medicaid eligible does not need to submit a new application. The client must request the need for Long-Term Care services and the Eligibility Site must redetermine the client's eligibility.

    a. All individuals applying for or requesting Long-Term Care services must disclose and provide documentation of:

        i) any transfer of assets without fair consideration as described at 8.100.7.F; and

        ii) any interest in an annuity as described at 8.100.7.I; and

        iii) any interest in a trust as described at 8.100.7.E.

    b. Failure to disclose and provide documentation of the assets described at 8.100.7.B.2.a may result in the denial of Long-Term Care services.

    c. The requirements at 8.100.7.B.2.a and 8.100.7.B.2.b do not apply to individuals who have been determined eligible under the Medicaid Buy-In Program for Working Adults with Disabilities described at 8.100.6.P.

3. For individuals served in Alternative Care Facilities (ACF), income in excess of the personal needs allowance and room and board amount for the ACF shall be applied to the Medical Assistance charges for ACF services. The total amount allowed for personal need and room and board cannot exceed the State's Old Age Pension Standard.

DO NOT PUBLSIH THIS PAGE

Title of Rule: Revision to the Medical Assistance Rule Concerning the Consideration of Trusts in Determining Medical Assistance Eligibility
Rule Number: MSB 17-08-31-A
Division / Contact / Phone: Legal / David L. Smith / 3247

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board
2. Title of Rule: MSB 17-08-31-A, Revision to the Medical Assistance Rule Concerning the Consideration of Trusts in Determining Medical Assistance Eligibility
3. This action is an adoption of: an amendment
4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 8.100.7.E.6.b.i.c, 8.100.7.E.6.b.i.f, and 8.100.7.E.6.c.i.h , Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).
5. Does this action involve any temporary or emergency rule(s)? Yes
   If yes, state effective date: 11/10/2017
   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Replace the current text at 8.100.7.E.1.b with the proposed text beginning at 8.100.7.E.1.b through the end of 8.100.7.E.1.c. This rule is effective December 30, 2017.

*to be completed by MSB Board Coordinator

DO NOT PUBLSIH THIS PAGE

Title of Rule: Revision to the Medical Assistance Rule Concerning the Consideration of Trusts in Determining Medical Assistance Eligibility
Rule Number: MSB 17-08-31-A
Division / Contact / Phone: Legal / David L. Smith / 3247

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   The 21st Century Cures Act signed on December 13, 2016 by President Obama permits a disabled individual to establish their own disability trust. Previously, the law required a disability trust to be established by the individual's parent, grandparent, legal guardian, or by the court. Colorado's General Assembly addressed the change in federal law by passing H.B. 17-1280 which amended section 15-14-412.8, C.R.S. of the Colorado Probate Code to permit disabled individuals to establish disability trusts on their own behalf. The Department is making this change to its rules to comply with the General Assembly's direction. See also, CMS State Medicaid Director Letter, Implications of the Cures Act for Special Needs Trusts (Aug. 2, 2017).

2. An emergency rule-making is imperatively necessary

   ☐ to comply with state or federal law or federal regulation and/or
   ☐ for the preservation of public health, safety and welfare.

   Explain:

3. Federal authority for the Rule, if any:

   42 U.S.C 1396p(d)(4)(A).

4. State Authority for the Rule:

   25.5-1-301 through 25.5-1-303, C.R.S. (2016);
   15-14-412.8, C.R.S.

Initial Review — Final Adoption **11/09/17**
Proposed Effective Date **12/30/17** — Emergency Adoption

DOCUMENT #06

DO NOT PUBLSIH THIS PAGE

Title of Rule: Revision to the Medical Assistance Rule Concerning the Consideration of Trusts in Determining Medical Assistance Eligibility
Rule Number: MSB 17-08-31-A
Division / Contact / Phone: Legal / David L. Smith / 3247

REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   Disabled individuals seeking to remain or become eligible for medical assistance who have excess resources that prevent financial eligibility.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   This rule change eliminates a potential burden for disabled individuals seeking to establish a disability trust by allowing them to establish such trusts on their own behalf.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

   This rule change is not anticipated to increase or decrease state revenues; rather, it eliminates a potential barrier for individuals and may decrease their legal costs of establishing disability trusts.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   Inaction could potentially cause regulatory risk from the Centers for Medicare & Medicaid (CMS) as well as individuals seeking to establish disability trusts.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   This rule amendment potentially makes it less costly for individuals seeking to establish disability trusts.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

DO NOT PUBLSIH THIS PAGE

This proposed amendment was chosen based upon the language provided by Congress and the General Assembly.

8.100.7.E Consideration of Trusts in Determining Medical Assistance Eligibility

1. Trusts established before August 11, 1993:

   a. Medical Assistance Qualifying Trust (MQT)

      i) In the case of a Medical Assistance qualifying trust, as defined in 42 U.S.C. Sec. 1396a(k), the amount of the trust property that is considered available to the applicant/recipient who established the trust (or whose spouse established the trust) is the maximum amount that the trustee(s) is permitted under the trust to distribute to the individual assuming the full exercise of discretion by the trustee(s) for the distribution of the maximum amount to the applicant/recipient. This amount of property is deemed available resources to the individual, whether or not is actually received.

The preceding regulations for trusts established on or after July 1, 1994, do not apply to the following:

   a. Income Trusts

      i) A trust consisting only of the individual's pension income, social security income and other monthly income that is established for the purpose of establishing income eligibility for Long Term Care institution care or Home and Community Based Services (HCBS). To be valid, the trust must meet the following criteria:

         a) The individual's gross monthly income must be above the 300%-SSI limit but below the average cost of private Long Term Care institution care in the geographic region in which the individual resides and intends to remain. The Colorado Department of Health Care Policy and Financing shall calculate the average rates for such regions on an annual, calendar-year basis. The geographic regions which are used for calculating the average private pay rate for Long Term Care institution care shall be based on the Bureau of Economic Analysis Regions and consist of the following counties:

            REGION I: (Adams, Arapahoe, Boulder, Broomfield, Denver, Jefferson)

            REGION II: (Cheyenne, Clear Creek, Douglas, Elbert, Gilpin, Grand, Jackson, Kit Carson, Larimer, Logan, Morgan, Park, Phillips, Sedgwick, Summit, Washington, Weld, Yuma)

            REGION III: (Alamosa, Baca, Bent, Chaffee, Conejos, Costilla, Crowley, Custer, El Paso, Fremont, Huerfano, Kiowa, Lake, Las Animas, Lincoln, Mineral, Otero, Prowers, Pueblo, Rio Grande, Saguache, Teller)

REGION IV: (Archuleta, Delta, Dolores, Eagle, Garfield, Gunnison, Hinsdale, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Routt, San Juan, San Miguel)

b) For Long Term Care institution clients, each month the trustee shall distribute the entire amount of income which is transferred into the trust. An amount not to exceed $20.00 may be retained for trust expenses such as bank charges if such charges are expected to be incurred by the trust.

c) The only deductions from the monthly trust distribution to the Long Term Care institution are the allowable deductions which are permitted for Medical Assistance-eligible persons who do not have income trusts. Allowable deductions include only the following:

i) Personal need allowance

ii) Spousal income payments

iii) Approved PETI payments

d) Any funds remaining after the allowable deductions shall be paid solely to the cost of the Long Term Care institution care in an amount not to exceed the Medical Assistance reimbursement rate. Any excess income which is not distributed shall accumulate in the trust.

e) No other deductions or expenses may be paid from the trust. Expenses which cannot be paid from the trust include, but are not limited to, trustee fees, attorney fees and costs (including attorney fees and costs incurred in establishing the trust), accountant fees, court fees and costs, fees for guardians ad litem, funeral expenses, past-due medical bills and other debts. Trustee fees which were ordered prior to April 1, 1996 may continue until the trust terminates.

f) For HCBS clients, the amount distributed each month shall be limited to the 300% of the SSI limit. Any monthly income above that amount shall remain in the trust. An amount not to exceed $20.00 may be retained for trust expenses such as bank charges if such charges are expected to be incurred by the trust. No other trust expenses or deductions may be paid from the trust. For the purpose of calculating Individual Cost Containment or client payment (PETI), the client's monthly income will be 300% of the SSI limit. Upon termination, the funds which have accumulated in the trust shall be paid to the Department up to the total amount of Medical Assistance paid on behalf of the individual.

g) For a court-approved trust, notice of the time and place of the hearing, with the petition and trust attached, shall be given to the eligibility site and the Department in the manner prescribed by law.

h) The sole beneficiaries of the trust are the individual for whose benefit the trust is established and the Department. The trust terminates upon the death of the individual or if the trust is not required for Medical Assistance eligibility in Colorado.

i) The trust must provide that upon the death of the individual or termination of the trust, whichever occurs sooner, the Department shall receive all amounts remaining in the trust up to the total amount of Medical Assistance paid on behalf of the individual.

j) The trust must include the name and mailing address of the trustee. The trustee must notify the Department of any trustee address changes or change of trustee(s) within 30 calendar days.

k) The trust must provide that an annual accounting of trust income and expenditures and an annual statement of trust assets shall be submitted to the eligibility site or to the Department upon reasonable request or upon any change of trustee.

l) The amount remaining in the trust and an accounting of the trust shall be due to the Department within three months after the death of the individual or termination of the trust, whichever is sooner. An extension of time may be granted by the Department if a written request is submitted within two months of the termination of the trust.

m) The regulations in this section for income trusts shall also apply to income trusts established after January 1, 1992, under the undue hardship provisions in 26-4-506.3(3),C.R.S. and 15-14-412.5,C.R.S.

b. Disability Trusts

i) A trust that is established solely for the benefit of a disabled individual under the age of 65, which consists of the assets of the individual, and is established for the purpose or with the effect of establishing or maintaining the individual's resource eligibility for Medical Assistance and which meets the following criteria:

a) The individual for whom the trust is established must meet the disability criteria of Social Security.

b) The only assets used to fund the trust are (1) the proceeds from any personal injury case brought on behalf of the disabled individual, or (2) retroactive payments of SSI benefits under Sullivan v. Zebley. (This provision is applicable to disability trusts established from July 1, 1994 to December 31, 2000.)

c) The trust is established solely for the benefit of the disabled individual by the individual, the individual’s parent, the individual’s grandparent, the individual’s legal guardian, or by the court.

d) The sole lifetime beneficiaries of the trust are the individual for whose benefit the trust is established and the Colorado Department of Health Care Policy and Financing

e) The trust terminates upon the death of the individual or if the trust is no longer required for Medical Assistance eligibility in Colorado.

f) Any statutory lien pursuant to section 25.5-4-301(5), C.R.S. must be satisfied prior to funding of the trust and approval of the trust.

g) If the trust is funded with an annuity or other periodic payments, the Department shall be named on the contract or settlement as the remainder beneficiary up to the amount of Medical Assistance paid on behalf of the individual.

h) The trust shall provide that, upon the death of the beneficiary or termination of the trust, the Department shall receive all amounts remaining in the trust up to the amount of total Medical Assistance paid on behalf of the individual.

i) No expenditures may be made after the death of the beneficiary, except for federal and state taxes. However, prior to the death of the individual beneficiary, trust funds may be used to purchase a burial fund for the beneficiary.

j) The amount remaining in the trust and an accounting of the trust shall be due to the Department within three months after the death of the individual or termination of the trust, whichever is sooner. An extension of time may be granted by the Department if a written request is submitted within two months of the termination of the trust.

k) The trust fund shall not be considered as a countable resource in determining eligibility for Medical Assistance.

l) [Rule 8.110.52 B 5. b. 1) l), adopted or amended on or after November 1, 2000 and before November 1, 2001 was not extended by HB 02-1203, and therefore expired May 15, 2002.]

m) Distributions from the trust may be made only to or for the benefit of the individual beneficiary. Cash distributions from the trust shall be considered income to the individual. Distributions for food or shelter are considered in-kind income and are countable toward income eligibility.

n) If exempt resources are purchased with trust funds, those resources continue to be exempt. If non-exempt resources are purchased, those resources are countable toward eligibility.

o) The trust must include the name and mailing address of the trustee. The Department must be notified of any trustee address changes or change of trustee(s) within 30 calendar days.

p) The trust must provide that an annual accounting of trust income and expenditures and an annual statement of trust assets shall be submitted to the eligibility site or to the Department upon reasonable request or upon any change of trustee.

q) Prior to the establishment or funding of a disability trust, the trust shall be submitted for review to the Department, along with proof that the individual beneficiary is disabled according to Social Security criteria. No disability trust shall be valid unless the Department has reviewed the trust and determined that the trust conforms to the requirements of 15-14-412.8,C.R.S., as amended, and any rules adopted by the Medical Services Board.

c. Pooled Trusts

i) A trust consisting of individual accounts established for disabled individuals for the purpose of establishing resource eligibility for Medical Assistance. A valid pooled trust shall meet the following criteria:

a) The individual for whom the trust is established must meet the disability criteria of Social Security.

b) The trust is established and managed by a non-profit association which has been approved by the Internal Revenue Service.

c) A separate account is maintained for each beneficiary; however, the trust pools the accounts for the purposes of investment and management of the funds.

d) The sole lifetime beneficiaries of each trust account are the individual for whom the trust is established and the Department.

e) If the trust is funded with an annuity or other periodic payments, the Department or the pooled trust shall be named as remainder beneficiary.

f) The trust account shall be established by the disabled individual, parent, grandparent, legal guardian, or the court.

g) The only assets used to fund each trust account are (1) the proceeds from any personal injury case brought on behalf of the disabled individual, or (2) retroactive payments of SSI benefits under Sullivan v. Zeblev . (This provision is applicable to pooled trusts established from July 1, 1994 to December 31, 2000.)

h) Any statutory lien pursuant to section 25.5-4-301(5), C.R.S. must be satisfied prior to funding of the individual's trust account and approval of the joinder agreement.

i) Following the disabled individual's death or termination of the trust account, whichever occurs sooner, to the extent that the remaining funds in the trust account are not retained by the pooled trust, the Department shall receive any amount remaining in the individual's trust account up to the total amount of Medical Assistance paid on behalf of the individual.

j) The pooled trust account shall not be considered as a countable resource in determining Medical Assistance eligibility.

k) Distributions from the trust account may be made only to or for the benefit of the individual. Cash distributions to the individual from the trust shall be considered as income to the individual. Distributions for food or shelter are considered in-kind income and are countable toward income eligibility.

l) If exempt resources are purchased with trust funds, those resources continue to be exempt. If non-exempt resources are purchased, those resources are countable toward resource eligibility.

ii) If an institutionalized individual for whom a pooled trust is established is 65 years of age or older, the transfer of assets into the pooled trust creates a rebuttable

resumption that the assets were transferred without fair consideration and shall be analyzed in accordance with the rules on transfers without fair consideration in this volume. This regulation is effective for transfers to pooled trusts after January 1, 2001.

iii) When the individual beneficiary of an income, disability or pooled trust dies or the trust is terminated, the trustee shall promptly notify the eligibility site and the Department. To the extent required by these rules the trustee shall promptly forward the remainder of the trust property to the Department, up to the amount of Medical Assistance paid on behalf of the individual beneficiary.

d. Third Party Trusts

i) Third party trusts are trusts which are established with assets which are contributed by individuals other than the applicant or the applicant's spouse for the benefit of an applicant or client

ii) The terms of the trust will determine whether the trust fund is countable as a resource or income for Medical Assistance eligibility.

iii) Trusts which limit distributions to non-support or supplemental needs will not be considered as a countable resource. If distributions are made for income or resources, such distributions are countable as such for eligibility.

iv) If the trust requires income distributions, the amount of the income shall be countable as income in determining eligibility.

v) If the trust requires principal distributions, that amount shall be considered as a countable resource.

vi) If the trustee may exercise discretion in distributing income or resources, the income or resources are not countable in determining eligibility. If distributions are made for income or resources, such distributions are countable as such for eligibility.

e. Federally Approved Trusts

i) If an SSI recipient has a trust which has been approved by the Social Security Administration, eligibility for Medical Assistance cannot be delayed or denied. Individuals on SSI are automatically eligible for Medical Assistance despite the existence of a federally approved trust.

ii) If the eligibility site has a copy of a federally approved trust, the eligibility site must send a copy to the Department.

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Attorney General

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Office of the Attorney General

Tracking number: 2017-00447

Opinion of the Attorney General rendered in connection with the rules adopted by the

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

on 11/09/2017

10 CCR 2505-10

MEDICAL ASSISTANCE - STATEMENT OF BASIS AND PURPOSE, AND RULE HISTORY

The above-referenced rules were submitted to this office on 11/09/2017 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.

November 21, 2017 14:44:15

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent 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 01/01/2018

Effective date

01/01/2018

(10 CCR 2506-1)

4.100 FOOD ASSISTANCE PROGRAM DEFINITIONS

“Mandatory Work Registrant” means an individual age sixteen (16) to sixty (60) who has not met any Federal exemptions from SNAP work requirements and is therefore required to register for work or be registered by the State agency.

“Voluntary Work Registrant” means an individual who chooses to participate in the program and is not mandated to participate by the State or Federal regulations.

****

4.207.3 Benefit Allotment [Rev. eff. 9/9/16]

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~~ 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 OCTOBER 1, 2017
1	$192
2	$352
3	$504
4	$640
5	$760
6	$913
7	$1,009
8	$1,153
Each Additional Person	$144

HOUSEHOLD SIZE	MINIMUM MONTHLY ALLOTMENT EFFECTIVE OCTOBER 1, 2017

1-2	$15

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4.401.1 Gross Income Eligibility Determination [Rev. eff. 9/9/16]

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 nonexempt 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, 2017, 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	$1,307	$2,010	$1,659
2	$1,760	$2,708	$2,233
3	$2,213	$3,404	$2,808
4	$2,665	$4,100	$3,383
5	$3,118	$4,798	$3,958
6	$3,571	$5,494	$4,532
7	$4,024	$6,190	$5,107
8	$4,477	$6,888	$5,682
Each additional person	+$453	+$698	+$575

****

4.401.2 Net Income Eligibility Determination [Rev. eff. 9/9/16]

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, 2017, 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	$1,005
2	$1,354
3	$$1,702
4	$2,050
5	$2,399
6	$2,747
7	$3,095
8	$3,444
Each Additional Person	+$349

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4.407.1 Standard Deduction [Rev. eff. 9/9/16]

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, 2017	$160	$170	$199	$228

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4.407.3 Excess Shelter Deduction [Rev. eff. 9/9/16]

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, 2017	$535

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4.407.31 Four-Tiered Mandatory Standard Utility Allowance [Rev. eff. 9/9/16]

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 costs 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 heating or cooling costs 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 costs 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, 2017	$469

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, 2017	$298

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, 2017	$56

D. Telephone Allowance

1. The telephone allowance is available to households whose only utility cost is for a telephone. If more than one assistance group shares in paying the telephone costs and that is the only utility costs of the dwelling, the full phone standard will be allowed for each assistance group sharing in the telephone costs.

2. The telephone allowance is as follows:

Effective October 1, 2017	$76

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4.408 RESOURCE ELIGIBILITY STANDARDS

A. The local office shall consider households eligible under either expanded or basic categorical eligibility as outlined in Section 4.206 to have satisfied the resource eligibility criteria of this section. For households eligible under basic categorical eligibility, the case shall be documented to show that all household members have been approved for and/or are receiving benefits from the program that confers basic categorical eligibility.

B. Households that do not meet expanded or basic categorical eligibility criteria shall have their nonexempt resources, as anticipated to be available in the issuance month, used to determine household eligibility. See Section 4.409 for what is considered a non-exempt resource.

For how resources of non-household members and disqualified members are handled, refer to Section 4.411.

The resources of a sponsor and spouse considered toward a non-citizen household shall be the sponsor's total resources less two thousand dollars ($2,000). See Section 4.411.

C. The value of liquid resources, as declared by the household, shall be utilized in the determination of expedited eligibility for all applicant households.

D. As a result of the Food, Conservation and Energy Act of 2008, adjustments to the Food Assistance resource limit will be subject to change annually according to the Consumer Price Index. There are currently two (2) resource limits:

1. One established for households that do contain a member who is elderly and/or a person with a disability; and,

2. Another established for households that do not contain a member who is elderly and/or a person with a disability.

An elderly member is a member who is sixty (60) years of age or older. A disabled member is defined in Section 4.304.41.

E. The resource limits are as follows:

Effective October 1, 2017, the resource limit for households that do contain a member who is elderly and/or a person with a disability is three thousand five hundred ($3,500). The resource limit for households that do not contain a member who is elderly and/or a person with a disability is two thousand two hundred fifty dollars ($2,250).

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Tracking number: 2017-00456

Opinion of the Attorney General rendered in connection with the rules adopted by the

Food Assistance Program (Volume 4B)

on 11/03/2017

10 CCR 2506-1

RULE MANUAL VOLUME 4B, FOOD ASSISTANCE

The above-referenced rules were submitted to this office on 11/07/2017 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.

November 21, 2017 14:24:27

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Human Services

Agency

Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)

CCR number

12 CCR 2509-8

Rule title

12 CCR 2509-8 CHILD CARE FACILITY LICENSING 1 - eff 01/01/2018

Effective date

01/01/2018

DEPARTMENT OF HUMAN SERVICES

Social Services Rules

CHILD CARE FACILITY LICENSING

12 CCR 2509-8

7.700 CHILD CARE FACILITY LICENSING

7.701 GENERAL RULES FOR CHILD CARE FACILITIES

7.701.1 INTRODUCTION

All rules in Section 7.701, et seq., shall be known and hereinafter referred to as the General Rules for Child Care Facilities and will apply to all child care applicants and licensees subject to the Child Care Licensing Act, Sections 26-6-101 to 26-6-119, C.R.S.

7.701.11 Licensing Exemptions

A. A license must be obtained before care begins unless such care is exempt as set forth below.

B. A license is not required for:

1. A special school or class in religious instruction. Religious instruction is defined as instruction in religion as a subject of general education, or instruction in the principles of a particular religious faith. Faith- or spiritually-based programs which offer religious instruction combined with early childhood education, child care or child development activities as a part of the daily routine must obtain a child care license.

2. A special school or class operated for a single skill-building purpose. Single skill building includes activities or instruction in one subject area. A single skill program includes the development of an individual skill which does not include naptime periods or overnight care, or any other time children are not engaged in that specific activity. Any time activities other than the identified single skill are provided; the program is no longer considered a single skill program and must obtain the appropriate license. Meals and snacks may be incorporated into the single skill request.

3. A child care center operated in connection with a church, shopping center, or business where children are cared for during short periods of time, not to exceed three hours in any twenty-four (24) hour period of time, while parents or persons in charge of such children, or employees of the church, shopping center, or business whose children are being cared for at such location are attending church services at such location, shopping, patronizing or working on the premises of the business. This facility must be operated on the premises of the church, business, or shopping center. Only children of parents or guardians who are attending a church activity**;** patronizing the business or shopping center or working at the church, shopping center or business can be cared for in the center.

4. Occasional care of children with or without compensation, which means the offering of child care infrequently and irregularly that has no apparent pattern.

5. A family care home that provides less than 24-hour care. Care must only be provided using one (1) of the options below at any one time:

a. Care of children who are directly related to the caregiver by blood, marriage or adoption. The relationship between the caregiver and child includes biological child(ren), step-child(ren), grandchild(ren), niece, nephew, sibling, or first cousin and provide care for children who are siblings from the same family household which is unrelated to the provider; or

b. Care of up to four (4) children, related or unrelated to the caregiver. No more than two (2) children under the age of two years may be cared for at any one time.

6. A child care facility that is approved, certified, or licensed by any other state department or agency, or by a federal government department or agency, which has standards for operation of the facility and inspects or monitors the facility.

7. The medical care of children in nursing homes.

8. Ski area guest child care facilities as defined at Sections 26-6-102(5) and 26-6-103.5, C.R.S.

9. Neighborhood Youth Organizations as defined at Sections 26-6-102(5.8) and 26-6-103.7, C.R.S.

C. Any child care providers wishing to be declared exempt from the Child Care Licensing Act based on the nature of their program must submit a request for exemption to the State Department. That request must include the name and address of the facility, the number of children in care and their approximate ages, the hours of operation, and a basic description of the program and its curriculum.

D. Decisions of the State Department regarding exemptions are the final agency decision of the Department and cannot be reviewed by an Administrative Law Judge.

7.701.12 Civil Penalties and Injunctions

A. Violation of any provision of the Child Care Licensing Act or intentional false statements o reports made to the Department or to any agency lawfully delegated by the Department to make an investigation or inspection may result in fines assessed of not more than $100 a day to a maximum of $10,000:

1. A civil penalty will be assessed by the Department only in conformity with the provisions and procedures specified in Article 4 of Title 24, C.R.S. No civil penalty will be assessed without a hearing conducted pursuant to the Child Care Licensing Act and Article 4 of Title 24, C.R.S., before an Administrative Law Judge acting on behalf of the Department.

2. Prior to receipt of a cease and desist order from the Department or from any agency delegated by the Department to make an investigation or inspection under the provision of the Child Care Licensing Act, any unlicensed child care facility may be fined up to $100 a day to a maximum of $10,000 for providing care for which a license is required.

3. For providing child care for which a license is required after receipt of a cease and desist order, an unlicensed facility will be fined $100 a day to a maximum of $10,000.

4. Assessment of any civil penalty under this section will not preclude the Department from initiating injunctive proceedings pursuant to Section 26-6-111, C.R.S.

5. A licensed child care facility may be fined up to $100 a day to a maximum of $10,000 for each violation of the Child Care Licensing Act or for any statutory grounds as listed at Section 26-6-108(2), C.R.S.

6. Assessment of any civil penalty does not preclude the Department from also taking action to deny, suspend, revoke, make probationary, or refuse to renew that license.

7. Any person intentionally making a false statement or report to the Department or to any agency delegated by the Department to make an investigation or inspection under the provisions of the Child Care Licensing Act may be fined up to $100 a day to a maximum of $10,000.

8. Civil penalties assessed by the Department must be made payable to the Colorado Department of Human Services.

B. In addition to civil penalties that may be assessed under Section 7.701.12, A, when an individual operates a facility after a license has been denied, suspended, revoked, or not renewed, or before an original license has been issued, injunctive proceedings may be initiated to enjoin the individual from operating a child care facility without a license.

C. Within ten (10) working days after receipt of a notice of final agency action with regard to a negative licensing action or the imposition of a fine, or when the department identifies and documents in a report of inspection serious violations of any of the standards that could impact the health, safety or welfare of a child cared for at the facility or family child care home, each child care center, facility or family child care home must provide the department with the names and mailing addresses of the parents or legal guardians of each child cared for at the facility so that the department can notify the parents or legal guardians of the negative licensing action taken or the serious violation impacting the health, safety or welfare of a child. The facility will be responsible for paying a fine to the Department that is equal to the direct and indirect costs associated with the mailing of the notice.

7.701.13 Appeals and Waivers

The Department is authorized to hear and decide three kinds of appeal or waiver requests by applicants or licensees: hardship appeals in this rule set, also referred to as hardship waivers, stringency appeals, and materials waiver requests, according to the following procedures. For purposes of this section 7.701.13, a county department of human/social services that certifies foster homes under § 26-6-106.3, C.R.S., is a “licensee.”

A. Hardship Waivers

1. Any applicant or licensee who has applied for or been issued a license to operate a child care facility or child placement agency has a right to appeal, pursuant to § 26-6-106(3), C.R.S., any rule or standard which, in his or her opinion, poses an undue hardship on the person, facility, or community.

   a. “Undue hardship” is defined as a situation where compliance with the rule creates a substantial, unnecessary burden on the applicant or licensee’s business operation or the families or community it serves, which reasonable means cannot remedy. An undue hardship does not include the normal cost of operating the business.

   b. Emergency hardship appeals are requests by applicants or licensees to excuse noncompliance with a specific child care licensing rule due to urgent, significant, and unexpected situations outside the applicant’s or licensee’s control. Specific situations that may be considered “emergencies” under this paragraph include, but are not limited to:

      1) Natural disasters;

      2) Infectious disease outbreaks;

3) Mold outbreaks;

4) Acts of nature or an accident resulting in structural damage to the child care facility; or

5) For foster care homes and residential child care facilities, an immediate, child(ren)-specific, emergency placement, situation which may disrupt placement, or situation posing a safety risk to a child(ren) in out-of-home placement.

2. Such appeal must be submitted to the department in writing within sixty (60) calendar days from the date on which the rule, standard, or emergency situation allegedly created the hardship. The applicant or licensee or their designated representative must send an appeal on the state-prescribed form to the appropriate division. Each rule appealed requires an individual appeal and applicable fee. If the appeal is an emergency hardship appeal, the applicant or licensee must mark it as such on the state-prescribed form.

3. When submitting an appeal, the applicant or licensee must consider the impact on the health, safety, and wellbeing of any children in care and include a proposed alternate compliance plan.

4. The department must consider the impact of an appeal on the health, safety, and wellbeing of the children in care, which must take priority over any undue hardship alleged, when determining whether an appeal should be granted.

5. If the Department grants an appeal for undue hardship, it will issue the applicant or licensee an official decision notification letter temporarily excusing the applicant or licensee from compliance with the appealed rule or standard and accepting the alternate compliance plan.

B. Stringency Appeals

1. Any applicant or licensee who has applied for or been issued a license to operate a child care facility or child placement agency has a right to appeal, pursuant to § 26-6-106(3), C.R.S., any violation of a child care licensing rule cited in a report of inspection, on the basis that the rule has been too stringently applied by a representative of the department. “Stringency,” as used in this section 7.701.13, means the child care licensing representative applied rules too strictly, improperly, or unfairly. Disputes over the factual accuracy of a cited violation are not reviewable under this provision and must be resolved with the licensing representative’s supervisor.

2. Such appeal must be submitted to the department in writing within sixty (60) calendar days from the date of the report of inspection at issue. The applicant or licensee or their designated representative must send an appeal on the state-prescribed form to the appropriate division. Each rule citation requires an individual appeal and applicable fee.

3. When submitting an appeal, the applicant or licensee must provide all evidence that it believes shows the rule was applied too stringently.

4. The department must consider the impact of an appeal on the health, safety, and wellbeing of the children in care.

5. If the Department finds a licensing rule was too stringently applied in the appealed citation, it will issue the applicant or licensee a new report of inspection with that citation removed, which shall for all purposes supersede the original report of inspection.

C. Materials Waiver Requests

1. A child care center that is applied for or has been issued a license may request a waiver, pursuant to § 26-6-105.7, C.R.S., to use certain hazardous materials in its program or curriculum that would otherwise violate child care licensing rules.

2. The child care center must submit a materials waiver request in writing on the state-prescribed form to the appropriate division. Each rule for which waiver is requested requires an individual request and applicable fee. If the request also seeks to remove a citation on a report of inspection involving the materials, it must be submitted within sixty (60) calendar days from the date of the report of inspection; otherwise, it may be submitted at any time.

3. A child care center requesting a materials waiver must adopt a safety policy, included with the waiver request, that provides that:

    a. Early childhood teachers are trained in the use of the specific material(s) in a way that provides reasonable, developmental-and age-appropriate safety provisions for children;

    b. Current training certificates are provided for each staff/classroom where the materials waiver is being sought. Training must be completed through nationally recognized programs related to the curriculum or philosophy, or through other department-approved training, curriculum, or program validation; and,

    c. Parents are notified in writing regarding the use of the hazardous materials in the child care center. The notice must include all of the potential safety risks associated with the materials. The child care center must obtain signed parental consent forms acknowledging awareness of the risks in using the materials in the child care center prior to implementing use of the identified materials and prior to any newly enrolled children attending the center after the waiver is implemented.

4. The department must consider the impact of a materials waiver request on the health, safety, and wellbeing of the children in care.

5. If the department grants a materials waiver request, it will issue the child care center an official decision notification letter allowing the use of the requested materials according to the provided safety policy. The applicant or licensee must post the decision letter next to the child care license until the letter's expiration date. If there is no expiration date, the decision letter expires three (3) years from the date of the letter. The approved waiver must be in place before using materials that pose a risk to children.

D. Administrative Review and Appeal Panel Procedures

1. The applicant or licensee must comply with all child care licensing rules and standards, including the rule(s) subject to an appeal or materials waiver request, until the applicant or licensee has received a written decision granting the appeal or waiver.

2. The Department will receive, review, and schedule all appeals and materials waiver requests for review by the appeal panel constituted under § 26-6-106(3), C.R.S.

    a. For hardship appeals, the Department may propose that the appeal panel grant one or more appeals as part of a consent agenda, which the appeal panel may approve with a single vote; except if any panel member objects to the consent agenda, the appeals on such agenda must be decided individually. The appeal panel may not deny appeals by consent agenda.

b. For emergency hardship appeals, the Department may administratively grant the appeal if it meets the definition of an emergency situation and the proposed alternate compliance plan adequately protects the health, safety, and wellbeing of children in care. If the Department does not administratively grant the emergency hardship appeal, it must schedule the appeal for review by the appeal panel.

c. For materials waiver requests, the Department will administratively grant or deny the waiver request within sixty (60) days after receipt of the request. If it denies a waiver, the Department must provide notice in its decision of the center's right to appeal the denial within forty-five (45) days and the center's right to meet with Department personnel as part of that appeal.

d. If a child care center appeals the denial of a materials waiver request within forty-five (45) days of the denial, the Department will schedule the appeal for review by the appeal panel within forty-five (45) days of the appeal. The entire appeal process must not last longer than one hundred (100) days from the date of the notice of denial.

3. The appeal panel will adopt a written decision recommending that the department grant, deny, or grant with modifications an appeal or materials waiver request. The department must send an official decision letter, including the written decision of the appeal panel, to the applicant or licensee, within ten (10) days from the date of the appeal panel meeting.

a. For hardship appeals and materials waiver requests, the official decision letter must be posted next to the child care license until its expiration date. If there is no expiration date, the letter expires three (3) years from its date.

b. If the department approves a hardship appeal or materials waiver request and the applicant or licensee wishes to make changes to the alternate compliance plan or safety policy submitted with the original appeal or request, the applicant or licensee must submit a new hardship appeal or materials waiver request.

c. If, after the department approves a hardship appeal or materials waiver request, the applicant or licensee violates the terms and conditions described in the approved alternate compliance plan, approved safety policy, or official decision letter, the department's approval will immediately be rescinded and considered null and void. For purposes of this provision, any injuries, accidents, or founded complaints or investigations related to the appealed or waived licensing rule constitute a violation.

4. Hearing requests

a. For hardship or stringency appeals, if an applicant or licensee is aggrieved by the decision of the department, the applicant or licensee may request an administrative hearing pursuant to § 24-4-105, C.R.S. Written requests for an administrative hearing must be received in writing within 30 calendar days from the date the applicant or licensee received the department's decision. In all such administrative hearings, the applicant or licensee will bear the burden or proof by a preponderance of the evidence.

b. For appeals from denials of materials waiver requests, the Department's decision is a final agency decision subject to judicial review pursuant to § 24-4-106, C.R.S.

7.701.14 Civil Rights

All facilities licensed under the Child Care Licensing Act are subject to the non-discrimination provisions of Title VI of the Civil Rights Act of 1964, as amended, and its implementing regulation, Title 45 Code of Federal Regulations (CFR), Part 80; the Age Discrimination Act of 1975, as amended, and its implementing regulation, Title 45 CFR, Part 91; Section 504 of the Rehabilitation Act of 1973, as amended, and its implementing regulation, Title 45 CFR, Part 84.

All facilities licensed under the Child Care Licensing Act are also subject to Titles I through V of the Americans with Disabilities Act, as amended, and its implementing regulation, Title 29 C.F.R., Part 1630. Decisions related to the enrollment, placement, or dismissal of a child with a disability or chronic condition must be in compliance with the Americans with Disabilities Act. The facility must provide reasonable accommodations for the child with a disability who has special needs.

A lack of independent ambulation or the need for assistance in feeding, toileting, or dressing or in other areas of self-care cannot be used as sole criteria for enrollment or placement or denial of enrollment or denial of placement. Efforts must be made to accommodate the child's needs and to integrate the child with his/her peers who do not have disabilities.

7.701.2 DEFINITIONS

A. Types of Homes

1. Family Child Care Home

"Family Child Care Home," defined at Section 26-6-102(13), C.R.S., means a type of family care home that provides less than 24-hour care for five (5) or more children under the age of eighteen (18) years on a regular basis in the primary residence of the child care provider.

2. Foster Care Home

"Foster Care Home," means a home that is certified by a county department or a child placement agency, pursuant to Section 26-6-106(14) C.R.S., for child care in a place of residence of a family or person for the purpose of providing twenty-four (24) hour foster care for a child and/or youth under the age of twenty-one (21) years. A foster care home may include foster care for a child and/or youth who is unrelated to the head of the home or foster care provided through a kinship foster care home, but does not include non-certified kinship care defined in Section 19-1-103(78.7), C.R.S. The term includes any foster care home receiving a child and/or youth for regular twenty-four (24) hour care and any home receiving a child and/or youth from any state-operated institution for child care or from any child placement agency. Foster care home also includes those homes licensed by the Department of Human Services pursuant to Section 26-6-104, C.R.S., that receive neither moneys from the counties, nor children and/or youth placed by the counties.

B. Specialized Group Facility

A "Specialized Group Facility," defined at Section 26-6-102(36)(a), C.R.S., means a facility that is sponsored and supervised by a county department or a licensed child placement agency for the purpose of providing twenty-four (24) hour care for three (3) or more children, but fewer than twelve (12) children except as noted below, from at least three (3) but less than eighteen (18) years of age, or for those persons less than twenty-one (21) years old who are placed by court order prior to their eighteenth 18th birthday whose special needs can best be met through the medium of a small group. A specialized group facility may serve a maximum of one (1) child enrolled in Children's Habilitation Residential Program (CHRP) and eight (8) other foster children, or two (2) children enrolled in CHRP and five (5) other foster children, unless there has been prior

written approval by the CHRP waiver administrator. If placement of a child in a Specialized Group Facility will result in more than three (3) children approved for Children's Habilitation Residential Program (CHRP) funding, then the total number of children placed in that Specialized Group Center will not exceed a maximum of six (6) total children. Placements of more than three (3) children approved for CHRP funding may be made if the agency can demonstrate to the CHRP waiver administrator that the provider has sufficient knowledge, experience, and supports to safely meet the needs of all of the children in the home. Emergency placements will not exceed maximum established limits. Facilities that exceed established capacity at the time the rule takes effect may not accept additional children into the home until capacity complies with the rule.

SPECIALIZED GROUP FACILITY MAXIMUM CAPACITY

CHRP	Non-CHRP	Total Children
1	8	9
2	5	7

SPECIALIZED GROUP CENTER MAXIMUM CAPACITY

CHRP	Non-CHRP	Total Children
3	3	6

1. "Specialized Group Homes or Group Centers" who are serving children enrolled in the Children's Habilitation Residential Program (CHRP) waiver must be in compliance with rules contained within the Department of Health Care Policy and Financing's Medical Assistance Manual at Section 8.508 (10 CCR 2505-10).

2. "Specialized Group Centers" that serve three (3) children enrolled in CHRP waiver must be staffed with sufficient staff to deal with the complex needs of the children placed in the home.

3. A "Specialized Group Home" is located in a house owned or otherwise controlled by the group home parents who are primary responsible for the care of the children and reside at the home.

4. A "Specialized Group Center" is located in a facility owned or controlled by a governing body that hires the group center parents or personnel who are primarily responsible for the care of the children.

C. Child Care Center

"Childcare centers," are less than 24-hour programs of care as defined at Section 26-6-102(5), C.R.S., child care centers may provide care for five (5) or more children ages six (6) weeks up to the age of eighteen (18) years and include the following types of facilities:

1. A "large child care center" provides care for sixteen (16) or more children between two and one-half (2-1/2) years and up to the age of eighteen (18) years of age.

2. A "small child care center" provides care for five (5) through fifteen (15) children between two (2) years and up to the age of eighteen (18) years of age.

3. An "infant program" provides care for children between six (6) weeks and eighteen (18) months of age.

4. A "toddler program" provides care for children between the ages of twelve (12) months (when and walking independently) and thirty-six (36) months of age.

5. “Preschool” is a part-day child care program for five (5) or more children between the ages of two and one-half (2-1/2) and seven (7) years of age which operates less than five (5) hours per day.

6. “Kindergarten” provides a program for children the year before they enter the first grade.

7. A “school-age child care center” (hereafter referred to as the “center”) means a child care center that provides care for five (5) or more children who are between five (5) years of age and up to the age of eighteen (18) years of age. Children 4 years of age, who will turn 5 on or before October 15th of the current calendar year may attend the center as part of a “building-based school-age child care program” or “building-based day camp” summer program prior to their kindergarten year. The centers purpose is to provide child care and/or an outdoor recreational experience using a natural environment. The center operates for more than one week during the year. The term includes facilities commonly known as “day camps”, “summer camps”, “summer playground programs”, “before and after school programs”, and “extended day programs.” This includes centers operating with or without compensation for such care, and with or without stated educational purposes.

    a. A “building-based school-age child care program” means a child care program that provides care for five (5) or more children who are between five (5) years of age and up to the age of eighteen (18) years of age. Four (4) year old children may attend a building based school age child care center the summer prior to attending kindergarten and the child’s fifth (5^{th}) birthday occurs on or before October 15^{th}. The center is located in a building that is regularly used for the care of children.

    b. A “mobile school-age child care program” provides care for five (5) or more children who are at least seven (7) years of age or have completed the first grade and up to the age of eighteen (18) years. Children move from one site to another by means of transportation provided by the governing body of the program. The program uses no permanent building on a regular basis for the care of children.

    c. An “outdoor-based school-age child care program” provides care for five (5) or more children who are at least seven (7) years of age or have completed the first grade and up to the age of 18 years. This program uses no permanent building on a regular basis for the care of children. Children are cared for in a permanent outdoor or park setting.

D. Children's Resident Camp

A “Children's Residential Camp,” is defined at Section 26-6-102(8), C.R.S. means a facility operating for three or more consecutive 24-hour days during one or more seasons of the year with the purpose of a group living experience offering education and recreation activities in an outdoor environment. The recreational experiences may occur at the permanent camp or on trips off the premises. A children’s resident camp is not a considered a single skill program and must obtain a child care license.

1. A residential camp may have a “primitive camp” which is a portion of the permanent camp premises or another site at which the basic needs for camp operation such as places of abode, water supply systems, and permanent toilet and/or cooking facilities are not usually provided.

2. A “travel-trip camp” must be known as a camp in which there is no permanent camp site and children move from one site to another. The travel-trip camp either originates in Colorado or moves into and/or through Colorado from another state and operates for three or more consecutive twenty four (24) hour days during one or more seasons of the year for the care of five (5) or more children who are at least ten (10) years old or have

completed the fourth grade. The program must have as its purpose a group learning experience offering educational and recreational activities utilizing an outdoor environment.

E. Day Treatment Center

A "Day Treatment Center," defined at Section 26-6-102(10), C.R.S., means a facility that provides less than twenty-four (24) hour care for groups of five (5) or more children three (3) to twenty-one 21 years of age. Nothing prohibits a day treatment center from allowing a person who reaches twenty-one (21) years of age after the commencement of an academic year from attending an educational program at the day treatment center through the end of the semester in which the twenty-first 21st birthday occurs or until the person completes the educational program, whichever comes first. The center must provide a structured program of various types of psycho-social and/or behavioral treatments to prevent or reduce the need for placement of the child out of the home or community. This definition does not include special education programs operated by a public or private school system or programs that are licensed by other regulations of the Department of Human Services for less than twenty-four (24) hour care of children, such as a child care center or part-day preschool.

F. Child Placement Agency

A "Child Placement Agency," defined at Section 26-6-102(7), C.R.S., means any corporation, partnership, association, firm, agency, institution, or person unrelated to the child being placed, who places, who facilitates placement for a fee, or arranges for placement any child under the age of eighteen (18) years with any family, person or institution for purposes of foster care, treatment and/or adoption. The natural parents or legal guardian of any child who places that child for care with any facility licensed as a "Family Child Care Home" or "Child Care Center" must not be deemed to be a Child Placement Agency.

To arrange for placement is to act as an intermediary by assisting a parent or guardian or legal custodian to place or plan to place a child with persons unrelated to the child for 24-hour care.

Any agency from out of state placing a child within Colorado must be licensed as a child placement agency by the Colorado Department of Human Services unless the placement services are coordinated with and provided by a county department of social services, Human Services or a child placement agency licensed by the department.

G. Residential Child Care Facility

1. "Residential Child Care Facility," defined at Section 26-6-102(33), C.R.S., must provide twenty-four (24) hour residential group care and treatment for five (5) or more children between the ages of three (3) and eighteen (18) years old and for those persons to twenty-one (21) years old who are placed by court order prior to their eighteenth 18th birthday. A residential child care facility must offer opportunities for a variety of experiences through a group living program and specialized services that can be used selectively in accordance with an individual plan for each child. A residential child care facility includes "Shelter Care Facilities", "Residential Child Care Facilities", and "Psychiatric Residential Treatment Facilities".

2. A "Transition Program" may be a component of an RCCF program in which the child is residing in the RCCF part of the time and in a living situation that child is expected to move to after treatment in the RCCF is completed. The purpose of transition is to enable the child to transition to the home or a less restrictive setting in a manner that prepares the child for success in the new setting.

H. Secure Residential Treatment Center

A “Secure Residential Treatment Center,” defined at Section 26-6-102(35), C.R.S., means a facility operated under private ownership that provides twenty-four (24) hour group care and treatment in a secure setting for five (5) or more children or persons from age ten (10) up to the age of twenty-one (21) who are committed by a court pursuant to an adjudication of delinquency or pursuant to a determination of guilt of a delinquent act or having been convicted as an adult and sentenced for an act that would be a crime if committed in Colorado, or in the committing jurisdiction, to be placed in a secure facility.

I. Neighborhood Youth Organization

A “Neighborhood Youth Organization,” defined at Section 26-6-102(26)(a), C.R.S., means a nonprofit organization that is designed to serve youth as young as six (6) years of age and up to the age of eighteen (18) years of age. A Neighborhood Youth Organization that operates primarily during times of the day when school is not in session and provides research-based, age-appropriate, and character-building activities designed exclusively for the development of youth from six (6) years to eighteen (18) years of age. These activities must occur primarily in a facility leased or owned by the Neighborhood Youth Organization. The activities must occur in an environment in which youth have written parental or legal guardian consent to become a youth member of the neighborhood youth organization and to arrive at and depart from the primary location of the activity on their own accord, without supervision by a parent, legal guardian, or organization.

A Neighborhood Youth Organization must not include faith-based centers, organizations or programs operated by state or city parks or special districts, or departments or facilities that are currently licensed as child care centers as defined in Section 26-6-102(5), C.R.S.

J. Other Definitions

1. “Affiliate of a licensee,” means any person or entity that owns more than five (5) percent of the ownership interest in the business operated by the licensee; applicant for a license, or any person who is directly responsible for the care and welfare of children served, any executive; officer; member of the governing board; employee of a licensee; or a relative of a licensee, when the relative provides care to children at the licensee’s facility, or is otherwise involved in the management or operations of the licensee’s facility.

2. For the purposes of all child care licensing rules, the terms “child battering,” “child abuse,” “child molesting,” and “child neglect” are terms to be considered within the definition of abuse set forth in Section 19-1-103, C.R.S., unless otherwise indicated.

3. “Citizen/legal resident” means a citizen of the United States, current legal resident of the United States, or lawfully present in the United States.

4. The “Consumer Product Safety Commission”, as referred to in rules Regulating Child Care Facilities, means the National Commission that establishes standards for the safety of children’s equipment and furnishings and for playground safety. Information about these guidelines may be obtained from the Office of Information and Public Affairs, U.S. Consumer Product Safety Commission (CPSC), Washington, D.C. 20207. The CPSC web address is http://www.cpsc.gov. The local U.S. Consumer Product Safety Commission Office is located at 1961 Stout Street, Denver, CO 80294. You may contact a Senior Resident Investigator in the Denver office for information. This rule refers to the current edition of the Consumer Product Safety Commission standards, in effect when rules referencing the Commission are referenced, and does not include later amendments to or editions of the standards. The standards may be examined at any State Publications Depository Library.

5. A “critical incident” is a serious incident or concern or potential incident or concern that poses a danger to a child or children at the facility or of a staff member at the facility.

6. “Department” is the Colorado Department of Human Services.

7. “Facility” is any business or operation established for the purpose of providing child care services that are required to be licensed pursuant to the Child Care Licensing Act, Section 26-6-101 et seq., C.R.S.

8. “Final Agency Action” means the determination made by the State Department, after opportunity for hearing to deny, suspend, revoke, or demote to probationary status a license issued pursuant to the Child Care Licensing Act or an agreement between the Department and the licensee concerning the demotion of such a license to a probationary license.

9. “Governing Body” is the individual, partnership, corporation, or association in whom ultimate authority and legal responsibility are vested for the administration and operation of the child care facility.

10. “Licensing Specialist” is the authorized representative of the Colorado Department of Human Services who inspects and audits child care facilities to ensure compliance with licensing requirements and to investigate possible violations of those requirements.

11. “Negative licensing action” means a Final Agency Action resulting in the denial, suspension, or revocation of a license issued pursuant the Child Care Licensing Act or the demotion of such a license to a probationary license.

12. “Serious emotional disturbance” means a diagnosable mental, behavioral, or emotional disorder that is of sufficient duration and has resulted in a functional impairment that substantially interferes with or limits a child’s role or functioning in family, school, or community activities. Serious emotional disturbances do not include developmental disorders, substance-related disorders, or conditions or problems that may be a focus or clinical attention unless they occur with another diagnosable serious emotional disturbance.

7.701.21 Homeless Youth Services - Definitions

“Homeless Youth” is defined at Sections 24-32-723 and 26-5.7-102(2), C.R.S.

“Homeless Youth Shelter” is defined at Sections 26-5.7-102(3) and 26-6-102(5.1), C.R.S.

“Licensed Host Family Home” is a home that is certified by the county department or a child placement agency as meeting the requirements for providing shelter to homeless youth.

7.701.3 APPLICATION PROCESS

7.701.31 Original Application

A. A completed original application accompanied by the appropriate fee and proof of lawful presence in the United States (see Section 3.140.11) must be submitted to the State Department a minimum of sixty (60) days prior to the proposed opening date for the facility. For 24-hour agencies or facilities, the addendum with specific requirements must be completed and submitted with the application.

B. A licensing evaluation will occur only after the department has received the complete application and appropriate fee.

C. If a county or agency establishes and plans to sponsor a Specialized Group Facility, the governing body for the Specialized Group Facility is the applicant for the license. A written plan for the supervision of the Specialized Group Facility must accompany the application.

7.701.32 Use of Records and Reports of Child Abuse or Neglect for Background and Employment Inquiries

A request to determine whether any owner, applicant, employee, licensee or resident of a licensed facility, any supervisory employee of a guest care facility, or an exempt family child care home provider and each adult eighteen (18) years of age or older residing in the home (also known as a qualified adult) receiving or applying to receive Colorado Child Care Assistance moneys was found to be responsible in a confirmed report of child abuse or neglect reported to the State Department's automated system must be directed to and be the responsibility of the State Department.

A. Foster Homes must also obtain a child abuse or neglect records check for each adult eighteen (18) years of age or older living in the home in every state where the adult has resided in the five 5 years immediately preceding the date of application.

B. An inquiry is not necessary regarding out-of-state employees of a children's resident camp or school-age child care center for a camp or center that is in operation for fewer than ninety (90) calendar days; out-of-state employees operating under this exemption must be supervised at all times by a staff member who has successfully completed all background checks.

C. The request must be made within ten (10) calendar days of the first day of employment for each employee or facility on the State prescribed form, accompanied by the required fee paid by check or money order (for fee assessment see section 7.000.73).

D. The request must be accompanied by the individual's written authorization to obtain such information from the State automated system, if applicable.

E. The State Department will inform the requesting party in writing of whether the individual has been confirmed to be a person responsible for an incident of child abuse or neglect.

1. If the result of the inquiry is that the individual has been confirmed as responsible for an incident of child abuse or neglect, the State Department must provide the requesting party with information regarding the date of the reported incident, the type of abuse or neglect with the severity level, and the county department that confirmed the report.

2. If the result of the inquiry is that the individual has not been confirmed to be responsible for an incident of child abuse or neglect, the State Department must notify the requesting party of this fact.

F. The information provided by the State Department must serve only as the basis for further investigation. The director or operator may inform an applicant or employee that the report from the State Department's automated system was a factor in the director or operator's decision with regard to the applicant or employee's employment.

G. Any person who willfully permits or who encourages the release of data or information related to child abuse or neglect contained in the State Department's automated database to persons not permitted access to such information commits a Class 1 misdemeanor and must be punished as provided in Section 18-1.3-501, C.R.S.

H. Every five (5) years, all child abuse and neglect inquiry background checks must be renewed by resubmitting an inquiry form and current fee to the department for processing. An updated

clearance letter or verification of the submission of the inquiry form must be obtained before the five (5) year date reflected on the current clearance letter.

7.701.33 Criminal Record Check

A. Criminal records checks are required under the following circumstances:

1. Each applicant listed below must submit to the Colorado Bureau of Investigation (CBI) and the Federal Bureau of Investigation (FBI) a complete set of fingerprints taken by a qualified law enforcement agency or any third party approved by CBI including county departments of human or social services that use fingerprint machines pursuant to section 19-3-406(1)(C),(2), C.R.S., to obtain any fingerprint criminal history record held by the CBI and FBI. If a third party takes the individual's fingerprints, the fingerprints may be electronically captured using CBI's approved LiveScan equipment pursuant to section 10-23-103 C.R.S. Payment of the fee for the criminal record check is the responsibility of the individual being checked, identified as follows:

   a. Each applicant for an original license for a center, facility, or agency and any adult eighteen (18) years of age or older who resides in the licensed center, facility or agency.

   b. Each exempt family child care home provider who provides care for a child and each individual who provides care for a child who is related to the individual (referred collectively in this section as a "qualified provider"), if the child's care is funded in whole or in part with money received on the child's behalf from the publicly funded Colorado Child Care Assistance Program; and, any adult eighteen (18) years of age or older who resides with a qualified provider where the care is provided.

   c. Applicants for an original certificate for a foster care home, and any adult eighteen (18) years of age or older who resides in the foster care home.

   d. Any person working in a twenty-four (24) hour child care agency or facility.

2. Each applicant for an original license for a Neighborhood Youth Organization must comply with the criminal background check requirements found at Section 26-6-103.7(4), C.R.S.

   The applicant must ascertain whether the person being investigated has been convicted of felony child abuse as specified in Section 18-6-401, C.R.S., or a felony offense involving unlawful sexual behavior as defined in Section 16-22-102(9), C.R.S. The Neighborhood Youth Organization must not hire a person as an employee or approve a person as a volunteer after confirmation of such a criminal history.

B. Only in the case of a children's resident camp or school-age child care center, out-of-state persons employed in a temporary capacity for less than ninety (90) days are not required to be fingerprinted to obtain a criminal record check. Each person exempted from fingerprinting and being checked with the State Department's automated system must sign a statement which affirmatively states that she/he has not been convicted of any charge of child abuse or neglect, unlawful sexual offense, or any felony. Out-of-state employees operating under this exemption must be supervised at all times by a staff member who has successfully completed all background checks.

   Prospective employers of such exempted persons must conduct reference checks of the prospective employees in order to verify previous work history and must conduct personal interviews with each such prospective employee.

C. At the time the annual declaration of compliance is submitted to the Department, a criminal record check is required only for adults living at the licensed facility who have not previously obtained one. Because the Colorado Bureau of Investigation (CBI) provides the Department with ongoing notification of arrests, owners, applicants, licensees, and persons who live in the licensed facility who have previously obtained a criminal record check, they are not required to obtain additional criminal record checks.

D. Each owner, employee, who is eighteen (18) years of age or older, of a facility or agency must submit to CBI a complete set of fingerprints to obtain any criminal record held by the CBI and FBI. Payment of the fee for the criminal record check is the responsibility of the individual being checked or the facility or agency. The results of the criminal record check, including a copy of the fingerprint card; CBI and FBI clear letter must be maintained at the home, center, facility, or agency and must be available for review upon request by a Licensing Specialist.

1. Employees and volunteers who are transferring from one child care facility to another may have their CBI, but not their FBI, fingerprints transferred 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 or school district. They must attach it to a new fingerprint card, the top portion of which they have completed with new fingerprints taken. The new fingerprint card must include the new employer's address and the new employer's license I.D. number in the box labeled MNU. “Transfer - Child Care” must be inserted in the “Reason Fingerprinted” block. The CBI clearance letter (or photocopy of the old fingerprint card) and the new fingerprint card must be sent with a money order or other certified funds covering all current transfer fees payable to CBI at: Colorado Bureau of Investigation, 690 Kipling Street., Suite 3000, Denver, CO 80215. Those facilities that have accounts with CBI are not required to send the money order or certified funds; instead, they must enter their CBI account number in the OCA block of the new fingerprint card and CBI will deduct the current transfer fee.

    b. New employees who cannot obtain the CBI clearance letter or photocopy of the processed fingerprint card from their former employer must have their fingerprints retaken and follow the process detailed in Section 7.701.33, D, 1, a.

    c. When an individual leaves employment, the facility must submit to CBI a completed Notification of Name Removal form to request the removal of the individual's name from their facility license number in the CBI database.

    d. School district employees who currently work at a child care facility must have their criminal history report linked to the license number of the child care facility.

2. Any adult volunteer, working as a staff member to meet the required staff-child ratio or staff qualifications, who works fourteen (14) days (112 hours) or more in a calendar year, must submit to CBI a complete set of fingerprints taken by a qualified law enforcement agency or any party approved by CBI to obtain a criminal record check. The results of the criminal record check must be maintained at the facility or agency and must be available for inspection by a Licensing Specialist. Employees operating as volunteers to meet required staff-child ratio that do not have a completed background check on file must be supervised at all times by a qualified staff member who has successfully completed all background checks.

3. Requests for a criminal record check must be submitted to the CBI within five (5) working days of the day that the individual begins to work at the facility or agency.

5. For the purposes of these rules, “convicted” means a conviction by a jury or by a court and shall also include a deferred judgment and sentence agreement, a deferred prosecution agreement, a deferred adjudication agreement, an adjudication, and a plea of guilty or *nolo contendere*.

6. Facilities and agencies that hire individuals who have been convicted of any felony, except those listed in a-f below, unlawful sexual behavior, or any misdemeanor, the underlying factual basis of which has been found by the court on record to include an act of domestic violence must inform the department of that hiring within fifteen (15) calendar days of receiving knowledge of the conviction.

7. A child care facility shall not employ, or a child placement agency shall not employ or certify, an individual who has been convicted of:

   a. Child abuse, as specified in Section 18-6-401, C.R.S.

   b. A crime of violence, as defined in Section 18-1.3-406, C.R.S.

   c. An offense involving unlawful sexual behavior, as defined in Section 16-22-102(9), C.R.S.

   d. A felony, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in Section 18-6-800.3, C.R.S.

   e. A felony involving physical assault, battery, or a drug-related offense within the five years preceding the date of application for a license or certificate.

   f. A pattern of misdemeanor convictions within the ten (10) years immediately preceding submission of the application. “Pattern of misdemeanor” shall include consideration of Section 26-6-108(2), C.R.S., regarding suspension, revocation and denial of a license, and shall be defined as:

      1. Three (3) or more convictions of third (3rd)degree assault as described in Section 18-3-204, C.R.S., and/or any misdemeanor, the underlying factual basis of which has been found by any court on the record to include an act of domestic violence as defined in Section 18-6-800.3, C.R.S.; or

      2. Five (5) misdemeanor convictions of any type, with at least two (2) convictions of third (3rd) degree assault as described in Section 18-3-204, C.R.S., and/or any misdemeanor, the underlying factual basis of which has been found by any court on the record to include an act of domestic violence as defined in Section 18-6-800.3, C.R.S. or,

      3. Seven (7) misdemeanor convictions of any type.

   g. Any offense in any other state, the elements of which are substantially similar to the elements listed in a-f.

8. No license or certificate to operate any agency or facility shall be issued by the Department, a county department of human or social services, or a licensed Child Placement Agency if the person applying for such license or certificate or an affiliate of the applicant, a person employed by the applicant, or a person who resides with the applicant of the facility has been determined to be insane or mentally incompetent by a court of competent jurisdiction and, should a court enter, pursuant to Part 3 or Part 4 of Article 14 of Title 15, C.R.S. or Section 27-65-109(4) or 27-65-127, C.R.S., an order specifically finding that the mental incompetency or insanity is of such degree that the

applicant is incapable of operating a family child care home, foster care home, child care center, or child placement agency, the record of such determination and entry of such order being conclusive evidence thereof.

E. Payment of the fee for the FBI check is the responsibility of the individual who is obtaining the check or the facility or agency. Certified foster parent(s) or any person eighteen (18) years of age or older who resides with a certified foster parent must obtain a criminal record check from the FBI regardless of the length of residence in Colorado.

F. The Department may deny, revoke, suspend, change to probationary or fine a child care facility or child placement agency if the applicant(s), an affiliate of the applicant, or any person living with or employed by the applicant has:

1. Been convicted in Colorado or in any other state of any felony, or has entered into a deferred judgment agreement or a deferred prosecution agreement in Colorado or in any other state to any felony other than those offenses specified in Section 26-6-104(7), C.R.S., or child abuse, as specified in Section 18-6-401, C.R.S., the record of conviction being conclusive evidence thereof, notwithstanding Section 24-5-101, C.R.S.; or

2. Been convicted of third degree assault, as described in Section 18-3-204, C.R.S., any misdemeanor, the underlying factual basis of which has been found by the court on any record to include an act of domestic violence, as defined in Section 18-6-800.3, C.R.S., any misdemeanor violation of a restraining order, as described in Section 18-6-803.5, C.R.S., any misdemeanor offense of child abuse as defined in Section 18-6-401, C.R.S., or any misdemeanor offense in any other state, the elements of which are substantially similar to the elements of any one of the offenses described in this paragraph; or

3. Used any controlled substance as defined in Section 12-22-303(7), C.R.S. or consumed any alcoholic beverage or been under the influence of a controlled substance or alcoholic beverage during the operating hours of the facility; or

4. Been convicted of unlawful use of a controlled substance as specified in Section 18-18-404, C.R.S., unlawful distribution, manufacturing, dispensing, sale, or possession of a controlled substance as specified in Section 18-18-405, C.R.S., or unlawful offenses relating to marijuana or marijuana concentrate as specified in Section 18-18-406, C.R.S.; or

5. Consistently failed to maintain standards prescribed and published by the Colorado Department of Human Services; or

6. Furnished or made any misleading or any false statement or report to the Colorado Department of Human Services; or

7. Refused to submit to the Colorado Department of Human Services any reports, or refused to make available to the Department any records required by it in an investigation of the facility for licensing purposes; or

8. Failed or refused to submit to an investigation or inspection by the Colorado Department of Human Services or to admit authorized representatives of the Department at any reasonable time for the purpose of investigation or inspection; or

9. Failed to provide, maintain, equip, and keep in safe and sanitary condition premises established or used for child care pursuant to standards prescribed by the Colorado Department of Public Health and Environment and the Colorado Department of Human Services or by ordinances of regulations applicable to the location of the foster care home; or

10. Willfully or deliberately violated any of the provisions of the Child Care Licensing Act; or

11. Failed to maintain financial resources adequate for the satisfactory care of children served in regard to upkeep of premises and provision for personal care, medical services, clothing, and other essentials in the proper care of children; or

12. Been charged with the commission of an act of child abuse or an unlawful sexual offense, as specified in Section 18-3-411(1), C.R.S., if:

    a. Such individual has admitted committing the act or offense and the admission is documented or uncontroverted; or

    b. An Administrative Law Judge finds that such charge is supported by substantial evidence.

13. Admitted to an act of child abuse or if substantial evidence is found that the licensee, person employed by the licensee, or person who resides with the licensee in the foster home has committed an act of child abuse, as defined at Section 19-1-103(1), C.R.S.; or

14. Been the subject of a negative licensing action; or

15. Misuse any public funds that are provided to any foster care home or any child placement agency that places, or arranges for placement of a child in foster care for the purposes of providing foster care services, child placement services related to the provision of foster care, or any administrative costs related to the provision of such foster care services or such foster-care-related child placement services.

G. The Department may deny an application for a child care facility license or a child placement agency license if the applicant is a relative affiliate of a licensee, as described in Section 26-6-102(1)(d), C.R.S., of a child care facility or child placement agency, which is the subject of a previous negative licensing action or is the subject of a pending investigation by the Department that may result in a negative licensing action.

H. For all CBI fingerprint-based criminal history record information checks required in this Section 7.701.33, including those confirming a criminal history as well as those confirming no criminal history, the Department will conduct a comparison search on the State Judicial Department's court case management system and the sex offender registry of the Colorado Department of Public Safety. The court case management search must be based on name, date of birth, and address, in addition to any other available criminal history data that the Department deems appropriate, is used to determine the type of crime(s) for which a person was arrested or convicted and the disposition thereof. The sex offender registry search is used to determine whether the address of a licensee or prospective licensee is listed as belonging to a registered sex offender, except that:

1. County departments of human or social services must conduct sex offender searches in the CBI sex offender registry and the national sex offender public website operated by the United States Department of Justice prior to certification and annually; include a copy in the provider record using the following criteria at a minimum:

    a. Known names and addresses of each adult residing in the foster care home or kinship foster care home; and,

    b. Address only, of the foster care home or the kinship foster care home.

2. Child placement agencies must conduct sex offender searches in the CBI sex offender registry and the national sex offender public website operated by the United States Department of Justice prior to certification and annually, includes copy in the provider record using the following criteria at a minimum:

a. Known names and addresses of each adult residing in the foster care home or kinship foster care home; and,

b. Address only of each adult residing in the foster care home or the kinship foster care home.

I. Portability of Background Checks

1. Where two or more individually licensed facilities are wholly owned, operated, and controlled by a common ownership group or school district, a fingerprint-based criminal history records check and a check of the Records and Reports of child abuse or neglect maintained by the department, completed for one of the licensed facilities of the common ownership group or school district pursuant to this section for whom a criminal records check is required under Section 26-6-107, C.R.S., may satisfy the records check requirement for any other licensed facility under the same common ownership group or school district. A new fingerprint-based criminal history records check or new check of the child abuse or neglect Records and Report must not be required of such an individual if the common ownership group or school district maintains a central records management system for employees of all its licensed facilities; takes action as required pursuant to Section 26-6-104, C.R.S., when informed of the results of a fingerprint-based criminal history records check or check of the of child abuse or neglect Records and Report that requires action pursuant to Section 26-6-107 C.R.S.; and informs the Department whenever an additional licensed facility comes under or is no longer under its ownership or control.

2. When a licensee is inspected pursuant to the Child Care Licensing Act and records regarding CBI and FBI fingerprint-based criminal background checks, as well as records and reports of child abuse and neglect maintained by the State Department, and the comparison search on the ICON system at the State Judicial system are held at a central records management system, the licensee must be afforded fourteen (14) calendar days to provide to the State Department documentation necessary to verify that employees at the licensed facility have the required records related to fingerprint-based criminal background checks.

7.701.34 Fire and Health Inspections, Zoning Codes

A. Prior to the original license being issued, following the renovation of the facility that would affect the licensing of the facility and at least every two (2) years thereafter, all child care facilities except family child care homes and Neighborhood Youth Organizations must be inspected and obtain an approving inspection report from the local department of health or the Colorado Department of Public Health and Environment and from the local fire department. These reports must be maintained at the facility and be available for review upon request by a Licensing Specialist.

B. Prior to the original license being issued, all child care facilities, except for foster homes and specialized group facilities, that are providing care for three or fewer children who are determined to have a developmental disability by a community centered board or who have a serious emotional disturbance, must submit to the State Department written approval from the local zoning department approving operation of the facility. The approval must include the address of the child care facility and the ages and numbers of children to be served. The facility must also submit written zoning department approval to the State Department any time there is a change to the license, including moving the facility to another location, increasing the capacity, or adding different ages of children.

C. All child care facilities must operate in compliance with local planning and zoning requirements of the municipality, city and county, or county where the facility is located.

7.701.35 Changes Requiring a New Application

A license is deemed surrendered and a new application is required in any of the following circumstances:

A. Change of licensee, owner, or governing body;

B. Change in classification of facility or service offered; or

C. Change in location of the facility.

7.701.36 Types of Licenses

7.701.361 Permanent License

A. A permanent license is granted when the Department is satisfied that the facility or agency is in compliance with the appropriate Department rules and the Child Care Licensing Act. The permanent license remains in effect until surrendered or revoked.

B. Once a permanent license has been issued, the licensee must annually submit to the Department a declaration of compliance with the applicable licensing rules and notice of continuing operation on the form prescribed by the Department, along with the appropriate annual fee as set forth at Section 7.701.4.

C. Failure to submit the annual Continuation Notice and fee will constitute a consistent failure to maintain Department standards and may result in fines or the revocation of the license.

7.701.362 Time-Limited License

A. A time-limited license is granted for specific types of child care facilities or agencies when the Department is satisfied that the facility or agency is in compliance with the appropriate Department rules and the Child Care Licensing Act. The time-limited license will expire on a set date.

B. Once a time-limited license has been issued, the licensee must submit a renewal application and appropriate fee prior to the expiration of the time-limited license. This will keep the license in effect until a new time-limited license can be issued.

C. Failure to submit the renewal application prior to the expiration of the time-limited license will result in the expiration of the license and closure of the facility.

7.701.363 Provisional License

A. A provisional license or certificate may be issued only for the initial six (6) month licensing period.

B. This license permits the facility to operate while it is temporarily unable to conform to all rules upon proof by the applicant that attempts are being made to comply with the rules.

C. If an applicant holds a valid provisional license at the time of application for a permanent license, the provisional license will remain in effect until the application is acted on by the Department.

7.701.364 Probationary License

A. A probationary license or certificate may be granted to a licensed facility or agency as provided in Section 26-6-108(2), C.R.S.

B. If the applicant holds a valid probationary license and submits the renewal application and appropriate fee for a permanent license, the current license will remain in effect until the renewal application is acted on by the Department.

7.701.365 Multiple Licenses

A. If a licensee wishes to assume child care responsibility in more than one classification of care, separate applications, fees, and licensing evaluations are required for each classification. A Family Child Care Home and a Specialized Group Home may only be licensed as one type of classification at any one location address.

B. If a licensee wishes to operate more than one facility of the same classification but at different locations, a separate application, fee, and evaluation are required for each location.

7.701.4 Fees

A. The appropriate application fee outlined in 7.701.4, C, must be submitted to the department with the application for a child care, agency or Neighborhood Youth Organization license at least sixty (60) calendar days prior to the opening date of the facility or the expiration date of the provisional or probationary license. Neighborhood Youth Organizations shall be exempt from this sixty (60) day requirement for the first twelve (12) months following original promulgation of the Neighborhood Youth Organization rules.

B. The appropriate application fee outlined in 7.701.4, C, must be submitted to the Department annually, at least sixty (60) calendar days prior to the anniversary date of the license, along with a completed continuation declaration.

C. Following is a schedule of original and annual fees for all types of child care facilities and agencies, and Neighborhood Youth Organizations:

Family Child Care Homes (1-8 children)	
Original/Continuation	$27
Large Family Child Care Homes (7-12 children)	
Original/Continuation	$40
Experienced Family Child Care Homes	
Original Application	$43
Continuation	$43

Child Care Centers, Preschools, School Age Child Care and Resident Camps	
Original/Continuation (5-20 children)	$ 85
Original/Continuation (21-50 children)	$134
Original/Continuation (51-100 children)	$195
Original/Continuation (101-150 children)	$299
Original/Continuation (151-250 children)	$414
Original/Continuation (251 or more children)	$585

Day Treatment Center Original/Continuation	$49

Specialized Group Facility Original/Continuation	$121

Child Placement Agencies Licensed for Foster Care	
Original Application	$627

Continuation (0-5 homes)	$319
Continuation (6-15 homes)	$407
Continuation (16-30 homes)	$506
Continuation (31-50 homes)	$594
Continuation (51 or more homes)	$693

Child Placement Agencies Licensed for Adoption	
Original Application	$479
Continuation (0-5 finalized adoptions)	$242
Continuation (6-11 finalized adoptions)	$270
Continuation (12-17 finalized adoptions)	$286
Continuation (18-23 finalized adoptions)	$319
Continuation (24 or more finalized adoptions)	$330

A Child Placement Agency licensed for both foster care and adoptions will pay only one fee - either the foster care fee or the adoption fee, whichever is greater. The annual report required by regulation 7.710.72, B, must be attached.

Homeless Youth Shelter Original/Continuation	$330

Neighborhood Youth Organization Original Application/Continuation	$77

Residential Child Care Facility	
Original Application	$792
Continuation (under 12 children)	$242
Continuation (13-25 children)	$396
Continuation (26-50 children)	$550
Continuation (51 or more children)	$715
RCCF/RTC's pay one continuation fee per year based on the total licensed capacity of the facility.	

Secure Residential Treatment Center Original/Continuation	$924

Changes to Licenses (Capacity and/or Number of Children) Family Child Care Homes, Child Care Centers, School Aged Child Care, Day Treatment Facilities, Children's Resident Camps, Neighborhood Youth Organization	$49
Duplicate Licenses Family Child Care Homes, Child Care Centers, School Aged Child Care, Day Treatment Facilities, Children's Resident Camps, Neighborhood Youth Organization	$37
Changes to Licenses (Capacity and/or Number of Children) Child Placement Agencies, Group Centers, Residential Child Care Facility, Secure Residential Treatment Center, Homeless Youth Center, International Adoption Agencies. Specialized Group Facility	$44
Duplicate Licenses	$33

Child Placement Agencies, Group Centers, Residential Child Care Facility, Secure Residential Treatment Center, Homeless Youth Center, International Adoption Agencies, Specialized Group Facility	

Changes to Licensees of Family Child Care Homes, Large Family Child Care Homes, and Experienced Family Child Care Homes will never exceed the cost of the original or continuation fee.

D. Following is a schedule of fees for the original application and annual fee required for the temporary and full accreditation of international adoption agencies.

International Adoption Agencies	
Original Application for Full Accreditation for Agencies that Complete 100 or More Intercountry Adoptions in a Calendar Year	$4,000
Original Application for Full Accreditation for Agencies that Complete 50-99 Intercountry Adoptions in a Calendar Year	$3,000
Original Application for Full Accreditation for Agencies that Complete 49 or Fewer Intercountry Adoptions in a Calendar Year	$2,000
Annual Fee for Agencies with Full Accreditation	$2,000
Original Application for Full Accreditation - Agencies with Colorado and Out-of-State Offices Additional Fee	$2,000
Original Application for Temporary Accreditation - Agencies with Colorado and Out-of-State Offices - Additional Fee	$500

E. International adoption agencies with out-of-state offices will be required to reimburse the State for actual and necessary charges involved with travel to out-of-state offices.

F. The appropriate administrative and criminal background check fees (refer to Section 7.701.33) paid with certified funds (i.e., money order or cashier's check) outlined in Section 3.905.1, A (9 CCR 2503-1) must be submitted to the State Department along with the completed background check packet upon renewal or signing a new fiscal agreement with the county to receive Colorado Child Care Assistance funds.

CCCAP – Exempt Family Child Care Homes	
Administration Fee for SFY2007 Initial Fingerprint Packet	$9.00
Administrative Fee for Subsequent Year Initial Fingerprint Packet	$11.00

7.701.5 ADMINISTRATION

7.701.51 Governing Body

A. The governing body must be identified by its legal name on the original application and annual continuation notice. The names and addresses of individuals who hold primary financial control and officers of the governing body must be fully disclosed to the Department.

B. The governing body must demonstrate to the Department, upon request, that there is sufficient financial support to operate and maintain the facility in accordance with all rules in Section 7.701, the rules regulating the specific type of facility, and the goals and objectives of the facility.

7.701.52 Reports

Critical incident reporting for 24-hour agencies, facilities and day treatment:

Within twenty four (24) hours, excluding weekends and holidays, of the occurrence of a critical incident at the facility or within twenty four (24) hours of a child's return to the facility:

1. Death

   a. Report any child/youth death in the facility or foster home while a child has an open placement, to include while a child is on or off grounds;

   b. Report death of a child/ youth while a child is on the premises of day treatment;

   c. Report death of staff while on duty;

   d. Report death of foster parent with child(ren)/ youth in placement;

   e. Report death of volunteer or visitor while on premises.

2. Abuse and neglect

   a. Report any allegation, suspicion, reasonable cause to know, observation or condition of physical, sexual, verbal, emotional, psychological, or financial abuse to a child/ youth when they are in placement or on the premises;

   b. Report any allegation, suspicion, reasonable cause to know, observation or condition of physical, deprivation of needs, medical, supervisory, emotional, psychological, or financial neglect to a child/ youth while they are in placement or on the premises;

   c. Report notification of an open investigation conducted by the county department.

3. Injury

   a. Report any serious injury to a child/youth that requires emergency medical attention by a health care professional outside of the facility or admission to a hospital;

   b. Report any serious injury in which there is no known cause or due to alleged lack of supervision;

   c. Report any injury, bruise or abrasion on the individual that occurs as a result of a physical management.

   d. Report any injury to a foster parent, staff, volunteer or visitor as a result of an altercation with a child/youth.

4. Illness

a. Report any serious illness that requires emergency medical attention by a health care professional outside of the facility or admission to a hospital;

b. Report when the wrong medication or dosage is given, or when the prescribed medication is not given to the ~~client~~ child/youth, which results in an adverse side effect (physiological or psychological) which requires treatment from a medical professional outside of the facility to address the adverse effects and ensure the safety of the child/ youth to sustain life;

c. A mandatory reportable illness, as required by the Colorado Department Of Public Health And Environment, of a child or staff member;

d. Report any suicidal attempt by a child/youth that requires emergency medical attention by a health care professional outside of the facility or admission to a hospital;

e. Report any self-injurious behavior by a child/youth that requires emergency medical attention by a health care professional outside of the facility or admission to a hospital;

f. Report if a child/youth is placed on a 72-hour/ M1 hold;

g. Report if a child, foster parent, or staff on duty receives medical or emergency attention outside of the facility as a result of a drug or alcohol related incident.

5. Emergency response

a. Report if a fire department responds and extinguishes a fire;

b. Report a hazardous situation that occurs that could have possibly threatened the lives of other people around a facility or foster home;

c. Report incidents that result in law enforcement taking control of a situation or taking control of a facility or foster home;

d. Report any major/ credible threat to the security and/or safety of a facility, foster home, or child/youth in out-of-home care;

e. Report if a law enforcement agency files charges; issues a summons or citation to a child/ youth, and/or a child/youth is arrested while child/youth has an open placement at the facility or foster home, to include when child/youth is on or off grounds;

f. Report if a child/ youth leaves without consent if under the age of 18 and does not return to the facility or foster home within 24 hours;

g. Report if division of youth services child/ youth escapes the facility or foster home.

A report of a critical incident must be submitted directly through the Colorado Department of Human Services, Division of Child Welfare, Trails automated system.

B. Reporting For Family Child Care Homes, Child Care Centers, Preschools, School Age Child Care, Children's Resident Camps And Neighborhood Youth Organizations

a. Within twenty four (24) hours, excluding weekends and holidays, of the occurrence of a critical incident at the facility or within twenty four (24) hours of a child's return to the facility the licensee must report in writing to The Office of Early Childhood, Division of Early Care And Learning the following critical incidents involving a child in the care of the facility or a staff member on duty:

a. All deaths including the death of a child, staff member or volunteer as a result of an accident, suicide, assault, Sudden Unexpected Infant Death or any natural cause while at the facility, or while on authorized or unauthorized leave from the facility. This report must be completed in the online injury system within 24 hours of an incident. If a provider is unable to access the online system, you must use the paper form, and submit the form within 24 hours of the incident.

b. An injury to a child or staff member that requires emergency medical attention by a health care professional or admission to a hospital. Whether or not treatment was given. This report must be completed in the online injury system within 24 hours of an incident. If a provider is unable to access the online system, you must use the paper form, and submit the form within 24 hours of the incident.

c. A mandatory reportable illness, as required by the Colorado Department of Public Health and Environment, of a child or staff member that requires emergency medical attention by a health care professional or admission to a hospital. This report must be completed in the online injury system within 24 hours of an incident. If a provider is unable to access the online system, you must use the paper form, and submit the form within 24 hours of the incident.

d. Any allegation of physical, sexual, or emotional abuse or neglect to a child that results in reporting to a law enforcement, county department of human or social services agency.

e. Any fire that is responded to by a local fire department.

f. Any major threat to the security of a facility including, but not limited to, a threat to kidnap a child, riots, bomb threats, hostage situations, use of a weapon, or drive by shootings active shooter situation, or lock down, lock out situations.

g. A drug or alcohol related incident involving a staff member or a child that requires outside medical or emergency response.

h. An assault, as defined by Sections 18-3-201 through 18-3-204, C.R.S., by a child upon a child, a child upon a staff member, volunteer or other adult; a staff member, volunteer or other adult upon a child, other staff member or other adult which results in a report to law enforcement.

i. A suicide attempt by a child at the facility which requires emergency intervention.

j. Felony theft or destruction of property by a child at the facility for which law enforcement is notified.

k. Any police or sheriff contact with the facility for a crime committed by a resident while in placement at the facility.

l. Any damage to the facility as a result of severe weather, fire, flood, mold or other natural disaster or damage to the facility that prevents the facility from normal operation.

C. Reports Made to the Department Within Ten (10) Working Days

1. Any legal action against a facility, agency, owner, operator, or governing body that relates to or may impact the care or placement of children.

2. Change of director of facility or agency;

3. Closure of the facility or agency;

4. Change of placement supervisor for a child placement agency.

5. Change in Trails CPA supervisor or trails public provider profile.

D. Changes to a License Requiring Written Notification to the Department Prior to Department Approval

1. Proposed change in the number, sex, or age of children for whom the facility is licensed that differs from that authorized by the license.

2. Changes in the physical facility or use of rooms for child care at a facility.

3. Change of name of the facility or agency.

4. Change of residents in the facility, not to include those residents placed in the facility by a county department or a child placement agency.

7.701.53 Reporting of Child Abuse

A. A child care facility must require each staff member of the facility to read and sign a statement clearly defining child abuse and neglect pursuant to state law and outlining the staff member's personal responsibility to report all incidents of child abuse or neglect according to state law.

B. Any caregiver or staff member in a child care facility who has reasonable cause to know or suspect that a child has been subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions that would reasonably result in abuse or neglect must immediately report or cause a report to be made of such fact to the state hotline, county department of human or social services or local law enforcement agency.

C. If the suspected child abuse occurred at the child care facility, the report of suspected child abuse must be made to the county department of human or social services, police department, or other law enforcement agency in the community or county in which the child care facility is located.

D. If the suspected child abuse did not occur at the child care facility, the report of suspected child abuse must be made to the county department of human or social services in the county in which the child resides or to the local law enforcement agency in the community in which the incident is believed to have occurred.

E. At the time of admission the facility must give the child's parent or guardian information that explains how to report suspected child abuse or child neglect.

7.701.54 Investigation of Child Abuse

A. Staff members of the county department of human or social services or a law enforcement agency that investigates an allegation of child abuse must be given the right to interview staff and children in care, and to obtain names, addresses, and telephone numbers of parents or legal guardians of children enrolled at the child care facility.

1. An agency or facility must not interfere or refuse to cooperate with a child protection investigation.

2. An agency or facility must not interview staff or children regarding the specific allegation(s) of child abuse or child neglect until the department of human or social services and/or local law enforcement agency has had the opportunity to interview all appropriate individuals and completed their investigation.

B. Any report made to the law enforcement authorities or a county department of human or social services of an allegation of abuse of any child at the child care facility will result in the temporary suspension or reassignment of duties of the alleged perpetrator to remove the risk of harm to the child/children if there is reasonable cause to believe that the life or health of the victim or other children at the facility is in imminent danger due to continued contact between the alleged perpetrator and the child/children at the facility. Such suspension or reassignment of duties will remain in effect pending the outcome of the investigation by the appropriate authorities.

7.701.55 Reporting of Licensing Complaints

Child care facilities must provide written information to parents or legal guardians at the time of admission and staff members at the time of employment on how to file a complaint concerning suspected licensing violations. For family child care homes, child care centers, preschools, school age child care, children’s resident camps and neighborhood youth organizations, the information must include the complete name, mailing address, and telephone number of the Colorado Department of Social or Human Services, Division of Early Care And Learning. For 24-hour care agencies and facilities providing out-of-home care and day treatment facilities, the information must include the complete name, mailing address, and telephone number of the Colorado Department of Human Services, Division of Child Welfare.

7.701.56 Posting Licensing Information

A. At all times during the operating hours of the facility, except for foster care homes, the facility/agency must post the current child care license in a prominent and conspicuous location easily observable by those entering the child care facility or agency. For foster care homes, the certificate must be available for review/upon request.

B. At all times during the operating hours of a family child care home, child care center, school-age child care center, or children's resident camp, the facility must post its most recent licensing inspection report or a notice as to where the report may be reviewed at the facility by the parent or legal guardian of a child or their designee.

C. At all times during the operating hours of a Family Child Care Home, Child Care Center, Preschool, School Age Child Care, Children's Resident Camp And Neighborhood Youth Organization, the facility must post in a prominent and conspicuous location information regarding the procedures for filing a complaint with the Colorado Department of Human Services, Division Of Early Care And Learning, including the telephone number and mailing address. All 24-hour care agencies and facilities providing out-of-home care and Day Treatment facilities must post in prominent and conspicuous location information regarding the procedures for filing a complaint with the Colorado department of human services, division of child welfare, including the telephone number and mailing address. For foster care homes and child placement agencies, information for filing a complaint must be made available upon request.

D. All facilities, except Family Child Care Homes must post in every room of the child care facility, excluding bedrooms and living areas, the license capacity of the room and the staff-to-child ratio required by regulation to be maintained for the age of children cared for in the room.

7.701.6 Confidentiality of Records

A. The records concerning the licensing of facilities and agencies are open to the public except as provided below.

B. Anyone wishing to review a record must make a written request to the Department.

C. The following documents are confidential and not available for review:

1. Information identifying children or their families;

2. Scholastic records, health reports, social or psychological reports. These are available only to the person in interest;

3. Personal references requested by the Department; and

4. Reports and records received from other agencies, including police and child protection investigation reports.

7.701.7 Parental Accessibility

A. During hours of operation, a facility must allow access to parents and guardians having legal custody of a child in care to those areas of the facility that are licensed for child care.

B. During the hours of operation, the facilities most recent licensing, fire department, and health department inspection reports must be accessible to parents and legal guardians of children in care or their designee and to parents and legal guardians considering placing their children in care at the facility.

C. A facility does not violate this section when it restricts access by a parent, guardian or their designee to a child during an emergency as instructed by local authorities.

7.701.8 Perjury Statement - Application Forms for Employment with a Child Care Provider

Every application used in the State of Colorado for employment with a child care provider or facility, or for the certification of a foster home, must include the following notice to the applicant:

"Any applicant who knowingly or willfully makes a false statement of any material fact or thing in the application is guilty of perjury in the second degree as defined in Section 18-8-503, C.R.S., and, upon conviction thereof, shall be punished accordingly."

7.701.9 General Health Rules

7.701.91 Smoking and Tobacco Products

Pursuant to 26-6-106(2)(e), C.R.S., 25-14-103.5, C.R.S., and 18-13-121, C.R.S., tobacco and nicotine products are prohibited by law from use in and around licensed child care facilities.

A. Smoking and tobacco product use is prohibited at all times while transporting children on field trips and excursions.

B. Smoking and tobacco product use is not prohibited in Family Child Care Homes during non-business hours.

C. Foster parents are exempt from this rule when no children are in placement.

7.701.100 Emergency and Disaster Preparedness for Child Care Centers, Family Child Care Homes, School-Age Programs, and Children's Resident Camps

A. Prior to caring for children, all staff must complete a department-approved training in emergency and disaster preparedness. For seasonal children's resident camp programs, operating no more than 90 days per calendar year, at least one on site director must be trained in the department approved training.

B. Evacuation, Shelter in Place, Lockdown, and Active Shooter on Premises Plans for Children in Care

All child care providers must have a written plan for evacuating and safely moving children to an alternate site, as well as lockdown, shelter in place, and active shooter on premises. The plan must include provisions for multiple types of hazards, such as floods, fires, tornadoes, and active shooter situations. All employees of a child care provider must also be trained on the programs written plan prior to caring for children.

1 "Lockdown drill" means a drill in which the occupants of a building are restricted to the interior of the building and the building is secured.

2. "Shelter-in-place drill" means a drill in which the occupants of a building seek shelter in the building from an external threat.

3. "Active shooter on premises drill" means a drill to address an individual actively engaged in killing or attempting to kill people in a confined space or other populated area.

C. Reuniting Families After an Emergency or Disaster

All child care providers must have a written plan for emergency notification of parents and reunification of families following an emergency or disaster.

D. Children with Disabilities and Those with Access and Functional Needs

All child care providers must have a written plan that accounts for children with disabilities and those with access and functional needs. The plan must include a specific requirement indicating how all children with special needs will be included in the emergency plan.

E. Continuity of Operations After a Disaster

1. All child care providers must have a written plan for continuity of operations in the aftermath of an emergency or disaster. Components of the plan must include:

    A. Responsibility for essential staffing needs and predetermined roles during and after the emergency or disaster;

    B. Procedure for backing up or retrieving staff and children's files; and

    C. Procedure for protecting confidential and financial records.

2. During an emergency or other significant, unexpected event, a child care facility may request an emergency waiver to move to a temporary location or exceed capacity, on a temporary basis, to accept children and families from affected areas.

F. Fire, Natural Disaster, and Emergency Drills

1. Each staff member of the facility must be trained in fire safety and the use of available fire extinguishers and fire alarms.

2. Emergency drills, lockdown and active shooter on premises drills must be held at least quarterly but often enough so that all occupants are familiar with the drill procedure and their conduct during a drill is a matter of established routine. Fire drills must be held monthly and be consistent with local fire department procedures. Tornado drills must be held monthly from March to October. A record of all emergency drills held over the past twelve (12) months must be maintained by the facility or center, including date and time of drill, number of adults and children participating, and the amount of time taken to evacuate.

3. Drills must be held at unexpected times and under varying conditions to simulate the conditions of an actual fire or other emergency event.

4. Drills must emphasize orderly evacuation under proper discipline rather than speed. No running should be permitted.

5. Drills must include suitable procedures for ensuring that all persons in the building, or all persons subject to the drill, actually participate.

6. Fire alarm equipment must be used regularly in the conduct of fire exit drills. Hand bells or other alarm emanating devices may be used in lieu of fire alarm equipment if use of fire alarm equipment is not feasible including, but not limited to, facilities operating in buildings where multiple unrelated tenants share a common fire alarm system.

7. If appropriate to the location of the center, forest fire, tornado and/or flood drills must be held often enough that all occupants are familiar with the drill procedure and their conduct

during a drill is a matter of established routine. A record of drills held over the past twelve (12) months must be maintained by the center.

8. For children's resident camps, at least one fire drill must be held within twenty-four (24) hours of the commencement of each camp session. The dates of the fire drills must be recorded in the camp office.

9. There must be a carbon monoxide detector installed in the area of the child care facility as recommended by the manufacturer and in the area where children and youth sleep.

7.701.200 The Reasonable and Prudent Parent Standard Requirements for Facilities Providing Twenty-Four (24) Hour Out-Of-Home Care to Approve Activities for a Child or Youth in Foster Care

Children and youth in foster care are entitled to participate in age or developmentally appropriate extracurricular, enrichment, cultural, and social activities as part of their well-being needs.

Providers must use a "reasonable and prudent parent standard" when determining whether to allow a child or youth in foster care, under the responsibility of the county or in non-secure residential settings under the Division of Youth Services (DYS), to participate in such activities following the criteria in A and B:

A. For an activity to be approved consistent with the reasonable and prudent parent standard, the activity must:

1. Maintain the health, safety, and best interests of each child or youth;

2. Encourage his/her emotional and developmental growth;

3. Be age or developmentally appropriate; and,

4. Be otherwise appropriate for the provider to approve.

B. When applying the reasonable and prudent parent standard and prior to approval of the activity, the provider must take reasonable steps to obtain or determine:

1. Adequate information about the child or youth, including the youth's particular religious, cultural, social, or behavioral attributes and preferences;

2. Behavioral and/or mental health stability of the child or youth;

3. The age or developmental appropriateness of the activity; and,

4. Whether the risk of reasonably foreseeable harm involved in the activity is at an acceptable level.

C. The responsible county department of human or social services or DYS must receive the same state training in applying the reasonable and prudent parent standard, and must receive ongoing training by their respective certifying or sponsoring agencies or governing body, as needed.

D. At least one trained one (1) staff or administrator in a specialized group facility or Residential Child Care Facility (RCCF) must be designated as authorized to apply the reasonable and prudent parent standard to decisions involving the participation of a child or youth in extracurricular, enrichment, cultural, or social activities.

E. The rationale used to authorize an activity for a child or youth must be clearly documented in the facility records and provided in a timely manner to the county department of human or social services or DYS using the contracted, written reporting format.

1. The facility must consult with and obtain a current copy of the policy from the responsible county department of human or social services or DYS regarding activities that are considered appropriate for the facility to approve.

   The responsible county department of human or social services or DYS may restrict certain activities based upon the documented exceptional needs and circumstances of a child or youth in foster care, which impact his/her unique safety needs.

2. The wishes of the parents/legal custodian must be considered, including cultural implications, whenever practical.

3. The facility may consult with the responsible agency for guidance about individual cases.

F. Providers must not incur liability to the State Department or to the county department of human or social services because of an extracurricular, enrichment, cultural, or social activity approved by the provider if the provider demonstrates compliance with the reasonable and prudent parent standard. In a child welfare investigation arising out of such an activity approved by the provider, the facility must not be founded for institutional neglect if the provider demonstrates compliance with the reasonable and prudent parent standard.

CYNTHIA H. COFFMAN
Attorney General

MELANIE J. SNYDER
Chief Deputy Attorney General

LEORA JOSEPH
Chief of Staff

FREDERICK R. YARGER
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

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Office of the Attorney General

Tracking number: 2017-00403

Opinion of the Attorney General rendered in connection with the rules adopted by the

Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)

on 11/03/2017

12 CCR 2509-8

CHILD CARE FACILITY LICENSING

The above-referenced rules were submitted to this office on 11/07/2017 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.

November 21, 2017 14:25:12

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Emergency Rules Adopted

Department

Department of Revenue

Agency

Taxpayer Service Division - Tax Group

CCR number

1 CCR 201-18

Rule title

1 CCR 201-18 RETAIL MARIJUANA TAX 1 - eff 11/09/2017

Effective date

11/09/2017

DEPARTMENT OF REVENUE

Taxpayer Service Division - Tax Group

RETAIL MARIJUANA TAX

1 CCR 201-18

DEFINITIONS

39-28.8-101

With respect to rules promulgated under Article 28.8 of Title 39, the following terms have the following meanings:

(1) Unless the context clearly requires otherwise, terms defined by section 12-43.4-103, C.R.S. or in Rule R 103 of 1 CCR 212-2, the Marijuana Enforcement Division's rules related to the Colorado Retail Marijuana Code, shall have the same meanings in these rules as therein defined.

(2) "Affiliated Marijuana Business Licensees" shall have the same meaning as defined in subsection 39-28.8-101(1), C.R.S.

(3) "Average Market Rate" shall have the same meaning as defined in subsection 39-28.8-101(1.5), C.R.S., and shall be calculated pursuant to Department Rule 39-28.8-302(4) in the following categories:

(a) Bud

(b) Trim

(c) Immature Plant

(d) Wet Whole Plant

(e) Seed

(f) Contaminated Product Allocated for Extraction

(4) "Bud" shall have the same meaning as the product of the "Flower" or "Flowering" stage as set forth by Rule R 103 of 1 CCR 212-2 including the actual flower, except that the term "Bud" shall not include any Contaminated Product Allocated for Extraction.

(5) "Contaminated Product Allocated for Extraction" means any Bud or Trim that failed microbial testing and is transferred to a retail marijuana products manufacturing facility pursuant to Rule R 1507(B.1)(2) of 1 CCR 212-2.

(6) "Immature Plant" shall have the same meaning as set forth by Rule R 103 of 1 CCR 212-2.

(7) "Inventory Tracking System" shall have the same meaning as set forth by Rule R 103 of 1 CCR 212-2.

(8) "Marijuana" means Medical Marijuana or Retail Marijuana.

(9) "Retail Marijuana" shall have the same meaning as set forth by Rule R 103 of 1 CCR 212-2.

(10) "Retail Marijuana Concentrate" shall have the same meaning as "Retail Marijuana Concentrate" as set forth by Rule R 103 of 1 CCR 212-2.

(11) "Retail Marijuana Cultivation Facility" shall have the same meaning as set forth by Rule R 103 of 1 CCR 212-2.

(12) "Retail Marijuana Excise Tax" means excise tax due under Article 28.8 of Title 39, C.R.S.

(13) "Retail Marijuana Excise Tax Return" means the excise tax return upon which all sales or Transfers of retail marijuana subject to the excise tax and the amount of Retail Marijuana Excise Tax is reported.

(14) "Retail Marijuana Plant" means a mature plant of the genus cannabis, whether growing or harvested, that is cultivated by a licensed Retail Marijuana Cultivation Facility.

(15) "Retail Marijuana Sales Tax" means sales tax collected and due under Article 28.8 of Title 39, C.R.S.

(16) "Retail Marijuana Sales Tax Return" means the sales tax return upon which all sales of Retail Marijuana Products and the amount of state and local Retail Marijuana Sales Tax is reported.

(17) "Retail Sales Tax" means the sales tax collected and due under part 1 of Article 26 of Title 39, C.R.S.

(18) "Test period" means the period of time used to calculate the Average Market Rate. The Test Period shall be each November 1st to the subsequent January 31st, each February 1st to the subsequent April 30th, each May 1st to the subsequent July 31st, and each August 1st to the subsequent October 31st.

(19) "Transfer" means to grant, convey, hand over, assign, sell, exchange, or barter, in any manner or by any means, with or without consideration, any Retail Marijuana or Retail Marijuana Product from one licensee to another or to a consumer. A Transfer includes the movement of Retail Marijuana or Retail Marijuana Product from one licensed premises to another, even if both premises are contiguous, and even if both premises are owned by a single entity or individual or group of individuals and also includes a virtual transfer that is reflected on the Inventory Tracking System, even if no physical movement of the Retail Marijuana occurs.

(20) "Trim" means any part of a Retail Marijuana Plant other than the Bud or Wet Whole Plant that is sold or Transferred to a Retail Marijuana Store or a Retail Marijuana Products Manufacturing Facility, except that the term "Trim" shall not include any Contaminated Product Allocated for Extraction. Trim includes "sweet leaf" or "sugar leaf".

(21) "Unaffiliated Marijuana Business Licensees" shall mean marijuana business licensees that are not owned or controlled by the same or related interests, where "related interests" includes individuals who are related by blood or marriage or entities that are directly or indirectly controlled by an entity or individual or related individuals.

(22) "Unprocessed Retail Marijuana" means all Retail Marijuana that is first sold or Transferred by a Retail Marijuana Cultivation Facility to a Retail Marijuana Store or Retail Marijuana Products Manufacturing Facility, even though it may have gone through some processing, and even though it may be subject to further processing by another licensee.

(23) "Wet Whole Plant" means a Retail Marijuana Plant that is cut off just above the roots and is not trimmed, dried, or cured. The weight of the Wet Whole Plant includes all bud, leaves, stems, and stalk. The Wet Whole Plant must be weighed within 2 hours of the plant being harvested. The plant must not undergo any further processing prior to being weighed, and tax must be paid on the weight of the entire unprocessed plant.

COLORADO
Department of Revenue
Taxation Division

Colorado Department of Revenue
Statement of Emergency Justification and Adoption
Emergency Amendment to Rule 39-28.8-101

Pursuant to sections 24-4-103(6), 39-28.8-101, and 39-28.8-308, C.R.S., I, Michael S. Hartman, Executive Director of the Department of Revenue, hereby adopt emergency Rule 39-28.8-101.

Section 24-4-103(6), C.R.S., authorizes the Executive Director to adopt a temporary or emergency rule if the Executive Director finds that the immediate adoption of the rule is imperatively necessary to comply with a state law and that compliance with the requirements of section 24-4-103, C.R.S. regarding promulgation of a permanent regulation would be contrary to the public interest.

I find that the immediate adoption of amendments to this rule is necessary to comply with statutory amendments made by Senate Bill 17-192, which took effect on August 9, 2017. The Department adopted Emergency Rule 39-28.8-101 on August 8, 2017 to conform the then existing rule to the amendments made by the bill. Permanent rulemaking proceedings are underway, but have not yet been completed and the existing emergency rule is set to expire December 6, 2017. Therefore, this emergency rule is necessary to continue compliance with the requirements established by Senate Bill 17-192.

I, therefore, find that the emergency adoption of this rule is necessary to comply with state law. Finally, I find that compliance with the requirements of section 24-4-103, C.R.S., would be contrary to the public interest under the circumstances.

Statutory Authority

The statutory authority for this amendment to the existing rule for section 39-28.8-101, C.R.S., is cited above.

Purpose

To conform the existing rule to changes made by Senate Bill 17-192.

Adoption

For the reasons set forth above, I hereby adopt emergency Rule 39-28.8-101, which is attached to this Statement and shall be effective on the date of its adoption and shall apply prospectively. This emergency rule shall be in force and effect for a period of one hundred and twenty days from the date of this notice, unless sooner terminated or replaced by permanent rules adopted in accordance with section 24-4-103, C.R.S.

Adopted this 9th day of November, 2017.

Michael S. Hartman
Executive Director
Colorado Department of Revenue

CYNTHIA H. COFFMAN
Attorney General

MELANIE J. SNYDER
Chief Deputy Attorney General

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Office of the Attorney General

Tracking number: 2017-00543

Opinion of the Attorney General rendered in connection with the rules adopted by the

Taxpayer Service Division - Tax Group

on 11/09/2017

1 CCR 201-18

RETAIL MARIJUANA TAX

The above-referenced rules were submitted to this office on 11/09/2017 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.

November 21, 2017 14:26:39

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Emergency Rules Adopted

Department

Department of Revenue

Agency

Taxpayer Service Division - Tax Group

CCR number

1 CCR 201-18

Rule title

1 CCR 201-18 RETAIL MARIJUANA TAX 1 - eff 11/09/2017

Effective date

11/09/2017

DEPARTMENT OF REVENUE

Taxpayer Service Division - Tax Group

RETAIL MARIJUANA TAX

1 CCR 201-18

RETAIL MARIJUANA EXCISE TAX

39-28.8-302

(1) **Incidence of Tax.** The excise tax is imposed upon the Retail Marijuana Cultivation Facility, which shall pay the excise tax to the Department on the first sale or Transfer of Retail Marijuana to a Retail Marijuana Store or a Retail Marijuana Products Manufacturing Facility. No Colorado Retail Marijuana Excise Tax is imposed on the sale or Transfer of Retail Marijuana from one Retail Marijuana Cultivation Facility to another Retail Marijuana Cultivation Facility. In such case, the Colorado Retail Marijuana Excise Tax will be imposed on the subsequent sale or Transfer of the Retail Marijuana to a Retail Marijuana Store or a Retail Marijuana Products Manufacturing Facility.

(2) **Local Incidence of Tax**. See §§ 29-2-114 and 32-1-1004, C.R.S. and the applicable local ordinance or resolution for information about the application of any local excise taxes to retail marijuana sales and Transfers.

(3) **Exempt Sales and Transfers**. No excise tax is imposed on the sale or Transfer of unprocessed medical marijuana by a marijuana cultivation facility to a medical marijuana center. The Transfer of Retail Marijuana to a testing facility for testing purposes is exempt from Retail Marijuana Excise Tax so long as the marijuana is destroyed by the Retail Marijuana Testing Facility during or following the testing.

(4) **Inventory Tracking System.** When a sale or Transfer is entered into the Inventory Tracking System, all sales or Transfers between Unaffiliated Marijuana Business Licensees must be entered in a manner that allows the price to be recorded in such system. When entering the price, the actual price charged, exclusive of tax, must be recorded in such system.

(5) **Calculation and Payment of Tax.**

(a) The method for calculating Colorado excise tax depends upon whether the first sale or Transfer of Retail Marijuana from a Retail Marijuana Cultivation Facility to a Retail Marijuana Store or a Retail Marijuana Products Manufacturing Facility is between Unaffiliated Marijuana Business Licensees or Affiliated Marijuana Business Licensees.

(i) Unaffiliated Marijuana Business Licensees –

(A) If the first sale or Transfer is between Unaffiliated Marijuana Business Licensees, the excise tax is calculated based on the contract price of the Retail Marijuana sold or Transferred.

(B) If no contract price is established at the time of the first sale or Transfer the excise tax is calculated based on the Average Market Rate of the Retail Marijuana sold or Transferred. Examples of such sales or Transfers include:

(I) a temporary Transfer, that does not constitute a sale, of Retail Marijuana from a Retail Marijuana Cultivation Facility to an unaffiliated Retail Marijuana Products Manufacturing Facility that will process or manufacture the Retail Marijuana before returning it to the Retail Marijuana Cultivation Facility or to a Retail Marijuana Store affiliated with the Retail Marijuana Cultivation Facility; or

(II) a Transfer of Retail Marijuana from a Retail Marijuana Cultivation Facility to an unaffiliated Retail Marijuana Store for which a price is not established at the time of Transfer, but instead depends upon the revenue generated from the subsequent sale of the Retail Marijuana to the end consumer.

(ii) Affiliated Marijuana Business Licensees - If the first sale or Transfer is between Affiliated Marijuana Business Licensees, the excise tax is calculated based on the Average Market Rate of the Retail Marijuana sold or Transferred.

(b) *Contract Price*

(i) The contract price is the invoice price charged by a Retail Marijuana Cultivation Facility to each licensed purchaser for each sale or Transfer of Unprocessed Retail Marijuana, exclusive of any tax that is included in the written invoice price, and exclusive of any discount or other reduction. In the case of multiple invoices reflecting multiple prices for the same transaction, the contract price used to calculate the tax is the highest such price. For the purpose of this paragraph (4)(b)(i), the invoice price charged includes all consideration the seller receives from the buyer in whatever form and regardless of the time of receipt.

(c) *Calculation of Average Market Rate.*

(i) The Department will calculate the Average Market Rate using reported sales of each category during the Test Period. The Department will determine the best methodology to arrive at the Average Market Rate. The Department may, from time to time, change its method of calculating the Average Market Rate if, in the judgment of the Department, such change is necessary to arrive at the most accurate Average Market Rate given the market conditions.

(d) In the case of excise tax calculated using Average Market Rate, the tax shall be calculated based on the category of Retail Marijuana (i.e., Bud, Trim, Immature Plant, Wet Whole Plant, Seed, or Contaminated Product Allocated for Extraction) being sold or Transferred. The provisions of this paragraph (4)(d) apply only to excise tax calculated using Average Market Rate.

(i) The excise tax for Bud is computed on the total weight of all Bud that will be sold or Transferred. Notwithstanding this rule, the inadvertent inclusion of inconsequential amounts of Bud in a sale or Transfer that is otherwise Trim shall not be treated as the sale of Bud.

(ii) The excise tax for Trim is calculated on the total weight of all Trim that will be sold or Transferred. Notwithstanding this rule, the inadvertent inclusion of inconsequential amounts of Bud in a sale or Transfer that is otherwise Trim shall be treated as the sale of Trim.

(iii) The excise tax for Immature Plants is calculated on the total number of Immature Plants being sold or Transferred.

(iv) The excise tax for Wet Whole Plants is calculated on the total weight of the entire Retail Marijuana Wet Whole Plant. The weight of the entire plant is subject to tax because the Average Market Rate for Wet Whole Plant already reflects an allowance for water weight and waste. The Wet Whole Plant may not undergo any further processing (i.e., drying the plant and subsequently selling separately the Bud and Trim) prior to being weighed when using the Wet Whole Plant basis. The Wet Whole Plant must be harvested and packaged in the same day.

(A) The Retail Marijuana Wet Whole Plant must be weighed within 2 hours of the plant being harvested and without any further processing, including any artificial drying such as increasing the ambient temperature of the room or any other form of drying, curing, or trimming. Tax must be calculated and paid on the total Wet Whole Plant weight. If the Wet Whole Plant is not weighed within 2 hours of being harvested or is subjected to further processing before being weighed, the excise tax on such plant cannot be calculated and paid on the Wet Whole Plant basis and must instead be calculated and paid at the Bud and Trim rates.

(B) The Retail Marijuana Cultivation Facility must maintain records of the time each plant (identified by its RFID tag) was harvested and weighed and the weight of each plant. The records must be in writing and created contemporaneously with the harvesting and weighing.

(v) The excise tax for seeds is calculated on the total number of Seeds being sold or Transferred.

(vi) The excise tax for Contaminated Product Allocated for Extraction is computed on the total weight of all Contaminated Product Allocated for Extraction that will be sold or Transferred.

(vii) The excise tax for Retail Marijuana Concentrate created by a Retail Marijuana Cultivation Facility can be paid based on the amount of Bud and/or Trim used or can be paid on the Wet Whole Plant basis pursuant to paragraphs (4)(b)(i), (4)(b)(ii), and (4)(b)(iv) of this rule.

(A) Example: A Retail Marijuana Cultivation Facility uses 100 grams of Bud and 348 grams of Trim to make 15 grams of concentrate on March 9, 2016. (Note: Average Markets Rates are based on the rates effective on January 1, 2016.) The following calculation will need to be performed:

<u>Bud:</u>

100 grams /453.592 grams = 0.2205 lb. used to create the concentrate

0.2205 lb. x $1948/lb. = $430 (Taxable Amount)

$430 x 15% = $65

Trim:

348 grams /453.592 grams = 0.7672 lb. used to create the concentrate

0.7672 lb. x $464/lb. = $356 (Taxable Amount)

$356 x 15% = $53

Total Due is $65 + $53 = **$118**

*448 grams per pound is acceptable to use in this calculation.

(6) **Evidence of Payment of Tax.**

(a) Both the Retail Marijuana Cultivation Facility and the first purchaser or transferee shall maintain documentation of the payment of the excise tax. Such evidence may be the purchase or Transfer invoice, so long as the invoice shows the name and license number of the Retail Marijuana Cultivation Facility, name and license number of first purchaser or transferee, the amount of excise tax paid or that will be paid by the Retail Marijuana Cultivation Facility when it files its next Retail Marijuana Excise Tax Return, the category of product being sold or Transferred, the date of sale or Transfer, and the weight of the product being sold or Transferred.

COLORADO
Department of Revenue
Taxation Division

Colorado Department of Revenue
Statement of Emergency Justification and Adoption
Emergency Amendment to Rule 39-28.8-302

Pursuant to sections 24-4-103(6), 39-28.8-302, and 39-28.8-308, C.R.S., I, Michael S. Hartman, Executive Director of the Department of Revenue, hereby adopt emergency amendments to tax Rule 39-28.8-302.

Section 24-4-103(6), C.R.S., authorizes the Executive Director to adopt a temporary or emergency rule if the Executive Director finds that the immediate adoption of the rule is imperatively necessary to comply with a state law and that compliance with the requirements of section 24-4-103, C.R.S. regarding promulgation of a permanent regulation would be contrary to the public interest.

I find that the immediate adoption of amendments to this rule is necessary to comply with statutory amendments made by Senate Bill 17-192, which took effect on August 9, 2017. The Department adopted Emergency Rule 39-28.8-302 on August 8, 2017 to conform the then existing rule to the amendments made by the bill. Permanent rulemaking proceedings are underway, but have not yet been completed and the existing emergency rule is set to expire December 6, 2017. Therefore, this emergency rule is necessary to continue compliance with the requirements established by Senate Bill 17-192.

Statutory Authority

The statutory authority for this amendment to the existing rule for section 39-28.8-302, C.R.S., is cited above.

Purpose

To conform the existing rule to changes made by Senate Bill 17-192.

Adoption

For the reasons set forth above, I hereby adopt emergency Rule 39-28.8-302, which is attached to this Statement and shall be effective on the date of its adoption and shall apply prospectively. This emergency rule shall be in force and effect for a period of one hundred and twenty days from the date of this notice, unless sooner terminated or replaced by permanent rules adopted in accordance with section 24-4-103, C.R.S.

Adopted this 9th day of November, 2017.

Michael S. Hartman
Executive Director
Colorado Department of Revenue

CYNTHIA H. COFFMAN
Attorney General

MELANIE J. SNYDER
Chief Deputy Attorney General

LEORA JOSEPH
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Office of the Attorney General

Tracking number: 2017-00545

Opinion of the Attorney General rendered in connection with the rules adopted by the

Taxpayer Service Division - Tax Group

on 11/09/2017

1 CCR 201-18

RETAIL MARIJUANA TAX

The above-referenced rules were submitted to this office on 11/09/2017 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.

November 21, 2017 14:26:55

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Emergency Rules Adopted

Department

Department of State

Agency

Secretary of State

CCR number

8 CCR 1505-1

Rule title

8 CCR 1505-1 ELECTIONS 1 - eff 11/01/2017

Effective date

11/01/2017

COLORADO SECRETARY OF STATE

[8 CCR 1505-1]

ELECTION RULES

Rules as Adopted - Clean

November 1, 2017

(*Publication instructions/notes*):

Repeal Current Rule 7.16.

STATE OF COLORADO
Department of State
1700 Broadway
Suite 200
Denver, CO 80290

Wayne W. Williams
Secretary of State

Suzanne Staiert
Deputy Secretary of State

Statement of Justification and Reasons for Adoption of Temporary Rules

Office of the Secretary of State
Election Rules
8 CCR 1505-1

November 1, 2017

Repeal Rule 7.16

In accordance with Colorado election law,[1] the Secretary of State finds that certain amendments to the existing election rules must be adopted and effective immediately to ensure the uniform and proper administration and enforcement of Colorado election laws.

Temporary repeal is necessary both to comply with law and to preserve the public welfare given concerns regarding SCORE functionality and the permissibility of cross-county Voter Polling and Service Centers.

For these reasons, and in accordance with the State Administrative Procedure Act, the Secretary of State finds that adoption and immediate effect of the amendments to existing election rules is imperatively necessary to comply with state and federal law and to promote public interests.[2]

[1] Sections 1-1-107(1)(c), 1-1-107(2)(a), 1-7.4-104, C.R.S. (2017).
[2] Section 24-4-103(3)(6), C.R.S. (2017).

CYNTHIA H. COFFMAN
Attorney General

MELANIE J. SNYDER
Chief Deputy Attorney General

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STATE OF COLORADO
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Office of the Attorney General

Tracking number: 2017-00536

Opinion of the Attorney General rendered in connection with the rules adopted by the

Secretary of State

on 11/01/2017

8 CCR 1505-1

ELECTIONS

The above-referenced rules were submitted to this office on 11/01/2017 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.

November 17, 2017 11:09:18

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Emergency Rules Adopted

Department

Department of Health Care Policy and Financing

Agency

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

CCR number

10 CCR 2505-10

Rule title

10 CCR 2505-10 MEDICAL ASSISTANCE - STATEMENT OF BASIS AND PURPOSE, AND RULE HISTORY 1 - eff 01/01/2018

Effective date

01/01/2018

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Special Financing Division Rule Concerning Colorado Dental Health Care Program for Low-Income Seniors, 10 CCR 2505-10, Section 8.960
Rule Number: MSB 17-10-05-A
Division / Contact / Phone: Special Financing / Chandra Vital / 303-866-5506

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name:	Health Care Policy and Financing / Medical Services Board
2. Title of Rule:	MSB 17-10-05-A, Revision to the Medical Assistance Special Financing Division Rule Concerning Colorado Dental Health Care Program for Low-Income Seniors, 10 CCR 2505-10, Section 8.960
3. This action is an adoption of:	an amendment

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 8.960, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)?	Yes
If yes, state effective date:	1/1/2018
Is rule to be made permanent? (If yes, please attach notice of hearing).	Yes

PUBLICATION INSTRUCTIONS*

Replace the current text at 8.960 Appendix A with the proposed text starting at 8.960 Appendix A through the end of 8.960 Appendix A. This rule is effective January 1, 2018.

*to be completed by MSB Board Coordinator

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Special Financing Division Rule Concerning Colorado Dental Health Care Program for Low-Income Seniors, 10 CCR 2505-10, Section 8.960
Rule Number: MSB 17-10-05-A
Division / Contact / Phone: Special Financing / Chandra Vital / 303-866-5506

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   This rule change incorporates the new code changes in the American Dental Association CDT 2018 Code book into Appendix A.

2. An emergency rule-making is imperatively necessary

   ☐ to comply with state or federal law or federal regulation and/or
   ☒ for the preservation of public health, safety and welfare.

   Explain:

   Grantees of the Colorado Dental Health Care Program for Low-Income Seniors will not be able to invoice the Department of Health Care Policy and Financing if procedures codes do not match the American Dental Association CDT 2018 code book. In turn, dental treatment on seniors enrolled in the Colorado Dental Health Care Program for Low-Income Seniors will not be able to be completed due to correct codes not in the current rule.

3. Federal authority for the Rule, if any:

   N/A

4. State Authority for the Rule:

   25.5-1-301 through 25.5-1-303, C.R.S. (2016);
   25.5-3-404, C.R.S. (2017)

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Special Financing Division Rule Concerning Colorado Dental Health Care Program for Low-Income Seniors, 10 CCR 2505-10, Section 8.960
Rule Number: MSB 17-10-05-A
Division / Contact / Phone: Special Financing / Chandra Vital / 303-866-5506

REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   This proposed rule incorporates revised codes per the American Dental Association CDT 2018 code book into Appendix A. These changes will make it possible for the grantees of the Colorado Dental Health Care Program for Low-Income Seniors to bill the correct procedure codes. No changes to covered services or payment rates are proposed; therefore, there is no change in costs due to the proposed rule

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   No changes to covered services or payment rates are proposed; therefore, there is no change in cost or economic impact on eligible seniors.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

   The Colorado Dental Health Care program for Low-Income Seniors has a fixed appropriation and the addition of these code changes will not increase the Department's administrative costs for the program.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   The incorporation of the revised codes will allow the Colorado Dental Health Care Program for Low-Income Seniors' grantees to bill the accurate procedure code based on the American Dental Association CDT 2018 code book.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   There are no other methods for achieving the purpose of the proposed rule.

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6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

   There are no alternatives to amending the existing rule.

8.960 COLORADO DENTAL HEALTH CARE PROGRAM FOR LOW-INCOME SENIORS

8.960.1 Definitions

Arrange For or Arranging For means demonstrating established relations with Qualified Providers for any of the Covered Dental Care Services not directly provided by the applicant.

Covered Dental Care Services include Diagnostic Imaging, Emergency Services, Endodontic Services, Evaluation, Oral and Maxillofacial Surgery, Palliative Treatment, Periodontal Treatment, Preventive Services, Prophylaxis, Removable Prosthesis, and Restorative Services as listed by alphanumeric procedure code in Appendix A.

C.R.S. means the Colorado Revised Statutes.

Dental Health Professional Shortage Area or Dental HPSA means a geographic area, population group, or facility so designated by the Health Resources and Services Administration of the U.S. Department of Health and Human Services.

Dental Prosthesis means any device or appliance replacing one or more missing teeth and associated structures if required.

Department means the Colorado Department of Health Care Policy and Financing established pursuant to title 25.5, C.R.S. (2014).

Diagnostic Imaging means a visual display of structural or functional patterns for the purpose of diagnostic evaluation.

Economically Disadvantaged means a person whose Income is at or below 250% of the most recently published federal poverty level for a household of that size.

Eligible Senior or Client means an adult who is 60 years of age or older, who is Economically Disadvantaged, who is able to demonstrate lawful presence in the country, who is not eligible for dental services under Medicaid or the Old Age Pension Health and Medical Care Program, and who does not have private dental insurance. An Eligible Senior shall be considered lawfully present in the country if they produce a document or waiver in accordance with 1 CCR 204-30 Rule 5 (effective August 30, 2016), which is hereby incorporated by reference. This incorporation of 1 CCR 204-30 Rule 5 excludes later amendments to, or editions of, the referenced material. Pursuant to § 24-4-103 (12.5), C.R.S., the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203. Certified copies of incorporated materials are provided at cost upon request.

Emergency Services means the need for immediate intervention by a Qualified Provider to stabilize an oral cavity condition.

Endodontic Services means services which are concerned with the morphology, physiology and pathology of the human dental pulp and periradicular tissues, including pulpectomy.

Evaluation means an assessment that may include gathering of information through interview, observation, examination, and use of specific tests that allows a dentist to diagnose existing conditions.

Federally Qualified Health Center means a federally funded nonprofit health center or clinic that serves medically underserved areas and populations as defined in 42 U.S.C. section 1395x (aa)(4).

Income means any cash, payments, wages, in-kind receipt, inheritance, gift, prize, rents, dividends, or interest that are received by an individual or family. Income may be self-declared. Resources are not included in Income.

Max Allowable Fee means the total reimbursement listed by procedure for Covered Dental Care Services under the Colorado Dental Health Care Program for Low-Income Seniors in Appendix A. The Max Allowable Fee is the sum of the Program Payment and the Max Client Co-Pay.

Max Client Co-Pay means the maximum amount that a Qualified Provider may collect from an Eligible Senior listed by procedure in Appendix A for Covered Dental Services under the Colorado Dental Health Care Program for Low-Income Seniors.

Medicaid means the Colorado medical assistance program as defined in article 4 of title 25.5, C.R.S. (2014).

Old Age Pension Health and Medical Care Program means the program described at 10 CCR 2505-10, section 8.940 et. seq. and as defined in sections 25.5-2-101 and 26-2-111(2), C.R.S. (2014)

Oral and Maxillofacial Surgery means the diagnosis, surgical and adjunctive treatment of diseases, injuries and defects involving both the functional and esthetic aspects of the hard and soft tissues of the oral and maxillofacial region.

Palliative Treatment for dental pain means emergency treatment to relieve the client of pain; it is not a mechanism for addressing chronic pain.

Periodontal Treatment means the therapeutic plan intended to stop or slow periodontal disease progression.

Preventive Services means services concerned with promoting good oral health and function by preventing or reducing the onset and/or development of oral diseases or deformities and the occurrence of oro-facial injuries.

Program Payment means the maximum amount by procedure listed in Appendix A for Covered Dental Care Services for which a Qualified Grantee may invoice the Department under the Colorado Dental Health Care Program for Low-Income Seniors

Prophylaxis means the removal of dental plaque and calculus from teeth, in order to prevent dental caries, gingivitis and periodontitis.

Qualified Grantee means an entity that can demonstrate that it can provide or Arrange For the provision of Covered Dental Care Services and may include but is not limited to:

1. An Area Agency on Aging, as defined in section 26-11-201, C.R.S. (2014);

2. A community-based organization or foundation;

3. A Federally Qualified Health Center, safety-net clinic, or health district;

4. A local public health agency; or

5. A private dental practice.

Qualified Provider means a licensed dentist or dental hygienist in good standing in Colorado or a person who employs a licensed dentist or dental hygienist in good standing in Colorado and who is willing to accept reimbursement for Covered Dental Services. A Qualified Provider may also be a Qualified Grantee if the person meets the qualifications of a Qualified Grantee.

Removable Prosthesis means complete or partial Dental Prosthesis, which after an initial fitting by a dentist, can be removed and reinserted by the eligible senior.

Restorative Services means services rendered for the purpose of rehabilitation of dentition to functional or aesthetic needs of the client.

Senior Dental Advisory Committee means the advisory committee established pursuant to section 25.5-3-406, C.R.S. (2014).

8.960.2 Legal Basis

The Colorado Dental Health Care Program for Low-Income Seniors is authorized by state law at part 4 of article 3 of title 25.5, C.R.S. (2014).

8.960.3 Request of Grant Proposals and Grant Award Procedures

8.960.3.A Request for Grant Proposals

Grant awards shall be made through an application process. The request for grant proposals form shall be issued by the Department and posted for public access on the Department's website at https://www.colorado.gov/hcpf/research-data-and-grants at least 30 days prior to the due date.

8.960.3.B Evaluation of Grant Proposals

Proposals submitted for the Colorado Dental Health Care Program for Low-Income Seniors will be evaluated by a review panel in accordance with the following criteria developed under the advice of the Senior Dental Advisory Committee.

1. The review panel will be comprised of individuals who are deemed qualified by reason of training and/or experience and who have no personal or financial interest in the selection of any particular applicant.

2. The sole objective of the review panel is to recommend to the Department's executive director those proposals which most accurately and effectively meet the goals of the program within the available funding.

3. Preference will be given to grant proposals that clearly demonstrate the applicant's ability to:

    a. Outreach to and identify Eligible Seniors;

    b. Collaborate with community-based organizations; and

    c. Serve a greater number of Eligible Seniors or serve Eligible Seniors who reside in a geographic area designated as a Dental HPSA.

4. The review panel shall consider the distribution of funds across the state in recommending grant proposals for awards. The distribution of funds should be based on the estimated percentage of Eligible Seniors in the state by Area Agency on Aging region as provided by the Department.

8.960.3.C Grant Awards

The Department's executive director, or his or her designee, shall make the final grant awards to selected Qualified Grantees for the Colorado Dental Health Care Program for Low-Income Seniors.

8.960.3.D Qualified Grantee Responsibilities

A Qualified Grantee that is awarded a grant under the Colorado Dental Health Care Program for Low-Income Seniors is required to:

1. Identify and outreach to Eligible Seniors and Qualified Providers;

2. Demonstrate collaboration with community-based organizations;

3. Ensure that Eligible Seniors receive Covered Dental Care Services efficiently without duplication of services;

4. Maintain records of Eligible Seniors serviced, Covered Dental Care Services provided, and moneys spent for a minimum of six (6) years;

5. Distribute grant funds to Qualified Providers in its service area or directly provide Covered Dental Care Services to Eligible Seniors;

6. Expend no more than seven (7) percent of the amount of its grant award for administrative purposes; and

7. Submit an annual report as specified under 8.960.3.F.

8.960.3.E Invoicing

A Qualified Grantee that is awarded a grant under the Colorado Dental Health Care Program for Low-Income Seniors shall submit invoices on a form and schedule specified by the Department. Covered Dental Care Services shall be provided before a Qualified Grantee may submit an invoice to the Department.

1. Invoices shall include the number of Eligible Seniors served, the alphanumeric code and procedure description as listed in Appendix A, and any other information required by the Department.

2. The Department will pay no more than the established Program Payment per procedure rendered.

3. Eligible Seniors shall not be charged more than the Max Client Co-Pay as listed in Appendix A.

4. Qualified Grantees may invoice for no more than seven (7) percent of the Program Payment for administrative costs.

8.960.3.F Annual Report

On or before September 1, 2016, and each September 1 thereafter, each Qualified Grantee receiving funds from the Colorado Dental Health Care Program for Low-Income Seniors shall submit a report to the Department following the state fiscal year contract period.

The annual report shall be completed in a format specified by the Department and shall include:

1. The number of Eligible Seniors served;
2. The types of Covered Dental Care Services provided;
3. An itemization of administrative expenditures; and
4. Any other information deemed relevant by the Department.

10 CCR 2505-10 § 8.960 APPENDIX A: COLORADO DENTAL HEALTH CARE PROGRAM FOR LOW-INCOME SENIORS COVERED SERVICES AND PROCEDURE CODES

Capitalized terms within this appendix shall have the meaning specified in the Definitions section.

Procedure Description	Alpha-numeric Code	Max Allowable Fee	Program Payment	Max Client Co-Pay	PROGRAM GUIDELINES
Periodic oral evaluation - established client	D0120	$46.00	$46.00	$0.00	Evaluation performed on a client of record to determine any changes in the client's dental and medical health status since a previous comprehensive or periodic evaluation. This may include an oral cancer evaluation and periodontal evaluation, diagnosis, treatment planning. Frequency: One time per 6 month period per client.
Limited oral evaluation - problem focused	D0140	$62.00	$52.00	$10.00	Evaluation limited to a specific oral health problem or complaint. This code must be used in association with a specific oral health problem or complaint and is not to be used to address situations that arise during multi-visit treatments covered by a single fee, such as, endodontic or post-operative visits related to treatments including prosthesis. Specific problems may include dental emergencies, trauma, acute infections, etc. Cannot be used for adjustments made to prosthesis provided within previous 6 months. Cannot be used as an encounter fee.

Procedure Description	Alpha-numeric Code	Max Allowable Fee	Program Payment	Max Client Co-Pay	PROGRAM GUIDELINES
Comprehensive oral evaluation - new or established client	D0150	$81.00	$81.00	$0.00	Evaluation used by general dentist or a specialist when evaluating a client comprehensively. Applicable to new clients; established clients with significant health changes or other unusual circumstances; or established clients who have been absent from active treatment for three or more years. It is a thorough evaluation and recording of the extraoral and intraoral hard and soft tissues, and an evaluation and recording of the client's dental and medical history and general health assessment. A periodontal evaluation, oral cancer evaluation, diagnosis and treatment planning should be included. Frequency: 1 per 3 years per client. Cannot be charged on the same date as D0180.
Comprehensive periodontal evaluation - new or established client	D0180	$88.00	$88.00	$0.00	Evaluation for clients presenting signs & symptoms of periodontal disease & clients with risk factors such as smoking or diabetes. It includes evaluation of periodontal conditions, probing and charting, evaluation and recording of the client's dental and medical history and general health assessment. It may include the evaluation and recording of dental caries, missing or unerupted teeth, restorations, occlusal relationships and oral cancer evaluation. Frequency: 1 per 3 years per client. Cannot be charged on the same date as D0150.

Procedure Description	Alpha-numeric Code	Max Allowable Fee	Program Payment	Max Client Co-Pay	PROGRAM GUIDELINES
Intraoral - complete series of radiographic images	D0210	$125.00	$125.00	$0.00	Radiographic survey of whole mouth, usually consisting of 14-22 periapical & posterior bitewing images intended to display the crowns & roots of all teeth, periapical areas of alveolar bone. Panoramic radiographic image & bitewing radiographic images taken on the same date of service shall not be billed as a D0210. Payment for additional periapical radiographs within 60 days of a full month series or a panoramic film is not covered unless there is evidence of trauma. Frequency: 1 per 5 years per client. Any combination of x-rays taken on the same date of service that equals or exceeds the max allowable fee for D0210 must be billed and reimbursed as D0210. Should not be charged in addition to panoramic film D0330. Either D0330 or D0210 per 5 year period.
Intraoral - periapical first radiographic image	D0220	$25.00	$25.00	$0.00	D0220 one (1) per day per client. Report additional radiographs as D0230. Any combination of D0220, D0230, D0270, D0272, D0273, or D0274 taken on the same date of service that exceeds the max allowed fee for D0210 is reimbursed at the same fee as D0210. D0210 will only be reimbursed every 5 years.

Procedure Description	Alpha-numeric Code	Max Allowable Fee	Program Payment	Max Client Co-Pay	PROGRAM GUIDELINES
Intraoral - periapical each additional radiographic image	D0230	$23.00	$23.00	$0.00	D0230 must be utilized for additional films taken beyond D0220. Any combination of D0220, D0230, D0270, D0272, D0273, or D0274 taken on the same date of service that exceeds the max allowed fee for D0210 is reimbursed at the same fee as D0210. D0210 will only be reimbursed every 5 years.
Bitewing - single radiographic image	D0270	$26.00	$26.00	$0.00	Frequency: 1 in a 12 month period. Report more than 1 radiographic image as: D0272 two (2); D0273 three (3); D0274 four (4). Any combination of D0220, D0230, D0270, D0272, D0273, or D0274 taken on the same date of service that exceeds the max allowed fee for D0210 is reimbursed at the same fee as D0210.
Bitewings - two radiographic images	D0272	$42.00	$42.00	$0.00	Frequency: 1 time in a 12 month period. Any combination of D0220, D0230, D0270, D0272, D0273, or D0274 taken on the same date of service that exceeds the max allowed fee for D0210 is reimbursed at the same fee as D0210.
Bitewings - three radiographic images	D0273	$52.00	$52.00	$0.00	Frequency: 1 time in a 12 month period. Any combination of D0220, D0230, D0270, D0272, D0273, or D0274 taken on the same date of service that exceeds the max allowed fee for D0210 is reimbursed at the same fee as D0210.

Procedure Description	Alpha-numeric Code	Max Allowable Fee	Program Payment	Max Client Co-Pay	PROGRAM GUIDELINES
Bitewings - four radiographic images	D0274	$60.00	$60.00	$0.00	Frequency: 1 time in a 12 month period. Any combination of D0220, D0230, D0270, D0272, D0273, or D0274 taken on the same date of service that exceeds the max allowed fee for D0210 is reimbursed at the same fee as D0210.
Panoramic radiographic image	D0330	$63.00	$63.00	$0.00	Frequency: 1 per 5 years per client. Cannot be charged in addition to full mouth series D0210. Either D0330 or D0210 per 5 years.

Procedure Description	Alpha-numeric Code	Max Allowable Fee	Program Payment	Max Client Co-Pay	PROGRAM GUIDELINES
Prophylaxis - adult	D1110	$88.00	$88.00	$0.00	Removal of plaque, calculus and stains from the tooth structures with intent to control local irritational factors. Frequency: • 1 time per 6 calendar months; 2 week window accepted. • May be billed for routine prophylaxis. • D1110 may be billed with D4341 and D4342 one time during initial periodontal therapy for prophylaxis of areas of the mouth not receiving nonsurgical periodontal therapy. When this option is used, individual should still be placed on D4910 for maintenance of periodontal disease. D1110 can only be charged once, not per quadrant, and represents areas of the mouth not included in the D4341 or D4342 being reimbursed. • May be alternated w/D4910 for maintenance of periodontally-involved individuals. • Cannot be used as 1 month re-evaluation following nonsurgical periodontal therapy.
Topical application of fluoride varnish	D1206	$52.00	$52.00	$0.00	Topical fluoride application is to be used in conjunction with prophylaxis or preventive appointment. Should be applied to whole mouth. Frequency: up to four (4) times per 12 calendar months. Cannot be used with D1208.

Procedure Description	Alpha-numeric Code	Max Allowable Fee	Program Payment	Max Client Co-Pay	PROGRAM GUIDELINES
Topical application of fluoride - excluding varnish	D1208	$52.00	$52.00	$0.00	Any fluoride application, including swishing, trays or paint on variety, to be used in conjunction with prophylaxis or preventive appointment. Frequency: one (1) time per 12 calendar months. Cannot be used with D1206. D1206 varnish should be utilized in lieu of D1208 whenever possible.
Amalgam - one surface, primary or permanent	D2140	$107.00	$97.00	$10.00	Includes tooth preparation, all adhesives, liners, polishing, and bases. Adjustments are included. Frequency: 36 months for the same restoration. See Explanation of Restorations.
Amalgam - two surfaces, primary or permanent	D2150	$138.00	$128.00	$10.00	Includes tooth preparation, all adhesives, liners, polishing, and bases. Adjustments are included. Frequency: 36 months for the same restoration. See Explanation of Restorations.
Amalgam - three surfaces, primary or permanent	D2160	$167.00	$157.00	$10.00	Includes tooth preparation, all adhesives, liners, polishing, and bases. Adjustments are included. Frequency: 36 months for the same restoration. See Explanation of Restorations.
Amalgam - four or more surfaces, primary or permanent	D2161	$203.00	$193.00	$10.00	Includes tooth preparation, all adhesives, liners, polishing, and bases. Adjustments are included. Frequency: 36 months for the same restoration. See Explanation of Restorations.
Resin-based composite - one surface, anterior	D2330	$115.00	$105.00	$10.00	Includes tooth preparation, all adhesives, liners, etching, and bases. Adjustments are included. See Explanation of Restorations.
Resin-based composite - two surfaces, anterior	D2331	$146.00	$136.00	$10.00	Includes tooth preparation, all adhesives, liners, etching, and bases. Adjustments are included. Frequency: 36 months for the same restoration. See Explanation of Restorations.

Procedure Description	Alpha-numeric Code	Max Allowable Fee	Program Payment	Max Client Co-Pay	PROGRAM GUIDELINES
Resin-based composite - three surfaces, anterior	D2332	$179.00	$169.00	$10.00	Includes tooth preparation, all adhesives, liners, etching, and bases. Adjustments are included. Frequency: 36 months for the same restoration. See Explanation of Restorations.
Resin-based composite - four or more surfaces or involving incisal angle (anterior)	D2335	$212.00	$202.00	$10.00	Includes tooth preparation, all adhesives, liners, etching, and bases. Adjustments are included. Frequency: 36 months for the same restoration. See Explanation of Restorations.
Resin-based composite - one surface, posterior	D2391	$134.00	$124.00	$10.00	Includes tooth preparation, all adhesives, liners, etching, and bases. Adjustments are included. Frequency: 36 months for the same restoration. See Explanation of Restorations.
Resin-based composite -two surfaces, posterior	D2392	$176.00	$166.00	$10.00	Includes tooth preparation, all adhesives, liners, etching, and bases. Adjustments are included. Frequency: 36 months for the same restoration. See Explanation of Restorations.
Resin-based composite - three surfaces, posterior	D2393	$218.00	$208.00	$10.00	Includes tooth preparation, all adhesives, liners, etching, and bases. Adjustments are included. Frequency: 36 months for the same restoration. See Explanation of Restorations.
Resin-based composite - four or more surfaces, posterior	D2394	$268.00	$258.00	$10.00	Includes tooth preparation, all adhesives, liners, etching, and bases. Adjustments are included. Frequency: 36 months for the same restoration. See Explanation of Restorations.

Procedure Description	Alpha-numeric Code	Max Allowable Fee	Program Payment	Max Client Co-Pay	PROGRAM GUIDELINES
Crown - porcelain/ceramic	D2740	$780.00	$730.00	$50.00	Only one of the following will be reimbursed each 84 months per client per tooth: D2740, D2750, D2751, D2752, D2781, D2782, D2783, D2790, D2791, D2792, or D2794. Second molars are only covered if it is necessary to support a partial denture or to maintain eight posterior teeth in occlusion.
Crown - porcelain fused to high noble metal	D2750	$780.00	$730.00	$50.00	Only one of the following will be reimbursed each 84 months per client per tooth: D2740, D2750, D2751, D2752, D2781, D2782, D2783, D2790, D2791, D2792, or D2794. Second molars are only covered if it is necessary to support a partial denture or to maintain eight posterior teeth in occlusion.
Crown - porcelain fused to predominantly base metal	D2751	$780.00	$730.00	$50.00	Only one of the following will be reimbursed each 84 months per client per tooth: D2740, D2750, D2751, D2752, D2781, D2782, D2783, D2790, D2791, D2792, or D2794. Second molars are only covered if it is necessary to support a partial denture or to maintain eight posterior teeth in occlusion.
Crown - porcelain fused to noble metal	D2752	$780.00	$730.00	$50.00	Only one the following will be reimbursed each 84 months per client per tooth: D2740, D2750, D2751, D2752, D2781, D2782, D2783, D2790, D2791, D2792, or D2794. Second molars are only covered if it is necessary to support a partial denture or to maintain eight posterior teeth in occlusion.

Procedure Description	Alpha-numeric Code	Max Allowable Fee	Program Payment	Max Client Co-Pay	PROGRAM GUIDELINES
Crown - 3/4 cast predominantly base metal	D2781	$780.00	$730.00	$50.00	Only one of the following will be reimbursed each 84 months per client per tooth: D2740, D2750, D2751, D2752, D2781, D2782, D2783, D2790, D2791, D2792, or D2794. Second molars are only covered if it is necessary to support a partial denture or to maintain eight posterior teeth in occlusion.
Crown - 3/4 cast noble metal	D2782	$780.00	$730.00	$50.00	Only one of the following will be reimbursed each 84 months per client per tooth: D2740, D2750, D2751, D2752, D2781, D2782, D2783, D2790, D2791, D2792, or D2794. Second molars are only covered if it is necessary to support a partial denture or to maintain eight posterior teeth in occlusion.
Crown - 3/4 porcelain/ceramic	D2783	$780.00	$730.00	$50.00	Only one of the following will be reimbursed each 84 months per client per tooth: D2740, D2750, D2751, D2752, D2781, D2782, D2783, D2790, D2791, D2792, or D2794. Second molars are only covered if it is necessary to support a partial denture or to maintain eight posterior teeth in occlusion.
Crown - full cast high noble metal	D2790	$780.00	$730.00	$50.00	Only one of the following will be reimbursed each 84 months per client per tooth: D2740, D2750, D2751, D2752, D2781, D2782, D2783, D2790, D2791, D2792, or D2794. Second molars are only covered if it is necessary to support a partial denture or to maintain eight posterior teeth in occlusion.

Procedure Description	Alpha-numeric Code	Max Allowable Fee	Program Payment	Max Client Co-Pay	PROGRAM GUIDELINES
Crown - full cast predominantly base metal	D2791	$780.00	$730.00	$50.00	Only one of the following will be reimbursed each 84 months per client per tooth: D2740, D2750, D2751, D2752, D2781, D2782, D2783, D2790, D2791, D2792, or D2794. Second molars are only covered if it is necessary to support a partial denture or to maintain eight posterior teeth in occlusion.
Crown - full cast noble metal	D2792	$780.00	$730.00	$50.00	Only one of the following will be reimbursed each 84 months per client per tooth: D2740, D2750, D2751, D2752, D2781, D2782, D2783, D2790, D2791, D2792, or D2794. Second molars are only covered if it is necessary to support a partial denture or to maintain eight posterior teeth in occlusion.
Crown - titanium	D2794	$780.00	$730.00	$50.00	Only one of the following will be reimbursed each 84 months per client per tooth: D2740, D2750, D2751, D2752, D2781, D2782, D2783, D2790, D2791, D2792, or D2794. Second molars are only covered if it is necessary to support a partial denture or to maintain eight posterior teeth in occlusion.
Re-cement or re-bond inlay, onlay, veneer or partial coverage restoration	D2910	$87.00	$77.00	$10.00	Not allowed within 6 months of placement.
Re-cement or re-bond crown	D2920	$89.00	$79.00	$10.00	Not allowed within 6 months of placement.

Procedure Description	Alpha-numeric Code	Max Allowable Fee	Program Payment	Max Client Co-Pay	PROGRAM GUIDELINES
Core buildup, including any pins when required	D2950	$225.00	$200.00	$25.00	Only one of the following will be reimbursed per 84 months per client per tooth. D2950, D2952, or D2954. Refers to building up of coronal structure when there is insufficient retention for a separate extracoronal restorative procedure. A core buildup is not a filler to eliminate any undercut, box form, or concave irregularity in a preparation. Not payable on the same tooth and same day as D2951.
Pin retention per tooth	D2951	$50.00	$40.00	$10.00	Pins placed to aid in retention of restoration. Can only be used in combination with a multi-surface amalgam.
Cast post and core in addition to crown	D2952	$332.00	$307.00	$25.00	Only one of the following will be reimbursed per 84 months per client per tooth. D2950, D2952, or D2954. Refers to building up of anatomical crown when restorative crown will be placed. Not payable on the same tooth and same day as D2951.
Prefabricated post and core in addition to crown	D2954	$269.00	$244.00	$25.00	Only one of the following will be reimbursed per 84 months per client per tooth. D2950, D2952, or D2954. Core is built around a prefabricated post. This procedure includes the core material and refers to building up of anatomical crown when restorative crown will be placed. Not payable on the same tooth and same day as D2951.
Endodontic therapy, anterior tooth (excluding final restoration)	D3310	$566.40	$516.40	$50.00	Complete root canal therapy; Includes all appointments necessary to complete treatment; also includes intra-operative radiographs. Does not include diagnostic evaluation and necessary radiographs/diagnostic images. Teeth covered: 6-11 and 22-27.

Procedure Description	Alpha-numeric Code	Max Allowable Fee	Program Payment	Max Client Co-Pay	PROGRAM GUIDELINES
Endodontic therapy, premolar tooth (excluding final restoration)	D3320	$661.65	$611.65	$50.00	Complete root canal therapy; Includes all appointments necessary to complete treatment; also includes intra-operative radiographs. Does not include diagnostic evaluation and necessary radiographs/diagnostic images. Teeth covered: 4, 5, 12, 13, 20, 21, 28, and 29.
Endodontic therapy, molar tooth (excluding final restoration)	D3330	$786.31	$736.31	$50.00	Complete root canal therapy; Includes all appointments necessary to complete treatment; also includes intra-operative radiographs. Does not include diagnostic evaluation and necessary radiographs/diagnostic images. Teeth covered: 2, 3, 14, 15, 18, 19, 30, and 31.

Procedure Description	Alpha-numeric Code	Max Allowable Fee	Program Payment	Max Client Co-Pay	PROGRAM GUIDELINES
Periodontal scaling & root planing - four or more teeth per quadrant	D4341	$177.00	$167.00	$10.00	Involves instrumentation of the crown and root surfaces of the teeth to remove plaque and calculus from these surfaces. For clients with periodontal disease and is therapeutic, not prophylactic. D4341 and D1110 can be reported on same service date when D1110 is utilized for areas of the mouth that are not affected by periodontal disease. D1110 can only be charged once, not per quadrant; A diagnosis of periodontitis with clinical attachment loss (CAL) included. Diagnosis and classification of the periodontology case type must be in accordance with documentation as currently established by the American Academy of Periodontology. Current periodontal charting must be present in client chart documenting active periodontal disease. Frequency: • 1 time per quadrant per 36 month interval. • No more than 2 quadrants may be considered in a single visit in a non-hospital setting. Documentation of other treatment provided at same time will be requested. • Any follow-up and re-evaluation are included in the initial reimbursement.

Procedure Description	Alpha-numeric Code	Max Allowable Fee	Program Payment	Max Client Co-Pay	PROGRAM GUIDELINES
Periodontal scaling & root planing - one to three teeth per quadrant	D4342	$128.00	$128.00	$0.00	Involves instrumentation of the crown and root surfaces of the teeth to remove plaque and calculus from these surfaces. For clients with periodontal disease and is therapeutic, not prophylactic. D4342 and D1110 can be reported on same service date when date when D1110 is utilized for areas of the mouth that are not affected by periodontal disease. D1110 can only be charged once, not per quadrant; A diagnosis of periodontitis with clinical attachment loss (CAL) included. Current periodontal charting must be present in client chart documenting active periodontal disease. Frequency: • 1 time per quadrant per 36 month interval. • No more than 2 quadrants may be considered in a single visit in a non-hospital setting.. Documentation of other treatment provided at same time will be requested. • Any follow-up and re-evaluation are included in the initial reimbursement.

Procedure Description	Alpha-numeric Code	Max Allowable Fee	Program Payment	Max Client Co-Pay	PROGRAM GUIDELINES
Periodontal maintenance procedures	D4910	$136.00	$136.00	$0.00	Procedure following periodontal therapy D4341 or D4342. This procedure includes removal of the bacterial plaque and calculus from supragingival and subgingival regions, site specific scaling and root planing where indicated and polishing the teeth. Frequency: • Up to four times per fiscal year per client. • Cannot be charged within the first three months following active periodontal treatment.
Complete denture - maxillary	D5110	$793.00	$713.00	$80.00	Reimbursement made upon delivery of a complete maxillary denture to the client. D5110 or D5120 cannot be used to report an immediate denture, D5130 or D5140. Routine follow-up adjustments/relines within 6 months are to be anticipated and are included in the initial reimbursement. A complete denture is made after teeth have been removed and the gum and bone tissues have healed - or to replace an existing denture. Complete dentures are provided once adequate healing has taken place following extractions. This can vary greatly depending upon client, oral health, overall health, and other confounding factors. Frequency: Program will only pay for one per every five years - documentation that existing prosthesis cannot be made serviceable must be maintained.

Procedure Description	Alpha-numeric Code	Max Allowable Fee	Program Payment	Max Client Co-Pay	PROGRAM GUIDELINES
Complete denture - mandibular	D5120	$793.00	$713.00	$80.00	Reimbursement made upon delivery of a complete mandibular denture to the client. D5110 or D5120 cannot be used to report an immediate denture, D5130, D5140. Routine follow-up adjustments/relines within 6 months are to be anticipated and are included in the initial reimbursement. A complete denture is made after teeth have been removed and the gum and bone tissues have healed - or to replace an existing denture. Complete dentures are provided once adequate healing has taken place following extractions. This can vary greatly depending upon client, oral health, overall health, and other confounding factors. Frequency: Program will only pay for one per every five years - documentation that existing prosthesis cannot be made serviceable must be maintained.

Procedure Description	Alpha-numeric Code	Max Allowable Fee	Program Payment	Max Client Co-Pay	PROGRAM GUIDELINES
Immediate denture – maxillary	D5130	$793.00	$713.00	$80.00	Reimbursement made upon delivery of an immediate maxillary denture to the client. Routine follow-up adjustments/soft tissue condition relines within 6 months are to be anticipated and are included in the initial reimbursement. An immediate denture is made prior to teeth being extracted and is inserted same day of extraction of remaining natural teeth. Frequency: D5130 can be reimbursed only once per lifetime per client. Complete denture, D5110, may be considered 5 years after immediate denture was reimbursed. Documentation that existing prosthesis cannot be made serviceable must be maintained.
Immediate denture – mandibular	D5140	$793.00	$713.00	$80.00	Reimbursement made upon delivery of an immediate mandibular denture to the client. Routine follow-up adjustments/soft tissue condition relines within 6 months are to be anticipated and are included in the initial reimbursement. An immediate denture is made prior to teeth being extracted and is inserted same day of extraction of remaining natural teeth. Frequency: D5140 can be reimbursed only once per lifetime per client. Complete dentures, D5120, may be considered 5 years after immediate denture was reimbursed – documentation that existing prosthesis cannot be made serviceable must be maintained.

Procedure Description	Alpha-numeric Code	Max Allowable Fee	Program Payment	Max Client Co-Pay	PROGRAM GUIDELINES
Maxillary partial denture - resin base (including any conventional clasps, rests and teeth)	D5211	$700.00	$640.00	$60.00	Reimbursement made upon delivery of a complete partial maxillary denture to the client. D5211 and D5212 are considered definitive treatments. Routine follow-up adjustments or relines within 6 months are to be anticipated and are included in the initial reimbursement. A partial resin base denture can be made right after having teeth extracted (healing from only a few teeth is not as extensive as healing from multiple). A partial resin base denture can also be made before having teeth extracted if the teeth being removed are in the front or necessary healing will be minimal. Several impressions and "try-in" appointments may be necessary and are included in the cost. Frequency: Program will only pay for one resin maxillary per every 3 years - documentation that existing prosthesis cannot be made serviceable must be maintained.

Procedure Description	Alpha-numeric Code	Max Allowable Fee	Program Payment	Max Client Co-Pay	PROGRAM GUIDELINES
Mandibular partial denture - resin base (including any conventional clasps, rests and teeth)	D5212	$778.00	$718.00	$60.00	Reimbursement made upon delivery of a complete partial mandibular denture to the client. D5211 and D5212 are considered definitive treatment. Routine follow-up adjustments/relines within 6 months are to be anticipated and are included in the initial reimbursement. A partial resin base denture can be made right after having teeth extracted (healing from only a few teeth is not as extensive as healing from multiple). A partial resin base denture can also be made before having teeth extracted if the teeth being removed are in the front or necessary healing will be minimal. Several impressions and "try-in" appointments may be necessary and are included in the cost. Frequency: Program will only pay for one resin mandibular per every 3 years - documentation that existing prosthesis cannot be made serviceable must be maintained.

Procedure Description	Alpha-numeric Code	Max Allowable Fee	Program Payment	Max Client Co-Pay	PROGRAM GUIDELINES
Maxillary partial denture – cast metal framework with resin denture bases (including any conventional clasps, rests and teeth)	D5213	$778.00	$718.00	$60.00	Reimbursement made upon delivery of a complete partial maxillary denture to the client. D5213 and D5214 are considered definitive treatment. Routine follow-up adjustments or relines within 6 months are to be anticipated and are included in the initial reimbursement. A partial cast metal base can also be made right after having teeth extracted (healing from only a few teeth is not as extensive as healing from multiple). A partial cast metal base denture can be made before having teeth extracted if the teeth being removed are in the front or necessary healing will be minimal. Several impressions and "try-in" appointments may be necessary and are included in the cost. Frequency: Program will only pay for one maxillary per every five years - documentation that existing prosthesis cannot be made serviceable must be maintained.

Procedure Description	Alpha-numeric Code	Max Allowable Fee	Program Payment	Max Client Co-Pay	PROGRAM GUIDELINES
Mandibular partial denture – cast metal framework with resin denture bases (including any conventional clasps, rests and teeth)	D5214	$778.00	$718.00	$60.00	Reimbursement made upon delivery of a complete partial mandibular denture to the client. D5213 and D5214 are considered definitive treatment. Routine follow-up adjustments or relines within 6 months are to be anticipated and are included in the initial reimbursement. A partial cast metal base can be made right after having teeth extracted (healing from only a few teeth is not as extensive as healing from multiple). A partial cast metal base denture can also be made before having teeth extracted if the teeth being removed are in the front or necessary healing will be minimal. Several impressions and "try-in" appointments may be necessary and are included in the cost. Frequency: Program will only pay for one mandibular per every five years - documentation that existing prosthesis cannot be made serviceable must be maintained.

Procedure Description	Alpha-numeric Code	Max Allowable Fee	Program Payment	Max Client Co-Pay	PROGRAM GUIDELINES
Immediate maxillary partial denture – resin base (including any conventional clasps, rests and teeth)	D5221	$509.00	$449.00	$60.00	Reimbursement made upon delivery of an immediate partial maxillary denture to the client. D5221 can be reimbursed only once per lifetime per client and must be on the same date of service as the extraction. Routine follow-up adjustments or relines within 6 months is to be anticipated and are included in the initial reimbursement. An immediate partial resin base denture can be made before having teeth extracted if the teeth being removed are in the front or necessary healing will be minimal. Several impressions and "try-in" appointments may be necessary and are included in the cost. Frequency: A maxillary partial denture may be considered 3 years after immediate partial denture was reimbursed. Documentation that existing prosthesis cannot be made serviceable must be maintained.

Procedure Description	Alpha-numeric Code	Max Allowable Fee	Program Payment	Max Client Co-Pay	PROGRAM GUIDELINES
Immediate mandibular partial denture – resin base (including any conventional clasps, rests and teeth)	D5222	$509.00	$449.00	$60.00	Reimbursement made upon delivery of an immediate partial mandibular denture to the client. D5222 can be reimbursed only once per lifetime per client and must be on the same date of service as the extraction. Routine follow-up adjustments or relines within 6 months is to be anticipated and are included in the initial reimbursement. An immediate partial resin base denture can be made before having teeth extracted if the teeth being removed are in the front or necessary healing will be minimal. Several impressions and "try-in" appointments may be necessary and are included in the cost. Frequency: A mandibular partial denture may be considered 3 years after immediate partial denture was reimbursed. Documentation that existing prosthesis cannot be made serviceable must be maintained.

Procedure Description	Alpha-numeric Code	Max Allowable Fee	Program Payment	Max Client Co-Pay	PROGRAM GUIDELINES
Immediate maxillary partial denture – cast metal framework with resin denture bases (including any conventional clasps, rests and teeth)	D5223	$778.00	$718.00	$60.00	Reimbursement made upon delivery of an immediate partial maxillary denture to the client. D5223 can be reimbursed only once per lifetime per client and must be on the same date of service as the extraction. Routine follow-up adjustments or relines within 6 months is to be anticipated and are included in the initial reimbursement. An immediate partial cast metal framework with resin base denture can be made before having teeth extracted if the teeth being removed are in the front or necessary healing will be minimal. Several impressions and "try-in" appointments may be necessary and are included in the cost. Frequency: A maxillary partial denture may be considered 5 years after immediate partial denture was reimbursed. Documentation that existing prosthesis cannot be made serviceable must be maintained.

Procedure Description	Alpha-numeric Code	Max Allowable Fee	Program Payment	Max Client Co-Pay	PROGRAM GUIDELINES
Immediate mandibular partial denture – cast metal framework with resin denture bases (including any conventional clasps, rests and teeth)	D5224	$778.00	$718.00	$60.00	Reimbursement made upon delivery of an immediate partial mandibular denture to the client. D5224 can be reimbursed only once per lifetime per client and must be on the same date of service as the extraction. Routine follow-up adjustments or relines within 6 months are to be anticipated and are included in the initial reimbursement. An immediate partial cast metal framework with resin base denture can be made before having teeth extracted if the teeth being removed are in the front or necessary healing will be minimal. Several impressions and "try-in" appointments may be necessary and are included in the cost. Frequency: A mandibular partial denture may be considered 5 years after immediate partial denture was reimbursed. Documentation that existing prosthesis cannot be made serviceable must be maintained.
Repair broken complete denture base, mandibular	D5511	$87.00	$67.00	$20.00	Repair broken completed denture base, mandibular
Repair broken complete denture base, maxillary	D5512	$87.00	$67.00	$20.00	Repair broken completed denture base, maxillary
Replace missing or broken teeth - complete denture (each tooth)	D5520	$73.00	$63.00	$10.00	Replacement/repair of missing or broken teeth.

Procedure Description	Alpha-numeric Code	Max Allowable Fee	Program Payment	Max Client Co-Pay	PROGRAM GUIDELINES
Repair resin partial denture base, mandibular	D5611	$95.00	$85.00	$10.00	Repair resin partial denture base, mandibular
Repair resin partial denture base, maxillary	D5612	$95.00	$85.00	$10.00	Repair resin partial denture base, maxillary
Repair or replace broken clasp	D5630	$123.00	$113.00	$10.00	Repair of broken clasp on partial denture base – per tooth.
Replace broken teeth-per tooth	D5640	$80.00	$70.00	$10.00	Repair/replacement of missing tooth.
Add tooth to existing partial denture	D5650	$109.00	$99.00	$10.00	Adding tooth to partial denture base. Documentation may be requested when charged on partial delivered in last 12 months.
Add clasp to existing partial denture	D5660	$131.00	$121.00	$10.00	Adding clasp to partial denture base – per tooth. Documentation may be requested when charged on partial delivered in last 12 months.
Rebase complete maxillary denture	D5710	$322.00	$297.00	$25.00	Rebasing the denture base material due to alveolar ridge resorption. Frequency: one (1) time per 12 months. Completed at laboratory. Cannot be charged on denture provided in the last 6 months. Cannot be charged in addition to a reline in a 12 month period.
Rebase complete mandibular denture	D5711	$322.00	$297.00	$25.00	Rebasing the denture base material due to alveolar ridge resorption. Frequency: one (1) time per 12 months. Completed at laboratory. Cannot be charged on denture provided in the last 6 months. Cannot be charged in addition to a reline in a 12 month period.
Rebase maxillary partial denture	D5720	$304.00	$279.00	$25.00	Rebasing the partial denture base material due to alveolar ridge resorption. Frequency: one (1) time per 12 months. Completed at laboratory. Cannot be charged on denture provided in the last 6 months. Cannot be charged in addition to a reline in a 12 month period.

Procedure Description	Alpha-numeric Code	Max Allowable Fee	Program Payment	Max Client Co-Pay	PROGRAM GUIDELINES
Rebase mandibular partial denture	D5721	$304.00	$279.00	$25.00	Rebasing the partial denture base material due to alveolar ridge resorption. Frequency: one (1) time per 12 months. Completed at laboratory. Cannot be charged on denture provided in the last 6 months. Cannot be charged in addition to a reline in a 12 month period.
Reline complete maxillary denture (chairside)	D5730	$182.00	$172.00	$10.00	Chair side reline that resurfaces without processing denture base. Frequency: One (1) time per 12 months. Cannot be charged on denture provided in the last 6 months. Cannot be charged in addition to a rebase in a 12 month period.
Reline complete mandibular denture (chairside)	D5731	$182.00	$172.00	$10.00	Chair side reline that resurfaces without processing denture base. Frequency: One (1) time per 12 months. Cannot be charged on denture provided in the last 6 months. Cannot be charged in addition to a rebase in a 12 month period.
Reline maxillary partial denture (chairside)	D5740	$167.00	$157.00	$10.00	Chair side reline that resurfaces without processing partial denture base. Frequency: one (1) time per 12 months. Cannot be charged on denture provided in the last 6 months. Cannot be charged in addition to a rebase in a 12 month period.
Reline mandibular partial denture (chairside)	D5741	$167.00	$157.00	$10.00	Chair side reline that resurfaces without processing partial denture base. Frequency: one (1) time per 12 months. Cannot be charged on denture provided in the last 6 months. Cannot be charged in addition to a rebase in a 12 month period.

Procedure Description	Alpha-numeric Code	Max Allowable Fee	Program Payment	Max Client Co-Pay	PROGRAM GUIDELINES
Reline complete maxillary denture (laboratory)	D5750	$243.00	$218.00	$25.00	Laboratory reline that resurfaces with processing denture base. Frequency: one (1) time per 12 months. Cannot be charged on denture provided in the last 6 months. Cannot be charged in addition to a rebase in a 12 month period.
Reline complete mandibular denture (laboratory)	D5751	$243.00	$218.00	$25.00	Laboratory reline that resurfaces with processing denture base. Frequency: one (1) time per 12 months. Cannot be charged on denture provided in the last 6 months. Cannot be charged in addition to a rebase in a 12 month period.
Reline maxillary partial denture (laboratory)	D5760	$239.00	$214.00	$25.00	Laboratory reline that resurfaces with processing partial denture base. Frequency: one (1) time per 12 months. Cannot be charged on denture provided in the last 6 months. Cannot be charged in addition to a rebase in a 12 month period.
Reline mandibular partial denture (laboratory)	D5761	$239.00	$214.00	$25.00	Laboratory reline that resurfaces with processing partial denture base. Frequency: one (1) time per 12 months. Cannot be charged on denture provided in the last 6 months. Cannot be charged in addition to a rebase in a 12 month period.
Extraction, erupted tooth or exposed root (elevation and/or forceps removal)	D7140	$82.00	$72.00	$10.00	Routine removal of tooth structure, including minor smoothing of socket bone, and closure as necessary. Treatment notes must include documentation that an extraction was done per tooth.

Procedure Description	Alpha-numeric Code	Max Allowable Fee	Program Payment	Max Client Co-Pay	PROGRAM GUIDELINES
Surgical removal of erupted tooth requiring removal of bone and/or sectioning of tooth, and including elevation of mucoperiosteal flap if indicated	D7210	$135.00	$125.00	$10.00	Includes removal of bone, and/or sectioning of erupted tooth, smoothing of socket bone and closure as necessary. Treatment notes must include documentation that a surgical extraction was done per tooth.
Surgical removal of residual tooth roots (cutting procedure)	D7250	$143.00	$133.00	$10.00	Includes removal of bone, and/or sectioning of residual tooth roots, smoothing of socket bone and closure as necessary. Treatment notes must include documentation that a surgical extraction was done per tooth. Can only be charged once per tooth. Cannot be charged for removal of broken off roots for recently extracted tooth.
Incisional biopsy of oral tissue-soft	D7286	$381.00	$381.00	$0.00	Removing tissue for histologic evaluation. Treatment notes must include documentation and proof that biopsy was sent for evaluation.
Alveoloplasty in conjunction with extractions - four or more teeth or tooth spaces, per quadrant	D7310	$150.00	$140.00	$10.00	Substantially reshaping the bone after an extraction procedure, much more than minor smoothing of the bone. Reported per quadrant.
Alveoloplasty in conjunction with extractions - one to three teeth or tooth spaces, per quadrant	D7311	$138.00	$128.00	$10.00	Substantially reshaping the bone after an extraction procedure, much more than minor smoothing of the bone. Reported per quadrant.
Alveoloplasty not in conjunction with extractions - four or more teeth or tooth spaces, per quadrant	D7320	$150.00	$140.00	$10.00	Substantially reshaping the bone after an extraction procedure, correcting anatomical irregularities. Reported per quadrant.

Procedure Description	Alpha-numeric Code	Max Allowable Fee	Program Payment	Max Client Co-Pay	PROGRAM GUIDELINES
Alveoloplasty not in conjunction with extractions - one to three teeth or tooth spaces, per quadrant	D7321	$138.00	$128.00	$10.00	Substantially reshaping the bone after an extraction procedure, correcting anatomical irregularities. Reported per quadrant.
Removal of torus palatinus	D7472	$308.00	$298.00	$10.00	To remove a malformation of bone for proper prosthesis fabrication.
Removal of torus mandibularis	D7473	$300.00	$290.00	$10.00	To remove a malformation of bone for proper prosthesis fabrication.
Incision & drainage of abscess - intraoral soft tissue	D7510	$193.00	$183.00	$10.00	Incision through mucosa, including periodontal origins.
Palliative (emergency) treatment of dental pain - minor procedure	D9110	$61.00	$36.00	$25.00	Emergency treatment to alleviate pain/discomfort. This code cannot be used for filing claims or writing or calling in a prescription to the pharmacy or to address situations that arise during multi-visit treatments covered by a single fee such as surgical or endodontic treatment. Report per visit, no procedure. Frequency: Limit 1 time per year. Maintain documentation that specifies problem and treatment.

EXPLANATION OF RESTORATIONS		
Location	Number of Surfaces	Characteristics

Anterior	1	Placed on one of the following five surface classifications – Mesial, Distal, Incisal, Lingual, or Labial.
	2	Placed, without interruption, on two of the five surface classifications – e.g., Mesial–Lingual.
	3	Placed, without interruption, on three of the five surface classifications – e.g., Lingual–Mesial–Labial.
	4 or more	Placed, without interruption, on four or more of the five surface classifications – e.g., Mesial-Incisal-Lingual-Labial.
Posterior	1	Placed on one of the following five surface classifications – Mesial, Distal, Occlusal, Lingual, or Buccal.
	2	Placed, without interruption, on two of the five surface classifications – e.g., Mesial-Occlusal.
	3	Placed, without interruption, on three of the five surface classifications – e.g., Lingual-Occlusal-Distal.
	4 or more	Placed, without interruption, on four or more of the five surface classifications – e.g., Mesial-Occlusal-Lingual-Distal.

COLORADO
Department of Health Care Policy & Financing
Medical Services Board

NOVEMBER 2017 EMERGENCY JUSTIFICATION FOR MEDICAL ASSISTANCE RULES ADOPTED AT THE NOVEMBER 9, 2017 MEDICAL SERVICES BOARD MEETING

Revision to the Medical Assistance Rules Concerning the Consideration of Trusts in Determining Medical Assistance Eligibility, Section 8.100.7.E.6.b

Emergency rule-making is imperatively necessary as the American Dental Association published the CDT 2018 Dental Procedure Code book listing additions, revisions and deletions effective January 1, 2018. There were four minor changes in codes currently used by the Colorado Dental Health Care Program for Low-Income Seniors (Senior Dental Program), and there were two codes removed that are also used by the Senior Dental Program.

Code D5510 (repair broken complete denture base) was removed and replaced with D5511 (repair broken complete denture base, mandibular) and D5512 (repair broken complete denture base, maxillary). Code D5610 (repair resin denture base) was also removed and replaced with D5611 (repair resin partial denture base, mandibular) and D5612 (repair resin partial denture base, maxillary). With the removal of these codes the grantees of the Senior Dental Program would not have the ability to provide these services to the current Colorado seniors enrolled in the Senior Dental Program. Seniors with broken dentures would not be able to consume the necessary daily vitamins needed from a healthy diet due to the inability to eat. The other detrimental issue are the medications that must be taken with food. This scenario leaves the senior with the choice of not taking the medication or taking the medications and becoming extremely ill due to not having an adequate meal.

The emergency rulemaking is necessary to keep in compliance with the current policy. This rule change is crucial for the preservation of public health, safety, and welfare.

CYNTHIA H. COFFMAN
Attorney General

MELANIE J. SNYDER
Chief Deputy Attorney General

LEORA JOSEPH
Chief of Staff

FREDERICK R. YARGER
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2017-00540

Opinion of the Attorney General rendered in connection with the rules adopted by the

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

on 11/09/2017

10 CCR 2505-10

MEDICAL ASSISTANCE - STATEMENT OF BASIS AND PURPOSE, AND RULE HISTORY

The above-referenced rules were submitted to this office on 11/09/2017 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.

November 21, 2017 14:44:32

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Terminated Rulemaking

Department

Department of Natural Resources

Agency

Oil and Gas Conservation Commission

CCR number

2 CCR 404-1

Tracking number

2017-00495

Termination date

11/29/2017

Reason for termination

Amended rule submitted

Terminated Rulemaking

Department

Department of Natural Resources

Agency

Oil and Gas Conservation Commission

CCR number

2 CCR 404-1

Tracking number

2017-00535

Termination date

11/29/2017

Reason for termination

Amended rule submitted

Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices

Filed on 11/27/2017

Department

Department of Public Health and Environment

Agency

Water Quality Control Commission (1002 Series)

COLORADO
Department of Public Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

NOTICE OF PUBLIC HEARING
BEFORE THE
COLORADO WATER QUALITY CONTROL DIVISION

SUBJECT:

This public hearing concerns systems employing new technology under the now-obsolete Guidelines for Individual Sewage Disposal Systems (5 CCR 1006-3) ("ISDS Guidelines"). The specific issue is whether the GeoMat and SoilAir systems for which application has been made by Geomatrix Systems, LLC (Geomatrix) have established a record of performance reliability, based upon the criteria set forth in the ISDS Guidelines, which would justify certification/approval by the Water Quality Control Division (Division) for use in the State of Colorado. *See* Section XI.B.1. of the ISDS Guidelines.

SCOPE:

Geomatrix requested that the ISDS Guidelines be used as the basis for the Division's determination because Geomatrix initiated the application process while those regulations were still in effect. The Division agreed to accommodate Geomatrix's request under the condition that any supporting evidence submitted by Geomatrix in the context of this public hearing be limited to data or studies that were in existence and/or generated at the time the ISDS Guidelines were in effect. Geomatrix is aware that the Division will not consider any supporting evidence that is based on data or studies conducted after the On-Site Wastewater Treatment System Regulation (5 CCR 1002-43) became effective on June 30, 2013.

SCHEDULE OF IMPORTANT DATES:

Geomatrix prehearing statement and written testimony due	11/27/2017	
Division prehearing statement and written testimony due Written comments from members of the public due	12/22/2017	
Public Hearing	01/10/2018 1:00 pm	Rooms C1C/C1D, 4300 Cherry Creek Drive South, Denver Colorado 80246

HEARING SUBMITTALS:

For this hearing, the Division will receive all submittals electronically. Submittals must be provided as PDF documents, except for raw data exhibits which may be provided as Excel workbooks. Sumbittals should be emailed to Annette.quill@coag.gov.

HEARING PROCEDURES:

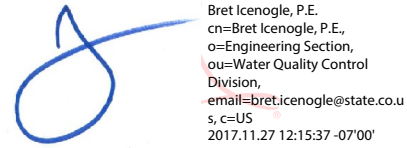
Geomatrix will provide oral testimony from its witnesses, and the Division will have an opportunity to ask questions of Geomatrix. The Division will then provide oral testimony from its witnesses, and Geomatrix will have an opportunity to ask questions of the Division's witnesses. Oral testimony at the hearing should primarily summarize written material previously submitted. After oral testimony by Geomatrix and the Division is completed, any member of the public may offer oral comments. The hearing will be recorded.

SPECIFIC AUTHORITY:

The provisions of the now-obsolete ISDS Guidelines (5 CCR 1003-6) provide the legal authority and jurisdiction for this hearing.

Dated this 20th day of November, 2017 at Denver, Colorado.

WATER QUALITY CONTROL DIVISION



Bret Icenogle

Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices

Filed on 12/04/2017

Department

Department of Health Care Policy and Financing

Agency

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

COLORADO
Department of Health Care Policy & Financing

PUBLIC NOTICE

December 10, 2017

Cost Sharing

The Department of Health Care Policy and Financing (Department) intends to submit a State Plan Amendment to the Centers for Medicare and Medicaid Services (CMS) to increase hospital outpatient, pharmacy, and non-emergency services in the emergency room co-payments, effective January 1, 2018. Hospital outpatient co-payment will increase from $3.00 per visit to $4.00 per visit. Pharmacy co-payment will increase from $1.00 per prescription for generic or multi-source drugs and $3.00 per prescription for single source or brand name drugs to $3.00 per new prescription or refill for all prescriptions. Non-emergency services in the emergency room co-payment will increase from $3.00 per visit to $6.00 per visit. The increased co-payments are being implemented in accordance with 25.5-4-209, C.R.S. This change affects individuals eligible for cost sharing.

General Information

A link to this notice will be posted on the Department's website starting on December 10, 2017. Written comments may be addressed to:

Director, Health Programs Office
Colorado Department of Health Care Policy and Financing
1570 Grant Street
Denver, CO 80203

Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices

Filed on 12/08/2017

Department

Department of Health Care Policy and Financing

Agency

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

COLORADO
Department of Health Care Policy & Financing

PUBLIC NOTICE

December 10, 2017

Alternative Benefit Plan State Plan Amendment

The Department of Health Care Policy and Financing (Department) intends to submit a State Plan Amendment to the Centers for Medicare and Medicaid Services (CMS) to align the vision services in the State Plan with the new Vision Services rule at 10 CCR 2505-10, Section 8.203, and to change Physical Therapy and Occupational Therapy benefits by removing the 48 unit limit for individuals age 21 and over, and requiring prior authorization for such benefits to exceed 48 units of any combination of physical and occupational therapy per 12-month period, effective December 1, 2017. The changes to the Alternative Benefit Plan State Plan Amendment include aligning the vision services provided in the State Plan, including eyeglasses, contact lenses, orthoptic vision treatment, and ocular prosthetics, with the services provided in rule and removing balance billing language; in addition, the changes implement Footnote 15.a. to Senate Bill 17-162 by removing the Physical Therapy and Occupational Therapy benefits 48 unit limit for adults and replacing it with a prior authorization requirement for services exceeding 48 units per 12-month period. These updates affect clients receiving vision services by defining the scope of vision services provided and removing the balance billing language and clients receiving physical therapy and occupational therapy services.

In accordance with 42 CFR § 440.386 and 42 CFR § 440.345, EPSDT services that are medically necessary will be provided to individuals under 21 years of age through the Alternative Benefit Plan.

General Information

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Director, Health Programs Office
Colorado Department of Health Care Policy and Financing
1570 Grant Street
Denver, CO 80203

Calendar of Hearings

Hearing Date/Time	Agency	Location
02/06/2018 10:00 AM	Division of Motor Vehicles	1881 Pierce Street Lakewood CO 80214 RM 110
01/08/2018 08:30 AM	Oil and Gas Conservation Commission	1120 Lincoln St, Suite 801, Denver, CO 80203
01/10/2018 08:30 AM	Colorado Parks and Wildlife (405 Series, Parks)	Hunter Education Building, 6060 Broadway, Denver, CO 80216
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06/18/2018 09:00 AM	Ground Water Commission	1313 Sherman Street, Room 318, Denver, CO 80203
01/09/2018 01:00 PM	Transportation Commission and Office of Transportation Safety	CDOT Auditorium, 4201 E. Arkansas Ave, Denver, CO 80222
01/09/2018 02:00 PM	Transportation Commission and Office of Transportation Safety	CDOT Auditorium, 4201 E. Arkansas Ave, Denver, CO 80222
01/18/2018 10:00 AM	Division of Banking	DORA, Division of Banking, 1560 Broadway, Suite 975, Denver, CO 80202
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01/02/2018 10:00 AM	Division of Insurance	1560 Broadway, Ste 110D, Denver CO 8202
01/22/2018 09:00 AM	Division of Professions and Occupations - State Electrical Board	1560 Broadway #110-D, Denver CO. 80202
02/20/2018 09:00 AM	Public Utilities Commission	Colorado Public Utilities Commission Hearing Room, 1560 Broadway Suite 250
01/11/2018 10:00 AM	Division of Professions and Occupations - State Boxing Commission	1560 Broadway, Ste 110 D., Denver, CO 80202
01/17/2018 10:00 AM	Laboratory Services Division	Sabin-Cleere Conference Room, Building A, 1st Floor, 4300 Cherry Creek Drive South, Denver, CO 80246
01/12/2018 09:00 AM	Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)	303 East 17th Ave, 11th Floor, Denver, CO 80203
01/05/2018 10:00 AM	Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	CDHS 1575 Sherman Street, 8th Floor, Denver, CO 80203